FILED
United States Court of Appeals
Tenth Circuit

October 1, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TEDDY CHIQUITO,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; NAVAJO POLICE,

Defendants - Appellees.

No. 21-2056
(D.C. Nos. 1:18-CV-00963-KWR-SCY & 1:03-CR-00982-MCA-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **MURPHY**, and **CARSON**, Circuit Judges.

Petitioner Teddy Chiquito filed a petition for a writ of *coram nobis* under 28 U.S.C. § 1651(a) to void his criminal conviction. The district court denied his petition, so Petitioner appealed.[1] Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] For substantially the reasons stated by the district court, we conclude this appeal is not taken in good faith and that Petitioner has failed to show the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. Therefore, we deny Petitioner's motion seeking leave to proceed *in*

A jury convicted Petitioner on three counts relating to assaults he committed within the Navajo Indian Reservation. Petitioner directly appealed his conviction; we affirmed. United States v. Chiquito, 175 F. App'x. 215 (10th Cir. 2006) (unpublished). Petitioner then moved to vacate, set aside, or correct his conviction under 28 U.S.C. § 2255. The district court, following a magistrate judge's recommendations, dismissed Petitioner's motion. Petitioner appealed the dismissal. We denied a certificate of appealability.

Fourteen years after trial, Petitioner filed this petition for a writ of *coram nobis* in the district court, raising four issues: (1) the district court did not try him as a law enforcement officer; (2) his counsel provided ineffective assistance; (3) his § 924(c) conviction lacked an underlying crime of violence; and (4) aspects of his trial violated the Navajo Bill of Rights and the Indian Civil Rights Act. The district court denied his petition. Petitioner appeals the district court's denial of his claims, except the crime of violence issue, which he does not challenge.

Writs of *coram nobis* originated in the common law courts of sixteenth-century England. *See* United States v. Denedo, 556 U.S. 904, 910 (2009). Although they serve some valid purposes in today's federal courts, they provide a limited remedy. Id. at 911. Courts properly issue writs of *coram nobis* to correct factual errors about the validity of the proceeding. United States v. Morgan, 346 U.S. 502, 507 (1954). But a court should grant a writ of *coram nobis* sparingly—only in "'extraordinary'

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forma pauperis on appeal. Rolland v. Primesource Staffing, L.L.C., 497 F.3d 1077, 1079 (10th Cir. 2007) (citing 28 U.S.C. § 1915(a)(3), (e)(2)).

cases presenting circumstances compelling its use 'to achieve justice.'" Denedo, 556 U.S. at 911 (quoting Morgan, 346 U.S. at 511). Indeed, "it is difficult to conceive of a situation in a federal criminal case today where a writ of *coram nobis* would be necessary or appropriate." Carlisle v. United States, 517 U.S. 416, 429 (1996) (citations and brackets omitted).

A court may not grant *coram nobis* relief where the petitioner previously raised or could have raised the claim on direct appeal or in a collateral attack. United States v. Miles, 923 F.3d 798, 804 (10th Cir. 2019). And if the petitioner raises a new claim in his writ of *coram nobis*, he must first establish that he diligently brought his claim to court. United States v. Tarango, 670 F. App'x. 981, 981 (10th Cir. 2016) (Gorsuch, J.) (unpublished) (holding the petitioner did not diligently pursue his claim because the facts underlying the claim occurred and were known to him for at least thirteen years).

The district court denied the petition in part because Petitioner raised three of the issues in prior actions. He raised the fact that the district court did not try him as a law enforcement officer on direct appeal and raised both the ineffective assistance of counsel and the crime of violence issues in his § 2255 motion. *See* Chiquito, 175 F. App'x. at 217; We agree with the district court. The fact that Petitioner previously raised these alleged errors—that the district court did not try him as a law enforcement officer and that his counsel provided ineffective assistance—bars *coram nobis* relief. Miles, 923 F.3d at 804.

This leaves only Petitioner's claim that aspects of his trial violated the Navajo Bill of Rights and the Indian Civil Rights Act. But we need not address that issue because even if he adequately alleged such a violation, those facts occurred, and Petitioner has known of them, since (at the latest) his trial in 2004. Yet he raised this argument for the first time in 2018. Petitioner fails to show he could not have raised this claim earlier or that he diligently pursued the claim. Under our body of precedent, that lack of diligence forecloses his claim. Miles, 923 F.3d at 804; Tarango, 670 F. App'x. at 981.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge