

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**December 30, 2011**

**Elisabeth A. Shumaker**  
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERRY L. LESTER,

Defendant - Appellant.

No. 11-3245  
(D.C. No. 2:06-CR-20151-JWL-1)  
(D. Kansas)

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**ORDER AND JUDGMENT\***

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Before **KELLY, HARTZ, and HOLMES**, Circuit Judges.

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Jerry Lester appeals the denial of his petition for writ of error *coram nobis* by the United States District Court for the District of Kansas. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

Lester was convicted in Kansas federal district court on charges of making false statements in connection with the acquisition of firearms and being an unlawful user of a controlled substance while in possession of firearms. *See*

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\*After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

18 U.S.C. § 922. He was sentenced to 27 months' imprisonment and ordered to pay a \$6000 fine. He unsuccessfully appealed to this court. *See United States v. Lester*, 285 F. App'x 542 (10th Cir. 2008). After he completed his sentence of incarceration and supervised release, but while still making installment payments on his fine, he filed his *coram nobis* petition, which was denied by the district court.

On appeal Lester challenges the district court's rejection of his claim that his statement admitted at trial should have been excluded under 18 U.S.C. § 3501. The government responds that it was improper to raise this claim in a petition for writ of error *coram nobis*. We agree. Lester correctly argues that various grounds for dismissing such a petition are not applicable here (for example, he points out that he is no longer in custody so he cannot file a motion under § 2255). But there is at least one ground that required the district court to dismiss the petition. A writ of error *coram nobis* cannot issue when another remedy was adequate and available. *See United States v. Payne*, 644 F.3d 1111, 1112 (10th Cir. 2011). Lester has failed to show that he could not have raised his § 3501 argument on direct appeal or in a motion under 28 U.S.C. § 2255.

We AFFIRM the judgment of the district court.

ENTERED FOR THE COURT

Harris L Hartz  
Circuit Judge