UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

UNITED STATES OF AMERICA, **Plaintiff,**	**CRIMINAL ACTION NO. 5:12-79-KKC-4**
v.	**OPINION AND ORDER**
MARK EDMOND BROWN, JR., **Defendant.**	

*** *** ***

This matter is before the Court on Defendant Mark Edmond Brown, Jr.'s motion for the Court to reconsider its October 17, 2022 Order and Opinion denying his second petition for a writ of coram nobis. (DE 1618; DE 1620.) For the following reasons, Brown's motion (DE 1620) is denied.

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"[C]ourts adjudicating motions to reconsider in criminal cases typically evaluate such motions under the same standards applicable to a civil motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e)." *United States v. Guzman*, Criminal Case No. 5:16-CR-41-JMH-EBA, 2019 WL 4418015, at *2 (E.D. Ky. Sept. 16, 2019) (citation and quotation marks omitted). The standard for a motion to reconsider under Rule 59(e) is "necessarily high." *Hewitt v. W. & S. Fin. Grp. Flexibly Benefits Plan*, Civil Action No. 16-120-HRW, 2017 WL 2927472, at *1 (E.D. Ky. July 7, 2017). A court may only grant a Rule 59(e) motion if the moving party shows (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in the controlling law; or (4) a manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted).

The Court denied Brown's petition for his failure to show that he is suffering an "ongoing civil disability" resulting from his conviction. (DE 1618 at 4.) Brown now challenges that decision on three separate grounds: (1) the Court denied the petition before receiving a response from the Government and holding an evidentiary hearing; (2) Brown is suffering from the present harm of his inability to own or possess a firearm following his conviction; and (3) his conviction itself is a disability. (DE 1620 at 1-2.) No ground is sufficient for the Court to grant Brown's motion.

First, the Court has the power to dismiss a petition for a writ of coram nobis *sua sponte* without a Government response, as it did here, where the petition clearly lacks merit on its face. *See Warden v. United States*, Civil Action No. 1:13CV-P20-R, 2013 WL 4096915, at *3 (W.D. Ky. Aug. 13, 2013) (stating that a petition for a writ of coram nobis was "subject to dismissal *sua sponte*"); *see also United States v. Brimage*, Criminal Action No. 95-10046-PBS, Civil Action No. 12-11592-PBS, 2012 WL 5398471, at *4 (D. Mass. Oct. 31, 2012) (dismissing a petition for a writ of coram nobis *sua sponte*); *United States v. Dilks*, Criminal Action No. 7:93-cr-00091, 2009 WL 528615, at *2 (W.D. Va. Feb. 27, 2009) ("The court may consider *sua sponte* whether the extraordinary relief of a writ of error coram nobis is proper."); *Grant v. Lantz*, No. 3:05CV1756(MRK), 2006 WL 1662896, at *3 (D. Conn. June 1, 2006) ("[I]t is proper for the Court to consider *sua sponte* whether coram nobis relief would be proper.") Similarly "evidentiary hearings are not required when, as here, the record conclusively shows that the petitioner is entitled to no relief." *Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996). Therefore, the Court will not grant the motion on this basis.

Next, whether an individual's inability to own or possess a firearm constitutes a civil disability is unclear. *See, e.g., United States v. Harrison*, CASE NO. 6:99-cr-2(1), 2013 WL 12373979, at *2 (E.D. Tex. Nov. 20, 2013) ("Therefore, Defendant's inability to vote, own a

firearm or pursue a certain profession does not support finding a continuing civil disability."). *But see Howard v. United States*, 962 F.2d 651, 655 (7th Cir. 1992) ("We have previously noted that the loss of the right to bear arms could be the type of civil disability conferring coram nobis jurisdiction."); *Nowlin v. United States*, 81 F. Supp. 3d 514, 522 (N.D. Miss. 2015) ("As [Defendant] has alleged loss of his Second Amendment right to keep and bear arms[,] he has shown sufficient adverse consequences (loss of civil rights) to support the instant petition for a writ of coram nobis."). However, Brown never alleged that his inability to own or possess a firearm was a civil disability in his original petition, even though that argument was available to him. "[P]arties cannot use a motion [to reconsider] to raise new legal arguments that could have been raised before a judgment was issued." *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 395 (6th Cir. 2007). Therefore, the Court denies the motion as to this ground.

Finally, "[a] conviction is a black mark, but that is not a civil disability." *United States v. Keane*, 852 F.2d 199, 204 (7th Cir. 1988). Thus, to the extent that Defendant's motion hinges on his argument that his conviction is a civil disability, that argument fails as a matter of law. In any event, Brown could have raised this argument in his initial petition, and a motion to reconsider is not the place to "raise new legal arguments." *See Roger Miller Music, Inc.*, 477 F.3d at 395. Accordingly, this argument is not a basis for the Court to grant Defendant's motion to reconsider.

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For the foregoing reasons, the Court hereby ORDERS that Mark Edmond Brown, Jr.'s motion for the Court to reconsider its October 17, 2022 Order and Opinion (DE 1620) is DENIED.

This 26th day of January, 2023.

KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

UNITED STATES OF AMERICA, Plaintiff, v. MARK EDMOND BROWN, JR., Defendant.	CRIMINAL ACTION NO. 5:12-79-KKC OPINION AND ORDER

*** *** ***

For a second time, Defendant Mark Edmond Brown, Jr., petitions the Court for a writ of coram nobis, moving to vacate and set aside his sentence. (DE 1611.) For the following reasons, the Court denies the petition.

I. Factual and Procedural Background

On April 5, 2013, Defendant Mark Edmond Brown, Jr., pleaded guilty to one count of conspiracy to distribute cocaine. (DE 570 ¶ 1.) The Court sentenced Brown to 108 months of imprisonment and 5 years of supervised release. (DE 728 at 2-3.) The Court later reduced Brown's sentence to 87 months. (DE 1084.) Brown was released from custody on September 1, 2017. (DE 1422 at 1.)

On April 27, 2020, Brown filed his first petition for a writ of coram nobis, seeking to vacate and set aside his sentence. (DE 1420; DE 1422 at 1, 22.) This Court denied that petition, finding that Brown waived his right to collaterally attack his sentence in his plea agreement and that he did not otherwise challenge the validity of that waiver. (DE 1479 at 3.) On appeal, the Sixth Circuit affirmed this Court's decision. (DE 1576.)

Now, Brown petitions this Court again for a writ of coram nobis, apparently challenging the validity of the waiver provision found in his plea agreement. (DE 1611 at 4). He argues that "the plea agreement itself was a product of ineffective assistance of counsel" because his lawyer advised him to admit to the "uncharged" allegation of crack cocaine possession, failed to address statute of limitations issues during his plea negotiations, and failed to raise due process challenges. (*Id.* at 5, 7-18.) Separately, Brown also claims that this Court lacked personal and territorial jurisdiction over his proceedings. (*Id.* at 18-21.)

In the affidavit filed alongside his petition, Brown states, "Coram nobis relief is necessary to remedy the continuing civil disability associated with my conviction, the realistic threat of future sentencing hearings treating me as a recidivist offender, and reputational harm." (DE 1611-1 ¶ 11.) He concludes, "I do not want to face the remainder of my life branded as a criminal, and a conviction of a felony imposes a status upon me which not only makes me vulnerable to future sanctions through new civil disability statutes, but also seriously affects my reputation and economic opportunities." (*Id.* ¶ 12.)

II. Analysis

"The writ of coram nobis provides a way to collaterally attack a criminal conviction for a person . . . who is no longer in custody and therefore cannot seek habeas relief under 28 U.S.C. § 2255 or § 2241." *United States v. Castano*, 906 F.3d 458, 462 (6th Cir. 2018) (citations and quotation marks omitted). "The writ is so extraordinary that it is used only in 'circumstances *compelling* such action to achieve justice.'" *United States v. Waters*, 770 F.3d 1146, 1147 (6th Cir. 2014) (emphasis in original) (quoting *United States v. Morgan*, 346 U.S. 502, 511). Due to the extraordinary nature of the writ, coram nobis relief is subject to several limitations. *Castano*, 906 F.3d at 463.

One limitation is the need to remedy an "ongoing civil disability" resulting from the relevant conviction. *Id.* Therefore, a petitioner must show that an "ongoing civil disability" warrants coram nobis relief. *See Waters*, 770 F.3d at 1147-48. An ongoing civil disability will not warrant coram nobis relief unless the disability meets the following three-part test: "First, the disability must be causing a present harm; *it is not enough to raise purely speculative harms* or harms that occurred completely in the past. Second, the disability must arise out of the erroneous conviction. Third, the potential harm to the petitioner must be more than incidental." *Castano*, 906 F.3d at 463 (emphasis in original) (citations and quotation marks omitted).

Brown claims four different civil disabilities result from his conviction: (1) "reputational harm;" (2) a loss of "economic opportunities;" (3) "the realistic threat of future sentencing hearings treating [him] as a recidivist offender," and (4) "future sanctions through new civil disability statutes." (DE 1611-1 ¶¶ 11-12.) No claim warrants coram nobis relief.

As an initial matter, reputational harm and economic harm cannot constitute civil disabilities for purposes of coram nobis relief. *Waters*, 770 F.3d at 1147-48 ("At most [the defendant] has alleged an injury to reputation, but this is not enough to warrant coram nobis."); *see United States v. Sloan*, 505 F.3d 685, 698 (7th Cir. 2007) ("[F]inancial injury cannot be classified as the sort of civil disability that can support the issuance of the writ of coram nobis."); *United States v. Keane*, 852 F.2d 199, 203 (7th Cir. 1988) ("Criminal convictions sometimes produce financial penalties . . . but these do not entail continuing legal effects of a judgment."); *United States v. Medley*, No. 88 CR 297, 2015 WL 6501207, at *4 (N.D. Ill. Oct. 27, 2015) ("[The defendant's] economic, social and professional harm are not considered legal disabilities.") (citation and quotation marks omitted). Even if proven, Brown cannot base his petition on those alleged harms. To the extent that Brown relies upon

reputational harm or loss of economic opportunity to prove an ongoing civil disability, his petition is dismissed.

As for his remaining allegations of harm, Brown has not sufficiently shown an ongoing civil disability because his petition does not fulfill the first prong of the test. He offers no evidence that any civil disability *presently* affects him as opposed to affecting him in the past or potentially in the future. Indeed, the two remaining civil disabilities explicitly reference "future" harms—the "threat of future sentencing hearings" and "future sanctions through new civil disability statutes." Such future-oriented harms are "purely speculative" and therefore do not fall within the purview of coram nobis relief. *Castano*, 906 F.3d at 463.

Brown's claims of civil disability are also speculative because they are unsubstantiated. Beyond his conclusory allegations, Brown does not provide any specific facts demonstrating that he is experiencing these civil disabilities or that those disabilities cause him identifiable harm. *United States v. Henton*, No. 19-1872, 2020 WL 4558842, at *2 (6th Cir. Mar. 10, 2020) (affirming denial of petition where the defendant's allegation that he was "suffering from an ongoing civil disability due to a purported sentence as a career offender" was "conclusory"); *United States v. Dyer*, 136 F.3d 417, 422 (5th Cir. 1998) ("Moreover, [the defendant] has failed to allege with any specificity what lingering civil disabilities he continues to suffer as a result of his [conviction.]"). While "one [i]njury rising to the level of a civil disability is an enhanced penalty for a recidivist offender," Brown does not indicate that he has received subsequent convictions that resulted in enhanced penalties. *Castano*, 906 F.3d 458, 463 (explaining that a harm was "speculative" if an enhanced penalty had not been imposed). He does not specify a civil disability statute that subjects him to sanctions. Without adequate proof that Brown faces an ongoing civil disability, the Court cannot afford him such an extraordinary remedy.

Because Brown's failure to meet the first prong of the test forecloses his petition in its entirety, the Court will not reach the remainder of the three-part test. Accordingly, the Court denies Brown's petition for a writ of coram nobis.

III. Conclusion

The Court hereby ORDERS that Defendant Mark Edmond Brown, Jr.'s petition for a writ of coram nobis is DENIED. (DE 1611.)

This 17th day of October, 2022.

KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-5158

MARK EDMOND BROWN, JR.,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before: BOGGS, McKEAGUE, and BLOOMEKATZ, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 23-5158

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARK EDMOND BROWN, JR.,	)	
	)	
Petitioner-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
UNITED STATES OF AMERICA,	)	KENTUCKY
	)	
Respondent-Appellee.	)	

ORDER

Before: BOGGS, McKEAGUE, and BLOOMEKATZ, Circuit Judges.

Mark Edmond Brown, Jr., a pro se former federal prisoner, appeals the district court's order denying his petition for a writ of coram nobis. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because Brown's petition is barred by his collateral-attack waiver, we affirm the district court's decision.

In 2013, Brown pleaded guilty to conspiring to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 846. As part of his plea agreement, he agreed to "waive[] the right to appeal and the right to attack collaterally the guilty plea, conviction and sentence." The district court sentenced him to 108 months of imprisonment, to be followed by five years of supervised release. The district court later reduced the term of imprisonment to 87 months. Brown was released from custody on September 1, 2017.

Brown first challenged his conviction and sentence in 2014, when he filed a motion to vacate pursuant to 28 U.S.C. § 2255. That motion included claims that trial counsel had performed

ineffectively by advising him to plead guilty. The district court denied the motion, and this court denied a certificate of appealability. *Brown v. United States*, No. 17-5854 (6th Cir. Feb. 12, 2018).

Following his release, Brown filed his first petition for a writ of coram nobis. The district court denied the petition because Brown had waived his right to collaterally attack his conviction in his plea agreement. We affirmed, determining that Brown had knowingly and voluntarily waived his right to collaterally attack his conviction, which waiver included his coram nobis petition. *Brown v. United States*, No. 21-5046 (6th Cir. Mar. 29, 2022).

A few months later, Brown filed a second petition for a writ of coram nobis. He again challenged the validity of his collateral-attack waiver, arguing that trial counsel performed ineffectively by advising him to plead guilty and admit to possessing a specific amount of crack-cocaine that was untrue and not charged in the indictment. He also claimed that counsel did not inform him of a statute-of-limitations issue and failed to challenge the government's use of superseding indictments, and that the district court lacked territorial and personal jurisdiction. Rather than enforce the collateral-attack waiver, the district court denied the petition because Brown did not adequately allege an ongoing civil disability, as required to maintain a coram nobis action. Brown then moved for reconsideration, asserting that the district court erred by denying his motion sua sponte without requiring a response from the government. He also asserted that his inability to own or possess a firearm as a felon and the other collateral consequences of his conviction amounted to ongoing civil disabilities. The district court denied reconsideration, noting that it can dismiss a coram nobis petition sua sponte if it clearly lacks merit and that Brown could not raise new arguments for the first time in a motion for reconsideration.

On appeal, Brown maintains that his inability to possess a firearm and the fact of his conviction itself are ongoing civil disabilities sufficient to support coram nobis relief. The government responds that Brown's second coram nobis petition, like his first, should be barred by his collateral-attack waiver under the law-of-the-case doctrine.

We review legal issues de novo in a coram nobis proceeding. *Blanton v. United States*, 94 F.3d 227, 230 (6th Cir. 1996). "*Coram nobis* is an extraordinary writ that may be used to 'vacate

a federal sentence or conviction when a § 2255 motion is unavailable—generally, when the petitioner has served his sentence completely and thus is no longer in custody.'" *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012) (quoting *Blanton*, 94 F.3d at 231); *see Chaidez v. United States*, 568 U.S. 342, 345 n.1 (2013). We may affirm for any reason supported by the record. *Clark v. United States*, 764 F.3d 653, 660-61 (6th Cir. 2014) (citing *Loftis v. United Parcel Serv., Inc.*, 342 F.3d 509, 514 (6th Cir. 2003)).

Brown's second coram nobis petition is barred by his collateral-attack waiver, which we already decided was enforceable in the appeal of his first coram nobis petition. He challenges the validity of that waiver once again, but the arguments he raises to support that challenge are not new. For instance, in his § 2255 motion, Brown challenged counsel's advice to plead guilty because the conduct he was admitting to did not have an evidentiary basis, which does not meaningfully differ from his present argument that counsel advised him to plead guilty and admit conduct that was untrue. The district court denied the claim and we denied a COA. *See Brown*, No. 17-5854, slip op. at 3-4. Similarly, we determined in Brown's appeal of his first coram nobis petition that his collateral-attack waiver was knowingly and voluntarily made and that it precluded him from seeking coram nobis relief. *Brown*, No. 21-5046, slip op. at 2-3. In that appeal, Brown specifically argued that the waiver was invalid due to poor advice from counsel. Thus, at its core, Brown's attack on his collateral-review waiver is an attempt to relitigate questions that we have already decided.

Coram nobis is an extraordinary remedy that should be granted only "under circumstances compelling such action to achieve justice" and to correct errors "of the most fundamental character." *United States v. Morgan*, 346 U.S. 502, 511-12 (1954). Nothing in Brown's petition gives us reason to reconsider our prior conclusion that he knowingly and voluntarily waived his right to collaterally attack his conviction, which in turn bars his other claims. He certainly does not establish an error of the most fundamental character necessary to obtain extraordinary coram nobis relief. A coram nobis petition is not a means to relitigate issues that have already been decided or could have been raised in Brown's § 2255 proceedings. *See Barrow v. United States*,

455 F. App'x 631, 636-37 (6th Cir. 2012); *United States v. Paz-Zamudio*, 2 F. App'x 483, 485 (6th Cir. 2001); *accord United States v. Hassebrock*, 21 F.4th 494, 498 (7th Cir. 2021); *United States v. Miles*, 923 F.3d 798, 804 (10th Cir. 2019); *United States v. Esogbue*, 357 F.3d 532, 535 (5th Cir. 2004).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk