No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC MARTIN MATTHEWS - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR AN

ORIGINAL WRIT OF HABEAS CORPUS TO

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

APPENDIX "A"

ERIC MARTIN MATTHEWS
75804-004
FMC FORT WORTH
P.O. BOX 15330
FORT WORTH, TX 76119

ERIC MARTIN MATTHEWS, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
2017 U.S. Dist. LEXIS 125285
CASE NO. 17-14272-Civ-MOORE,(06-14069-Cr-MOORE)
August 7, 2017, Decided
August 7, 2017, Entered on Docket

Editorial Information: Subsequent History

Adopted by, Objection overruled by, Petition denied by, Certificate of appealability denied, Judgment entered by Matthews v. United States, 2017 U.S. Dist. LEXIS 225282 (S.D. Fla., Dec. 2, 2017)Certificate of appealability denied, Motion denied by, Motion denied by, As moot Matthews v. United States, 2018 U.S. App. LEXIS 15074 (11th Cir. Fla., June 4, 2018)Magistrate's recommendation at Matthews v. United States, 2018 U.S. Dist. LEXIS 147355 (S.D. Fla., Aug. 28, 2018)Post-conviction proceeding at, Request denied by In re Matthews, 2019 U.S. App. LEXIS 11046 (11th Cir., Apr. 15, 2019)Magistrate's recommendation at, Habeas corpus proceeding at Matthews v. Hudgins, 2019 U.S. Dist. LEXIS 172841 (S.D. Fla., Oct. 2, 2019)Magistrate's recommendation at United States v. Matthews, 2020 U.S. Dist. LEXIS 146553, 2020 WL 4721325 (S.D. Fla., May 11, 2020)Related proceeding at Matthews v. Exec. Office for the United States Attys., 2020 U.S. Dist. LEXIS 257015 (W.D. Tex., Sept. 20, 2020)

Editorial Information: Prior History

Matthews v. United States, 2009 U.S. Dist. LEXIS 50583 (N.D. Tex., June 5, 2009)

Counsel {2017 U.S. Dist. LEXIS 1}Eric Martin Matthews, Plaintiff (2:17-cv-14272-KMM), Pro se, Littleton, CO.

For USA, Plaintiff (2:06-cr-14069-JEM-1): Antonia J. Barnes, LEAD ATTORNEY, United States Attorney's Office, West Palm Beach, FL; Diana Margarita Acosta, United States Attorney's Office, Fort Pierce, FL.

Judges: Patrick A. White, UNITED STATES MAGISTRATE JUDGE.

Opinion

Opinion by: Patrick A. White

Opinion

REPORT OF MAGISTRATE JUDGE

I. Introduction

Eric Martin Matthews, a federal prisoner, currently confined at the Englewood Federal Correctional Institution in Littleton, Colorado, has filed a pro se petition for writ of error *coram nobis* pursuant to 28 U.S.C. § **1651**, challenging the constitutionality of his conviction and sentence entered following a guilty plea in case no. 06-14069-CR-Moore.

This cause has been referred to the undersigned for consideration and report pursuant to 28 U.S.C. § 636(b)(1)(B),(C); S.D.Fla. Local Rule 1(f) governing Magistrate Judges; S.D. Fla. Admin. Order

2003-19; and Rules 8 and 10 Governing Section 2255 Cases in the United States District Courts.

No order to show cause has been issued because, on the face of the motion, together with the underling criminal record, it is evident the movant is entitled to no relief. See Rule 4,1 Rules Governing Section 2255 Proceedings.

The Court has reviewed the movant's motion (Cv-DE#1), together with all pertinent{**2017 U.S. Dist. LEXIS 2**} portions of the underlying criminal file, as well as, the movant's prior § 2255 motion, assigned case no. 08-CV-14030-Moore.2

II. Claim

This court, recognizing that movant is *pro se*, afforded him liberal construction pursuant to Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). In his petition (DE#1), movant appears to claim that the United States Congress improperly passed the laws under which he was convicted.

III. Procedural History

The procedural history of the underlying criminal case reveals that the movant was charged by Indictment with use of a computer to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b) (Count 1), two counts of using a computer to transfer obscene material, in violation of 18 U.S.C. § 1470 (Counts 2-3), distribution of child pornography via a computer, in violation of 18 U.S.C. § 2522(a)(2) (Count 4), as well as, a forfeiture count. (Cr-DE#10).

Pursuant to the terms of a written plea agreement, the movant agreed to plead guilty to Counts One and Four of the Indictment. (Cr-DE#23). In exchange, the government agreed to dismiss all remaining counts after sentencing, and to recommend up to a three-level reduction in the movant's base offense level based on his timely acceptance of responsibility. (Id.:1,4).

The movant thereafter filed *{2017 U.S. Dist. LEXIS 3}pro se* motions to withdraw his guilty plea, dismiss counsel, and to proceed *pro se* until new counsel was appointed. (Cr-DE#s34-36). Movant's counsel filed a motion for a status conference after visiting the movant at a local detention center, at which time he learned that the movant had filed the subject pleadings. (Cr-DE#33). After an evidentiary hearing, a Report was entered denying the motions based on the fact that the movant understood he faced more time if he proceeded to trial, and therefore was tacitly withdrawing the motions. (Cr-DE#47).

On March 8, 2007, the movant was sentenced to a term of 262 months in prison as to Count 1, and a concurrent term of 240 months in prison as to Count 4, followed by a term of life supervised release. (Cr-DE#53). The judgment was entered by the Clerk on March 9, 2007. (Id.). No direct appeal was filed. Thus, the judgment of conviction in the underlying criminal case became final at the latest on **March 23, 2007**, when time expired for filing a notice of appeal, ten days following the entry of judgment.3

Less than one year later on January 5, 2007, petitioner timely filed his first § 2255 motion to vacate, assigned **case no. 08-14030-Civ-Moore**. (08-CV-14030,{**2017 U.S. Dist. LEXIS 4**} DE#1).4 On August 27, 2008, the district court denied the § 2255 motion. (08-CV-14030, DE#18). On April 17, 2009, the Eleventh Circuit dismissed movant's motion for a certificate of appealability. (08-CV-14030, DE#31). The United States Supreme Court denied the petition for writ of certiorari on November 5, 2009. (08-CV-14030, DE#32)

On June 30, 2017,5 the movant, undeterred, next filed the instant writ of error *coram nobis*. (Cv-DE#1).

IV. Standard of Review

Certain common-law writs may be used to "fill the interstices of the federal post-conviction remedial framework." United States v. Holt, 417 F.3d 1172, 1175 (11th Cir. 2005)(quotations omitted). The writ of *audita querela*, Latin for "the complaint having been heard," was an ancient writ used to attack the enforcement of a judgment after it was rendered. BLACK'S LAW DICTIONARY 126 (9th ed. 2009). The common law writ was typically employed by a judgment debtor in a civil case against the execution of a judgment because of some defense or discharge arising subsequent to the rendition of the judgment or the issue of the execution. See id. See also Gonzalez v. Sec. for the Dep't of Corr's, 366 F.3d 1253, 1289 (11th Cir. 2004)(Tjoflat, J., dissenting). The writ of *audita querela* was abolished, however, in the civil context by the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 60(b).

However,{2017 U.S. Dist. LEXIS 5} federal courts have authority to issue a writ of error *coram nobis* under the All Writs Act, Title 28, Section 1651(a). United States v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000). See also Bonadonna v. Unknown Defendant, 181 Fed.Appx. 819, 822 n.2 (11th Cir. 2006). The Supreme Court recognized long ago that a writ of *coram nobis* is available to correct errors "of the most fundamental character" that have occurred in a criminal proceeding. United States v. Morgan, 346 U.S. 502, 512, 74 S. Ct. 247, 98 L. Ed. 248 (1954). Such "extraordinary" relief is only available, however, "under circumstances compelling such action to achieve justice." Id. at 511, 74 S. Ct. 247.

In other words, a writ of error *coram nobis* may only issue where (1) ?there is and was no other avenue for 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." Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000); Mills, 221 F.3d at 1203; Jimenez v. Trominski, 91 F.3d 767, 768 (5th Cir. 1996). Consequently, the bar for *coram nobis* relief is high. Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000); see also, United States v. Louis, 463 Fed.Appx. 819, 820 (11th Cir. 2012).

As such, the remedy has traditionally been reserved "to bring before the court factual errors 'material to the validity and regularity of the legal proceeding itself,' such as the defendant's being under age or having died before the verdict." Carlisle v. United States, 517 U.S. 416, 426, 116 S. Ct. 1460, 134 L. Ed. 2d 613 (1996)(*quoting* United States v. Mayer, 235 U.S. 55, 69, 35 S. Ct. 16, 59 L. Ed. 129 (1914)). It is "difficult to conceive of a situation in a federal criminal case today where that remedy would be necessary or appropriate." Carlisle, 517 U.S. at 429 (*quoting* United States v. Smith, 331 U.S. 469, 476 n.4, 67 S. Ct. 1330, 91 L. Ed. 1610 (1947)).

V. Discussion{2017 U.S. Dist. LEXIS 6}

A. Timeliness

A writ of error *coram nobis* is available only if the petitioner "presents sound reasons for failing to seek relief earlier." United States v. Morgan, 346 U.S. 502, 512, 74 S. Ct. 247, 98 L. Ed. 248 (1954). Petitioner has offered no reason why he has waited over **10 years** to file the instant petition after his conviction became final on **March 23, 2007**, when the time expired for filing a direct appeal. His claim is also not based on any right newly recognized by the United States Supreme Court that has been made retroactively applicable to cases on collateral review, nor does he allege any newly discovered facts, or any impediment created by the government which prevented an earlier filing.

Rather, the petitioner challenges his conviction and resulting sentence, claiming he is entitled to *coram nobis* relief, because the United States congress improperly passed the laws under which he was convicted. (Cv DE# 1). Without presenting sound reasons for failing to seek relief earlier, petitioner is not entitled to review of his claim. See United States v. Morgan, 346 U.S. 502, 512, 74

S. Ct. 247, 98 L. Ed. 248 (1954). Petitioner's claim is not based on any right newly recognized by the United States Supreme Court that has been made retroactively applicable to cases on collateral review.

Petitioner has also not alleged any newly discovered{2017 U.S. Dist. LEXIS 7} facts or any impediment created by the government which prevented an earlier filing. Thus, the petition could be dismissed on the basis of timeliness alone. See generally Rojas v. United States, 2012 U.S. Dist. LEXIS 110348, 2012 WL 3150052, *6-7 (S.D.Fla. July 16, 2012), *adopted and affirmed* Rojas v. United States, 2012 U.S. Dist. LEXIS 107162, 2012 WL 3150079 (S.D.Fla. Aug. 1, 2012)(finding that coram nobis petition filed over one year after *Padilla* was decided was untimely, given that petitioner had offered "no sound reasons" why petition was not filed within one year of *Padilla*, and noting that it would be inequitable to require habeas petitioners to file within one year, but allow *coram nobis* petitioners a longer period); see also Rodriguez v. United States, 2012 U.S. Dist. LEXIS 173350, 2012 WL 6082477, *10 (S.D.N.Y. Dec. 4, 2012)(finding untimely a *coram nobis* petition filed more than two years after *Padilla* where petitioner provided no "justification for delay").

It is also pointed out that petitioner's status as an unskilled layperson does not excuse the delay.6 See generally Johnson v. United States, 544 U.S. 295, 311, 125 S. Ct. 1571, 1582, 161 L. Ed. 2d 542 (2005)(stating that "the Court has never accepted *pro se* representation alone or procedural ignorance as an excuse for prolonged inattention when a statute's clear policy calls for promptness."). See also Rivers v. United States, 416 F.3d at 1323 (holding that while movant's lack of education may have delayed his efforts to vacate his state conviction, his procedural ignorance is not an excuse for prolonged inattention when promptness is{2017 U.S. Dist. LEXIS 8} required); Carrasco v. United States, 2011 U.S. Dist. LEXIS 46778, 2011 WL 1743318, *2-3 (W.D.Tex. 2011)(finding that movant's claim that he just learned of *Padilla* decision did not warrant equitable tolling, although movant was incarcerated and was proceeding without counsel, because ignorance of the law does not excuse failure to timely file § 2255 motion).

B. Merits

Even if deemed timely filed, the petitioner would not be entitled to the extraordinary relief he seeks, the vacation of his conviction and sentence. The petitioner bears the burden to show that the claim was not previously put in issue or passed upon. This burden requires a petitioner to establish "(1) 'there is 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.'" Jackson v. United States, 375 Fed.Appx. 958, 959 (11th Cir. 2010)(*quoting* Alikhani, 200 F.3d at 732, 734 (11th Cir. 2000)).

In analyzing the requirements for *coram nobis* relief, a reviewing court must presume that the underlying proceedings were correct. See Morgan, 346 U.S. at 512, 74 S. Ct. 247. Since the bar for *coram nobis* relief is high, even exceeding that of a habeas petitioner, successful *coram nobis* petitions are exceedingly rare. See United States v. Stoneman, 870 F.2d 102, 106 (3d Cir. 1989)(stating that the burden placed on a petitioner seeking a writ of *coram{2017 U.S. Dist. LEXIS 9} nobis* exceeds the corresponding burden placed on a habeas petitioner); Jimenez, 91 F.3d at 768 n.6.

In Peter, a rare case where *coram nobis* relief was granted, the Eleventh Circuit found that the facts supporting the guilty plea did not constitute an offense in light of a Supreme Court case decided after Petitioner's sentence had expired. Peter, 310 F.3d at 711. Because the district court lacked jurisdiction to accept a guilty plea to a "non-offense," the Eleventh Circuit held in Peter that "a writ of error *coram nobis* must issue to correct the judgment that the court never had power to enter." Id. at 716. Also, a writ of error *coram nobis* may be justified in light of a retroactive dispositive change in

the law. See United States v. Mandel, 862 F.2d 1067 (4th Cir. 1988); see generally Brooks v. United States, 2 M.J. 1257, 52 C.M.R. 44 (Army Ct. M. Rev. 1976)(when the exceptional circumstance alleged is a subsequent court decision, that decision must necessarily have retroactive application or extraordinary relief will be denied); United States v. Hay, 702 F.2d 572 (5th Cir. 1983).

However, if a claim relies on a case that was decided after the petitioner's conviction and sentence became final and the case is not retroactive, then the petitioner "has not suffered such compelling injustice that would deserve relief pursuant to a writ of error *coram nobis*." United States v. Swindall, 107 F.3d 831 (11th Cir. 1997). See also United States v. Williams, 158 Fed.Appx. 249 (11th Cir. 2005).

This case presents no jurisdictional claim and there{**2017 U.S. Dist. LEXIS 10**} is no applicable retroactive dispositive change in the law. The petitioner has failed to demonstrate that any ?error involve[d] ... matters of fact of the most fundamental character which have not been put in issue or passed upon..." Alikhani, 200 F.3d at 734.

To the extent Petitioner is challenging the indictment, his petition also fails. An indictment that follows the statute is nevertheless insufficient if it fails to sufficiently apprise the defendant of the charged offense. United States v. Sharpe, 438 F.3d 1257, 1263 (11th Cir. 2006). Thus, if an indictment tracks the language of the criminal statute, it must include enough facts and circumstances to inform the defendant of the specific offense being charged. United States v. Bobo, 344 F.3d 1076, 1083 (11th Cir. 2003). This is necessary ?not only to give the defendant notice as guaranteed by the [S]ixth [A]mendment, but also to inform the court of the facts alleged to enable it to determine whether the facts are sufficient in law to support a conviction." See Belt v. United States, 868 F.2d 1208, 1211 (11th Cir. 1989). The charging instrument, however, need not "allege in detail the factual proof that will be relied upon to support the charges." United States v. Crippen, 579 F.2d 340, 342 (5th Cir. 1978).

Here, petitioner was charged and plead guilty to use of a computer to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b) and with distribution of child pornography via a computer, in violation{**2017 U.S. Dist. LEXIS 11**} of 18 U.S.C. § 2522(a)(2).(Cr-DE#10). Petitioner has not established that he was charged with a non-offense. Moreover, the Indictment was not fatally defective, and petitioner's attempt to challenge it anew warrants no relief. As noted by the Supreme Court, *coram nobis* is inapplicable if the petitioner merely wishes to re-litigate criminal convictions. See United States v. Addonizio, 442 U.S. 178, 186-188, 99 S. Ct. 2235, 60 L. Ed. 2d 805 (1979). This is what the petitioner is attempting to do in this proceeding.

Although available in unique situations, a writ of *coram nobis* and/or "writ of *audita querela* may not be granted when relief is cognizable under § 2255, regardless of whether a § 2255 motion would have succeeded." Holt, 417 F.3d at 1175. Because movant is collaterally attacking his conviction and sentence as violating the United States Constitution, the proper avenue of relief is § 2255 and this Court lacks authority to grant relief pursuant to a writ of *coram nobis*.

When construing the instant pleading as a § 2255 motion, movant is also entitled to no relief. See Holt, 417 F.3d at 1175 (noting that the motion for a writ of *audita querela* could be liberally construed as a § 2255 motion but that such a motion would have been impermissibly successive). Movant has already filed a motion to vacate his sentence under § 2255 which has been denied on the merits in case{**2017 U.S. Dist. LEXIS 12**} no. 08-14030-Moore. This proceeding is yet one more try at obtaining reconsideration of his judgment of conviction. Thus, movant's use of a writ of *coram nobis* is an improper attempt to circumvent the requirement in § 2255(h) that he seek authorization from the Eleventh Circuit to file another § 2255 motion. See 28 U.S.C. § 2255(h); 2244(b)(3). See also

Holt, 417 F.3d 1172 (rejecting use of petition for writ of *audita querela* to vacate a sentence based on *Apprendi* and its progeny).

Regardless of whether this matter is considered under *coram nobis* or § 2255, he is not entitled to relief. As a § 2255 motion, petitioner is now required to secure the permission of the Eleventh Circuit before this Court can consider this latest motion. See Ramos v. Warden, FCI Jesup, 502 Fed.Appx. 902, 904 (11th Cir. 2012). Specifically, 28 U.S.C. § 2255(h) provides that "[a] second or successive motion must be certified...by a panel of the appropriate court of appeals." Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003). There is no indication that movant has done so here.

As such, construing this motion as one made pursuant to § 2255, it is subject to dismissal for lack of jurisdiction. See United States v. Mosqueda, 2013 U.S. Dist. LEXIS 117859, 2013 WL 4493581, at *2 (N.D. Fla. Aug. 19, 2013)(dismissing a petitioner's § 2255 motion for failing to seek permission from the court of appeals to file a second § 2255 motion). Further, even if movant had sought permission from the Eleventh Circuit to file a successive § 2255 motion,**{2017 U.S. Dist. LEXIS 13}** his arguments fail to meet the statutory criteria permitting a second habeas petition. A circuit court of appeals may only allow such a motion when it contains:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.28 U.S.C. § 2255(h). Movant does not maintain that newly discovered evidence would establish that he is actually innocent as required under subsection (1) above. Also, he does not rely on any new rule of constitutional law, that has been made retroactively applicable to cases on collateral review. As the Supreme Court explains:
>
> Quite significantly, under this provision, the Supreme Court is the only entity that can "ma[k]e" a new rule retroactive. The new rule becomes retroactive, not by the decisions of the lower court or by the combined action of the Supreme Court and the lower courts, but simply by the action of the Supreme Court. The only way the Supreme Court can, by itself, "lay**{2017 U.S. Dist. LEXIS 14}** out and construct" a rule's retroactive effect, or "cause" that effect "to exist, occur, or appear," is through a holding. The Supreme Court does not "ma[k]e" a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts.Tyler v. Cain, 533 U.S. 656, 663, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001). Therefore, "[i]t is not enough that the new rule is or will be applied retroactively by the Eleventh Circuit or that it satisfies the criteria for retroactive application set forth by the Supreme Court." In re Joshua, 224 F.3d 1281, 1283 (11th Cir. 2000). A declaration of retroactivity must come from the Supreme Court. See Simpson v. United States, 721 F.3d 875, 876 (7th Cir. 2013),7 citing Dodd v. United States, 545 U.S. 353, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005); Tyler v. Cain, 533 U.S. 656, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001).

Notwithstanding, if movant intends to pursue this case, he should forthwith apply to the United States Eleventh Circuit Court of Appeals for the authorization required by 28 U.S.C. § 2244(b)(3)(A). Movant will be provided with a form to apply for such authorization with this report.

VI. Certificate of Appealability

Although under *coram nobis*, no certificate appealability is required, to the extent that it is necessary in this case, it is further recommended that a certificate of appealability should not issue.8

VII. Conclusion

Movant has not demonstrated entitlement to relief by writ of error *coram nobis* or otherwise. It is therefore{**2017 U.S. Dist. LEXIS 15**} recommended that this Petition for Writ of Error *Coram Nobis* be DISMISSED. Alternatively, to the extent this petition should be construed as being properly brought pursuant to § 2255, it should be DISMISSED, as successive, for failure to obtain permission from the Eleventh Circuit prior to filing with this court; that no certificate of appealability issue, and this case closed.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

Signed this 7th day of August, 2017.

/s/ Patrick A. White

UNITED STATES MAGISTRATE JUDGE

Footnotes

1

Rule 4 of the Rules Governing Section 2255 Petitions, provides, in pertinent part, that "[I]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner...."
2

The undersigned takes judicial notice of its own records as contained on CM/ECF in those proceedings. See Fed.R.Evid. 201.
3

Where, as here, a defendant does not pursue a direct appeal, the conviction becomes final when the time for filing a direct appeal expires. Adams v. United States, 173 F.3d 1339, 1342 n.2 (11th Cir. 1999). The time for filing a direct appeal expires ten days after the judgment or order being appealed is entered. Fed.R.App.P. 4(b)(1)(A)(I). The judgment is "entered" when it is entered on the docket by the Clerk of Court. Fed.R.App.P. 4(b)(6). On December 1, 2002, Fed.R.App.P. 26 which contains the rules on computing and extending time, was amended so that intermediate weekends and holidays are excluded from the time computation for all pleadings due in less than 11 days.
4

The movant signed his first § 2255 motion and dated it in January 2007, prior to imposition of sentence in the underlying criminal case. (Cv-DE#1). See: Adams v. U.S., 173 F.3d 1339 (11 Cir. 1999) (prisoner's pleading is deemed filed when executed and delivered to prison authorities for mailing). Although it appears from the handwritten date that it was filed in January 2007, this may, in fact, be a scrivener's error as it was not received by the Clerk until January 2008. Regardless, utilizing either 2007 or 2008 for the filing date makes no difference as the first § 2255 motion was timely filed.
5

See: Adams v. U.S., 173 F.3d 1339 (11 Cir. 1999) (prisoner's pleading is deemed filed when executed and delivered to prison authorities for mailing).
6

Pro se filings are subject to less stringent pleading requirements, and should be liberally construed

with a measure of tolerance. Mederos v. United States, 218 F.3d 1252, 1254 (11th Cir. 2000). However, the policy of liberal construction for pro se litigants' pleadings does not extend to a "liberal construction" of the one-year limitations period.
7

The Supreme Court has clearly stated that "a new rule is not made retroactive to cases on collateral review unless the Supreme Court holds it to be retroactive." Tyler v. Cain, 533 U.S. 656, 663, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001).
8

A certificate of appealability is required in two circumstances: (A) when "the detention complained of arises out of process issued by a State court," or (B) when the appellant challenges "the final order in a proceeding under section 2255". 28 U.S.C. § 2253(c)(1)(A), (B). Petitioner fits into neither category set forth in § 2253(c)(1), and therefore does not require a COA to proceed on appeal in this matter. Even if he does require a COA, a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282, 124 S. Ct. 2562, 159 L. Ed. 2d 384 (2004)(citation and internal quotation marks omitted), or that "the issues presented are adequate to deserve encouragement to proceed further," Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). See also Eagle v. Linahan, 279 F.3d 926, 935 (11th Cir. 2001). Because the undersigned finds that there has been no substantial showing of the denial of a constitutional right, a certificate of appealability should be denied. See 28 U.S.C. § 2253(c)(2).

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC MARTIN MATTHEWS - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR AN

ORIGINAL WRIT OF HABEAS CORPUS TO

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

APPENDIX "B"

ERIC MARTIN MATTHEWS
75804-004
FMC FORT WORTH
P.O. BOX 15330
FORT WORTH, TX 76119

Eric Martin Matthews, Plaintiff, v. United States of America, Defendant.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
2017 U.S. Dist. LEXIS 225282
Case No. 2:17-cv-14272-KMM
December 2, 2017, Decided
January 2, 2018, Entered on Docket

Editorial Information: Prior History

Matthews v. United States, 2017 U.S. Dist. LEXIS 125285 (S.D. Fla., Aug. 7, 2017)

Counsel {2017 U.S. Dist. LEXIS 1}Eric Martin Matthews, Plaintiff, Pro se, Bastrop, TX USA.

For United States of America, Defendant: Noticing 2255 US Attorney, LEAD ATTORNEY; Diana Margarita Acosta, LEAD ATTORNEY, United States Attorney's Office, Fort Pierce, FL USA.

Judges: K. MICHAEL MOORE, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: Kevin Michael Moore

Opinion

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Plaintiff Eric Matthew's pro se Petition for Writ of Error Coram Nobis Pursuant to 28 U.S.C. § 1651 ("Petition") (ECF No. 1). THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, who issued a Report (ECF No. 4), recommending that Plaintiff's Petition should be denied and a certificate of appealability should not be issued. Plaintiff has timely1 filed Objections (ECF No. 8) to the Report.

The All Writs Act, 28 U.S.C. § 1651(a), provides federal courts the authority to issue writs of error coram nobis. *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000). "A writ of error coram nobis is a remedy available to vacate a conviction when the petitioner has served his sentence and is no longer in custody, as is required for post-conviction relief under 28 U.S.C. § 2255." *United States v. Peter*, 310 F.3d 709, 712 (11th Cir. 2002) (per curiam). "The writ of error coram nobis is an extraordinary remedy of last resort available only{2017 U.S. Dist. LEXIS 2} in compelling circumstances where necessary to achieve justice." *Mills*, 221 F.3d at 1203. Because of the availability of habeas review, we have recognized that it is "difficult to conceive of a situation in a federal criminal case today where coram nobis relief would be necessary or appropriate." *Lowery v. United States*, 956 F.2d 227, 229 (11th Cir. 1992) (per curiam) (internal quotation marks omitted).

On November 7, 2006, Plaintiff was charged by indictment with use of a computer to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b) (Count 1), two counts of using a computer to transfer obscene material, in violation of 18 U.S.C. § 1470 (Counts 2-3), distribution of child pornography via a computer, in violation of 18 U.S.C. § 2522(a)(2) (Count 4), as well as, a forfeiture count. *See* Indictment (CR DE 10).2 Pursuant to the terms of a written plea

agreement, the movant agreed to plead guilty to Counts 1 and 4 of the Indictment. *See* Plea Agreement (CR DE 23).

On March 8, 2007, Plaintiff was sentenced under Count 1 and Count 4; and no direct appeal was filed. *See* Judgment (CR DE 53). On January 5, 2008, Petitioner filed an unsuccessful § 2255 motion to vacate. *See* Motion to Vacate (CV DE 1); Order Adopting Report and Recommendations (CV DE 18).3 The Eleventh Circuit**{2017 U.S. Dist. LEXIS 3}** declined to issue a certificate of appealability (CV DE 31) and the Supreme Court denied certiorari (CV DE 32).

In the instant Motion, Plaintiff essentially argues that the United States Congress improperly passed the laws under which he was convicted. *See* Petition (ECF No. 1) at 2-8. In the Report, Judge White recommends dismissing this action because coram nobis relief is not available to Plaintiff, and because the claim is untimely in any event. *See* Report (ECF No. 4) at 6-14.

Plaintiff filed Objections (ECF No. 8) to the Report, lodging fifteen arguments-none of which has any merit. In his first objection, Plaintiff objects to Magistrate Judge White's presence on the case on the grounds that it infringes his right to have an Article III Judge to review his claim. Plaintiff is mistaken; Magistrate Judge White's role in this matter is merely to issue a report and recommendation. A district court may accept, reject, or modify a magistrate judge's report and recommendation. *See* 28 U.S.C. § 636(b)(1). Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a**{2017 U.S. Dist. LEXIS 4}** de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). There is nothing improper about Magistrate Judge White's issuance of a Report in this matter; and the Court will review the Report in accordance with the above authorities.

In his second objection, Plaintiff objects to the Report's characterization of his claim and asserts that his claim is as follows: 18 U.S.C. § 3231 does not afford a district court jurisdiction "over any criminal process against Matthews" because the underlying criminal law purportedly did not comply with the requirements of "Bicameralism." *See* Objections at 1. The statute cited by Plaintiff grants district courts exclusive jurisdiction of all offenses against the laws of the United States. *See* 18 U.S.C. § 3231. Liberally construed, Plaintiff argues that the law under which he was convicted was not a law of the United States within the meaning of § 3231. In other words, Plaintiff's claim relates to the purportedly improper process employed in the passage of the laws under which Plaintiff was convicted. The Court finds that the Report does not mischaracterize Plaintiff's claim. In any event, this Objection does not relate to, or otherwise**{2017 U.S. Dist. LEXIS 5}** affect, the grounds under which Judge White recommended dismissal of Plaintiff's claim: coram nobis relief is not available to Plaintiff and the claim is untimely in any event.

In his third and fifteenth objections, Plaintiff argues that he has raised a question concerning "Personal Jurisdiction over his Criminal Proceedings." *See* Objections at 1; *see also id.* at 5. However, Plaintiff makes no arguments concerning personal jurisdiction in his Petition (ECF No. 1). Because this argument was raised for the first time in Plaintiff's Objections, the Court does not consider it. *See Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived."). In any case, to the extent Plaintiff now questions whether the Court had personal jurisdiction over him during his criminal proceedings, he has waived this objection. *See United States v. Isaac Marquez*, 594 F.3d 855, 858 (11th Cir. 2010) ("A challenge to personal jurisdiction is a claim of defect in instituting the prosecution, and such a challenge is to be raised pursuant to Federal Rule of Criminal Procedure 12."); *see also id.* ("Failure to make a timely objection constitutes a waiver of the objection.").

In objections four through eleven, Plaintiff essentially re-argues the merits of his Petition. He argues that the sentencing{2017 U.S. Dist. LEXIS 6} court lacked subject matter jurisdiction because the crimes for which he was convicted were not properly enacted. Although Judge White considered and rejected this argument, the Court now conducts a de novo review. *See* Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C).

"The bar for coram nobis relief is high." *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000). A petitioner may only obtain coram nobis relief where: 1) "there is 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.* (internal quotation marks omitted). Moreover, such relief is only proper when "'the petitioner presents sound reasons for failing to seek relief earlier.'" *United States v. Marchesseault*, 692 F. App'x 601, 603 (11th Cir. 2017) (quoting *United States v. Mills*, 221 F.3d 1201, 1203-04 (11th Cir. 2000)).

Here, Plaintiff cannot demonstrate that "there is and was no other available avenue of relief." *Alkihani*, 200 F.3d at 734. Plaintiff is currently in custody and seeks to collaterally attack his conviction and sentence as violating the Constitution. Therefore Plaintiff may raise his claim in the context of a § 2255 motion. *See United States v. Brown*, 117 F.3d 471, 475 (11th Cir. 1997) ("If Brown was 'in custody' within the meaning of § 2255 when he filed his appeal, then the statutory remedies of that provision were available to him, and coram{2017 U.S. Dist. LEXIS 7} nobis relief was unavailable as a matter of law."). "Coram nobis relief is unavailable to a person who is in custody [like Plaintiff], because he has access to the statutory remedies of 28 U.S.C. § 2255." *United States v. Aviles*, 380 F. App'x 830, 831 (11th Cir. 2010) (citation omitted). Therefore, this Court lacks authority to grant Plaintiff relief pursuant to a writ of coram nobis.

Moreover, this Court need not construe Plaintiff's Petition as a motion for relief under § 2255, because Plaintiff previously filed an unsuccessful § 2255 motion and he has not been granted leave under 28 U.S.C. § 2244(b)(3)(A) to file a second or successive motion. *See United States v. Aviles*, 380 F. App'x 830, 831 (11th Cir. 2010) (holding that a district court "properly refused to construe" a coram nobis petition as a § 2255 motion in the same scenario); *see also United States v. Garcia*, 181 F.3d 1274, 1274-75 (11th Cir.1999).

Finally, even if Plaintiff were legally permitted to pursue a coram nobis petition, Plaintiff has failed to present any reason, let alone "sound reasons," *Marchesseault*, 692 F. App'x at 603, for waiting over ten years to file the instant petition after his conviction became final. For that reason alone, his claim would fail. *See, e.g., Jerome v. United States*, 643 F. App'x 951, 952 (11th Cir. 2016).

The remainder of Plaintiff's objections do not persuade this Court to alter its finding that the Petition is fatally flawed. In his twelfth and thirteenth objections, Plaintiff objects to the Report's construal of the Petition{2017 U.S. Dist. LEXIS 8} as a § 2255 motion. *See* Objections at 4. The Court notes that Judge White only construed the Petition as a § 2255 motion in the alternative after considering the viability of the Petition as one seeking a writ of coram nobis. To the extent Petitioner disagrees with Judge White's construal, the Court finds that this analysis was properly performed in order to "create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis," *Castro v. United States*, 540 U.S. 375, 381-82, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003). In any case, as noted above, regardless of whether Plaintiff's Petition is construed as one for a writ of coram nobis, or as a § 2255 motion, it fails. Plaintiff's fourteenth objection is similarly meritless. Therein, Plaintiff accuses Magistrate Judge White of "advocating" for the Government. *See* Objections at 4-5. This objection is patently false; Magistrate Judge White's well-reasoned Report accurately assesses the merits of the Petition.

The Court has also reviewed the following submissions: Rule 5.1 Notices (ECF Nos. 5, 14, 15, 24); Rule 36 Motions for Admissions from the United States (ECF Nos. 6, 12); Motions to Apply Stare Decisis (ECF Nos. 9, 11); Question to the Court (ECF No. 10); Judicial Notice Requests (ECF Nos. 16, 22, 23, 29, 31, 32, 35, 36); Motion for a Preliminary{2017 U.S. Dist. LEXIS 9} Injunction (ECF No. 17); Subpoena for Diana M. Acosta (ECF No. 18); Motion Pursuant to Rule 44 (ECF No. 19); Motion to Compel (ECF No. 20); Questions to the United States Supreme Court (ECF No. 21); Motions for Final Decision (ECF No. 25, 37); Notice of Default by Assistant United States Attorney (ECF No. 26); Motion for Leave to File Amicus Curiae Brief (ECF No. 28); Notice of Failure to Respond to Rule 36 Interrogatory (ECF No. 30); Petitioner's Motions for Trial or Evidentiary Hearing (ECF Nos. 33, 34)4 ; Motion to Seal the Records (ECF No. 38); and Motion for Federal Gag Order (ECF No. 39). Therein, Petitioner essentially lodges the same unmeritorious arguments already considered and (correctly) rejected in the Report, filings which are unrecognizable in this action, and/or requests for discovery or judicial notice which have no bearing on the fate of the Petition, which fails as a matter of law for the reasons discussed above. These filings do not persuade the Court to alter its findings, and to the extent these filings can be construed as motions, they are hereby DENIED AS MOOT.5

UPON CONSIDERATION of the Petition (ECF No. 1), the Report (ECF No. 4), the Objections (ECF No. 8), the Rule 5.1 Notices (ECF{2017 U.S. Dist. LEXIS 10} Nos. 5, 14, 15, 24), the Rule 36 Motions for Admissions from the United States (ECF Nos. 6, 12), the Motions to Apply Stare Decisis (ECF Nos. 9, 11); the Question to the Court (ECF No. 10), the Judicial Notice Requests (ECF Nos. 16, 22, 23, 29, 31, 32, 35, 36), the Motion for a Preliminary Injunction (ECF No. 17), the Subpoena for Diana M. Acosta (ECF No. 18), the Motion Pursuant to Rule 44 (ECF No. 19), the Motion to Compel (ECF No. 20), the Questions to the United States Supreme Court (ECF No. 21), the Motions for Final Decision (ECF No. 25, 37), the Notice of Default by Assistant United States Attorney (ECF No. 26), the Motion for Leave to File Amicus Curiae Brief (ECF No. 28), the Notice of Failure to Respond to Rule 36 Interrogatory (ECF No. 30), the Motion to Seal the Records (ECF No. 38), the Motion for Federal Gag Order (ECF No. 39), and being otherwise fully advised in the premises, the Court finds that coram nobis relief is not available to Plaintiff, and that Plaintiff has proffered no reason for the Petition's excessive untimeliness. Accordingly, it is hereby ORDERED AND ADJUDGED that Plaintiff's Petition (ECF No. 1) is DENIED and that no certificate of appealability shall issue. It is further{2017 U.S. Dist. LEXIS 11} ORDERED AND ADJUDGED that the conclusions in Magistrate Judge White's Report and Recommendation (ECF No. 4) are ADOPTED.6

The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of December, 2017.

Kevin Michael Moore

K. MICHAEL MOORE

CHIEF UNITED STATES DISTRICT JUDGE

Footnotes

1

Under the prison mailbox rule, a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir.

2009); *see* Fed.R.App. 4(c)(1)("If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing."). Unless there is evidence to the contrary, like prison logs or other records, a prisoner's motion is deemed delivered to prison authorities on the day he signed it. *See Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001). Petitioner signed his Objections on the August 21, 2017 deadline. *See* Objections at 7.

2

References to the underlying criminal case, *United States v. Matthews*, Case No. 06-cr-14069, will be to "CR DE __."

3

References to the related habeas case, *Matthews v. United States*, Case No. 08-cv-14030, will be to "CV DE __."

4

The Court finds that there is no need for an evidentiary hearing (or trial) as requested by Plaintiff because a "hearing is not required on patently frivolous claims . . . . " *Saunders v. United States*, 278 F. App'x 976, 978 (11th Cir. 2008).

5

Additionally, Plaintiff has filed a Motion to Strike (ECF No. 13) pertaining to a summary judgment motion attached as an exhibit to the Motion to Strike, but that does not otherwise appear on the docket. The Motion to Strike (ECF No. 13) is DENIED AS MOOT.

6

The Court alters the Report as follows: the last line on page four should read "the judgment or the issue of the execution. *See id.*; *see also* . . . ."; the second to last line of the second full paragraph on page five should read "*United States*, 200 F.3d 732, 734 (11th Cir. 2000); *see also United* . . . ."; the fourth line from the bottom of page seven should read "promptness.'); *see also* . . . ."; the second to last line in the first full paragraph on page nine should read "(11th Cir. 1997); *see also* . . . ."

28 U.S.C. 1651(A)
FOR CASE NUMBER: 2:17-CV-14272-KMM
DOCKET
FOR SOUTHERN DISTRICT
OF FLORIDA

APPEAL,CLOSED,PAW,WRIT_CORAM_NOBIS

U.S. District Court
Southern District of Florida (Ft Pierce)
CIVIL DOCKET FOR CASE #: 2:17-cv-14272-KMM

Matthews v. United States of America
Assigned to: Chief Judge K. Michael Moore
Referred to: Magistrate Judge Patrick A. White
Case in other court: USDC, Southern FL, 06-cr-14069-JEM
USCA, 18-10300-C
Cause: 28:1651 Petition for Writ of Coram Nobis

Date Filed: 07/28/2017
Date Terminated: 01/02/2018
Jury Demand: None
Nature of Suit: 540 Mandamus & Other
Jurisdiction: U.S. Government Defendant

Plaintiff

Eric Martin Matthews

represented by **Eric Martin Matthews**
75804-004
Englewood
Federal Correctional Institution
Inmate Mail/Parcels
9595 West Quincy Avenue
Littleton, CO 80123
PRO SE

V.

Defendant

United States of America

represented by **Noticing 2255 US Attorney**
Email: usafls-2255@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Diana Margarita Acosta
United States Attorney's Office
101 South U.S. Hwy 1
Suite 3100
Fort Pierce, FL 34950
772-293-0981
Fax: 772-466-1020
Email: diana.acosta@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/10/2017	1	Motion for Relief Under All Writs Act 28 U.S.C. 1651 (A) (Criminal Case #

		06-cr-14069). No fee Required. NOTE: All further docketing is to be done in this civil case, filed by Eric Martin Matthews. (Attachments: # 1 Exhibit A) (vjk) (Entered: 07/28/2017)
07/28/2017	2	Clerks Notice of Judge Assignment to Chief Judge K. Michael Moore and Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19, this matter is referred to the Magistrate Judge for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (vjk) (Entered: 07/28/2017)
08/02/2017	3	INITIAL ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Magistrate Judge Patrick A. White on 8/2/2017. (fbn) (Entered: 08/02/2017)
08/07/2017	4	REPORT AND RECOMMENDATIONS on MANDAMUS case re 1 Motion (Complaint) for Writ of Error Coram Nobis filed by Eric Martin Matthews; Recommending that this Petition for Writ of Error Coram Nobis be DISMISSED. Alternatively, to the extent this petition should be construed as being properly brought pursuant to §2255, it should be DISMISSED, as successive, for failure to obtain permission from the Eleventh Circuit prior to filing with this court; that no certificate of appealability issue, and this case closed. Objections to R&R due by 8/21/2017. Signed by Magistrate Judge Patrick A. White on 8/7/2017. (fbn) (Entered: 08/07/2017)
08/21/2017	5	NOTICE of Filing of Rule 5.1 Notifying of Constitutional Queation by Eric Martin Matthews. (kpe) (Entered: 08/21/2017)
08/21/2017	6	NOTICE of Filing Discovery: Rule 36 Motion, Admissions Requested by Eric Martin Matthews.(kpe) (Entered: 08/21/2017)
08/22/2017	7	NOTICE of Attorney Appearance by Diana Margarita Acosta on behalf of United States of America. Attorney Diana Margarita Acosta added to party United States of America(pty:dft). (Acosta, Diana) (Entered: 08/22/2017)
08/28/2017	8	Response to Report of Magistrate Judge White and Objections re 4 Report and Recommendations by Eric Martin Matthews. (kpe) (Entered: 08/28/2017)
09/18/2017	9	MOTION to Apply Stare Decisis by Eric Martin Matthews. (kpe) (Entered: 09/18/2017)
09/18/2017	10	NOTICE of Inquiry/Question to the Court by Eric Martin Matthews. (kpe) (Entered: 09/18/2017)
09/28/2017	11	Duplicate MOTION to Apply Stare Decisis by Eric Martin Matthews. (kpe) Modified on 9/29/2017 (kpe). (Entered: 09/29/2017)
09/28/2017	12	Duplicate NOTICE of Filing Discovery: Rule 36 Motion, Admissions Requested by Eric Martin Matthews.(kpe) (Entered: 09/29/2017)
09/28/2017	13	MOTION to Strike from the Record by Eric Martin Matthews. Responses

		due by 10/12/2017 (kpe) (Entered: 09/29/2017)
10/03/2017	14	MOTION to Compel *Court to Comply with Rule 5.1 Notification* by Eric Martin Matthews. Responses due by 10/17/2017 (kpe) (Entered: 10/03/2017)
10/05/2017	15	MOTION to Compel *Court to Comply with Rule 5.1 Notification* by Eric Martin Matthews. Responses due by 10/19/2017 (kpe) (Entered: 10/05/2017)
11/14/2017	16	NOTICE of Filing of Judicial Notice Pursuant to FRE201 by Eric Martin Matthews. (kpe) (Entered: 11/15/2017)
11/20/2017	17	MOTION for Preliminary Injunction by Eric Martin Matthews. (kpe) (Entered: 11/21/2017)
11/20/2017	18	Request for Subpoena Pursuant to Rule 45 by Eric Martin Matthews. (kpe) (Entered: 11/21/2017)
11/27/2017	19	MOTION Pursuant to Rule 44 by Eric Martin Matthews. (kpe) Modified on 11/28/2017 (kpe). (Entered: 11/28/2017)
11/27/2017	20	MOTION to Compel The United States States Assistant Attorney to Comply with Fed. R. Civ. Proc. 1 by Eric Martin Matthews. Responses due by 12/11/2017 (kpe) (Entered: 11/28/2017)
11/27/2017	21	Questions to the United States Supreme Court by Eric Martin Matthews. (kpe) (Entered: 11/28/2017)
11/27/2017	22	NOTICE of Filing of Judicial Notice by Eric Martin Matthews. (kpe) (Entered: 11/28/2017)
11/27/2017	23	Second NOTICE of Filing of Judicial Notice by Eric Martin Matthews. (kpe) Modified on 11/28/2017 (kpe). (Entered: 11/28/2017)
11/27/2017	24	MOTION to Compel With The Court To Comply With Rule 5.7 Notification by Eric Martin Matthews. Responses due by 12/11/2017 (kpe) (Entered: 11/28/2017)
11/27/2017	25	Renewed Motion For Final Decision Under 28 U.S.C. 1291 by Eric Martin Matthews. (kpe) (Entered: 11/28/2017)
11/28/2017	26	Notice of Default by Eric Martin Matthews. (kpe) Modified text on 11/30/2017 (mrl). (Entered: 11/29/2017)
11/29/2017	27	Clerks Non-Entry of Default as to United States of America.Signed by DEPUTY CLERK on 11/29/2017. (kpe) (Entered: 11/29/2017)
12/04/2017	28	MOTION for Leave to File Amicus Curiae Brief in Support by Eric Martin Matthews. (cga) (Entered: 12/05/2017)
12/04/2017	29	Judicial Notice of Facts by Eric Martin Matthews (cga) (Entered: 12/05/2017)
12/11/2017	30	NOTICE of Failure to Respond to Rule 36 Interog. by Eric Martin Matthews re 12 Duplicate NOTICE of Filing Discovery: Rule 36 Motion, Admissions

		Requested. (kpe) (Entered: 12/12/2017)
12/11/2017	31	Judicial NOTICE Pursuant to Fre 201 by Eric Martin Matthews. (kpe) (Entered: 12/12/2017)
12/12/2017	32	Second Judicial NOTICE Pursuant to Fre 201 by Eric Martin Matthews. (kpe) (Entered: 12/13/2017)
12/12/2017	33	Renewed MOTION for Trial or Evidentiary Hearing by Eric Martin Matthews. (kpe) (Entered: 12/13/2017)
12/15/2017	34	Second Renewed MOTION for Trial or Evidentiary Hearing by Eric Martin Matthews. (kpe) (Entered: 12/15/2017)
12/18/2017	35	Third Judicial NOTICE Pursuant to Fre 201 by Eric Martin Matthews. (kpe) (Entered: 12/19/2017)
12/18/2017	36	MOTION to Ask to Correct the Error The Court Committed Pursuant to Fre 201 by Eric Martin Matthews. Responses due by 1/2/2018 (kpe) (Entered: 12/19/2017)
12/19/2017	37	MOTION for as Ruling on the Evidence Submitted by the Petitioner by Eric Martin Matthews. (kpe) (Entered: 12/19/2017)
12/19/2017	38	MOTION to Seal The Records As to Title 18 by Eric Martin Matthews (nc) (Entered: 12/20/2017)
12/20/2017		SYSTEM ENTRY - Docket Entry 39 [motion] restricted/sealed until further notice. (nc) (Entered: 12/20/2017)
01/02/2018	40	ORDER Adopting 4 Report and Recommendations; denying as moot 9 Motion; denying as moot 11 Motion; denying as moot 13 Motion to Strike ; denying as moot 14 Motion to Compel; denying as moot 15 Motion to Compel; denying as moot 17 Motion for Preliminary Injunction; denying as moot 18 Motion to Produce; denying as moot 19 Motion for Leave to File; denying as moot 20 Motion to Compel; denying as moot 24 Motion to Compel; denying as moot 25 Motion for Judgment; denying as moot 28 Motion for Leave to File; denying as moot 33 Motion for Hearing; denying as moot 34 Motion for Hearing; denying as moot 36 Motion to Amend/Correct; denying as moot 37 Motion for Judgment; denying as moot 38 Motion to Seal; denying as moot 39 Sealed Motion. Certificate of Appealability: DENIED. Closing Case. Signed by Chief Judge K. Michael Moore on 1/2/2018. (bvr) **NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69.** (Entered: 01/02/2018)
01/03/2018	41	Case No Longer Referred to Magistrate Judge Patrick A. White/Case Closed by the District Judge. Signed by Magistrate Judge Patrick A. White on 1/3/2017. (br) (Entered: 01/03/2018)

01/09/2018	42	Fourth Judicial NOTICE Pursuant to FRE 201 by Eric Martin Matthews. (kpe) (Entered: 01/09/2018)
01/09/2018	43	Fifth Judicial NOTICE Pursuant to FRE 201 by Eric Martin Matthews. (kpe) (Entered: 01/09/2018)
01/09/2018	44	MOTION for the Court to Order the United States Attorney to Make Responsive Pleadings re 16 Notice (Other), 20 MOTION to Compel, 11 MOTION to Apply Stare Decisis, 23 Notice (Other), 25 MOTION for Judgment, 18 MOTION to Produce, 19 Motion for Leave to File, 22 Notice (Other), 9 MOTION to Apply Stare Decisis, 14 MOTION to Compel *Court to Comply with Rule 5.1 Notification*, 15 MOTION to Compel *Court to Comply with Rule 5.1 Notification*, 24 MOTION to Compel, 17 MOTION for Preliminary Injunction by Eric Martin Matthews. (kpe) (Entered: 01/09/2018)
01/11/2018	45	Second MOTION to Ask Court to Correct the Error the Court Committed Pursuant to Fre 201 by Eric Martin Matthews. Responses due by 1/25/2018 (kpe) (Entered: 01/11/2018)
01/11/2018	46	Judicial NOTICE Pursuant to FRE 201 by Eric Martin Matthews. (kpe) Modified on 1/12/2018 (kpe). (Entered: 01/11/2018)
01/19/2018	47	Judicial NOTICE Pursuant to FRE 201 re House Report 304 by Eric Martin Matthews. (kpe) (Entered: 01/19/2018)
01/23/2018	48	Notice of Appeal as to 40 Order on Report and Recommendations, Order on Motion for Miscellaneous Relief, Order on Motion to Strike, Order on Motion to Compel,, Order on Motion for Preliminary Injunction, Order on Motion to Produce, Order on Motion for Leave to File, Order on Motion for Judgment, Order on Motion for Hearing, Order on Motion to Amend/Correct,, Order on Motion to Seal, Order on Sealed Motion, by Eric Martin Matthews. FILING FEE: (NOT PAID). Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Certificate of Appealability: DENIED per DE 40 Order). (apz) (Entered: 01/23/2018)
01/23/2018		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re 48 Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 01/23/2018)
01/30/2018	49	Acknowledgment of Receipt of NOA from USCA re 48 Notice of Appeal, filed by Eric Martin Matthews. Date received by USCA: 1/23/2018. USCA Case Number: 18-10300-C. (amb) (Entered: 01/31/2018)
02/08/2018	50	TRANSCRIPT INFORMATION FORM by Eric Martin Matthews re 48 Notice of Appeal. No Transcript Requested. (apz) (Entered: 02/08/2018)
02/08/2018	51	MOTION for Leave to Appeal in forma pauperis by Eric Martin Matthews. (apz) (Entered: 02/08/2018)

02/15/2018	52	NOTICE of Filing of Lawsuit filed in the U.S.D.C. of District of Columbia by Eric Martin Matthews. (kpe) (Entered: 02/15/2018)
02/16/2018	53	PAPERLESS ORDER. THIS CAUSE came before the Court upon Petitioner's Motion to Order the United States to Make Responsive Pleadings (ECF No. 44). Therein Petitioner requests an order requiring the United States to respond to several motions filed by Petitioner. However, each of these motions has been denied by this Court. See Order Denying Motion (ECF No. 40) at 8. Accordingly, UPON CONSIDERATION of the Motion to Order the United States to Make Responsive Pleadings, the pertinent portions of the record, and being otherwise fully informed in the premises, it is hereby ORDERED AND ADJUDGED that the Motion (ECF No. 44) is DENIED. Signed by Chief Judge K. Michael Moore on 2/16/2018. (bvr) (Entered: 02/16/2018)
02/16/2018	54	PAPERLESS ORDER. THIS CAUSE came before the Court upon Petitioner's Motion to Correct Error (ECF No. 45). Construed liberally, Petitioner argues that this Court committed error by failing to address his Request for Judicial Notice (ECF No. 16) in the Order Denying Motion (ECF No. 40). In turn, the Request for Judicial Notice sought to direct this Court's attention to an argument allegedly lodged by a litigant in the United States District Court for the District of Columbia in a case numbered 17-cv-875. See Request for Judicial Notice (ECF No. 16) at 2. At the outset, the Court notes that an argument made by a litigant is not binding on any court. Moreover, a search for this case yields no results -- thus the request has no persuasive value. UPON CONSIDERATION of the Motion to Correct Error, the pertinent portions of the record, and being otherwise fully informed in the premises, it is hereby ORDERED AND ADJUDGED that the Motion (ECF No. 45) is DENIED. Signed by Chief Judge K. Michael Moore (bvr) (Entered: 02/16/2018)
02/16/2018	55	PAPERLESS ORDER. THIS CAUSE came before the Court upon Petitioner's Motion for Leave to Appeal in Forma Pauperis (ECF No. 51). Petitioner's case was dismissed on January 2, 2017, when this Court denied Petitioner's coram nobis motion. See Order Denying Motion (ECF No. 40). The Court found that the Petitioner could not obtain any relief in this coram nobis action because, inter alia, Petitioner could not demonstrate that there was no other avenue of relief. After a careful review of the record in the above-styled case, the Court hereby finds that an appeal in this matter is frivolous pursuant to Title 28 U.S.C. § 1915(e)(2)(B)(i). Accordingly, UPON CONSIDERATION of the Motion for Leave to Appeal in Forma Pauperis, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion (ECF No. 51) is DENIED. Signed by Chief Judge K. Michael Moore on 2/16/2018. (bvr) (Entered: 02/16/2018)
03/02/2018	56	Notice of Filing Discovery: Request for Admissions by Eric Martin Matthews.(kpe) (Entered: 03/02/2018)
03/23/2018	57	NOTICE of Filing U.S. District Court District of Columbia Amended

		Petition by Eric Martin Matthews. (kpe) (Entered: 03/23/2018)
04/17/2018	58	MOTION for Copy of Grand Jury Proceedings by Eric Martin Matthews. (kpe) (Entered: 04/17/2018)
04/18/2018	59	PAPERLESS ORDER. THIS CAUSE came before the Court upon a Motion for a Copy of Grand Jury Proceedings. 58 . PURSUANT to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, the above-captioned cause is referred to Magistrate Judge Patrick A. White to issue a report and recommendation with respect to the Motion. 58 . Signed by Chief Judge K. Michael Moore on 4/18/2018. (jm01) (Entered: 04/18/2018)
04/18/2018	60	CASE REFERRED to Magistrate Judge Patrick A. White. Motions referred to Judge Patrick A. White per 59 Order (asl) (Entered: 04/18/2018)

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC MARTIN MATTHEWS - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR AN

ORIGINAL WRIT OF HABEAS CORPUS TO

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

APPENDIX "C"

ERIC MARTIN MATTHEWS
75804-004
FMC FORT WORTH
P.O. BOX 15330
FORT WORTH, TX 76119

ERIC MARTIN MATTHEWS, Petitioner-Appellant, versus UNITED STATES OF AMERICA, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 15074
No. 18-10300-C
June 4, 2018, Decided

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Florida.Matthews v. United States, 2017 U.S. Dist. LEXIS 125285 (S.D. Fla., Aug. 7, 2017)

Counsel Eric Martin Matthews, Petitioner - Appellant, Pro se, Littleton, CO.
For United States of America, Respondent - Appellee: Emily M. Smachetti, U.S. Attorney Service - Southern District of Florida, U.S. Attorney's Office, Miami, FL; Sivashree Sundaram, U.S. Attorney's Office, Fort Lauderdale, FL.

Judges: Beverly B. Martin, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Beverly B. Martin

Opinion

ORDER:

Eric Martin Matthews, a federal prisoner proceeding pro se, seeks a certificate of appealability ("COA") and leave to proceed in forma pauperis ("IFP") to challenge the District Court's denial of his petition for writ of error coram nobis, pursuant to 28 U.S.C. § 1651(a). He also filed a motion under Federal Rule of Appellate Procedure 27 for the purpose of notifying this Court of a related civil suit he filed in the United States District Court for the District of Columbia, which he says will be affected by a successful outcome in this case.

Mr. Matthews is currently serving a 262-month sentence, followed by a lifetime of supervised release, after pleading guilty in 2006 to use of a computer to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b), and distribution of child pornography{2018 U.S. App. LEXIS 2} via a computer, in violation of 18 U.S.C. § 2522(a)(2). Mr. Matthews was sentenced on March 8, 2007, and he did not pursue a direct appeal. In January 2008, Mr. Matthews filed a timely 28 U.S.C. § 2255 motion to vacate, which the District Court denied. This Court declined to issue a certificate of appealability, and the Supreme Court denied certiorari.

On June 30, 2017, Mr. Matthews filed this petition under § 1651(a), in which he argues that the United States Congress failed to adhere to the Presentment Clause of the Constitution, U.S. Const art I, § 7 els. 2-3, when it passed the laws, under which he was convicted. As a result of the alleged procedural failure, he says his conviction should be vacated because the District Court lacked subject matter jurisdiction over his criminal proceedings. He says the conduct for which he was charged was not a federal offense. The District Court denied Mr. Matthews's petition.

Unlike an appeal from a final order in a § 2255 proceeding, a COA is not required to appeal the denial of a petition brought under § 1651 (a), including petitions for a writ of error coram nobis. Although no COA is required, because Mr. Matthews seeks leave to proceed IFP, his appeal is subject to a frivolity determination. See 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit either in{2018 U.S. App. LEXIS 3} law or fact. See Napier v. Preslicka, 314 F.3d 528, 531 (1 Ith Cir. 2002). This Court reviews the denial of a petition for writ of error coram nobis for an abuse of discretion. Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000).

Federal courts are authorized to issue a writ of error coram nobis under the All Writs Act See 28 U.S.C. § 1651(a). This Court has held that a writ of error coram nobis is a remedy available to challenge a conviction when the petitioner has already served his sentence and is no longer in custody. United States v. Peter, 310 F.3d 709, 712 (11th Cir. 2002). Conversely, coram nobis relief is unavailable to a prisoner in custody who can seek relief under § 2255. See United States v. Brown, 117 F.3d 471, 475 (11th Cir. 1997).1

Here, the District Court did not abuse its discretion in denying Mr. Matthews's coram nobis petition. Because Mr. Matthews is in federal custody, coram nobis relief was not available to him. See Brown, 117 F.3d at 475. Instead § 2255 is the exclusive method for challenging his conviction based on the alleged Presentment Clause violation. See id. Thus, the District Court correctly denied the corum nobis petition, and any appeal from the District Court's denial of the petition would be frivolous.

Mr. Matthews's motion for a COA is DENIED as unnecessary and his motion for IFP status is DENIED. His motion pursuant to Federal Rule of Appellate Procedure 27 is DENIED AS MOOT. /s/ Beverly B. Martin{2018 U.S. App. LEXIS 4} UNITED STATES CIRCUIT JUDGE

/s/ Beverly B. Martin

UNITED STATES CIRCUIT JUDGE

Footnotes

1

We have instructed courts to treat pleadings incorrectly styled as coram nobis petitions as § 2255 motions, and vice versa. Brown,117 F.3d at 475. However, Mr. Matthews had already filed a § 2255 motion, and it was denied on the merits. As Mr. Matthews had not obtained permission to file a second or successive § 2255 motion from this Court, see 28 U.S.C. § 2255(h), the District Court could not have construed his corum nobis petition as a § 2255 motion. United States v. Garcia,181 F.3d 1274, 1275 (11th Cir. 1999).

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10300-C

ERIC MARTIN MATTHEWS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Eric Martin Matthews, a federal prisoner proceeding pro se, seeks a certificate of appealability ("COA") and leave to proceed in forma pauperis ("IFP") to challenge the District Court's denial of his petition for writ of error coram nobis, pursuant to 28 U.S.C. § 1651(a). He also filed a motion under Federal Rule of Appellate Procedure 27 for the purpose of notifying this Court of a related civil suit he filed in the United States District Court for the District of Columbia, which he says will be affected by a successful outcome in this case.

Mr. Matthews is currently serving a 262-month sentence, followed by a lifetime of supervised release, after pleading guilty in 2006 to use of a computer to attempt to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b), and distribution of child pornography via a computer, in violation of 18 U.S.C. § 2522(a)(2). Mr. Matthews was sentenced on March 8, 2007, and he did not pursue a direct appeal. In January 2008, Mr. Matthews filed a timely 28 U.S.C. § 2255 motion to vacate, which the District Court denied. This Court declined to issue a certificate of appealability, and the Supreme Court denied certiorari.

On June 30, 2017, Mr. Matthews filed this petition under § 1651(a), in which he argues that the United States Congress failed to adhere to the Presentment Clause of the Constitution, U.S. Const. art. I, § 7 cls. 2–3, when it passed the laws under which he was convicted. As a result of the alleged procedural failure, he says his conviction should be vacated because the District Court lacked subject matter jurisdiction over his criminal proceedings. He says the conduct for which he was charged was not a federal offense. The District Court denied Mr. Matthews's petition.

Unlike an appeal from a final order in a § 2255 proceeding, a COA is not required to appeal the denial of a petition brought under § 1651(a), including petitions for a writ of error coram nobis. Although no COA is required, because Mr. Matthews seeks leave to proceed IFP, his appeal is subject to a frivolity

determination. See 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit either in law or fact. See Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002). This Court reviews the denial of a petition for writ of error coram nobis for an abuse of discretion. Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000).

Federal courts are authorized to issue a writ of error coram nobis under the All Writs Act. See 28 U.S.C. § 1651(a). This Court has held that a writ of error coram nobis is a remedy available to challenge a conviction when the petitioner has already served his sentence and is no longer in custody. United States v. Peter, 310 F.3d 709, 712 (11th Cir. 2002). Conversely, coram nobis relief is unavailable to a prisoner in custody who can seek relief under § 2255. See United States v. Brown, 117 F.3d 471, 475 (11th Cir. 1997).[1]

Here, the District Court did not abuse its discretion in denying Mr. Matthews's coram nobis petition. Because Mr. Matthews is in federal custody, coram nobis relief was not available to him. See Brown, 117 F.3d at 475. Instead § 2255 is the exclusive method for challenging his conviction based on the alleged Presentment Clause violation. See id. Thus, the District Court correctly denied the

[1] We have instructed courts to treat pleadings incorrectly styled as coram nobis petitions as § 2255 motions, and vice versa. Brown, 117 F.3d at 475. However, Mr. Matthews had already filed a § 2255 motion, and it was denied on the merits. As Mr. Matthews had not obtained permission to file a second or successive § 2255 motion from this Court, see 28 U.S.C. § 2255(h), the District Court could not have construed his corum nobis petition as a § 2255 motion. United States v. Garcia, 181 F.3d 1274, 1275 (11th Cir. 1999).

corum nobis petition, and any appeal from the District Court's denial of the petition would be frivolous.

Mr. Matthews's motion for a COA is DENIED as unnecessary and his motion for IFP status is DENIED. His motion pursuant to Federal Rule of Appellate Procedure 27 is DENIED AS MOOT.

Boyce B. Martin

UNITED STATES CIRCUIT JUDGE

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC MARTIN MATTHEWS - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR AN

ORIGINAL WRIT OF HABEAS CORPUS TO

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

APPENDIX "D"

ERIC MARTIN MATTHEWS
75804-004
FMC FORT WORTH
P.O. BOX 15330
FORT WORTH, TX 76119

IN RE: ERIC MATTHEWS, Petitioner.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2019 U.S. App. LEXIS 11046
No. 19-10973-G
April 15, 2019, Decided

Editorial Information: Prior History

Application for Leave to File a Second or Successive Motion to Vacate, Set Aside, or Correct Sentence, 28 U.S.C. § 2255(h){**2019 U.S. App. LEXIS 1**}.Matthews v. United States, 2017 U.S. Dist. LEXIS 125285 (S.D. Fla., Aug. 7, 2017)

Counsel In re: ERIC MARTIN MATTHEWS, Petitioner, Pro se, Littleton, CO.
For United States of America, Successive Habeas Respondent: Emily M. Smachetti, U.S. Attorney Service - SFL, Miami, FL; U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami, FL.

Judges: Before: JORDAN, ROSENBAUM and JILL PRYOR, Circuit Judges.

Opinion

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Eric Matthews has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.28 U.S.C. § 2255(h). "The court of appeals may authorize{**2019 U.S. App. LEXIS 2**} the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that this Court's determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In his application, Matthews indicates that he wishes to raise one overall claim in a second or successive § 2255 motion. He argues that the district court lacked jurisdiction to convict him because its claim to original jurisdiction over offenses against the United States was based on 18 U.S.C. § 3231, which he claims is unconstitutional. First, he does not assert that his claim relies on newly discovered evidence. *See* 28 U.S.C. § 2255(h)(1). Second, he does not assert that his claim relies on a new rule of constitutional law made retroactive to cases on collateral review. *See* § 2255(h)(2).

Accordingly, because Matthews has failed to make a *prima facie* showing of the existence of either of

the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10973-G

IN RE: ERIC MATTHEWS,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before: JORDAN, ROSENBAUM and JILL PRYOR, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Eric Matthews has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the

application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that this Court's determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In his application, Matthews indicates that he wishes to raise one overall claim in a second or successive § 2255 motion. He argues that the district court lacked jurisdiction to convict him because its claim to original jurisdiction over offenses against the United States was based on 18 U.S.C. § 3231, which he claims is unconstitutional. First, he does not assert that his claim relies on newly discovered evidence. *See* 28 U.S.C. § 2255(h)(1). Second, he does not assert that his claim relies on a new rule of constitutional law made retroactive to cases on collateral review. *See* § 2255(h)(2).

Accordingly, because Matthews has failed to make a *prima facie* showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby DENIED.

General Docket

United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 19-10973 **Docketed:** 03/18/2019
In re: Eric Matthews **Termed:** 04/15/2019
Appeal From: Southern District of Florida
Fee Status: Fee Not Required

Case Type Information:
1) Original Proceeding
2) Application - Successive
3) -

Originating Court Information:
District: 113C-2 : 2:06-cr-14069-JEM-1
Sentencing Judge: Jose E. Martinez, U.S. District Judge

Prior Cases:
18-10300 **Date Filed:** 01/23/2018 **Date Disposed:** 07/26/2018 **Disposition:** Dismissed

Current Cases:
None

In re: ERIC MARTIN MATTHEWS (Federal Prisoner: 75804-004)	Petitioner	Eric Martin Matthews [NTC Pro Se] FCI Englewood - Inmate Legal Mail 9595 W QUINCY AVE LITTLETON, CO 80123
UNITED STATES OF AMERICA	Successive Habeas Respondent	Emily M. Smachetti [COR NTC US Attorney] U.S. Attorney Service - SFL 99 NE 4TH ST 5TH FL MIAMI, FL 33132-2111

U.S. Attorney
Service - Southern District of Florida
[COR NTC US Attorney]
U.S. Attorney
Service - SFL
99 NE 4TH ST
5TH FL
MIAMI, FL
33132-2111

04/26/2019		Clerk's letter of response to Petitioner's Motion to Inform All Parties of the Facts [Entered: 04/26/2019 02:42 PM]
04/15/2019		ORDER: Motion for leave to file successive motion to vacate sentence filed by Petitioner Eric Martin Matthews is DENIED. [8724475-2] AJ, RSR and JP [Entered: 04/15/2019 05:09 PM]
04/15/2019		ORDER: Motion to file excess words/pages filed by Petitioner Eric Martin Matthews is GRANTED. [8724548-2] AJ [Entered: 04/15/2019 04:56 PM]
03/27/2019		Notice of filing: Exhibits J and K by Petitioner Eric Martin Matthews. [Entered: 03/26/2019 04:28 PM]
03/20/2019		Public Communication: Motion for Oral Argument returned [Entered: 03/20/2019 04:00 PM]
03/18/2019		*MOTION for excess words/pages filed by Petitioner Eric Martin Matthews. Opposition to Motion is Unknown [8724548-1]* [Entered: 03/20/2019 03:53 PM]
03/18/2019		ORIGINAL PROCEEDING DOCKETED. EMERGENCY Application for leave to file successive motion to vacate sentence filed by Petitioner Eric Martin Matthews. Served 03/13/2019. Fee Status: Fee Not Required [Entered: 03/20/2019 03:26 PM]

IN THE UNITED STATES
COURT OF APPEALS
FOR THE 11TH CIRCUIT

ERIC MARTIN MATTHEWS PETITIONER	$ $	
V.	$ $	CASE NUMBER: 19-10973
UNITED STATES OF AMERICA RESPONDANT	$ $	

MOTION FOR PERMISSION TO FILE
A SECOND AND SUCCESSIVE
28 U.S.C. 2255

Mr. Matthews claims he is being held unconstitutionally so therefore he request permission to file a second and successive 28 U.S.C. 2255.

GROUND RULES FOR THIS PETITION

In terms of the required formating, type-size, type face etc. The Petitioner would appreciate the court's indulgence in liberraly construing these items given the Petitioners access only to those type-size, type-face the the Bureau of Prisons provides. However, when it comes to the substance of the arguements in question, the Petitioner request that this brief be treated as any other (attorney written)brief and not liberally construed.

CONCISE STATEMENTS OF
THE CHALLENGES PRESENTED

Mr. Matthews wishes to challenge the following items listed below in this second and successive 28 U.S.C. 2255:

The broad questions that this Petition will answer are as follows:

(1) Can Congress vote it's self broader power without amending the Constitution in accordance with Article V? (Article 1, Section8 enumerated powers and 10TH Amendment)

(2) Can Congress ignore Constitutional mandates and requirements when attempting to pass legislation? (Article 1, Section 7, Clause 2 of the Constitution)

(3) Are Appeals Courts and District Courts required to follow precedent from a higher court when deciding the outcome of cases brought before them in their court?

(4) Can Circuit Courts Modify or nullify constitutional mandates and/or requirements without amending the Constitution of the United States? Are Circuit Courts the Constitutionally authorized method for amending the Constitution of the United States? (Article V)

(5) Can the Speaker of the Speaker of the House of Representatives and the President Pro Tempore of the Senate (or President of the Senate) enroll a bill that was never presented to Congress nor voted on by Congress in the precise method mandated by the Constitution of the United States of America? Then presented to the President of the United States as if that bill had passed by all the requirements established in the COnstitution of the United States. (Article I, Section 7, Clause 2, House Conncurrent Resolution 219)

(7) Is a de facto government ever legitimate? Do the circumstances that make a de facto government legitimate currently exist in the United States? (Article 1 Section 7 Clause 2)

(8) Can Congress, by legislation, modify standing as described, expressed and implied in the Constitution of the United States without amending the Constitution of the United States? (Article 5)

The following are more narrow questions that are specific to each arguement and the facts surrounding that arguement. They are as follows:

1) Mr. Matthews challenges the Constitutionality of the court(s) jurisdictional statute 18 u.s.c. 3231, which is relied on in a criminal case. He contends that 18 u.s.c. 3231 is unconstitutional, and also contends that many of the statutes in Title 18 are also unconstitutional. Some of these statutes are the underlying statutes for criminal rules. MR. MATTHEWS DOES NOT CHALLENGE THE ACTUAL STATUTES HE WAS CONVICTED UNDER.

2) Mr. Matthews challenges the constitutionality of Titles 1, 4, 6, 9, and 17. He contends that sections of theses titles are unconstitutional. Due to certain sections of certain Titles being unconstitutional the United States government is operating as a de-facto government. This is also considered a jurisdiction challenge. A de-facto government has no legal authority.

3) Mr. Matthews also contends that the United States has no standing to prosecute crime(s). Standing is a jurisdictional element, thus a jurisdictional challenge. In one of the 1st drafts of 18 u.s.c. 3231 the statute reads "offenses against the United States..." As written this gave the United States Standing. Standing requires injury in fact. The framers of the Constitution intended for the United States to have standing because the crimes listed in the Constitution injure the United States which is injury in fact, The 1st draft of the statute 18 U.S.C. 32131 used wording consistent with Article 1 Section 2 Clause 1 of the United States Constitution.

4) Prior to 1948 the Commerce Clause was rarely, if ever, involved by Congress as an enumerated power under which they enacted laws. Under the revised and amended statute 18 U.S.C. 3231, that changed as the statute expanded and broadened congressional and judicial power at the expense of the States. This broad expansion of power should not ever have been allowed without amending the Constitution of the United States of America. The Commerce Clause has become Congress's "DO WHAT EVER YOU WANT" clause and is used by Congress to regulate

every conceivable thing not just "selling, buying, and bartering as well as transporting for these purposes." United States v. Lopez, 514 U.S. 549, 585, 115 S. Ct. 1624, 131 L Ed 2d 626 (1995).

5) In Marshall Field v. Clark, 36 L Ed 294, 143 U.S. 645 (1892) the Supreme Court held " The signing by the speaker of the House of Represenatives, and the President of the Senate, in open session, of any enrolled bill is an official attestation by the two Houses that such bill has passed Congress..." The problem is that H.R. 3190 was not signed by the Speaker of the House of Represenatives, and the President of the Senate in open session, in violation of Marshall Field.

JURISDICTION NEVER WAIVED

"Notably, jurisdictional defects, by contrast, CANNOT, be procedurally defaulted. As federal Courts, we are courts of limited jurisdiction, deriving our power solely from Article III of the Constitution and from legislative acts of Congress. See: Insurance Corp of Ir., LTD v. Compagnie des Bauxites de Guinee, 456 U.S. 684, 701 72 L Ed 2d 492, 102 S. Ct. 2099(1982). We therefore cannot derive power to act from the actions of the parties before us. See: ID at 702. Consequently, the parties are incapable of conferring upon us a jurisdictional foundation we otherwise lack simply by waiver or procedural default. See: United States V. Griffin, 303 U.S.226, 229, 82 L Ed 764, 58 S. Ct 601 (1938) (Since lack of jurisdiction of a federal court touching the subject matter of the litigation cannot be waived by the parties, we must upon this appeal examine the contention.): Hertz Corp v. Alamo Rent A Car Inc., 16 F.3d 1126, 1131 (11th Cir. 1994) (subject matter jurisdiction can never be waived or conferred by the consent of the parties) (quoting : Latin Am. Property and Cas. Ins. Co. V. Hi-Lift Marina Inc., 887 F. 2d 1477, 1479 (11th Cir. 1989); Fitzgerald v. Seaboard Sys, R.R. Inc. 760 F.2d 1249, 1250 (11th Cir. 1985) (It is a well know fact that parties can not confer jurisdiction upon the federal Courts.")

Love v. Turlington, 733 F.2d 1562, 1564 (11th Cir 1984). It is an established principle of law that subject matter jurisdiction cannot be waived or conferred on a court by consent of the parties." Furthermore we are bound to assure ourselves of jurisdiction even if the parties fail to raise the issue. See: Insurance Corp of IR. LTd, 456 U.S. at 702. (A court ... will riase lack of subject matter jurisdiction on its own motion.) Fitzgerald , 760 F.2d at 1251 (A federal court no only has the power but also the obligation at any time to inquire inot jurisdiction whenever possibliity that jurisdiction does not exist arises.)

In short, because jurisdictional claims may not be defaulted, a defendant need not show "cause" to justify his failure to raise such a claim." See: Headnot: "Jurisdictional defects cannot be procedurally defaulted." United States v. harris, 149 F.3d 1304 (11th Cir 1998)

See also for jurisdiction can never be waived, fortieted or procedurally defaulted. United States v. Brown, 752 F. 3d 1344, 1347 (11th Cir. 2014); United States v. Peter, 310 F. 3d 709, 712 (11th Cir. 2002); United States v Harris, 149 F. 3d 1308-09 (11th Cir. 1998); United States v. Keel, 585 F. 2d 110, 114 (5th Cir. 1978); Louisville and Nashville Railroad Co. Mottley, 211 U.S. 149, 152, 53 L Ed 126, 29 S. Ct. 42 (1908).

COMPLEXITY OF ARGUEMENTS

These jurisdictional arguments presented herein are complex. This is a single argument with five prongs to it. The complex nature of the facts surrounding this argument , and given the way each microproof, from each prong of the argument forms an integral piece(s) of the overriding Constitutional questions presented. THIS IS A JURISDICTIONAL CHALLENGE TO THE DISTRICT COURTS JURISDICTION.

STANDARD FOR 28 U.S.C. 2255

SECOND AND SUCCESSIVE

It is held in Goins v. Flournoy, 2017 U.S. Dist. Lexis 47959 (March 30, 2017 Southern Dist. OF GA) that "the mere fact that such a §2255 motion is procedurally barred by §2255 statute of limitations or restrictions on second or successive motion does not make it inadequate or ineffective."

As cited supra jurisdiction can never be waived or procedurally barred. But a 2255 second and successsive does not provide a procedural provision to challenge the jurisdiction of the court, as the Petitioner's case, as being unconstitutional.

So the second and successive part of the §2255 has procedurally barred the Petitioner from makeing a claim, specifically jurisdiction, that this court hold (See: United States v. Brown, 752 F. 3d 1344, 1347 (11th Cir 2014); United States v. Peter, 310 F.3d 709, 712 (11th Cir. 2002) including the Supreme Court (See: Louisville & Nashville Railroad Co. V. Mottley, 211 U.S. 149, 152, 53 L. Ed 12, 29 S. Ct. 42 (1908) that jurisdiction can never be waived or procedurally barred. (See: United States V. Harris, 149 F.3d 1308, 1309 (11th Cir 1998). So, since the Petitioner by this circuits on case law can not claim that the §2255 is ineffective or inadequate then that means this courts rulings in Harris, Brown, and Peter that jurisdiction can never be waived or procedurally defaulted are in direct conflict with the statute 28 U.S.C. 2255.

The question is not what will this court do? Will this court certify the 28 U.S.C. 2255 second and successive for a jurisdictional claim in line with Harris, Brown, and Peter, that does not allow for a jurisdictional claim to be waived or procedurally defaulted. Or will this court go with the statute that does not allow for a jurisdictional claim under the second and successive part of 28 U.S.C. 2255. In this case this court would violate its own case law precedent by doing this.

The Petitioner wished to remind this court that if this court procedurally bars the Petitioner from the second and successive 28 U.S.C. 2255 for jurisdiction being unconstitutional, the this court only leaves a 28 U.S.C. 2241 left in the Habeas to make a constitutional challenge to jurisdiction that can never be waived or procedurally barred.

APPEAL NUMBER 18-10300

IN RE 28 U.S.C. 1651(A)

In Case number 18-10300 this court choose not to hear the Petitioners arguements of no jurisdiction, specifically the Article 1, Section 7, Clause 2 of the Constitution violation(s). This court refused to hear a jurisdictional challenge based on the Constitution. This Court went on to change what the Petitioner said and dismissed the appeal. This court had the option to take the money for the appeal from the Petitioners prison account but choose not too.

The Petitioner argued lack of jurisdiction due to 18 U.S.C. 3231 not being passed by the requirements of Article 1, Section 7, Clause 2 of the Constitution. This Court changed the arguement to the statutes of conviction. The Petitioner was not convicted of 18 U.S.C. 3231.

28 U.S.C. 1651
HISTORY

Mr. Matthews challenged the jurisdictional statute 18 U.S.C. 3231 as being unconstitutional in the District Court for the Southern District of Florida. (See: Case Number 2:17-cv-14272-KMM). (See Also: Appeal Number 18-10300) Mr. Matthews claimed that the 80th Congress on May 12, 1947 failed to put the names in the House Journal for who voted yea and nay for the bill H.R. 3190 which contains 18 U.S.C. 3231. This is a violation of the United States Constitution Article 1, Section 7, Clause 2. The District Court ignored Supreme Court and 11th Circuit precedent that says jurisdiction can never be waived. The District Court also ignored Supreme Court precedent that says Congress must follow Article 1, Section 7, Clause 2 of the Constitution. The District Court committed many procedural errors, then denied the claim. Mr. Matthews timely appealed.

ON Appeal (See: Case Number: 18-10300) the 11th Circuit Court of Appeals Judge Martin said on page 2 of her order in the second paragraph that Mr. Matthews "argues that the United States Congress failed to adhere to the Presentment Clause of the COnstitution, U.S. Const. art 1 Section 7 Clauses 2 and 3 when it passed the laws under which he was convicted." This statement is simply not true. The statutes of conviction were not passed in 1947. Mr. Matthews was not convicted under 18 U.S.C. 3231 (the Jurisdictional statute that Mr. Matthews was challenging as unconstitutional.)

The Circuit Court Judge went on to say that Mr. Matthews says "the conduct for which he was charged was not a federal offense." Again this statement is simply not true. The Brief Mr. Matthews submitted does not say in it anywhere this statement or anything like it.

the 11th Circuit Judge took what Mr. Matthews wrote as a request for a COA. (See page 1 of order 1st sentence) But the Circiut Judge says in a footnote on page 3 "... the District Court could not have construed his corum

nobis Petition as a section 2255 motion." The 11th Circuit Court Judge said in the same footnote, that the 28 U.S.C. 2255 was the exclusive remedy. The 11th Circuit Court Judge denied the appeal as procedurally barred claim. The Assistant United States Attorney recognized this appeal being dismissed for a procedural bar.

The 11th Circuit Court Clerk took just the opposite action. In a letter dated July 26, 2018, the court clerk dismissed the appeal for want of prosecution. So, which is it ? Is the judges order procedurally baring the claim the reason for dismissal or is it for not paying the filing fee and want of prosecution?

CLAIMS NOT MADE

IN HISTORY NOR NOW

Petitioner has never claimed nor ever intends to claim the following:

1) Any UCC related thing
2) Sovereign Citizen
3) Corporate Citizen
4) 14TH Amendment Citizen

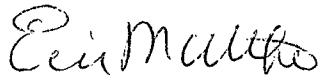
CONCLUSION

The 11th Circuit COurt of Appeals **MUST** leave the Petitioner a way to challenge the jurisdiction of the court. This court and the United States Supreme Court precedents say jurisdiction can not be procedurally barred, waived or forfieted. This request for permission to proceed with a second and successive 28 U.S.C. 2255 is another chance for this court to allow the Petitioner to challenge the courts jurisdictional statute 18 U.S.C. 3231. By dening this application , this court will be acting contrary , for a second time, with it's own precendents and United States Supreme Court precedents.

REQUESTED RELIEF

Mr. Matthews request that this court grant permission to proceed with a second and successive 28 U.S.C. 2255 to challenge the Constitutionality of the Jurisdiction of the court(s) as outlined in this application. Failing that, Petitioner request this court reverse and remand to vacate his conviction with prejudice and then seal the record.

Respectfully Submitted,



Eric Matthews

CERTIFICATE OF SERVICE

I, Eric Matthews, do declare that on this date: March 13, 2014, have served the following document(s): MOTION FOR PERMISSION TO FILE A SCOND AND SUCCESIVE 28 U.S.C. 2255 / AND EXHIBITS

on each and every party required to be served and all parties that have an intrest in this particular proceeding. I have deposited an envelope/box with proper 1st class postage in the Prison Legal Mail system on this date with the above document(s) enclosed. Below is the list of person(s) that have received copy(s) of these document(s):

One (1) Original and Two (2) copies to:

United States Court of Appeals for the 11th Circuit
56 Forsyth Street N.W.
Atlanta, GA 30303

AND

Two (2) Copies to:

United States Attorney for
the Southern District of Florida
99 NE 4th Street
Miami, FL 33132

Respectfully Submitted,

Eric Matthews

Eric Matthews

CC: United States District Court
ATTN: Dave Brannon
101 S US Highway 1
Room 1016
Fort Pierce, FL 34950

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