

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 21 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KENNETH CHARLES ROWE,

No. 19-35834

Petitioner-Appellant,

D.C. No. 4:19-cv-00064-BMM

v.

MEMORANDUM*

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted May 18, 2021**

Before: CANBY, FRIEDLAND, and VANDYKE, Circuit Judges.

Federal prisoner Kenneth Rowe appeals from the district court's judgment dismissing his petition for a writ of error coram nobis. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Matus-Leva v. United States*, 287 F.3d 758, 760 (9th Cir. 2002), and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

To obtain coram nobis relief, a petitioner must meet four requirements, one of which is to demonstrate that a more usual remedy is not available. *See id.* The district court determined that Rowe did not satisfy this requirement because he is in custody serving his term of imprisonment, and can therefore file a 28 U.S.C. § 2255 motion. Rowe does not challenge this conclusion and instead argues that his conviction is void. We do not address Rowe's contention because we agree with the district court that Rowe cannot show that the more usual remedy of a § 2255 motion is unavailable to attack his conviction. *See Matus-Leva*, 287 F.3d at 760 (a petitioner in custody cannot resort to coram nobis even if a § 2255 motion would be time-barred).

Rowe's "Motion for Relief" is denied.

AFFIRMED.