

1 Case No. 1:00-cr-05165-OWW, Doc. No. 22.¹) He was sentenced to a determinate term of 57 months
2 in federal prison. (Id.) He completed his sentence and was released from custody.

3 He filed the instant petition for writ of error coram nobis on October 10, 2017. (Doc.1.) He
4 moves to vacate or set aside and expunge the conviction because his plea was invalid, unintelligent
5 and involuntary. It appears he is claiming that neither the trial court nor his attorney advised him that
6 deportation was a possible consequence. He further claims that his plea was not knowing and
7 intelligent because the Magistrate Judge misinformed him as to the nature of the charged crime.
8 Finally, he challenges the validity of the statutes under which he was convicted.

9 **II. DISCUSSION**

10 A. Preliminary Review of Petition

11 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary
12 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it
13 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
14 the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
15 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
16 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
17 answer to the petition has been filed.

18 B. Standard for Writ of Error Coram Nobis

19 “Both the Supreme Court and [the Ninth Circuit] have long made clear that the writ of error
20 coram nobis is a highly unusual remedy, available only to correct grave injustices in a narrow range of
21 cases where no more conventional remedy is applicable.” United States v. Riedl, 496 F.3d 1003,
22 1005–06 (9th Cir. 2007). The Supreme Court characterized the writ as an “extraordinary remedy” that
23 should be granted “only under circumstances compelling such action to achieve justice.” United
24 States v. Morgan, 346 U.S. 502, 511 (1954); see also Carlisle v. United States, 517 U.S. 416, 429
25 (1996) (“[I]t is difficult to conceive of a situation in a federal criminal case today where [a writ of

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27 ¹ The Court may take judicial notice of facts that are capable of accurate and ready determination by resort to sources
28 whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333
(9th Cir. 1993). Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1
(N.D.Cal.1978), aff’d, 645 F.2d 699 (9th Cir.).

1 coram nobis] would be necessary or appropriate.’’) (quoting United States v. Smith, 331 U.S. 469,
2 475 n. 4 (1947)) (second alteration in original). The writ has been available to bring before the court
3 only those fundamental “factual errors material to the validity and regularity of the legality of the
4 proceeding itself, such as the defendants being under age or having died before the verdict.” Carlisle,
5 517 U.S. at 429.

6 The Ninth Circuit has also described the writ as “extraordinary,” Hirabayashi v. United States,
7 828 F.2d 591, 604 (9th Cir. 1997), “used only to review errors of the most fundamental character,”
8 Matus-Leva v. United States, 287 F.3d 758, 760 (9th Cir. 2002), and “fill[ing] a very precise gap in
9 federal criminal procedure,” Telink, Inc. v. United States, 24 F.3d 42, 45 (9th Cir. 1994). The Ninth
10 Circuit adopted the following framework to determine when the writ should issue:

11 [A] petitioner must show the following to qualify for coram nobis relief: (1) a more
12 usual remedy is not available; (2) valid reasons exist for not attacking the conviction
13 earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case
or controversy requirement of Article III; and (4) the error is of the most fundamental
character.

14 Hirabayashi, 828 F.2d at 604.

15 C. Analysis

16 In this case, it is clear Petitioner has failed to satisfy the requirements for such an extraordinary
17 remedy. The more usual remedy in this case would be to appeal the conviction to the appellate court,
18 or to file a motion to vacate or set aside judgment in the sentencing court pursuant to 28 U.S.C. §
19 2255. Petitioner apparently failed to do so, and he provides no valid reason for waiting until now to
20 seek relief. Clearly, he was or should have been well aware of the factual basis for his claim that his
21 plea was not knowing and intelligent.

22 Moreover, Petitioner fails to show that the error is of “the most fundamental character.”
23 Hirabayashi, 828 F.2d at 604. Petitioner contends he was not advised that deportation was a possible
24 consequence; however, the minutes of the sentencing hearing held on March 19, 2001, refute this
25 claim and reflect that the Court in fact ordered deportation as one of the consequences. (United States
26 v. Contreras, Case No. 1:00-cr-05165-OWW, Doc. No. 21.) He also claims the Magistrate Judge
27 misinformed him of the nature of the charges. Transcripts of the change of plea hearing held on
28 October 30, 2000, belie this claim. A review of the proceedings show Petitioner was fully informed of

1 the charges against him, and he knowingly and intelligently entered a guilty plea. (United States v.
2 Contreras, Case No. 1:00-cr-05165-OWW, Doc. No. 29.) Petitioner also takes issue with various
3 statutes under which he was charged and convicted; however, these claims are frivolous. In sum, none
4 of Petitioner’s claims are “errors of the most fundamental character.” Matus-Leva, 287 F.3d at 760.

5 Consequently, the Court finds that the extraordinary writ of error coram nobis should not be
6 available in this case.

7 **III. ORDER**

8 It is hereby ORDERED that the Clerk of Court is DIRECTED to assign a District Judge to this
9 case.

10 **IV. RECOMMENDATION**

11 Accordingly, the Court HEREBY RECOMMENDS that the Petition for Writ of Error Coram
12 Nobis be SUMMARILY DISMISSED.

13 This Findings and Recommendation is submitted to the United States District Court Judge
14 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
15 Local Rules of Practice for the United States District Court, Eastern District of California. Within
16 twenty-one days after being served with a copy, Petitioner may file written objections with the Court.
17 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
18 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §
19 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
20 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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22 IT IS SO ORDERED.

23 Dated: November 8, 2017

/s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE
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