22-7543 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DWAYNE MITCHELL LITTLEJOHN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES APPEALS COURT FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Dwayne Mitchell Littlejohn
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Cherokee, NC 28719
Pro Se

QUESTION(S) PRESENTED

1. Whether a defendant's reliance on erroneous advice from counsel, the Court of Appeals and novelty of a legal interpretation constitutes "valid reasons" for not attacking the conviction earlier under the All Writs Act, 28 U.S.C. § 1651(a)..

2. Is there an error committed by the Fourth Circuit in failing to conduct a *Strickland v. Washington*, 466 U.S. 668 (1984) analysis of Mr. Littlejohn's ineffective assistance of counsel which often conflation of the Fifth Amendment right to due process with Sixth Amendment rights when analyzing assistance of counsel in deciding whether he failed establish a valid reason for the delay in filing a coram nobis petition and failure to address the novelty of the question as a basis for the delay?

3. Whether a petitioner who is "in custody" can utilize a coram nobis to challenge non-custodial aspects of a criminal judgment.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States District Court (W. D. N.C.):

United States v. Littlejohn, 2:08-cr-00036-MR-WCM-2

United States v. Littlejohn, 1:22-cv-00090-MR

United States Court of Appeals (4th Cir):

United States v. Littlejohn, 422 Fed. Appx. 225 (2011)

United States v. Littlejohn, No. 22-6726 (2023)

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Dwayne Mitchell Littlejohn, respectfully submit this petition for certiorari seeking review of the judgment rendered by the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit issued its opinion on January 4, 2023 not addressing the questions raised the questions raised and conducting an analysis under *Strickland v. Washington* nor did the court address the novel question of whether a person in custody can seek a coram nobis or whether it constitutes a "valid reason." The opinion of the United States court of appeals appears at Appendix A to this petition and is unpublished. Upon filing of a petition for rehearing, the Court sought to time bar petitioner, and after filing a reconsideration, removed the time bar denied rehearing on March 30, 2023.

The opinion of the United States district court appears at Appendix B to this petition and is unpublished.

JURISDICTION

The Fourth Circuit issued its unpublished opinion on January 4, 2023. (See Petitioners' Appendix ("Pet. App.") A, 1-2). The Fourth Circuit sought to time bar Petitioner. (See Pet. App. A, 3). Subsequently the Fourth Circuit rescinded its time bar denial and denied rehearing on March 30, 2023. This petition for a writ of certiorari is timely filed under Rule 13 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The All Writs Act authorizes courts to issue writs "necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Supreme Court has held that the Act permits courts to issue writs of error coram nobis to correct errors in criminal cases that are no longer subject to direct review. *United States v. Morgan*, 346 U.S. 502 (1954). A writ of coram nobis should be allowed only under circumstances compelling such action to achieve justice. *Morgan*, 346 U.S. at 511. If no other

remedy is available and sound reasons existing for failure to seek appropriate earlier relief, a motion of the writ of coram nobis must be heard by the federal court. *Morgan*, 346 U.S. at 512.

The Sixth Amendment provides "[i]n all criminal prosecutions, the accused shall enjoy the right to the assistance of Counsel for his defence." Amendment VI. and the Fifth Amendment provides guarantees "No person shall be held to answer for a capital, or otherwise infamous crime ... nor be deprived of life, liberty, or property, without due process of law..." Amendment V.

STATEMENT OF THE CASE

Petitioner, Littlejohn and one co-defendant was convicted after pleading guilty to second-degree murder, a violation of 18 U.S.C. §§ 1111 and 2. On December 4, 2009 during the sentencing proceeding, they court ordered Littlejohn to pay restitution jointly and severally under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664. The district court entered a restitution order that included speculated "future wages" of $383,173 for a victim for whom there was no evidence presented that he

ever actually worked. This was entered in violation of the statute, which requires "actual loss."

Littlejohn filed an appeal. *United States v. Littlejohn,* 422 Fed. Appx. 225 (4th Cir. 2011). The Fourth Court of Appeals dismissed the matter based on an ambiguous waiver in the plea agreement.[1] Littlejohn filed motions to challenge the restitution and a motion to vacate. The Court dismissed it after conflating the Fifth amendment right to due to process and the right of effective assistance of counsel under the Sixth Amendment.

At issue, an ambiguous reference to restitution being ordered and that it authorizes the district court to impose a restitution amount in violation of the statute.

The Court of Appeals and Littlejohn's then attorney informed him that there was no means to collaterally attack a restitution order. Littlejohn contacted various attorneys seeking pro bono representation to collaterally attack his conviction because his monies were being garnished by the government. He acted pro se and

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[1] At the time of the appeal, Littlejohn did not have benefit of this Court's decision in *Kisor v. Wilkie,* 139 S. Ct. 2400 (2019) which limited deference with interpretation of ambiguous language and agency interpretations. *Kisor's* limitation should apply to courts as well.

identified the legal error that no lawyer in his case or court this circuit has identified – including the judge, that a coram nobis could be used to set aside a restitution order since no other remedy was available. Indeed, no attorney has sought to litigate whether a person "in custody" and has no other remedy could challenge a restitution order imposed in violation of law and the constitution using a writ of coram nobis.

The district court concluded that Littlejohn failed to provide a valid reason for failing to seek collateral relief sooner, specifically that mis-advice from the Court of Appeals and his attorney is not a valid reason for the delay, simply stating that "ignorance of the law"[2] is no excuse and that since the question of whether a person in custody can file a coram nobis has not been decided by the Fourth Circuit relief would be precluded. The Fourth Circuit also declined to address the unsettled question of whether a person in custody can seek a writ of coram nobis and whether the novelty of the question constitutes valid reason for the delay in filing a coram nobis petition.

[2] If as suggested by the district court *"ignorance of the law is no excuse,"* then why ever appoint counsel to provide any guidance in any criminal proceeding? After all, it is ignorance the law is why criminal defendants are often charged with offenses and require attorneys. Ignorance of the law was what led to a plea with an attorney that failed to explain the full scope of waiver.

The Fourth Circuit also declined to conduct a Strickland analysis as to whether the misadvice from the Court of Appeals and his attorney are valid reasons for the delay in seeking relief via coram nobis. The Fourth Circuit affirmed.

REASONS FOR GRANTING THE WRIT

This Court should grant a writ of certiorari to review the decision of the Fourth Circuit in this case as further delineated herein. The Fourth Circuit's decision creates further conflict with other circuits and Supreme Court precedent regarding the Sixth Amendment right to effective assistance of counsel and the availability of the writ of coram nobis through the lack of guidance through the years. The lack of guidance from this Court has left the lower courts without appropriate legal standards in these two areas.

Specifically, the Fourth Circuit erred by conflating the Fifth Amendment plea colloquy and the Sixth Amendment right to counsel, thereby failing to recognize the crucial role of competent counsel in ensuring the voluntariness of a guilty plea. This led to issue presented in this case is whether misadvice by defense counsel and

the Court of Appeals, the novelty of a coram nobis petition being used to collaterally set aside a restitution order can constitute a valid reason for a delayed filing of a coram nobis petition.

In this case, the defendant was not properly advised by counsel as to availability of coram nobis to collaterally attack a restitution order as did the Court of Appeals which advised that there was no other means to correct the error. When Littlejohn brought his coram nobis petition, the lower court denied his petition on the grounds of a delayed filing without a valid reason and the absence of authority for a petitioner in custody to seek coram nobis relief for non-custodial aspects of a criminal judgment. In doing so it conducted a reasonable analysis under *Strickland* nor addressing the novelty of the question of an "out of custody requirement" can constitute a valid reason for the delay either individually or in combination.

The lack of guidance from this Court, the Fourth Circuit's decision creates further uncertainty and a split among circuits on the availability of coram nobis relief for individuals who are "in custody" and the contours of the

write. The Fourth Circuit failed to recognize the unsettled law in this area and ignored the possibility that the writ of coram nobis could be used to challenge non-custodial aspects of a criminal judgment.

This case raises significant constitutional issues regarding the Sixth Amendment's guarantee of effective assistance of counsel and the right to seek relief for constitutional violations through the coram nobis remedy. The courts below failed to address the crucial question of whether misadvice by counsel, novelty of a legal question can constitute a valid reason for a delayed filing of a coram nobis petition, and whether a petitioner in custody can utilize the coram nobis remedy for non-custodial aspects of a criminal judgment..

The resolution of this issue has far-reaching implications for the protection of defendants' rights in the plea process, the effectiveness of the Sixth Amendment's guarantee of effective assistance of counsel which has consistently been conflated with the Fifth Amendment right, and the availability of the coram nobis remedy as a means of seeking relief for constitutional violations.

Therefore, the issues presented in this case are of national importance and warrant review by the Supreme Court. The decision of the Fourth Circuit conflicts with other circuits and Supreme Court precedent, creates uncertainty, and limits the availability of relief for individuals who have been prejudiced by the misadvice of counsel.

Accordingly, the Petitioner respectfully urges this Court to grant a writ of certiorari and provide much-needed guidance on these critical issues.

I. OVERVIEW OF CORAM NOBIS AND THE COMPETING PRINCIPLES LEADING TO THE CIRCUIT SPLIT.

The writ of coram nobis has its roots in the common law of 16th-century England. David Wolitz, *The Stigma of Conviction: Coram Nobis, Civil Disabilities, and the Right to Clear One's Name,* 2009 *B.Y.U.L. Rev.* 1277, 1281 (2009) at 1283. In its traditional form, coram nobis provided a narrow opportunity for a court to reconsider a final judgment, primarily where new facts had come to light. *Id.* The phrase itself means "before us," which is a reference to the sovereign reviewing its own judgment. Black's Law Dictionary 338 (7th ed. 1999).

The writ came to the United States with the common law, and it maintained its traditional role as a means for trial courts to correct factual errors in decided cases. *Wolitz*, supra, at 1283.

The United States Constitution is the supreme law of the United States. Article One of the Constitution creates the legislature and provides Congress with the means to create and enact laws. Article Three of the Constitution creates the judiciary and provides courts with the means to interpret laws. Other than the writ of habeas corpus, the Constitution has no language permitting or restricting courts from issuing specific writs, including the writ of coram nobis.[3]

As courts crafted other mechanisms for correcting factual and clerical mistakes into the 1930s and 1940s, however, coram nobis became more and more rare. *Id.* at 1284. Indeed, the writ was abolished in civil cases by Federal Rule of Civil Procedure 60(b). What life remained in coram nobis was then squarely presented to this Court in *United States v. Morgan*, 346 U.S. 502 (1954).

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[3] Section 9 of Article One states that "the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

In *Morgan* this Court held that coram nobis was alive and well. *Wolitz*, supra, at 1284. The defendant there had pleaded guilty, without counsel, to various federal offenses when he was 19 years old. *Morgan*, 346 U.S. at 511. Years after his release, he sought coram nobis relief to vacate the conviction based on the denial of his right to counsel. *Id.* at 504. The Second Circuit concluded coram nobis was available, and this Court affirmed.

Though this Court recognized that the writ was not explicitly authorized by federal statute and had been abolished in civil proceedings, the Court found sufficient statutory authority for coram nobis in the All Writs Act of 1789, which authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *Id.* at 506 n.6 (quoting 28 U.S.C. § 1651(a)). The Court further delineated when coram nobis relief was available, holding that it "should be allowed . . . only under circumstances compelling such action to achieve justice"—namely, (a) to cure errors "of the most fundamental character," when (b) "no other remedy [is]

then available," and (c) when "sound reasons [exist] for failure to seek appropriate earlier relief." *Id.* at 511–12. The Court noted that the "wrong" of an unlawful conviction includes the abstract injustice in the system and may also include "results of the conviction," noting, for example, that "civil rights may be affected." *Id.* at 512–13. The Court concluded as follows:

> "As the power to remedy an invalid sentence exists, we think [*Morgan*] is entitled to an opportunity to attempt to show that his conviction was invalid." *Id.*

Ultimately, this Court described a petition for coram nobis relief as "of the same general character as one under 28 U.S.C. § 2255." *Id.* at 506 n.4. Thus, coram nobis "became, in essence, habeas for those not in federal custody" and "a vital part of the post-conviction legal landscape." *Wolitz*, supra, at 1287, 1289.

This Court recently reaffirmed the viability of the writ. See *United States v. Denedo*, 129 S. Ct. 2213, 2221 (2009) (stating that a federal court's "authority to grant a writ of coram nobis is conferred by the All Writs Act"). Other than providing military courts the authority to issue the writ, the Supreme Court has declined to provide

federal courts additional guidance in coram nobis proceedings.

Appellate courts have occasionally criticized the Supreme Court for failing to provide this additional guidance. The Seventh Circuit called the writ of coram nobis, "a phantom in the Supreme Court's cases"[4] and contends "[t]wo ambiguous decisions on the subject in the history of the Supreme Court are inadequate." *Id.* The Sixth Circuit took a similar stance saying, "[t]he Supreme Court has decided only one coram nobis case in the last forty-two years, Morgan, and that opinion is ambiguous concerning whether proof of an ongoing civil disability is required."[5] The First Circuit wrote that its decision of time limitations "derives from the Morgan Court's cryptic characterization of coram nobis as a 'step in the criminal case'".[6] In another case, the First Circuit writes, "The metes and bounds of the writ of coram nobis are poorly defined and the Supreme Court has not developed an easily readable roadmap for its issuance."[7]

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[4] *United States v. Bush*, 888 F. 2d 1145, 1146 (7th Cir. 1989).
[5] *United States v. Blanton*, 94 F. 3d 227, 232 (6th Cir. 1996).
[6] *Trenkler v. United States*, 536 F. 3d 85, 95 (1st Cir. 2008).
[7] *United States v. George*, 676 F. 3d 249, 254 (1st Cir. 2012).

A. THE DISTRICT COURT ERRED IN DETERMINING THAT LITTLEJOHN DID NOT PROVIDE A VALID REASON FOR FAILING TO SEEK COLLATERAL RELIEF SOONER.

The district court committed an error in its decision to deny Littlejohn's petition for collateral relief, as it wrongly concluded that he had not provided a valid reason for the delay in seeking such relief. Littlejohn's delay was due to the misinformation he received from both his then attorney and the Court of Appeals, which misstated the law and failed to conduct the required analysis under *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The crucial question of whether misadvice by counsel can constitute a valid reason for a delayed filing of a coram nobis petition was not addressed, nor was the novelty of the issue of whether a prisoner in custody, either individually or in combination with misadvice, constitutes a valid reason for delay.. The court effectively without analysis rubber stamp the district court's decision and concluded ...

> "we are satisfied the district court did not abuse its discretion in denying the petition based on Littlejohn's failure to establish a valid reason for his delay in seeking relief."

The Sixth Amendment guarantees effective assistance of counsel, which is violated when counsel's conduct falls below an objective standard of reasonableness and results in prejudice to the defendant's case. A defendant's Sixth Amendment rights can be violated by counsel's affirmative misadvice, causing the defendant to enter a guilty plea or take other actions that result in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In such cases, the defendant's ability to file a timely petition for coram nobis relief is hindered by the ineffective assistance of counsel. *United States v. Cronic*, 466 U.S. 648, 656-57 (1984). Littlejohn's attorney misadvised him as to the scope of the waiver as it related to restitution in his plea agreement, and both the Fourth Circuit and his attorney informed him that he had no recourse to challenge the wrongful restitution judgment. Littlejohn was left with no way to challenge the restitution order, as the Court deprived him of all funds to retain other counsel. It was only after significant due diligence that Littlejohn was able to formulate valid arguments for a coram nobis petition, including the novelty of the question of availability in restitution cases

and in custody prisoners. The district court suggested that "ignorance of the law" is no excuse. However, the district court failed to observe that it was "ignorance of the law" under the guidance of counsel was what led to the illegally imposed restitution order and failure to explain an ambiguous waivers' scope.

In this case, Littlejohn provide two reasons for the delay in bringing the coram nobis petition, (1) advice by both his attorney and the Fourth Circuit that there was no way to collaterally attack an illegal restitution order after a direct appeal; (2) the novelty of the question whether a coram nobis can be used to set aside a restitution order or filed by a prisoner in custody. Both of these reasons are valid, and reasonable given that Littlejohn required the assistance of counsel previous. A delay in filing of a coram nobis petition in such cases would promote justice and fairness. It would provide a remedy for those who have been denied effective assistance of counsel on issues which cannot be raised through any other procedural means and would enhance the integrity of the criminal justice system. Furthermore,

this would not unduly burden the courts, as coram nobis relief is already limited to exceptional cases.

Thus, the writ of coram nobis is essential for correcting fundamental errors in the criminal justice system, and a delay in filing based on misadvice of counsel and novelty of the legal questions presented would further the interests of justice and fairness. As such, the misadvice of counsel and the novelty of legal questions interpretations should be recognized as valid reasons to delay filing a coram nobis petition.

B. THE COURT ERRED IN DETERMINING THAT A PRISONER IN CUSTODY CANNOT SEEK RELIEF VIA CORAM NOBIS WHEN A GAP EXISTS IN THE POST CONVICTION SCHEME.

The court erred in determining that a prisoner in custody cannot seek relief via coram nobis when there is a gap in the post-conviction scheme. The writ of coram nobis can be used to challenge a criminal judgment by a petitioner in custody, even if they are not seeking to be released from custody. However, the Fourth Circuit and many other courts have grafted on a rule that federal courts may grant relief from a conviction by way of coram

nobis only after a petitioner has completed the sentence at issue. Coram nobis relief is appropriate only when there is no 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.

In *Morgan*, the Supreme Court held that a petitioner in custody may use the writ of coram nobis to challenge a criminal judgment, even if the petitioner is not seeking to be released from custody. This Court reasoned that a petitioner in custody has a continued interest in the validity of his conviction and sentence, and that the writ of coram nobis is available to address errors that would not otherwise be reviewable on direct appeal or in a habeas corpus proceeding.

Here, Littlejohn is in custody and has a continued interest in the validity of his criminal judgment. Littlejohn is not seeking to challenge the validity of his custodial sentence, but rather the non-custodial aspects of his judgment. Therefore, the writ of coram nobis is an

appropriate mechanism for him to challenge the non-custodial aspects of his criminal judgment.

The greatest point of contention between the majority and the dissent in Morgan—whether a prisoner can file a coram nobis petition while in custody when no other remedy is available.

In the Fourth Circuit, in order to be eligible for relief through a coram nobis a petitioner must establish: (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. *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012). The Fourth Circuit and many other courts have grafted on a rule that federal courts may grant relief from a conviction by way of coram nobis only after a petitioner has completed the sentence at issue, see 28 U.S.C. § 1651 (2006); *United States v. Morgan*, 346 U.S. 502, 512-513 (1954), the Supreme Court has stated that "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); *See also Kaminski v. United States, 339 F. 3d 84, 89 (2d Cir. 2003); Bernard, 351 F.3d 360, 361 (8th Cir. 2003)(collecting cases); United States v. Thiele, 314 F.3d 399, 402 (9th Cir. 2002); United States v. Hatten, 167 F.3d 884, 887 (5th Cir. 1999); Smullen v. United States, 94 F.3d 20, 26 (1st Cir. 1996); see also Virsnieks v. Smith, 521 F.3d 707, 720-21 (7th Cir. 2008).*

The Eleventh Circuit also recognizes that "the bar for coram nobis relief is high." *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000). Coram nobis relief is appropriate only when: (1) "there is no and was no other available avenue of relief;" and (2) "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." Id. (citing *Morgan*, 346 U.S. at 512; *Moody v. United States*, 874 F.2d 1575, 1576-78 (11th Cir. 1989)); see *United States v. Peter*, 310 F.3d 709, 715 (11th Cir. 2002) (reversing district court's dismissal of Peter's coram nobis petition after sentence expired where subsequent

Supreme Court decision held that conduct to which Peter pled guilty did not constitute a crime).

In *Peter*, the Eleventh Circuit explained that "[coram nobis relief affords a procedural vehicle through which [jurisdictional] error may be corrected.]" 310 F.3f at 709.In the Eleventh Circuit "[a] petition for a writ of coram nobis may only be filed after a sentence has been served and the petitioner is no longer in custody." *Brown*, 117 F. 3d 471, 475 (11th Cir. 1997); *United States v. Bush*, 888 F.2d 1145, 1147 (7th Cir. 1989) (same); *United States v. Little*, 608 F.2d 296, 299 n.5 (8th Cir. 1979), cert. denied, 444 U.S. 1089, 62 L. Ed. 2d 777, 100 S. Ct. 1053 (1980) ("Coram nobis lies only where the petitioner has completed his [or her] sentence and is no longer in federal custody, is serving a sentence for a subsequent state conviction, or has not begun serving the federal sentence under attack"); *United States v. Brown*, 413 F.2d 878, 879 (9th Cir. 1969) (holding coram nobis relief unavailable to a prisoner in custody), cert. denied, 397 U.S. 947, 25 L. Ed. 2d 127, 90 S. Ct. 965 (1970). To be entitled to relief, the petitioner must demonstrate (1) an error of fact; (2) unknown at the time of trial; (3) of a fundamentally

unjust character which probably would have altered the outcome of the challenged proceeding if it had been known. See id. [*Blanton*] In addition, the writ of coram nobis is available only "when a § 2255 motion is unavailable - generally, when the petitioner has served his sentence completely and thus is no longer 'in custody' as required for § 2255 relief." *Id.* Indeed, the Eleventh Circuit, for example, the lack of guidance from this Court has let to a complete bar to collaterally attacking a restitution order even if it involves custodial aspects in a 2255 motion. See *Blaik v. United States*, 161 F.3d 1341, 1343 (11th Cir. 1998) (holding that § 2255 cannot be used by a federal prisoner who challenges only the restitution portion of his sentence); *Mamone v. United States*, 559 F.3d 1209, 1211 (11th Cir. 2009)(despite the presence of claims challenging his custody and requesting release from custody, prisoner could not utilize § 2255 to challenge his restitution order).

No uniform custody requirement for coram nobis exists among jurisdictions.[8] The Eleventh Circuit in

[8] Compare 536 F.3d at 98 (adopting that coram nobis available for defendant no longer in custody), with *Utah v. Rees*, 125 P.3d 874, 876 (Utah 2005) (considering in-custody petitioner's coram nobis petition).

Peter suggest that "[a] writ of error coram nobis is a remedy available to vacate a conviction when the petitioner has served his sentence" and going on to further suggested that a coram nobis is only available when the person "is no longer in custody, as is required for post-conviction relief under 28 U.S.C. § 2255." This proposition appears to stem from mis-analogized law.[9] The seminal case resurrecting coram nobis, *Morgan,* involved a defendant challenging his sentence after serving it. Since that decision, some courts have narrowly applied coram nobis by analogizing that it applies only to those with completed sentences.[10] Indeed, the Supreme Court rejected the government's argument that Congress had intended to restrict other post-conviction remedies when it enacted section 2255.[11]

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[9] See *Hack*, supra note 31, at 211 (explaining courts applying AEDPA to coram nobis without considering purpose ignore AEDPA's language). Hack also concedes that defendants regularly use coram nobis after their completed convictions, but the "contours of [the] writ" are subject to heated debate. Id. at 211-12.

[10] See *Hack*, supra note 31, at 211-12 (noting since Morgan petitioners use coram nobis regularly after defendant completed sentence); *Millemann,* supra note 31 and accompanying text (outlining coram nobis for petitioners out of custody).

[11] Id. at 510. The Court found that § 2255's purpose was "'to meet practical difficulties' in the administration of federal habeas corpus jurisdiction." Id. at 511 (quoting *United States v. Hayman*, 342 U.S. 205, 219 (1952)). See supra note 18. The Court further added

Based on Morgan and under the All Writs Act, 28 U.S.C. § 1651, courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This Court has also held that section 2255 does not preempt other forms of relief authorized under the All Writs Act.[12] While section 2255 is available only to in-custody prisoners seeking release, those with served sentences may not challenge post-conviction consequences under the statute.[13] Declaring the opposite, i.e., only those out of custody can use coram nobis, however, commits a logical fallacy. AEDPA does not address coram nobis requirements, so its legislative history does not support such restrictions.[14] Therefore the Court of Appeals

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that "'[n]owhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions.'" Id. (quoting Hayman, 342 U.S. at 219).

[12] 536 F.3d at 97 (reminding that Supreme Court preserved common-law writs despite section 2255); see also Peter Hack, The Roads Less Traveled: Post Conviction Relief Alternatives and the Antiterrorism and Effective Death Penalty Act of 1996, 30 AM. J. CRIM. L. 171, 222-23 (2003) (opining courts' readings of AEDPA's procedural hurdles strictly limit postconviction alternatives); Michael A. Millemann, Collateral Remedies in Criminal Cases in Maryland: An Assessment, 64 MD. L. REV. 968, 968 (2005) (categorizing coram nobis as remedy for those not in or under custody).

[13] See Eclavea, supra note 23, § 2[b] (noting section 2255 not available to those not in custody).

[14] See *United States v. Barrett*, 178 F.3d 34, 56-57 (1st Cir. 1999) (highlighting situations where section 2255 inadequate for in-custody prisoners); *Triestman v. United States*, 124 F.3d 361, 380 n.24 (2d Cir. 1997)

suggestions that coram nobis is only available to those out of custody in unsupported. Nor should the Supreme Court's holding in *Morgan* relating section 2255 in-custody wording preclude coram nobis relief.[15] As one court of appeals has explained, "[t]he teaching of Morgan is that federal courts may properly fill the interstices of the federal post-conviction remedial framework through remedies available at common law." *United States v. Ayala*, 894 F.2d 425, 428 (D.C. Cir. 1990).

In sum, the Supreme Court in *Morgan*, held that a person who regardless of custody may bring a writ of error coram nobis if the person can show that the writ is necessary to correct a fundamental error that would have prevented the person's conviction if it had been known at

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(maintaining possibility coram nobis available to in-custody defendant if section 2255 unavailable); Hack,supra note 31, at 211 (asserting application AEDPA without considering coram nobis purpose ignores common-law and AEDPA language).

[15] See *Triestman v. United States*, 124 F.3d 361, 380 n.24 (2d Cir. 1997) (maintaining coram nobis possibly available to in-custody defendant if section 2255 unavailable); W.W. Allen, *Delay as Affecting Right to Coram Nobis Attacking Criminal Conviction*, 62 A.L.R.2D 432, §1 (1958) (noting section 2255 requirement of "in custody" prisoner "does not cover whole field of needed relief"); Romualdo R. Eclavea, Annotation, *Availability, Under 28 U.S.C.A. § 1651, of Writ of Error Coram Nobis to Vacate Federal Conviction Where Sentence Has Not Yet Been Served*, 37 A.L.R. FED. 499, §2[a] (1978) (explaining coram nobis normally applied when movant no longer in custody); *Wheatley*, supra note 2, § 6 (explaining restraint not prerequisite for coram nobis relief).

the time of trial. The Court stated that the writ of error coram nobis is a powerful remedy that is available to a person who has been convicted of a crime and who is seeking relief from a fundamental error that occurred during their trial. Section 2255 equally coexists with a coram nobis to address those issues that cannot properly be raised in a 2255.

Accordingly, there is no well-reasoned legal authority to support the proposition that coram nobis relief is limited to persons who are out of custody. As this court has held, the only requirement is that the petitioner demonstrate that a fundamental error occurred that would have resulted in a different outcome if it had been corrected at the time of proceeding and no other avenues of relief are available.

This Court should not pass on the opportunity to answer the question of whether a petitioner in custody can use a coram nobis to challenge non-custodial aspects of a criminal judgment, so others are not delayed in making a petition in appropriate cases.

There is also a substantial question as to whether this grafted on requirement into the existing legal framework is a valid reason for not seeking relief earlier which went unanswered by both the lower court and this Court. Often courts rejects filings as frivolous or without merit any may preclude later relief or improperly recharacterize them based on lack of guidance from this court. See 28 U.S.C. 1915(a).

CONCLUSION

Littlejohn's case presents important questions of law that are critical to the fair administration of justice. The lower court's decision departs from well-established principles of law and conflicts with the decisions of other circuit courts. The issues raised in this case are of national importance and require clarification by this Honorable Court.

Therefore, Littlejohn respectfully requests that this Honorable Court grant his petition for a writ of certiorari, review the decision of the Court of Appeals for the Fourth Circuit, reverse the decision of the district court, and provide guidance on the standards that should be applied

in determining whether a defendant has presented a valid reason for failing to seek collateral relief sooner

Alternatively, Littlejohn requests that this Honorable Court remand the case to the lower courts for further proceedings consistent with this petition to address the open novel questions.

Respectfully submitted this 2nd day of May, 2023,

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Dwayne M. Littlejohn