

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BLUEFIELD DIVISION

RODNEY EUGENE SMITH,

Petitioner,

v.

CIVIL ACTION NO. 1:08-cv-01288

UNITED STATES OF AMERICA,

Respondent.

ORDER

Pending before the court are the following motions by the petitioner, Rodney Eugene Smith: (1) Void Judgment Requested Pursuant to the Writ of Error Coram Nobis [Docket 1]; Notice to the Court of Reasons Why Smith is Entitled to the Issuance of the Writ of Coram Nobis [Docket 4]; Summary Judgment Request Pursuant to Federal Rules of Civil Procedure 56 [Docket 5]; Addendum to Void Judgment Requested Pursuant to the Writ of Coram Nobis [Docket 16]; Summary Judgement Requested Pursuant to Federal Rules of Civil Procedure 56 [Docket 17]; and Second Request for Summary Judgment Requested Pursuant to Federal Rules of Civil Procedure 56 [Docket 18]. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition (“PF&R”), pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner’s motions because his claims are not cognizable.

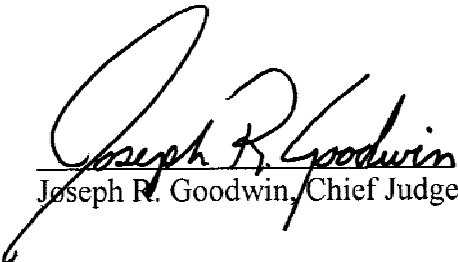
The petitioner timely filed written objections to the Magistrate Judge’s PF&R, in which he objected to the PF&R and reiterated his arguments on the merits. I therefore will review the PF&R

de novo. See *Lipscombe v. United States*, No. 2:09CV102, 2009 WL 1249285, at *1 (E.D. Va. April 29, 2009).

Having reviewed the petitioner's objections *de novo*, the court **FINDS** that they are without merit. As the Magistrate Judge concluded, the court **FINDS** that the petitioner is procedurally barred from asserting a coram nobis petition because he is on supervised release and therefore technically in custody. See *United States v. Pregent*, 190 F.3d 279, 283 (4th Cir. 1999). As such, he could have brought a § 2255 motion. See *id.*; see also *United States v. Mills*, 221 F.3d 1201, 1204 (11th Cir. 2000) (“[C]ourts may consider coram nobis petitions only where no other remedy is available and the petitioner presents sound reasons for failing to seek relief earlier.”). Moreover, I will not consider the petition on its merits because the petitioner may not renew his previously unsuccessful challenge to the district court's jurisdiction through a coram nobis petition. See *Durrani v. United States*, 294 F. Supp. 2d 204, 209-10 (D. Conn. 2003).

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **DENIES** the petitioner's pending motions. The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: July 23, 2009


Joseph R. Goodwin, Chief Judge