

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6467

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THEODORE HOWZE, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:98-cr-00299-GCM-1)

Submitted: May 7, 2013

Decided: May 10, 2013

Before KING and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Theodore Howze, Jr., Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theodore Howze, Jr., a federal prisoner, appeals the district court's order denying his petition for writ of error coram nobis. Finding no error, we affirm.

"Coram nobis is an extraordinary remedy that has traditionally been used to attack [federal] convictions with continuing consequences when the petitioner is no longer in custody for purposes of 28 U.S.C. § 2255." United States v. Rhines, 640 F.3d 69, 71 (3d Cir. 2011) (internal quotation marks omitted). A petitioner "may not resort to a writ of error coram nobis simply because he cannot meet the standards for filing a second or successive § 2255 motion." Id. at 72.

Here, Howze sought, by way of coram nobis, to benefit from our decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). We previously denied Howze's 28 U.S.C. § 2244 (2006) motion, in which he sought leave to file a successive § 2255 motion raising the Simmons issue. Howze also has sought relief under Simmons by way of a § 2255 motion, which the district court denied.

We conclude that the district court did not abuse its discretion in denying relief. Not only is Howze incarcerated, but coram nobis is unavailable to a petitioner, such as Howze, who seeks through the writ to evade the limitation on second or successive § 2255 motions.

We therefore affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED