APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 19 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TAYLOR WINSTON WRIGHT, Defendant-Appellant.	No. 22-55110 D.C. No. 8:06-cr-00143-SB-1 Central District of California, Santa Ana ORDER

Before: S.R. THOMAS, PAEZ, and LEE, Circuit Judges.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Accordingly, we grant appellee's motion (Docket Entry No. 12) to summarily affirm the district court's order denying appellant's petition for a writ of error coram nobis. *See United States v. Riedl*, 496 F.3d 1003, 1005-06 (9th Cir. 2007) (listing four requirements for granting "extraordinary remedy" of coram nobis relief).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 8:21-cv-01068-SB 8:06-cr-00143 SB-1	Date: 11/10/2021

Title: *Taylor Winston Wright v. United States of America*

Present: The Honorable **STANLEY BLUMENFELD, JR., U.S. District Judge**

Victor Cruz	N/A
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Appearing	None Appearing

Proceedings: [In Chambers] ORDER DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS [Dkt. No. 1]

On June 17, 2021, Taylor Winston Wright (Wright) filed a petition for a writ of error coram nobis that seeks to overturn his 2008 criminal conviction. Petition, Dkt. No. 1. The United States has opposed the Writ. Opposition (Opp.), Dkt. No. 5. For the foregoing reasons, the Court denies the Writ.

On November 9, 2007, Wright pleaded guilty to one count of possession with intent to distribute PCP in violation of 21 U.S.C. § 841. ECF No. 56.[1] On April 25, 2008, Judge Carter sentenced Wright to 188 months in prison and five years of supervised release. ECF No. 69. Wright has completed his custodial sentence, and Judge Carter granted Wright's request for early termination of his supervised release on October 4, 2019. ECF No. 190. On June 17, 2021, nearly two years after the termination of his supervised release, Wright filed the Petition.

[1] All citations marked "ECF" refer to the docket numbers in the corresponding criminal case *United States v. Wright*, No. 8:06-cr-00143-SB.

The writ of error of coram nobis is an "extraordinary remedy," *United States v. Morgan*, 346 U.S. 502, 511 (1954), used "to attack a conviction when the petitioner has served his sentence and is no longer in custody," *Estate of McKinney By and Through McKinney v. United States*, 71 F.3d 779, 781 (9th Cir. 1995). "Both the Supreme Court and [the Ninth Circuit] have long made clear that the writ of coram nobis is a highly unusual remedy, available only to correct grave injustices in a narrow range of cases where no more conventional remedy is applicable." *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007); *see also Estate of McKinney*, 71 F.3d at 781 (writ is available to those who were "unconstitutional[ly] or unlawful[ly] convicted based on errors of fact and egregious legal errors") (quoting *United States v. Walgren*, 885 F.2d 1417, 1420 (9th Cir. 1989)).

The Ninth Circuit has established a four-part test for deciding when the writ of coram nobis should be issued, requiring the petitioner to show the following:

> (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character.

Hirabayashi v. United States, 828 F.2d 591, 604 (9th Cir. 1987). In the Petition, Wright relies on two grounds to challenge his conviction: (1) Wright's discovery of the 2013 disbarment of his lawyer, Roger Rosen; and (2) Rosen's failure to request a suppression hearing. Neither ground is sufficient under *Hirabayashi*, and they do not merit the "extraordinary remedy" of coram nobis relief. *Morgan*, 346 U.S. at 511.

First, Wright does not establish that a "more usual remedy" for challenging Rosen's decision not to file a suppression motion—such as an appeal or a habeas petition—was unavailable to him. Wright's claim that he was "prevented from filing a Direct Appeal" is mistaken. Petition at iv. Under the "Limited Mutual Waiver of Appeal and Collateral Attack" in Wright's plea agreement, Wright gave up the right to "appeal any sentence imposed by the Court," but not to appeal his conviction. ECF No. 55 ¶ 20. Wright also gave up "any right to bring a post-conviction collateral attack on the conviction or sentence, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel [or] a claim of newly discovered evidence." *Id.* Thus, Wright's plea agreement expressly preserved Wright's right to appeal his conviction and to file a habeas petition based

on an allegation of ineffective assistance of counsel. Wright did neither. Thus, the writ of error of coram nobis cannot issue here. *See Riedl*, 496 F.3d at 1005 (coram nobis relief only appropriate "in a narrow range of cases where no more conventional remedy is applicable").

Second, no valid reasons exist for Wright's delay in attacking his conviction. Wright claims that he learned of Rosen's 2013 disbarment "[w]hile living in the free world"—an apparent reference to Wright's release from custody—but provides no specific facts. Petition at v. According to the BOP Inmate Locator, Wright was released in July 2017. Opp. at 5. The Ninth Circuit has found a delay in seeking coram nobis relief to be reasonable when "the applicable law was recently changed and made retroactive, when new evidence was discovered that the petitioner could not reasonably have located earlier, and when the petitioner was improperly advised by counsel not to pursue habeas relief." *Riedl*, 496 F.3d at 1007 (internal citations omitted). This case is plainly unlike any of those situations. Wright has failed to articulate any reason why he could not have learned of Rosen's disbarment sooner, either while in prison or soon upon release. This defect is fatal to Wright's request for coram nobis relief. *See Maghe v. United States*, 710 F.2d 503, 503-04 (9th Cir. 1983) (denying coram nobis petition as untimely where claim could have been raised earlier and there were no sound reasons for the delay).

Further, Wright presents no evidence that his delay is justified by learning about Rosen's disbarment. Wright claims that Rosen rendered ineffective assistance by failing to file a suppression motion. But Wright knew that his counsel did not file a suppression motion, and he knew all the facts he now presents in support of a claim of a Fourth Amendment violation at the time of his conviction and sentencing in 2008—13 years before he filed this Petition. Wright was therefore in a position long ago to assess whether Rosen's performance was constitutionally deficient, and he has not shown how the discovery of disbarment is materially related to his delay in filing a claim of ineffective assistance of counsel or to the merits of such a claim.

Third, even if the Petition were timely, it would not merit the "extraordinary remedy" of coram nobis relief. *Morgan*, 346 U.S. at 511. Wright can satisfy the "fundamental error" requirement for coram nobis relief if he can establish that he received ineffective assistance of counsel. *See United States v. Kwan*, 407 F.3d 1005, 1014 (9th Cir. 2005). To establish ineffective assistance of counsel, Wright must show that: (1) counsel's performance fell below an "objective standard of

reasonableness"; and (2) he suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Wright cannot show that Rosen's performance was objectively unreasonable. Wright appears to allege that Rosen's failure to file a suppression motion was unreasonable because Wright informed Rosen "that the Maintenance Supervisor over the complex where Wright was living misrepresented facts to the Sherriff's Department that was used in an Affidavit to get a Warrant to search." Petition at 3. Wright also alleges that he told Rosen "that he and the Maintenance Supervisor had run-ins before about the same garage that was the central facility to search." *Id.* However, Wright fails to establish that Rosen's decision not to move to suppress was deficient. Even if this allegation were true, it would not necessarily be sufficient to obtain a *Franks* hearing, much less suppression. In *Franks v. Delaware*, 438 U.S. 154, 171 (1978), the Supreme Court stated:

> There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. . . . Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.

Id.

Wright has made no showing that would satisfy any of the requirements to obtain a *Franks* hearing such that Rosen's failure to request one fell below the *Strickland* standard. First, Wright allegedly provided Rosen with conclusory information—i.e., that the Maintenance Supervisor "misrepresented [unspecified] facts" to the police, and that Wright previously had "run-ins" about the garage with the Maintenance Supervisor. Second, Wright does not allege, as he must, that the

Sherriff's Department (i.e., the "affiant") deliberately or recklessly provided false information in the affidavit. Third, Wright does not demonstrate that the unspecified and allegedly false information was material to the probable cause determination. On this record, Wright has not shown that Rosen's performance was deficient.

The only other allegation of deficiency is that Rosen was "involved in double dealing in order to pad his pocket." Writ at 2. But Rosen was disbarred because of an unrelated representation, and Wright fails to demonstrate the relevance of Rosen's ethical misconduct to his case. Thus, Wright's conclusory and unsupported allegation against Rosen does not show that Rosen's performance fell below an "objective standard of reasonableness," *Strickland*, 466 U.S. at 687-88, and cannot satisfy the "fundamental error" element of the *Hirabayashi* test.

"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) (cleaned up). Because Wright had other remedies available to him to challenge his conviction, failed to explain the multi-year delay in seeking relief, and failed to establish ineffective assistance of counsel, Wright's case is not one of those rare cases. The Court **hereby DENIES** the petition for a writ of coram nobis.

IT IS SO ORDERED.