

APPENDIX A

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 1, 2021

Christopher M. Wolpert
Clerk of Court

TEDDY CHIQUITO,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA;
NAVAJO POLICE,

Defendants - Appellees.

No. 21-2056
(D.C. Nos. 1:18-CV-00963-KWR-SCY &
1:03-CR-00982-MCA-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before BACHARACH, MURPHY, and CARSON, Circuit Judges.

Petitioner Teddy Chiquito filed a petition for a writ of *coram nobis* under 28 U.S.C. § 1651(a) to void his criminal conviction. The district court denied his petition, so Petitioner appealed.¹ Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ For substantially the reasons stated by the district court, we conclude this appeal is not taken in good faith and that Petitioner has failed to show the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. Therefore, we deny Petitioner's motion seeking leave to proceed *in*

Appendix A

A jury convicted Petitioner on three counts relating to assaults he committed within the Navajo Indian Reservation. Petitioner directly appealed his conviction; we affirmed. United States v. Chiquito, 175 F. App'x. 215 (10th Cir. 2006) (unpublished). Petitioner then moved to vacate, set aside, or correct his conviction under 28 U.S.C. § 2255. The district court, following a magistrate judge's recommendations, dismissed Petitioner's motion. Petitioner appealed the dismissal. We denied a certificate of appealability.

Fourteen years after trial, Petitioner filed this petition for a writ of *coram nobis* in the district court, raising four issues: (1) the district court did not try him as a law enforcement officer; (2) his counsel provided ineffective assistance; (3) his § 924(c) conviction lacked an underlying crime of violence; and (4) aspects of his trial violated the Navajo Bill of Rights and the Indian Civil Rights Act. The district court denied his petition. Petitioner appeals the district court's denial of his claims, except the crime of violence issue, which he does not challenge.

Writs of *coram nobis* originated in the common law courts of sixteenth-century England. *See United States v. Denedо*, 556 U.S. 904, 910 (2009). Although they serve some valid purposes in today's federal courts, they provide a limited remedy. *Id.* at 911. Courts properly issue writs of *coram nobis* to correct factual errors about the validity of the proceeding. United States v. Morgan, 346 U.S. 502, 507 (1954). But a court should grant a writ of *coram nobis* sparingly—only in “extraordinary”

forma pauperis on appeal. Rolland v. Primesource Staffing, L.L.C., 497 F.3d 1077, 1079 (10th Cir. 2007) (citing 28 U.S.C. § 1915(a)(3), (e)(2)).

cases presenting circumstances compelling its use ‘to achieve justice.’” Denedo, 556 U.S. at 911 (quoting Morgan, 346 U.S. at 511). Indeed, “it is difficult to conceive of a situation in a federal criminal case today where a writ of *coram nobis* would be necessary or appropriate.” Carlisle v. United States, 517 U.S. 416, 429 (1996) (citations and brackets omitted).

A court may not grant *coram nobis* relief where the petitioner previously raised or could have raised the claim on direct appeal or in a collateral attack. United States v. Miles, 923 F.3d 798, 804 (10th Cir. 2019). And if the petitioner raises a new claim in his writ of *coram nobis*, he must first establish that he diligently brought his claim to court. United States v. Tarango, 670 F. App’x. 981, 981 (10th Cir. 2016) (Gorsuch, J.) (unpublished) (holding the petitioner did not diligently pursue his claim because the facts underlying the claim occurred and were known to him for at least thirteen years).

The district court denied the petition in part because Petitioner raised three of the issues in prior actions. He raised the fact that the district court did not try him as a law enforcement officer on direct appeal and raised both the ineffective assistance of counsel and the crime of violence issues in his § 2255 motion. *See Chiquito*, 175 F. App’x. at 217; We agree with the district court. The fact that Petitioner previously raised these alleged errors—that the district court did not try him as a law enforcement officer and that his counsel provided ineffective assistance—bars *coram nobis* relief. Miles, 923 F.3d at 804.

This leaves only Petitioner's claim that aspects of his trial violated the Navajo Bill of Rights and the Indian Civil Rights Act. But we need not address that issue because even if he adequately alleged such a violation, those facts occurred, and Petitioner has known of them, since (at the latest) his trial in 2004. Yet he raised this argument for the first time in 2018. Petitioner fails to show he could not have raised this claim earlier or that he diligently pursued the claim. Under our body of precedent, that lack of diligence forecloses his claim. Miles, 923 F.3d at 804; Tarango, 670 F. App'x. at 981.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

APPENXIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TEDDY CHIQUITO,

Petitioner,

vs.

No. 1:18-cv-00963-KWR-SCY

UNITED STATES and
NAVAJO POLICE,

Respondents.

**ORDER DENYING MOTION AND AFFIDAVIT
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

THIS MATTER is before the Court under Fed. R. App. P. 24 on the Motion and Affidavit for Permission to Appeal in Forma Pauperis filed by Petitioner Teddy Chiquito (Doc. 10). The Court will deny the Motion and certify that Petitioner Chiquito's appeal is not taken in good faith.

Mr. Chiquito was indicted in case no. CR03-00892 MCA. (CR Doc. 1). A jury found Chiquito guilty on 3 counts: Count I -- 18 U.S.C. § 113(a)(3), Assault with a Dangerous Weapon; Count II --18 U.S.C. § 113(a)(6), Assault Resulting in Serious Bodily Injury; and Count V --18 U.S.C. § 924(c)(1)(A)(iii) Discharge of a Firearm During and in Relation to a Crime of Violence. (CR Doc. 109). On January 18, 2005, the Court sentenced him to two 24-month prison terms on Counts I and II, to be served concurrently, followed by a ten-year minimum mandatory consecutive sentence on Count V for a total term of incarceration of 144 months. (CR Doc. 127).

Mr. Chiquito filed an appeal asserting eight claims: (1) that the trial court abused its discretion in not allowing the jury to view the scene of the shootings; (2) *Belcher* and *Stengel* violations; (3) lack of a jury instruction the definition of serious bodily injury; (4) lack of medical records or expert testimony to support injuries (5) trial as an Indian rather than as a law

enforcement officer; (6) double jeopardy; (7) obstruction of justice; and (8) qualified immunity. (Doc. 133 at 4). On April 6, 2006, the Tenth Circuit entered an Order and Judgment affirming this Court. (CR Doc. 133; *United States v. Chiquito*, 175 Fed. App'x 215 (10th Cir. 2006)).

Petitioner Chiquito then filed a motion to vacate, set aside, or correct his conviction and sentence under 28 U.S.C. § 2255. (CR Doc. 134). In his § 2255 motion, Chiquito raised the following issues:

- (1) ineffective assistance of counsel;
- (2) due process rights violated by conviction on Count V when defendant was innocent of any crime under 18 U.S.C. § 924(c);
- (3) conviction on Count V violated double jeopardy rights;
- (4) Sixth Amendment rights were violated when the Court denied defendant's *Booker* motion to strike paragraphs 11-25 of the Presentence Investigation Report.

CR(Doc. 134 at 4-8). He asked that his sentence be declared null and void. (CR Doc. 134). Under a 28 U.S.C. § 636(b) Order of Reference, the Magistrate Judge issued Proposed Findings and a Recommended Disposition, recommending that the § 2255 motion be dismissed. (CR Doc. 139). The Court adopted the Magistrate Judge's recommendations and dismissed the case on November 20, 2007. (CR Doc. 144).

Petitioner Chiquito appealed the dismissal on November 28, 2007. (CR Doc. 145). On appeal, he asserted issues of violation of his due process rights, ineffective assistance of counsel, and violation of his Sixth Amendment rights by refusing to strike portions of the Presentence Investigation Report. (CR Doc. 147 at 2). The Tenth Circuit then denied a certificate of appealability on May 22, 2008. (CR Doc. 147).

Petitioner Chiquito filed his Petition for Writ of Error Coram Nobis on November 17, 2018. (Doc. 1). His Coram Nobis Petition raises four claims, including the issue that he was not tried as a law enforcement officer, ineffective assistance of counsel, no underlying crime of violence to

support his conviction, and violation of the Navajo Bill of Rights. (Doc. 1 at 1-7). Chiquito's Prayer for Relief states:

“Petitioner Teddy Chiquito suffered a miscarriage of justice at the hands of the Government and the Navajo Police, and with a defense counsel that is unqualified and untrained in representing a Navajo law enforcement officer. Teddy Chiquito, who was perfectly justified in an incident involving justified self-defense of 2002. The Petitioner now seeks order to voiding the judgment of conviction of 2004 upon Teddy Chiquito.”

(Doc. 1 at 11).

On April 28, 2021, this Court entered its Memorandum Opinion and Order denying Chiquito's Petition for Writ of Error Coram Nobis. (Doc. 7). The Court denied his Petition on the grounds that Petitioner Chiquito is not entitled to Coram Nobis relief in this case. He does not demonstrate an error of fact, unknown at the time of trial, and of a fundamentally unjust character that would probably have altered the outcome of the challenged proceeding. *United States v. Johnson*, 237 F.3d 751, 755 (6th Cir.2001). To the contrary, all of the issues raised by Mr. Chiquito were known to and available to him at the time of his conviction in 2004. With one exception, all of his issues were raised and adjudicated against him either on direct appeal or through the § 2255 proceedings. *United States v. Payne*, 644 F.3d 1111, 1112 (10th Cir. 2011). (Doc. 7 at 5). To the extent his claim that Navajo Police violated the Navajo Bill of Rights could not have been raised on direct appeal or under § 2255, it does not present a federal question that can be remedied through a writ of Coram Nobis. (Doc. 7 at 5-6).

Chiquito filed his Notice of Appeal, appealing from the Court's denial of his Coram Nobis Petition on May 24, 2021. (Doc. 7). At the same time, Petitioner Chiquito filed his Affidavit in support of a motion for permission to appeal *in forma pauperis* under Fed. R. App. P. 24(c). In his Affidavit, he states that the issue he intends to raise on appeal is “District Court abuse discretion in dismissing coram nobis, as issues raised are substantial material.” (Doc. 10 at 2).

Rule 24 of the Federal Rules of Appellate Procedure states:

“[A]ny party to a district-court action who desires to appeal in *forma pauperis* must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party’s inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.”

Fed. R. App. P. 24(a)(1). Plaintiff Chiquito’s Motion complies with the formal requirements of Rule 24 for requesting leave to proceed *in forma pauperis* on appeal.¹

However, the Court determines under Fed. R. App. P. 24(a)(3)(A) that Petitioner Chiquito’s appeal is not taken in good faith. First, the issue Chiquito intends to raise is an issue of abuse of discretion by the Court. However, the Court’s ruling on Chiquito’s Coram Nobis Petition was not a matter of judicial discretion. Instead, the Court denied Chiquito’s Petition on the grounds that Chiquito had failed as a matter of law to meet the stringent requirements for a Writ of Error Coram Nobis. *See Klein v. United States*, 880 F.2d 250, 253 (10th Cir.1989); *Johnson*, 237 F.3d at 755; Doc. 7 at 3-6. Chiquito does not raise any legal or factual error in the Court’s ruling.

Further, as set out in the Court’s Memorandum Opinion and Order, all of Chiquito’s Coram Nobis issues were available to him at the time of judgment on his original criminal conviction and sentence, all but one of the issues were presented and adjudicated in several post-conviction proceedings, and the sole new issue is not cognizable in a Coram Nobis proceeding. His appeal is not taken in good faith. *See United States v. Hanks*, 340 F. Supp. 625, 627–28 (D. Kan. 1972).

Under Fed. R. App. P. 24(a)(4), the Court will direct the Clerk to notify the Court of

¹ The Court notes that, based on Petitioner Chiquito’s Affidavit (Doc. 10 at 2-7), Petitioner appears to have sufficient assets available to him to pay the docketing fee on appeal and that his Motion could be denied on that alternative grounds.

Appeals of this denial of Petitioner Chiquito's Motion and Affidavit for Permission to Appeal in Forma Pauperis and certification that the appeal is not taken in good faith. Chiquito is advised that he may file a motion for leave to proceed on appeal *in forma pauperis* with the United States Court of Appeals for the Tenth Circuit within thirty (30) days after service of this Order. Fed. R. App. P. 24(a)(5).

IT IS ORDERED that the Motion and Affidavit for Permission to Appeal in Forma Pauperis filed by Petitioner Teddy Chiquito on May 24, 2021 (Doc. 10) is **DENIED**, the Court **CERTIFIES** that the appeal is not taken in good faith, and the Court **DIRECTS** the Clerk to notify the Court of Appeals of this denial and certification.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TEDDY CHIQUITO,

Petitioner,

vs.

No. 1:18-cv-00963-KWR-SCY

UNITED STATES and
NAVAJO POLICE,

JUDGMENT

THIS MATTER having come before the Court on the Petition for Writ of Error Coram Nobis filed by Petitioner, Teddy Chiquito (Doc. 1) and the Court having entered its Memorandum Opinion and Order (Doc. 7) dismissing the Petition,

IT IS ORDERED that the Petition for Writ of Error Coram Nobis filed by Petitioner, Teddy Chiquito (Doc. 1) is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.



KEA WRIGGS
UNITED STATES DISTRICT JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TEDDY CHIQUITO,

Petitioner,

vs.

No. 1:18-cv-00963-KWR-SCY

UNITED STATES and
NAVAJO POLICE,

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Petition for Writ of Error Coram Nobis filed by Petitioner, Teddy Chiquito. (Doc. 1). The Court will deny the Petition.

Factual and Procedural Background

Shortly after midnight on May 25, 2002, Petitioner Chiquito became concerned that his fourteen-year-old daughter was attending a party at his ex-wife's home where alcohol was present. Mr. Chiquito drove to his ex-wife's home, where he found the daughter intoxicated. Although Mr. Chiquito was a police officer with the Navajo Nation Police Department, he was neither on duty nor in uniform that night, nor was he driving a police vehicle. Mr. Chiquito did, however, carry his Navajo Nation police-duty weapon with him into the party. *United States v. Chiquito*, 175 Fed. Appx 215 (10th Cir. 2006).

Shortly after Mr. Chiquito dragged his daughter from the house, a seventeen-year-old, P.H., approached him. Mr. Chiquito shot P.H. in the stomach in the altercation that followed. A second man, Jonah Toledo, approached and Mr. Chiquito shot him in the leg. Mr. Chiquito testified that he warned Mr. Toledo to stop and shot him when he kept charging. Mr. Toledo testified that he was ten yards away. *Id.*

Mr. Chiquito was indicted in case no. CR03-00892 MCA. (CR Doc. 1). A jury found Chiquito guilty on 3 counts: Count I -- 18 U.S.C. § 113(a)(3), Assault with a Dangerous Weapon; Count II -- 18 U.S.C. § 113(a)(6), Assault Resulting in Serious Bodily Injury; and Count V -- 18 U.S.C. § 924(c)(1)(A)(iii) Discharge of a Firearm During and in Relation to a Crime of Violence. (CR Doc. 109). On January 18, 2005, the Court sentenced him to two 24-month prison terms on Counts I and II, to be served concurrently, followed by a ten-year minimum mandatory consecutive sentence on Count V for a total term of incarceration of 144 months. (CR Doc. 127).

Mr. Chiquito filed an appeal asserting eight claims: (1) that the trial court abused its discretion in not allowing the jury to view the scene of the shootings; (2) *Belcher* and *Stengel* violations; (3) lack of a jury instruction the definition of serious bodily injury; (4) lack of medical records or expert testimony to support injuries (5) trial as an Indian rather than as a law enforcement officer; (6) double jeopardy; (7) obstruction of justice; and (8) qualified immunity. (Doc. 133 at 4). On April 6, 2006, the Tenth Circuit entered an Order and Judgment affirming this Court. (CR Doc. 133; *United States v. Chiquito*, 175 Fed. Appx 215 (10th Cir. 2006)).

Petitioner Chiquito then filed a motion to vacate, set aside, or correct his conviction and sentence under 28 U.S.C. § 2255. (CR Doc. 134). In his § 2255 motion, Chiquito raised the following issues:

- (1) ineffective assistance of counsel;
- (2) due process rights violated by conviction on Count V when defendant was innocent of any crime under 18 U.S.C. § 924(c);
- (3) conviction on Count V violated double jeopardy rights;
- (4) Sixth Amendment rights were violated when the Court denied defendant's *Booker* motion to strike paragraphs 11-25 of the Presentence Investigation Report.

(Doc. 134 at 4-8). He asked that his sentence be declared null and void. (CR Doc. 134). Under a 28 U.S.C. § 636(b) Order of Reference, the Magistrate Judge issued Proposed Findings and a

Recommended Disposition, recommending that the § 2255 motion be dismissed. (CR Doc. 139). The Court adopted the Magistrate Judge's recommendations and dismissed the case on November 20, 2007. (CR Doc. 144).

Petitioner Chiquito appealed the dismissal on November 28, 2007. (CR Doc. 145). On appeal, he asserted issues of violation of his due process rights, ineffective assistance of counsel, and violation of his Sixth Amendment rights by refusing to strike portions of the Presentence Investigation Report. (Doc. 147 at 2). The Tenth Circuit then denied a certificate of appealability on May 22, 2008. (CR Doc. 147).

Petitioner Chiquito filed his Petition for Writ of Error Coram Nobis on November 17, 2018. (Doc. 1). His Coram Nobis Petition raises four claims, including the issue that he was not tried as a law enforcement officer, ineffective assistance of counsel, no underlying crime of violence to support his conviction, and violation of the Navajo Bill of Rights. (Doc. 1 at 1-7). Chiquito's Prayer for Relief states:

"Petitioner Teddy Chiquito suffered a miscarriage of justice at the hands of the Government and the Navajo Police, and with a defense counsel that is unqualified and untrained in representing a Navajo law enforcement officer. Teddy Chiquito, who was perfectly justified in an incident involving justified self-defense of 2002. The Petitioner now seeks order to voiding the judgment of conviction of 2004 upon Teddy Chiquito."

(Doc. 1 at 11).

Standards for a Writ of Error Coram Nobis

A writ of coram nobis is an extraordinary remedy and relief is allowed only under compelling circumstances in order to achieve justice. *United States v. Morgan*, 346 U.S. 502, 511 (1948); *see also Klein v. United States*, 880 F.2d 250, 253 (10th Cir.1989) (Writ is available only to correct error that results in a complete miscarriage of justice.) Generally, courts will only issue the writ to correct errors of fact that, through no negligence on the part of the defendant, were not

part of the original record and that would have prevented rendition of the judgment questioned.

See United States v. Johnson, 237 F.3d 751, 755 (6th Cir.2001). To be entitled to coram nobis relief, the petitioner must demonstrate (1) an error of fact; (2) unknown at the time of trial; (3) of a fundamentally unjust character which would probably have altered the outcome of the challenged proceeding had it been known. *Johnson*, 237 F.3d at 755.

Due to its exceptional nature, a petitioner must satisfy stringent criteria to obtain a writ of coram nobis. The petitioner must demonstrate that he exercised due diligence in raising the issue and that the information used to challenge the sentence or conviction was not previously available to him. *Klein*, 880 F.2d at 254. In addition, the prisoner must exhaust all otherwise available remedies, which includes seeking post-conviction relief under § 2255. *Johnson*, 237 F.3d at 755; *Goldstein v. United States Parole Comm.*, 940 F. Supp. 1505, 1508 (C.D.Cal.1996). Finally, the writ is usually only applied in cases where the petitioner has served his sentence and is no longer in custody or has not yet begun serving the challenged sentence. *Johnson*, 237 F.3d at 755; *Igo v. United States*, 303 F.2d 317, 318 (10th Cir.1962).

The further a case progresses through the remedial steps available to a criminal defendant, the more stringent the requirements for vacating a final judgment. Thus, direct review affords the greatest latitude for review and an initial habeas petition is easier for a criminal defendant to litigate than a successive one. The writ of error coram nobis lies at the far end of the continuum. *United States v. George*, 676 F.3d 249, 258 (1st Cir. 2012). Tenth Circuit precedent imposes a bar to coram nobis relief “unless relief under 28 U.S.C. § 2255 was unavailable or would have been inadequate.” *United States v. Payne*, 644 F.3d 1111, 1112 (10th Cir. 2011). In other words, a claim pressed through a coram nobis petition is ordinarily barred if the petitioner previously raised the claim in a § 2255 motion but was unsuccessful or simply failed to pursue the claim under § 2255

when petitioner could have. *See United States v. Tarango*, 670 F. App'x 981, 981 (10th Cir. 2016). A writ of *coram nobis* may not be used to litigate issues that were or could have been raised on direct appeal or through collateral litigation, including a 28 U.S.C. § 2255 motion. A petition for writ of coram nobis must be rejected if the claim was raised or could have been raised on direct appeal, through a § 2255 motion, or in any other prior collateral attack on the conviction or sentence. *See United States v. Miles*, 923 F.3d 798, 804 (10th Cir. 2019); *United States v. Swindall*, 107 F.3d 831, 836 n.7 (11th Cir. 1997); *United States v. Camacho-Bordes*, 94 F.3d 1168, 1172–73 (8th Cir. 1996); *United States v. Bartlett*, Nos. 90-6345, 90-6351, 1990 WL 135645, at *1 n.* (4th Cir. Sept. 20, 1990).

Analysis of Petitioner Chiquito's Claims

Petitioner Chiquito has served his sentence and now seeks a writ of error Coram Nobis to have his criminal conviction declared void. (Doc. 1). However, Petitioner Chiquito is not entitled to Coram Nobis relief in this case. He does not demonstrate an error of fact, unknown at the time of trial, and of a fundamentally unjust character that would probably have altered the outcome of the challenged proceeding. *Johnson*, 237 F.3d at 755. To the contrary, all of the issues raised by Mr. Chiquito were known to and available to him at the time of his conviction in 2004. With one exception, all of his issues were raised and adjudicated against him either on direct appeal or through the § 2255 proceedings. *United States v. Payne*, 644 F.3d at 1112.

The Petition contends, first, that Chiquito was not tried as a law enforcement officer. (Doc. 1 at 4-6). This issue was raised by Chiquito in his direct appeal. (CR Doc. 133 at 4). The issue was rejected and his conviction was affirmed by the Tenth Circuit. (CR Doc. 133). Similarly, Petitioner Chiquito's claim of ineffective assistance of counsel (Doc. 1 at 1-5) was presented in his § 2255 motion. (CR Doc. 134 at 4). The argument was rejected by this Court and the Tenth

Circuit, finding no error, declined to issue a certificate of appealability. (CR Doc. 139, 144, 147). His claim of no underlying crime of violence to support his conviction (Doc. 1 at 1-5) was also raised and decided against him both in this Court and on appeal. (CR Doc. 139, 144, 147). The Court is barred from granting Coram Nobis relief on the issues that were previously raised by Chiquito and adjudicated against him on direct appeal and in prior collateral review proceedings. *United States v. Miles*, 923 F.3d at 804; *United States v. Tarango*, 670 F. App'x at 981.

Petitioner Chiquito asserts one claim that was not raised in his direct appeal or prior collateral review proceedings. He claims that his federal conviction violated the Navajo Bill of Rights. (Doc. 1 at 6-7). Violation of the Navajo Bill of Rights is a tribal, not a federal, question, and would not afford a basis to vacate or set aside Chiquito's federal conviction. 28 U.S.C. § 2255(a) (a federal conviction may be vacated or set aside only where it was imposed in violation of the Constitution or laws of the United States).

To the extent his claim that Navajo Police violated the Navajo Bill of Rights could not have been raised on direct appeal or under § 2255, it is not an issue that can be remedied through a writ of Coram Nobis. If the argument even presents a question of federal law, it could only be raised through a proceeding under the Indian Civil Rights Act and Petitioner would have needed to exhaust any tribal remedies before filing in this Court. 25 U.S.C. § 1303; *Dry v. CFR Court of Indian Offenses for the Choctaw Nation*, 168 F.3d 1207, 1209 (10th Cir. 1999). Further, even if a violation of the Navajo Bill of Rights could be remedied through a writ of Coram Nobis, the claim was available to Petitioner at the time of his conviction and is not a factual error unknown at the time of trial that would afford a basis for Coram Nobis relief. *Johnson*, 237 F.3d at 755.

In this case, Petitioner Chiquito pursued both direct review and post-judgment collateral review under § 2255. He raised the same issues that he now brings by his Coram Nobis Petition. All of his claims were either raised on direct appeal and through his § 2255 motion or are not issues that can be remedied through a writ of error Coram Nobis. Therefore, the Court will deny his Petition for Writ of Error Coram Nobis and dismiss this proceeding.

IT IS ORDERED that the Petition for Writ of Error Coram Nobis filed by Petitioner Teddy Chiquito (Doc. 1) is **DENIED**, this case is **DISMISSED WITH PREJUDICE**, and Judgment will be entered.

IT IS SO ORDERED.

KEA W. RIGGS
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**