

NOT FOR PUBLICATION

APPENDIX 'A'

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-12688

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

SAMUEL KWUSHUE,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Northern District of Georgia  
D.C. Docket No. 1:15-cr-00398-SCJ-JFK-1

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Before ROSENBAUM, GRANT, and ABUDU, Circuit Judges.

PER CURIAM:

Samuel Kwushue appeals from the district court's denial of his petition for *coram nobis* relief. In his petition he raised claims of (1) jurisdictional error, (2) factual innocence and due process error, and (3) ineffective assistance of counsel.

APPENDIX A

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Opinion of the Court

24-12688

“The bar for *coram nobis* relief is high.” *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000). To qualify for *coram nobis* relief, the petitioner must identify an error involving “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.* (quotation omitted). But even if he can identify such an error, the court may grant *coram nobis* relief only “when there is and was no other available avenue of relief.” *Id.*

We review “denial of *coram nobis* relief for abuse of discretion.” *Id.* Although the district court evaluated Kwushue’s claims on their merits, we may “affirm on any ground supported by the record, regardless of whether that ground was relied upon or even considered below.” *Pop v. LuliFama.com LLC*, 145 F.4th 1285, 1292 (11th Cir. 2025) (quotation omitted).

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. **AFFIRMED.**<sup>1</sup>

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<sup>1</sup> The Court appointed Bryan W. Lutz of Alston & Bird LLP to represent Kwushue in this appeal. Lutz and his colleague Jason Sigalos submitted excellent briefing in this case on an issue the Court raised, and we thank them for accepting the appointment and for their capable advocacy.

A

APPENDIX 'B'

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION FILE

v.

No. 1:15-CR-00398-SCJ

SAMUEL KWUSHUE,

Defendant.

ORDER

The matter is before the Court on Defendant's Motion for Writ of Error *Coram Nobis*. Doc. No. [174].<sup>1</sup>

This is Defendant Samuel Kwushue's second attempt to secure a writ of error *coram nobis*. Before filing the instant Motion in above-styled criminal case, Kwushue filed a civil action seeking the same relief he seeks through this Motion. See Kwushue v. United States, No. 1:24-CV-01006-SCJ (N.D. Ga. March 7, 2024). There, as through the instant Motion, Kwushue sought to vacate his criminal conviction in the above-styled case. The undersigned denied the relief Kwushue

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<sup>1</sup> All citations are to the electronic docket unless otherwise noted, and all page numbers referenced are those imprinted by the Court's docketing software.

APPENDIX 'B'

(B)

sought because subject matter jurisdiction was lacking, but nevertheless analyzed the merits of Kwushue's request and concluded that even if Kwushue had properly filed the writ in his criminal case, his failure to identify any fundamental error in his criminal proceedings (a threshold showing for *corum nobis* relief) doomed his claim. No. 1:24-CV-01006-SCJ, slip op. at 7-8 (N.D. Ga. May 1, 2024). In addition, as noted in the Court's Order, Kwushue had failed to give (as required by applicable law) a sound reason for why the errors on which he based his writ of *corum nobis* (i.e., jurisdictional error; factual innocence and due process error; and insufficient assistance of trial and appellate counsel) had only come to light following his sentence completion and could not have been pursued earlier. Id. at 8-9.

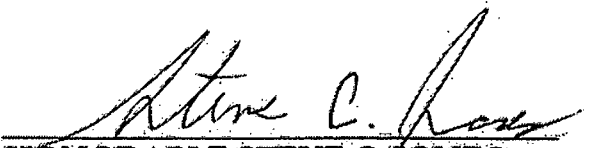
Kwushue's Motion is substantially similar to the petition he filed, and which the undersigned dismissed, in the civil case. The Motion identifies no errors beyond those identified in the civil case and raises the same arguments. The undersigned previously concluded that the alleged errors Kwushue identified failed to support *corum nobis* relief. See No. 1:24-CV-01006-SCJ, slip op. at 7-9. That conclusion applies with equal force here.

'B'

'B'

Accordingly, Kwushue's Motion for Writ of Error *Coram Nobis* (Doc. No. [174]) is DENIED.

IT IS SO ORDERED this 14<sup>th</sup> day of August, 2024.

  
HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

'B'

APPENDIX 'E'

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-12688

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

SAMUEL KWUSHUE,

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Appeal from the United States District Court  
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D.C. Docket No. 1:15-cr-00398-SCJ-JFK-1

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Before ROSENBAUM, GRANT, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Samuel Kwushue is DENIED.

APPENDIX 'C'