

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-6140**

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MARCO BIRD,

Defendant – Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:86-cr-00314-CMH-2)

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Submitted: January 13, 2023

Decided: April 18, 2023

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Before AGEE, HARRIS, and QUATTLEBAUM, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Jonathan P. Sheldon, SHELDON & FLOOD, PLC, Fairfax, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Richmond, Virginia, Jacqueline R. Bechara, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marco Bird appeals the district court’s order denying his petition for a writ of coram nobis. 28 U.S.C. § 1651(a). Bird sought vacatur of his 1987 conviction for possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1). He argued that his trial counsel mistakenly and unreasonably believed he was a United States citizen and misadvised him as to the immigration consequences of his plea bargain. And this mistake, he argues, constituted ineffective assistance of counsel—a fundamental error warranting coram nobis relief.

A petitioner seeking a writ of coram nobis must establish that (1) a more usual remedy, such as habeas corpus, is unavailable, (2) he has a valid basis for not attacking his conviction earlier, (3) the consequences of his conviction satisfy Article III’s case-or-controversy requirement, and (4) the error that is the basis for relief is “of the most fundamental character.” *Bereano v. United States*, 706 F.3d 568, 576 (4th Cir. 2013) (quoting *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012)). The district court determined that Bird failed to satisfy requirements (2) and (4)—namely, he did not show that he had a valid basis for not attacking his conviction earlier, nor did he establish a fundamental error in his conviction.

In assessing a district court’s order denying a petition for writ of coram nobis, we review factual findings for clear error, questions of law de novo, and the court’s ultimate decision to deny the writ for abuse of discretion. *United States v. Lesane*, 40 F.4th 191, 196 (4th Cir. 2022).

We have reviewed the record and conclude that the district court did not err in denying relief. Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*