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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Samuel Kwushue

PETITIONER


vs.

United States of America

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI


Samuel Kwushue (*Pro se*)
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404-477-9905

QUESTION(S) PRESENTED

- 1) Whether the Eleventh Circuit Court of Appeals improperly affirmed, on procedural ground of “another bite at the same apple”, to foreclose review of a district court order denying Coram nobis relief, when petitioner’s claim of a Jurisdictional error, premised on a defective indictment, was not resolved, or not adequately addressed in a 2255 motion to vacate, set aside or correct the sentence.

- 2) Whether a grand jury indictment which alleged non-compliance with SNAP rules and regulations..... “All in violation of wire fraud statute 18 USCS 1343” is defective, is a Jurisdictional error of a most fundamental character that should warrant the issue of Coram nobis relief, to achieve justice.

PARTIES TO THE PROCEEDINGS

Samuel Kwushue, Petitioner

United States of America, Respondent

STATEMENT OF RELATED CASES

- United States of America v. Samuel Kwushue, No. 1-15-CR-398- SCJ-JFK
U.S. District Court, Northern District of Georgia. Atlanta Division. Judgment
entered August 19, 2016;
- United States of America v. Samuel Kwushue, Appeal Docket # 16-15683,
U.S. Court of Appeals for the Eleventh Circuit. Opinion entered October,
2018.
- Samuel Kwushue v United States of America. Case # 18-6279 *Cert. denied*
11/05/2018
- Samuel Kwushue v. United States of America, No.1-18-CV-5591 SCJ-JFK,
United States District Court Northern District of Georgia. Atlanta Division.
Order denying motion to vacate pursuant to 28 USCS 2255 and application
for Certificate of Appealability entered June 27, 2019.

- Samuel Kwushue v. United States of America, U.S Court of Appeals for the Eleventh Circuit, No.19-12579 Order denying Petition for Certificate of Appealability entered December 19,2019
- Samuel Kwushue v United States of America. Case # 19-1245 *Cert. denied, May 2020, Rehearing denied, August 2020.*
- United States of America v. Samuel Kwushue, No. 1-15-CR-398-SCJ-JFK. District court denied Coram Nobis Relief.
- .United States of America v Samuel Kwushue No. 24-12688, U.S. Court of Appeals for the Eleventh Circuit, affirming the district court Order denying Kwushue's Coram Nobis petition. 11/25/2025
- Eleventh circuit court of appeals denied Rehearing on December 31, 2025.
- The United States Supreme Court extended Petitioner's date of submission of document.
- On March 13, 2026, Petitioner received a 60 days extension of time, to comply with relevant rule of the Supreme Court.

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APPENDIX C: Order of the United States Court of Appeals for the Eleventh Circuit denying rehearing on 12/31/2025.

TABLE OF AUTHORITIES CITED

CASES	PAGE(S) NUMBER
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<i>Jackson v. Ala. State Tenure Comm'n</i> , 405 F.3d 1276, 1283 (11th Cir. 2005),	8
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<i>Minor v. Dugger</i> , 864 F.2d 124, 126 (11th Cir.1989).	13
<i>Moody v. United States</i> , 874 F.2d 1575, 1576 (11th Cir. 1989).	2
<i>Rhode v United States</i> , No. 08-15004,	6
<i>Spencer v. Kemna</i> , 523 U.S. 1, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998),	13
<i>United States v Jordan</i> , 429 F.3d 1032, 1036 (11th Cir. 2005)	8
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PETITION FOR WRIT OF CERTIORARI

Samuel Kwushue respectfully petitions this Court for a Writ of Certiorari to review the Order of the United States Court of Appeals for the Eleventh Circuit affirming the district court denial of Coram Nobis relief..

OPINIONS BELOW

The Eleventh Circuit's Order are unreported but enclose as Appendix A and C. The district court's order denying Petitioner's petition for Coram Nobis relief is unreported but enclosed as Appendix B.

JURISDICTION

The United State Court of Appeal for the Eleventh Circuit denied Rehearing on 12/31/2025. The United States Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. 28 USCS 1651(a)

STATEMENT OF THE CASE

Kwushue was charged with eight (8) counts of substantive wire fraud offense for non-compliance with SNAP rules and regulation, in violation of 18 USCS 1343.

Doc.1 para. 7&8

Kwushue pleaded guilty, was convicted and sentenced to 51 Months confinement on August 19, 2016. **Doc. 40 pgs.1-5.** Kwushue has served his sentence and is no more in custody.

Kwushue's petition for Error Coram Nobis relief filed 7/29/2024 was denied by the district court on 08/14/2024. **Appendix B**

Kwushue timely appealed the denial of Coram Nobis relief to the Eleventh Circuit Appeals Court on 8/22/2024

The Eleventh Circuit Appeals Court affirmed the district court denial on 11/25/2025. **Appendix A.**

Rehearing was denied 12/31/2025. **Appendix C.**

REASONS FOR GRANTING THE PETITION

Certiorari should be granted in this matter because a United States Court and Court of Appeals has decided an important question in a way that conflicts with relevant decisions of this court, and has decided a question that has not been, but should be, settled by this Court.

Since Morgan, 346 U.S. at 506 (1954) was decided, there has been a circuit split on procedural ground that should foreclose the review of claims in a coram nobis petition. One of such ground was explained in Moody v. United States, 874 F.2d 1575, 1576 (11th Cir. 1989). "The *coram nobis* writ also requires that the alleged

must be one that has not been "put in issue or passed upon..." This court may not have spoken on whether constitutional and fundamental claims "put in issue, but "not passed upon," or, not adequately addressed in a 2255 motion can be a claim in coram nobis petition. This issue is of utmost importance to the public because the writ of error Coram Nobis is seen as an extraordinary remedy of the last resort to redress errors of the most fundamental character for ex-convicts. It is a settled law that all claims in a 2255 motion must be resolved, but this court is yet to speak on whether constitutional or fundamental claims not "passed upon" or resolved in a 2255 motion, or not adequately addressed, qualify as "another bite at the same apple" when such a claim is presented in a Coram Nobis petition. Granting Certiorari in this case will clarify this Court's position in respect of procedural limitation or otherwise, to constitutional and fundamental claims in a coram nobis petition which was "put in issue but not passed upon", or not adequately addressed in a 2255 motion.

The question to be resolved by this petition is whether claims of a constitutional violation, or errors of the most fundamental character , put in issue, but not passed upon, or not adequately addressed in a 2255 motion, will qualify as " another bite at the same apple" to foreclose appellate review of the district order, when such claims are presented in a coram nobis petition.

BACKGROUND

Kwushue was charged with eight counts of substantive wire fraud offense in violation of 18 USCS 1343. Kwushue pleaded guilty and was sentenced to 51 months in confinement and three years of supervised release. Kwushue has served his sentence and is no more in custody.

Kwushue's petition for Coram Nobis relief to the district court was denied. Kwushue timely filed an appeal at the United States Court of Appeals for the Eleventh Circuit in which Kwushue sought review of the district court's denial of Kwushue's Coram Nobis petition. The United States Court of Appeals for the Eleventh Circuit *affirmed* on procedural ground of "another bite at the same apple." Kwushue's petition for rehearing was denied 12/31/2025

STATEMENT

This Court held that the district court had the power, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), to consider and (if appropriate) grant the petition. *Morgan*, 346 U.S. at 506-07; ("As the power to remedy an invalid sentence exists, we think, respondent is entitled to an opportunity to attempt to show that his conviction was invalid."). *Morgan* thus confirmed that, even after a defendant's sentence has been fully served, "federal courts should act in doing justice if the record makes plain a right to relief." As the Supreme Court explained: "Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected." "Continuation of litigation after

final judgment” therefore “should be allowed through this extraordinary remedy,” where “circumstances compel such action to achieve justice.”

ARGUMENT

THE ELEVENTH CIRCUIT APPEALS COURT MAY HAVE IMPROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF CORAM NOBIS RELIEF ON THE BASIS OF "...ANOTHER BITE AT THE SAME APPLE."

The Eleventh circuit opinion asserts that "Here, the district court did not abuse its discretion because each of Kwushue's errors could have been—and actually was—raised earlier in his December 2018 motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255. Not only was there another avenue of relief available to Kwushue, but he already availed himself of it. Coram nobis does not offer him another bite at the same apple." **Appendix A, page 1.**

The Eleventh circuit may have improperly affirmed the district court for the following reasons:

- a) Kwushue's Claim Of An Indictment Which Appears To Be Defective Under Jurisdictional Error In Kwushue's 2255 Motion Was Not Passed Upon Or Resolved By The District Court.

Petitioner's coram nobis petition may be warranted due to a fundamental error that undermines the original conviction.

Kwushue's claim (1) in his 2255 motion under Jurisdictional error, was not addressed, or resolved by the district court. In Kwushue's 2255 motion, Kwushue asserted "Contrary to the charging document, 18 U.S.C. § 1343 neither regulate SNAP program nor the SNAP/EBT payment process.

Kwushue further asserted that the specific conduct asserted in the

indictment to which Kwushue pleaded guilty should not fall within the sweep of the statute of conviction: 18 U.S.C. § 1343, because 18 U.S.C. § 1343 does not regulate the SNAP/EBT program as alleged. The district court should lack jurisdiction to convict and sentence defendant.” **Crim Doc. 106-1 Page 1.**

The above claim in Kwushue’s 2255 motion was not ‘passed upon’ or resolved by the District court **See Crim. Doc 141 and Doc. 146,**

In *Clisby v Jones*, 960 F.2d 925 , 936 (11th Cir. 1992) (en banc) the Eleventh Circuit Appeals Court asserts “Accordingly, we now exercise our supervisory power over the district courts,...and instruct the district courts to resolve all claims for relief raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (1988), regardless whether habeas relief is granted or denied. A claim for relief for purposes of this instruction is any allegation of a constitutional violation.”

In Rhode v United States, No. 08-15004, The Eleventh circuit held “We have also recognized that the legal principles applicable to § 2254 proceedings generally apply to § 2255 motions to vacate,... the district court was required to comply with *Clisby* and resolve all claims for relief raised in.... § 2255 motion.”

Because Kwushue's Claim (1)- Jurisdictional error, in his 2255 motion was not resolved, as required by *Clisby* 960 F.2d 925 , 936 (11th Cir. 1992), the Eleventh circuit affirmance on the basis of "another bite at the same apple" may be improper.

Kwushue's coram nobis petition seeks to show that his trial and conviction may be irregular and invalid because of an error of the most fundamental character in the indictment. The Supreme Court in *United States v Morgan*, 346 US 502 (1957) asserts "As the power to remedy an invalid sentence exists, we think, respondent is entitled to an opportunity to attempt to show that this conviction was invalid."

In *Morgan*, 346 US 502 (1957), the Supreme Court further asserts that:

"Because coram nobis is an extraordinary remedy, relief may only issue when (1) "no other remedy is available and the petitioner presents sound reasons for failing to seek relief earlier"; 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." citing *Mills*, 221 F.3d at 1204; *Alikhani*, 200 F.3d at 734 (quotation omitted).

Kwushue's claim of a Jurisdictional error, premised on an allegation that the conduct charged may not offend the charging statute, not passed upon by the district court in a 2255 motion, may not be "another bite at the same apple" in a coram nobis petition, as asserted by the Eleventh Circuit Appeals Court.

b) THE THIRD EXCEPTION OF THE LAW OF THE CASE DOCTRINE MAY PERMIT “ANOTHER BITE AT THE APPLE” IN A CORAM NOBIS PETITION TO ACHIEVE JUSTICE, WHERE PREVIOUS DECISION IS CLEARLY ERRORNEOUS

If Kwushue’s claims in his Coram Nobis petition was put in issue and passed upon in his 2255 motion, then the “previous decision” in his 2255 motion may be “clearly erroneous”, if the indictment is facially defective. The previous decision may be reexamined under the third exception of the law of the case doctrine which allows for a correction of that decision by way of a Coram Nobis relief to achieve justice. **Appl. Brf. DOC 12 page 10.**

If Kwushue’s claim of an indictment which appears to be facially defective was put in issue and NOT passed upon in his 2255 motion, Kwushue’s coram nobis petition may not be procedurally barred by the doctrine of “another bite at the same apple” asserted by the Eleventh Circuit Court of Appeals.

In United States v. Jordan, 429 F.3d 1032, 1036 (11th Cir. 2005) (noting that the law-of-the-case doctrine has an exception “where we are convinced our decision in the prior appeal is clearly erroneous and following it would work a manifest injustice”). Kwushue’s prior habeas petition was heard without the benefit of the Supreme Court’s intervening authority in *Kelly v United States*. No: 18-1059 and *Ciminelli*, 598 U. S. ____ (2023) which would establish yet another exception to the law-of-the-case doctrine.” Citing *Jackson v. Ala. State Tenure Comm’n*, 405 F.3d 1276, 1283 (11th Cir. 2005) (noting an exception to the law-of-the-case doctrine “when there has been a change in controlling authority”).

The Eleventh circuit appeals court may have overlooked the fact that Kwushue filed his coram nobis petition under the third exception of the law of the case doctrine in which the Eleventh circuit recognizes: Coram Nobis relief is available where "...the previous decision was clearly erroneous and would work a manifest injustice." *Westbrook v Zant*, 743 F.2d 764, 768-69(11th Cir.1984). See **Appellate Brf.. DOC 12 page 10**. In the light of the above, the Eleventh circuit may have improperly affirmed the district court on the basis of "another bite at the same apple" because a reexamination of the district court decision may have been contemplated by the "exception" of the law of the case, when an erroneous decision is identified and alleged.

c) THE DOCTRINE OF "...ANOTHER BITE AT THE SAME APPLE" MAY NOT APPLY BECAUSE PREVIOUS ADJUDICATED JURISDICTIONAL CLAIM IN 2255 MOTION DIFFERS FROM PRESENT JURISDICTIONAL CLAIM IN CORAM NOBIS PETITION.

In its Order in respect of Kwushue's 2255 motion, the district court adopted the Report & Recommendation of the Magistrate judge which asserts in relevant part that:

"The Court agrees with Respondent that Movant cannot re-litigate his claims (whether couched as a jurisdictional matter or otherwise) based on the contention that only intra-state wire was involved." **Doc. 141pg 7.**

The present claim in Kwushue's coram nobis petition may not qualify as "another bite at the same apple," because the basis for the district court prior adjudication (intra state wire communication) **Doc. 141 pg. 7**, differs from Kwushue's present claim of a Jurisdictional error, based on a grand jury indictment which appears to be

facially defective as charged. The wire fraud statute-18 USCS 1343 may not contain rules and regulation for SNAP benefit. Kwushue asserted that "The grand jury indictment under which petitioner was convicted may have charged a non-offense under the charging statute-18 USCS 1343." **Doc. 174 page 4.**

Kwushue unsuccessfully sought a Certificate of Appealability from the district court **[Docs. 144, 145]**, and the Eleventh Circuit Appeals Court, to determine among other claims "whether the wire fraud statute 18 USCS 1343 regulates SNAP/EBT program as asserted in movant's charging document, **Doc.1**, and whether the district court lack Jurisdiction to adjudicate Movant's wire fraud charge." See **Crim. Doc. 149 page 2.**

For the foregoing reasons, the Eleventh circuit may have improperly affirmed the district court on the basis of "another bite at the same apple..." to foreclose a review of the district court order.

THE DISTRICT COURT MAY HAVE ABUSED ITS DISCRETION BY THE DENIAL OF KWUSHUE'S PETITION FOR CORAM NOBIS RELIEF.

The district court may have abused its discretion by its improper denial of Kwushue's petition for coram nobis relief. The district court ruled that "Kwushue's allegations does not constitute errors of a most fundamental character to warrant coram nobis relief." **Appendix B, pgs.1 and 2.**

Kwushue alleged the following errors in his coram nobis petition, categorized into various claims.

(a) The grand jury indictment under which petitioner was convicted may have charged a non-offense under the charging statute-18 USCS 1343.- Jurisdictional error.

(b) The District Court may have misconstrued the statute of conviction- 18 USCS

1343 to be a regulatory statute for SNAP/EBT program.- Factual Innocence error.

(c) The District Court, may have accepted petitioner's guilty plea for a non- offense under the charging statute 18 USCS 1343.- Due Process Error.

(d) The district court may have accepted petitioner's trial counsel's prejudicial assertion that " ... BREAKING THE RULES AND VIOLATING THE CONSTRAINTS OF THE PROGRAM ... " was wire fraud, **DOC.49, 24-25** , see **Doc. 174 pages 4 and 5.-** Insufficient Assistance of Counsel.

The district court asserts that:

“The errors on which he based his writ of coram nobis (., jurisdictional error, factual innocence and due process error, and insufficient assistance of trial and appellate counsel error...the undersigned previously concluded that the alleged errors Kwushue identified failed to support coram nobis relief.” **Appendix B, pgs., 1 and 2.**

In *United States v. Meacham*, 626 F.2d 503 (5th Cir. 1980) (finding the indictment charging a "conspiracy to attempt" was fatally defective as there is no such offense).” The indictment upon which Kwushue was convicted may be facially defective as there may be no offense as “Contrary to SNAP rules & Regulation....All in violation of the wire fraud statute 18 USCS 1343.” **Crim. Doc 1 paras. 7-8.** The wire fraud statute 18 USCS 1343 may not contain rules and regulations for SNAP program.

The district court further asserts that “The undersigned denied the relief Kwushue sought because subject matter jurisdiction was lacking..., his failure to identify any fundamental error in his criminal proceeding... doomed his claim”. No 1:24-

CV_01006_SCJ, slip op. @7-8 (N.D Ga May 1, 2024). The assertion of the district court may be contrary to the holding in *United States v. Peter*, 310 F.3d 709, 712 (11th Cir.2002) where the Eleventh circuit held that, “Indeed, jurisdictional error is by its nature of such a “fundamental character” as to render proceedings “irregular and invalid,” citing *Morgan*, 346 U.S. at 509 n. 15, 74 S.Ct. 247, and coram nobis relief affords a procedural vehicle through which such error may be corrected.”

In *United states v Leonard* No. 19-14142 (11th Cir. 2021) the Eleventh circuit asserted that “... we have found a lack of subject matter jurisdiction when the alleged crime “simply did not exist in the United States Code”; when the conduct alleged “undoubtedly fell outside the sweep” of the cited statute; and where the violation was of a regulation that was “not intended to be a ‘law’ for purposes of criminal liability.”

In *Alikhani v. United States*, 200 F.3d 732 (2000), the court asserts that a “genuine claim that the district court lacked jurisdiction to adjudicate the petitioner guilty may well be a proper ground for coram nobis relief as a matter of law.” “...Indeed, jurisdictional error is by its nature of such a “fundamental character” as to render proceedings “irregular and invalid,” citing *Morgan*, 346 U.S. at 509 n. 15, 74 S.Ct. 247, and coram nobis relief affords a procedural vehicle through which such error may be corrected. Accordingly, a writ of error coram nobis must issue to correct the judgment that the court never had power to enter.”

The district court ruling that Kwushue's claim of Jurisdictional error "fail to support coram nobis relief" may be contrary to the Eleventh Circuit assertion that "By its nature, a jurisdictional error is of "such a 'fundamental character' as to render proceedings 'irregular and invalid.'" *Peter*, 310 F.3d at 715...

The district court may have abused its discretion in denying coram nobis relief on this ground.

An analysis of Kwushue's jurisdictional error claim of an allegation of a facially defective grand jury indictment, may resolve all the errors enumerated in Kwushue's coram nobis petition. The district court may err for its ruling which may be contrary to the Supreme Court precedent in *Morgan*, 346 U.S. at 509 and Eleventh Circuit Appeal court decision in *Peter* 310 F.3d at 715 (11th Cir. 2002),

KWUSHUE CONTINUES TO SUFFER ADVERSE COLLATERAL CONSEQUENCIES AS A RESULT OF HIS CONVICTION. Crim Doc. 174 pgs. 21-22

In *Peter*, 310 F.3d at 715.(2000) The Eleventh circuit held "When a court without jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force. Moreover, as the Supreme Court reiterated in *Spencer v.*

Kemna, 523 U.S. 1, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998), "it is an obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences." *Id.* at 12, 118 S.Ct. 978 (internal quotation marks omitted), citing *Wolfe v. Coleman*, 681 F.2d 1302, 1305 (11th Cir.1982); citing *Minor v. Dugger*, 864

F.2d 124, 126 (11th Cir.1989). Accordingly, a writ of error coram nobis must issue to correct the judgment that the court never had power to enter.”

CONCLUSION

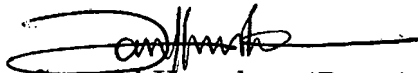
In the light of the above, Certiorari should be granted in this matter because the United States Court of Appeals for the Eleventh circuit, and a United States district court has decided an important question in a way that conflicts with relevant decisions of this court, and has decided a question that has not been, but should be, settled by this Court.

This court should grant Certiorari because the Eleventh Circuit Appeals Court may have improperly affirmed the district court on procedural ground of “another bite at the same apple.” to bar the review of the district court’s order, when Kwushue’s claim of a Jurisdictional error, premised on a defective indictment, put in issue but not resolved, or was not adequately addressed in his 2255 motion.

The district court may have abused its discretion in finding that Mr. Kwushue failed to demonstrate that fundamental error affected his underlying criminal proceeding. **Appendix B at 2.** The Eleventh Circuit Appeals Court has held that a defective indictment that alleges specific conduct that falls outside the scope of the statute charged is an error requiring coram nobis relief. See *Peter*, 310 F.3d at 711, 715–16 (reversing denial of coram nobis relief because the mail fraud charge against the defendant was based on allegations that could not constitute mail fraud in light

of recent Supreme Court precedent. The district court's order may be in direct conflict with the decision of this court.

Respectfully Submitted,



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