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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TAHEE ABD RASHEED,

1:09-cv-01216-DLB (HC)

Petitioner,

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

v.

[Doc. 1]

PAROLE COMMISSIONER, et.al.,

Respondents.

Petitioner is a state prisoner proceeding with a petition for writ of coram nobis pursuant to 28 U.S.C. § 1651(a). Petitioner has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). (Court Doc. 3.)

DISCUSSION

Coram nobis is an extraordinary writ that is usually available only to petitioners who have fully served their sentences. See United States v. Monreal, 301 F.3d 1127, 1131, 1132 (9th Cir. 2002); Telink, Inc. v. United States, 24 F.3d 42, 45 (9th Cir.1994). “The United States Supreme Court has held that district courts have the power to issue the writ under the All Writs Act, 28 U.S.C. § 1651(a).” Matus-Leva v. United States, 287 F.3d 758, 760 (9th Cir.2002) (citing United States v. Morgan, 346 U.S. 502, 506-07, 74 S.Ct. 247 (1954)). To warrant coram nobis relief, the petitioner must establish that: (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error

1 is of a fundamental character. See Monreal, 301 F.3d at 1132, Matus-Leva, 287 F.3d at 760.

2 Although this Court has the inherent power to issue the writ, such a remedy is only
3 available to challenge *federal* convictions. Yasui v. United States, 772 F.2d 1496, 1498 (9th Cir.
4 2002 1985). As the Ninth Circuit explained:

5 The writ of error coram nobis fills a void in the availability of post-conviction remedies
6 in federal criminal cases. A convicted defendant who is in federal custody and claims
7 that his sentence “was imposed in violation of the Constitution or laws of the United
8 States ... or is otherwise subject to collateral attack” may move to have his sentence
9 vacated, set aside, or corrected under 28 U.S.C. § 2255. But a defendant who has served
10 his sentence and been released from custody has no statutory avenue to relief from the
11 lingering collateral consequences of an unconstitutional or unlawful conviction based on
12 errors of fact.

13 Yasui, 772 F.2d at 1498.

14 Here, Petitioner is challenging a state court conviction and the denial of release on parole.
15 In addition, to the extent Petitioner is challenging the conditions of his confinement he must seek
16 relief by way of civil rights complaint pursuant to 42 U.S.C. § 1983. Accordingly, coram nobis
17 is not an available remedy, and the petition must be dismissed.

18 Accordingly, coram nobis is not an available remedy, and the petition must be dismissed.

19 IT IS SO ORDERED.

20 **Dated: August 7, 2009**

21 /s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE