

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11177-DD

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHNNY BRETT GREGORY,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: WILLIAM PRYOR, Chief Judge, JILL PRYOR and BRANCH, Circuit Judges.

PER CURIAM:

"Recall Mandate 11th Cir. R. 41-1(b) and Motion Pursuant to 11th Cir. R. 27-2 and Fed R. App. P. 40(a)(2) To Court Order Dated November 16, 2021" construed as The Petition for Panel Rehearing filed by Johnny Brett Gregory is DENIED.

ORD-41

Appendix C

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11177

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY BRETT GREGORY,

Defendant -Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:06-cr-00010-WMR-WEJ-1

Appendix A

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR and
BRANCH, Circuit Judges.

PER CURIAM:

Johnny Gregory, a former federal prisoner, appeals *pro se* the denial of his petition for a writ of error coram nobis. 28 U.S.C. § 1651(a). We affirm.

The district court did not abuse its discretion when it denied Gregory's petition. The district court may issue a writ of error coram nobis only if "there is and was no other available avenue of relief" and "the error involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which renders the proceeding itself irregular and invalid." *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000). Gregory does not dispute, and our review of the record confirms, that he made no "cogent argument as to why he is entitled to [coram nobis] relief." See *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). In addition, while a petitioner may use the writ of coram nobis "to vacate a conviction when [he] has served his sentence and is no longer in custody," *United States v. Peter*, 310 F.3d 709, 712 (11th Cir. 2002), Gregory is ineligible for relief under the writ because he is still serving his term of supervised release.

We **AFFIRM** the denial of Gregory's petition for a writ of error coram nobis.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA

v.

JOHNNY BRETT GREGORY,

Defendant.

CRIMINAL ACTION NO.
4:06-00010-WMR-WEJ-1

ORDER

This case comes before the Court on *pro se* Defendant's Motion for Correction to Notice of Appeal [Doc. 314], Motion for Ex Parte Writ of Error Coram Nobis [Doc. 321], and a document regarding Federal Rule of Appellate Procedure 10, which the Clerk has construed as a "Motion." [Doc. 323]. Upon consideration of the Defendant's Motions and all appropriate matters of record, the Court rules that the Defendant's Motion for Correction to Notice of Appeal [Doc. 314] is GRANTED and his Motion for Ex Parte Writ of Error Coram Nobis [Doc. 321] is DENIED. As Defendant's "Motion" [Doc. 323] appears to involve the production of the record on appeal, the Court notes that this is typically a matter for the Clerk to address. Accordingly, the Clerk is directed to TERMINATE the submission of the "Motion." [Doc. 323].

Appendix B

1. Defendant's Motion for Correction to Notice of Appeal

In his Motion for Correction to Notice of Appeal [Doc. 314], Defendant asks the Court to correct a certain citation of authority in his Notice of Appeal — specifically, he seeks to change the citation of “18 U.S.C. § 553(a)” to “18 U.S.C. § 3553(a).” The Court GRANTS this motion because the amendment is non-substantive and only serves to correct a clerical error.¹

2. Defendant's Motion for Ex Parte Writ of Error Coram Nobis

The Defendant's Motion for Ex Parte Writ of Error Coram Nobis is DENIED because the Defendant does not make any cogent argument as to why he is entitled to such relief.

3. Defendant's “Motion” regarding Fed. Rule of Appellate Procedure 10

The Court notes that the Clerk has already transmitted the record in PDF format to the Eleventh Circuit Court of Appeals in accordance with Federal Rules of Appellate Procedure 10 and 11. Thus, the Clerk is hereby directed to TERMINATE the “Motion” regarding the production of the record for the purposes of appeal. [Doc. 323].

¹ It should be noted, however, that the record was previously provided to the Court of Appeals in PDF format on January 14, 2021, so the typo may still be present in the Notice of Appeal within the Court of Appeals' Record. The Defendant should not be prejudiced by the error, however, because the Court of Appeals can readily identify the statute by the context of the appeal.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's Motion to Correct the Notice of Appeal [Doc. 314] is **GRANTED** and Defendant's Motion for Ex Parte Writ of Error Coram Nobis [Doc. 321] is **DENIED**. It is further ORDERED that the Clerk **TERMINATE** Defendant's "Motion" regarding Federal Rule of Appellate Procedure 10. [Doc. 323].

IT IS SO ORDERED, this 2nd day of April, 2021.

William M. Ray II
WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE