

O

JS-6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CLARENCE RUDOLPH ADOLPHUS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Case Nos. CR 04-215 CAS,
CR 04-402 CAS,
CV 16-8800 CAS,
CV 16-8871 CAS

PETITION FOR WRIT OF ERROR
CORAM NOBIS (CV 16-8800-CAS,
Dkt. 1, filed November 28, 2016)

I. INTRODUCTION AND BACKGROUND

On January 16, 2007, petitioner Clarence Rudolph Adolphus pleaded guilty to one count of conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), 846; one count of conspiracy to launder money, in violation of 21 U.S.C. §§ 1956(a)(1), 1956(h), 1957; one count of tax evasion, in violation of 26 U.S.C. § 7201; and one count of obstructing due administration of the internal revenue laws, in violation of 26 U.S.C. § 7212(a).

///

///

1 CR Dkt. 669.¹ On October 18, 2007, petitioner filed a motion to withdraw his
2 guilty plea, arguing that: (1) his plea colloquy was deficient because the Court did
3 not properly explore the factual basis for the plea; and (2) his plea was involuntary
4 because he was subject to undue pressure. The Court denied petitioner’s motion
5 on January 22, 2008. See United States v. Adolphus, No. CR 04-215 CAS, 2008
6 WL 11301048 (C.D. Cal. Jan. 22, 2008).

7 On July 27, 2010, the Court sentenced petitioner to a total term of 168
8 months imprisonment followed by a four-year term of supervised release. CR Dkt.
9 764. On August 3, 2010, petitioner appealed his sentence, arguing that: (1) the
10 Court violated Federal Rule of Criminal Procedure 32 and prevented meaningful
11 appellate review by failing to make sufficient findings in response to his objection
12 to the aggravating role adjustment; and (2) the Court erred by applying an
13 aggravating role adjustment under U.S.S.G. § 3B1.1(a) because there was no
14 evidence that he had control and authority over another participant with regard to
15 the money laundering offense. CR Dkt. 767. The Ninth Circuit rejected both
16 arguments and affirmed petitioner’s sentence. See United States v. Adolphus, 519
17 F. App’x 469, 470 (9th Cir. 2013).

18 On June 10, 2016, petitioner completed his term of imprisonment and was
19 subsequently detained by U.S. Immigration and Customs Enforcement (“ICE”) at
20

21
22
23 ¹ Petitioner filed the same petition for writ of error *coram nobis* with respect
24 to two underlying criminal cases: Case Nos. CR 04-215 CAS and CR 04-402
25 CAS. The corresponding civil docket numbers are CV 16-8800-CAS and CV 16-
26 8871-CAS. In Case No. CR 04-215 CAS, a grand jury indicted defendant on
27 February 27, 2004 on the tax evasion and obstruction charges. Thereafter, on April
28 13, 2004, in Case No. CR 04-402 CAS, a grand jury issued a four-count indictment
against defendant and eight other co-defendants, which included the conspiracy
charges to which defendant pleaded guilty. Unless otherwise noted, “CR” refers to
the docket in CR 04-402 CAS and “CV” refers to the docket in CV 16-8800 CAS.

1 the LaSalle Detention Facility in Jena, Louisiana and placed in removal
2 proceedings. CV Dkt. 1 (“Pet.”) at 5–6. Proceeding *pro se*, petitioner filed the
3 instant petition for writ of error *coram nobis* on November 28, 2016 while still in
4 ICE custody and subject to supervised release. See id. On June 18, 2017, the
5 government filed an opposition. CV Dkt. 11 (“Opp’n”). And on October 4, 2017,
6 petitioner filed a response. CV Dkt. 17 (“Resp.”). Having carefully considered the
7 parties arguments, the Court finds and concludes as follows.

8 **II. LEGAL STANDARD**

9 “*Coram nobis* is an extraordinary writ that usually is available only to
10 petitioners who have fully served their sentences.” United States v. Monreal, 301
11 F.3d 1127, 1131–32 (9th Cir. 2002) (citing Telink, Inc. v. United States, 24 F.3d
12 42, 45 (9th Cir. 1994)). “Specifically, the writ provides a remedy for those
13 suffering from the lingering collateral consequences of an unconstitutional or
14 unlawful conviction based on errors of fact and egregious legal errors.” Estate of
15 McKinney v. United States, 71 F.3d 779, 781 (9th Cir. 1995) (citations and
16 quotation marks omitted). A petition for writ of error *coram nobis* “fills a very
17 precise gap in federal criminal procedure.” Telink, 24 F.3d at 45 (explaining that
18 while a convicted defendant in federal custody may petition for habeas relief under
19 28 U.S.C. § 2255, there is no statutory basis to collaterally attack a conviction once
20 the sentence has been served). A court’s authority to issue a writ of error *coram*
21 *nobis* derives from the All Writs Act, 28 U.S.C. § 1651(a). Matus–Leva v. United
22 States, 287 F.3d 758, 760 (9th Cir. 2002).

23 The Supreme Court and the Ninth Circuit have both emphasized that “the
24 writ of error *coram nobis* a highly unusual remedy, available only to correct grave
25 injustices in a narrow range of cases where no more conventional remedy is
26 applicable.” United States v. Riedl, 496 F.3d 1003, 1005 (9th Cir. 2007) (citing
27 United States v. Morgan, 346 U.S. 502, 511 (1954) (characterizing the writ as an
28 “extraordinary remedy” that should be granted “only under circumstances

1 compelling such action to achieve justice”) and Carlisle v. United States, 517 U.S.
2 416, 429 (1996) (“[I]t is difficult to conceive of a situation in a federal criminal
3 case today where [a writ of coram nobis] would be necessary or appropriate.”)). In
4 order to qualify for *coram nobis* relief, the petitioner must demonstrate that “(1) a
5 more usual remedy is not available; (2) valid reasons exist for not attacking the
6 conviction earlier; (3) adverse consequences exist from the conviction sufficient to
7 satisfy the case or controversy requirement of Article III; and (4) the error is of the
8 most fundamental character.” Hirabayashi v. United States, 828 F.2d 591, 604 (9th
9 Cir. 1987). “Because these requirements are conjunctive, failure to meet any one
10 of them is fatal.” Matus–Leva, 287 F.3d at 760 (citation omitted).

11 **III. DISCUSSION**

12 Petitioner seeks to vacate his conviction on several grounds, arguing that: (1)
13 he received ineffective assistance of counsel because his attorney failed to prepare
14 for trial and failed to adequately advise him of the immigration consequences of
15 his plea; (2) his plea was involuntary because he was under emotional distress; and
16 (3) the Court’s plea colloquy was deficient because the Court did not clearly
17 question petitioner about the factual basis for his plea. Pet. at 4–5. The
18 government contends that petitioner is not entitled to *coram nobis* relief because he
19 cannot satisfy the first, second, and fourth Hirabayashi requirements. Opp’n at 9.
20 Specifically, the government argues that: (1) because petitioner is currently serving
21 a term of supervised release, he remains “in custody” and thus the more usual
22 habeas remedy under § 2255 is available; (2) petitioner has not provided valid
23 reasons for not attacking his conviction earlier; and (3) petitioner cannot show
24 fundamental error because his claim of ineffective assistance of counsel fails on
25 the merits and this Court previously rejected his challenges to the validity of the
26 plea. Id. at 9–17. Because the Court agrees that petitioner cannot satisfy the first
27 two, procedural Hirabayashi requirements, the Court need not reach the merits of
28 petitioner’s claims.

1 **A. “A More Usual Remedy” Under 28 U.S.C. § 2255 is Available**

2 Plaintiff has failed to demonstrate that “a more usual remedy is not
3 available.” Hirabayashi, 828 F.2d at 604. The Ninth Circuit has held that a federal
4 defendant who is subject to supervised release remains “in custody” and therefore
5 may seek habeas relief pursuant to § 2255. Matus–Leva, 287 F.3d at 761 (citing
6 Jones v. Cunningham, 371 U.S. 236, 242–43, (1963)). Thus, “[b]ecause the more
7 usual remedy of a habeas petition is available, the writ of error *coram nobis* is not.”
8 Id. This is true even if habeas relief under § 2255 is not available as a practical
9 matter because the petition would be time barred under the Antiterrorism and
10 Effective Death Penalty Act (“AEDPA”). See id. (“A petitioner may not resort to
11 *coram nobis* merely because he has failed to meet the AEDPA’s gatekeeping
12 requirements. To hold otherwise would circumvent the AEDPA’s overall purpose
13 of expediting the presentation of claims in federal court and enable prisoners to
14 bypass the limitations and successive petitions provisions.”)

15 Here, the Court sentenced petitioner to 168 months imprisonment followed
16 by a four-year term of supervised release. CR Dkt. 764. Petitioner completed his
17 term of imprisonment on June 10, 2016, Pet. at 5, and accordingly remains subject
18 to supervised release until June 9, 2020. Thus, because petitioner satisfies the
19 custody requirement of § 2255, the more usual remedy of a habeas petition is
20 available, and petitioner accordingly may not seek *coram nobis* relief. See Matus–
21 Leva, 287 F.3d at 761. This is true regardless of the fact that petitioner was in
22 removal proceedings and detained by ICE when he filed the petition on November
23 21, 2016. See United States v. Ndiagu, 591 Fed. App’x 632, 633 (9th Cir. 2015)
24 (holding that a petitioner who was released from federal prison satisfied the “in
25 custody” requirement under § 2255 because he was still subject to a term of
26 supervised release even though he had been transferred to ICE custody and
27 charged as deportable); see also United States v. Swaby, 855 F.3d 233, 239 (4th
28 Cir. 2017) (finding *coram nobis* petition invalid because the petitioner, who was

1 “under supervised release and detained by immigration authorities,” had access to
2 habeas relief under § 2255).

3 **B. Petitioner Has Not Provided Valid Reasons for Delayed Challenge**

4 Petitioner has also failed to demonstrate that “valid reasons exist for not
5 attacking the conviction earlier.” Hirabayashi, 828 F.2d at 604. Although no
6 formal statute of limitations applies to *coram nobis* petitions, “courts have required
7 *coram nobis* petitioners to provide valid or sound reasons explaining why they did
8 not attack their sentences or convictions earlier.” United States v. Kwan, 407 F.3d
9 1005, 1012 (9th Cir. 2005) (citations omitted), abrogated on other grounds by
10 Padilla v. Kentucky, 559 U.S. 356 (2010). The Ninth Circuit also requires
11 petitioners to exercise due diligence. See Riedl, 496 F.3d at 1008 (citing Klein v.
12 United States, 880 F.2d 250, 254 (10th Cir. 1989) (denying *coram nobis* relief
13 when there was a seven-year delay during which the petitioner did not exercise due
14 diligence). Petitioner has not satisfied this requirement.

15 With respect to petitioner’s claims that the plea colloquy was deficient and
16 that his plea was involuntary, the Court already considered and rejected these
17 arguments when it denied petitioner’s motion to withdraw his guilty plea. See
18 Adolphus, 2008 WL 11301048 at *2–3 (finding that petitioner admitted there was
19 a factual basis for his guilty plea, and that the record establishes there was
20 sufficient factual basis for the plea; and concluding that petitioner’s guilty plea was
21 voluntary and not the result of undue pressure or emotional distress). Petitioner
22 did not challenge his conviction based on ineffective assistance of counsel until he
23 filed the instant petition on November 28, 2016. This claim was not raised on
24 direct appeal or through a habeas petition pursuant to § 2255. Petitioner argues
25 that the delay was justified because he was in the custody of the U.S. Marshals
26 Service from April 2014 through May 2016 as a government witness. Pet. at 6.
27 Petitioner states he was not given prior notice of his transfer, was unable to take his

28 ///

1 legal papers with him, and had limited access to the law library while housed in
2 county jail. Id.

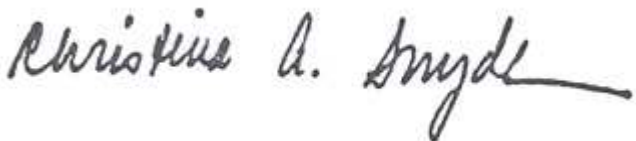
3 Petitioner's purported reason for the delay in challenging his conviction is
4 not persuasive, and a similar argument has been rejected by the Ninth Circuit.
5 Although petitioner may not have been able to pursue his ineffective assistance of
6 counsel claim between April 2014 and May 2016, he offers no explanation why the
7 claim was not raised earlier on direct appeal or through a § 2255 petition within the
8 statutory deadline. See Riedl, 496 F.3d at 1007 (rejecting petitioner's justification
9 for delay based on her deportation because it did not explain why she did not
10 challenge her conviction prior to being deported or while she was still imprisoned).
11 Accordingly, the Court concludes that petitioner is not entitled to *coram nobis*
12 relief because he has offered no valid reasons for the delay in attacking his
13 conviction.

14 **IV. CONCLUSION**

15 Based on the foregoing, the Court **DENIES** the petition for writ of error
16 *coram nobis*.

17 IT IS SO ORDERED.

18
19 Dated: October 18, 2017

20 
21 _____
22 CHRISTINA A. SNYDER
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28