NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 22, 2023*
Decided March 23, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2616

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 06-cr-30049-SMY
GARY E. PEEL, *Defendant-Appellant*.	Staci M. Yandle, *Judge*.

O R D E R

Gary Peel appeals the denial of his petition to vacate his criminal convictions through the esoteric writs of *coram nobis* and *audita querela*. We agree with the district court that Peel is impermissibly attempting to relitigate issues presented in previous collateral attacks, and we therefore affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In 1974, Peel took sexually explicit photographs of his then-wife's 16-year-old sister. Decades later, Peel and his wife divorced, and he filed for bankruptcy. Peel's ex-wife opposed his efforts to alter a roughly $750,000 obligation to her under their divorce settlement, and she filed an adversarial proceeding in the bankruptcy case. Peel then threatened to make the photos of her sister public if she did not drop her claim. This brought on federal charges.

A jury found Peel guilty of bankruptcy fraud and obstruction of justice for his attempt to extort concessions in the bankruptcy case, *see* 18 U.S.C. §§ 152(6), 1512(c)(2), and two counts of possessing child pornography for retaining the explicit photos, *id.* § 2252A(a)(5)(B). Peel appealed, and we agreed that the conviction for either obstruction of justice or bankruptcy fraud had to be dismissed because dual punishments for the same unlawful threat violated the Double Jeopardy Clause. *United States v. Peel*, 595 F.3d 763, 767 (7th Cir. 2010). But we affirmed Peel's convictions and sentences for possessing child pornography, rejecting his argument that he was innocent because having sexually explicit photos of a minor did not violate federal law when he took them. *Id.* at 769–71.

On remand, the district court dismissed the obstruction-of-justice conviction and imposed the same total prison sentence of 144 months. In his appeal, Peel again insisted that he was not guilty of possessing child pornography because of the absence of federal prohibition at the time he took the photos. We rejected that argument and affirmed. *United States v. Peel*, 668 F.3d 506, 509–10 (7th Cir. 2012).

Beginning in 2011, before the second appeal was final, Peel filed a string of unsuccessful motions to vacate his convictions. In his first proper motion under 28 U.S.C. § 2255, he raised dozens of arguments, including that his convictions were unlawful because (1) possessing child pornography was not federally illegal in 1974; (2) his ex-wife had filed, then later withdrawn, a fraudulent adversarial claim in the bankruptcy case; and (3) his trial and appellate counsel were constitutionally ineffective for failing to raise these arguments. The district court rejected Peel's assertions, explaining that possessing the photographs was illegal no matter when they were taken, his ex-wife never withdrew her bankruptcy objections, and the merits of her claim were irrelevant to Peel's fraud. *Peel v. United States*, No. 06-CR-30049-WDS, 2013 WL 1799040 (S.D. Ill. Apr. 29, 2013). While in federal custody, Peel repeated the same arguments in many other motions, variously styled, and a petition under § 2241 and § 2255(e), all of which were denied on the merits or dismissed for lack of jurisdiction.

Then, after serving his prison sentence and three years of supervised release, Peel returned to federal court seeking the rare writs of *coram nobis* and *audita querela*. A petition for a writ of *coram nobis* is a means to collaterally attack a criminal conviction when a defendant is no longer in federal custody. *United States v. Delhorno*, 915 F.3d 449, 452 (7th Cir. 2019). And a writ of *audita querela* might in rare cases provide relief based on some defense arising after the imposition of the judgment. *United States v. Johnson*, 962 F.2d 579, 582 (7th Cir. 1992). Though he invoked these new procedural vehicles, Peel presented the same arguments he had raised in his direct appeals and prior collateral attacks: he lawfully took explicit photos of a 16-year-old, his ex-wife's actions in the bankruptcy proceeding undermine his fraud conviction, and his lawyers were ineffective for failing to raise these issues before his convictions were final.

The district court denied the petition, rejecting each argument in turn. First, Peel did not have new evidence, and his arguments had already been made, and rebuffed, several times. Second, he possessed child pornography as late as 2006, well after the pertinent statute was passed (1978) and amended to define "minor" as anyone under age 18 (1984). Third, Peel already raised his ineffective assistance of counsel claims numerous times. Peel timely moved for reconsideration, repeating the arguments from his petition, but the court concluded that his assertions of legal error were groundless.

On appeal, Peel argues that the district court erroneously refused to vacate his convictions or at least hold evidentiary hearings. Once again, he repeats his three primary arguments. (They are not specific to the denial of his motion to reconsider, so we do not address that ruling separately. *See White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021).) None of Peel's arguments justifies the relief he seeks.

A writ of *coram nobis* is reserved for "extraordinary cases" when "(1) the error alleged is 'of the most fundamental character' as to render the criminal conviction 'invalid'; (2) there are 'sound reasons' for the defendant's 'failure to seek earlier relief'; and (3) 'the defendant continues to suffer from his conviction even though he is out of custody.'" *Delhorno*, 915 F.3d at 452–53 (citation omitted). But a *coram nobis* petition cannot be used to relitigate issues already raised under § 2255 and rejected. *United States v. Hassebrock*, 21 F.4th 494, 498 (7th Cir. 2021). That is all Peel attempts to do here.

The obscure writ of *audita querela* also has no role here. As we have said before, we question whether, "given the availability of *coram nobis* and § 2255," this writ has any relevance to criminal proceedings. *Johnson*, 962 F.2d at 583. If anything, it might "plug a gap in a system of federal postconviction remedies." *United States v. Kimberlin*,

675 F.2d 866, 869 (7th Cir. 1982). But there is no gap here. Peel could—and did—raise the same arguments in his collateral attacks.

We caution Peel that further attempts to relitigate his convictions could result in sanctions.

AFFIRMED