

Answer

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

DEC 22 2003

ATLANTA DIVISION

LUTHER ... Clerk
[Signature] Deputy Clerk

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:92-CR-182-04/05 RLV
GEORGE W. HIGH	:	
VIRGINIA C. HIGH	:	

RESPONSE TO PETITION FOR WRIT OF ERROR CORAM NOBIS

Comes now the United States of America, by William S. Duffey, Jr., United States Attorney, and H. Allen Moye, Assistant United States Attorney for the Northern District of Georgia, and files this RESPONSE TO PETITION FOR WRIT OF ERROR CORAM NOBIS, and respectfully shows the Court as follows:

1.

George W. and Virginia C. High have filed a pleading denominated Petition for Writ of Error Coram Nobis. This is the second such petition, and the same should be dismissed.

2.

Defendants filed a Petition for Writ of Coram Nobis on May 22, 2002. [Doc. No. 592]. On July 16, 2002, this Court denied the petition. [Doc. No. 595]. An appeal to the Eleventh Circuit was taken, and, on February 12, 2003, in an unpublished opinion, the

Court of Appeals affirmed this Court's denial of the petition for writ of coram nobis.

3.

The writ of error coram nobis was a common-law writ. In federal civil matters, the writ has been abolished, but it remains available in criminal cases. Jurisdiction derives not from any express grant of authority to the courts, but from the All-Writs Act, 28 U.S.C. § 1651. *United States v. Morgan*, 346 U.S. 502, 506 (1954); *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000); *Correa-Negron v. United States*, 473 F.2d 684 (5th Cir. 1973).

Two conditions must exist in order for the Court to derive jurisdiction to grant a writ of error coram nobis. First, there must be no statutory remedy which is both available and adequate, and the petitioner presents sound reasons for failing to seek relief earlier. *United States v. Mills, supra*, at 1204, citing *United States v. Morgan, supra*, at 512. As a general rule, the writ is unavailable to persons who are currently in custody, because a petition, pursuant to 28 U.S.C. § 2255 is both available and adequate where questions related to the validity of a conviction are in issue. *United States v. Garcia*, 181 F.3d 1274 (11th Cir. 1999); *United States v. Brown*, 117 F.3d 471, 474-475 (11th Cir. 1997). In this case, because the Highs are no longer in

custody, action pursuant to 28 U.S.C. § 2255 is not available to them. See Lowery v. United States, 956 F.2d 227 (11th Cir. 1992).

The second condition precedent to a federal court's jurisdiction to grant a writ of error is that the error must be "of the most fundamental character," United States v. Mills, supra, at 1203, citing United States v. Mayer, 235 U.S. 55, 69 (1914), where action is necessary to "achieve justice." United States v. Swindall, 107 F.3d 831, 834 (11th Cir. 1997). The type of claims which are not included in the category of "fundamental" errors, are claims of newly-discovered evidence. United States v. Mills, supra, at 1204.

4.

In this case, the High's have raised issues which have previously been presented to this Court and to the Court of appeals, but have reformulated the issues as being jurisdictional.

However, the real issues which are presented for litigation are the validity of the conviction of Virginia C. High on Counts 17, 18, 20, 23 and 24; the validity of the search of the residence of the High's; the validity of the mandatory special assessments imposed; and the validity of the forfeiture orders. All of those issues have been, or could have been litigated previously before this Court and/or the Court of Appeals.

CONCLUSION

The Petition for Writ of Error Coram Nobis should be dismissed.

Respectfully submitted,

WILLIAM S. DUFFEY, JR.
UNITED STATES ATTORNEY

H. Allen Moye

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ASSISTANT UNITED STATES ATTORNEY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C.

JUL 16 2002

UNITED STATES OF AMERICA

v.

GEORGE HIGH and VIRGINIA C.
HIGH,

Defendants.

CRIMINAL ACTION
NO. 1:92-CR-182-4,5

LUTHER D. THOMAS, C.
Deputy Clerk
EP Moore

O R D E R

George and Virginia High have filed a petition for writ of error coram nobis [Doc. No. 592] together with motions to disqualify the undersigned [Doc. Nos. 593 and 594] and a motion for appointment of counsel [Doc. No. 591]. Because the motions to disqualify do not state a legal basis requiring recusal, those motions are DENIED. The motion for appointment of counsel is also DENIED.

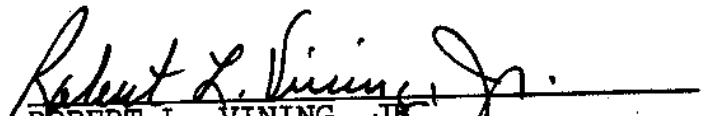
In their petition for a writ of error coram nobis, the Highs simply restate arguments that have been considered and rejected by both this court and the Court of Appeals for the Eleventh Circuit. "A court's jurisdiction over coram nobis petitions is limited to the review of errors 'of the most fundamental character.'" United States v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2001), quoting United States v. Mayer, 235 U.S. 55, 69, 35 S.Ct. 16, 19-20 (1914). Such errors do not include "prejudicial misconduct in the course of the trial, the misbehavior or partiality of jurors, and newly discovered evidence." Mayer, 235 U.S. at 69, 35 S.Ct. at 20. "In addition, courts may consider coram nobis petitions only where no

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other remedy is available and the petitioner presents sound reasons for failing to seek relief earlier." Mills, 221 F.3d at 1204.

Since the Highs have failed to meet the standard for granting a coram nobis petition, their petition is DENIED.

SO ORDERED, this 15TH day of July, 2002.



ROBERT L. VINING, JR.
Senior United States District Judge

United States Court of Appeals

For the Eleventh Circuit

FILED IN THE CLERK'S OFFICE
No. 02-14214

APR 23 2003

No. 02-14214	FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
District Court Docket No. 92-00182-CR-4-5-1	Feb 12, 2003 THOMAS K. KAHN CLERK

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

GEORGE HIGH,
VIRGINIA C. HIGH,

Defendants-Appellants.

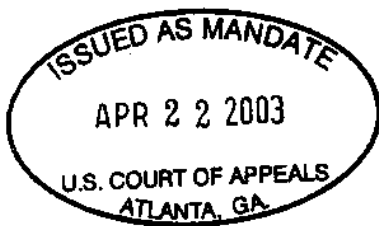
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A True Copy - Attested:
Clerk, U.S. Court of Appeals
Eleventh Circuit

By: *[Signature]*
Deputy Clerk
Atlanta, Georgia

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.



Entered: February 12, 2003
For the Court: Thomas K. Kahn, Clerk
By: Alvin, Keturah

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[DO NOT PUBLISH]

MAR 23 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-14214
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
February 12, 2003
THOMAS K. KAHN
CLERK

D.C. Docket No. 92-00182-CR-4-5-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE HIGH,
VIRGINIA C. HIGH,

Defendants-Appellants.

Appeal from the United States District Court for the
Northern District of Georgia

(February 12, 2003)

Before DUBINA, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Appellants Virginia and George High appeal from an order of the district court denying their petition for writ of error *coram nobis*, brought under 28 U.S.C.

§ 1651(a), together with a motion for appointment of counsel and a motion for disqualification of the district court.

We review a denial of *coram nobis* relief for an abuse of discretion. See *United States v. Peter*, 310 F.3d 709, 711 (11th Cir. 2002). “Federal courts have authority to issue a writ of error *coram nobis* under the All Writs Act, 28 U.S.C. § 1651(a).” *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000), *cert. denied*, 531 U.S. 1144 (2001). “A court’s jurisdiction over *coram nobis* petitions is limited to the review of errors of the most fundamental character.” *Id.* (citation and quotation omitted). The Higs have not demonstrated “errors of the most fundamental character.” We therefore conclude that the district court did not abuse its discretion in denying their petition.

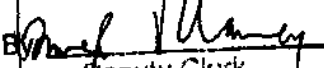
Next, the Higs argue that they are entitled to have counsel represent them on the writ of error *coram nobis*. “While defendants have a Sixth Amendment right to counsel at trial and on direct appeal, they do not have a corresponding right to counsel when collaterally attacking their convictions.” *Hill v. Jones*, 81 F.3d 1015, 1024 (11th Cir. 1996) (habeas case) (citation omitted). The Higs have not demonstrated that they are entitled to counsel. Consequently, the district court did not abuse its discretion in denying the Higs’ motion for appointment of counsel.

Lastly, the Higs argue that the district court judge should have disqualified himself because he was not impartial. We review the denial of a motion for disqualification pursuant to 28 U.S.C. § 455(a) for an abuse of discretion. *See Byrne v. Nezhat*, 261 F.3d 1075, 1099-100 (11th Cir. 2001). Under § 455(a), a district judge must “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” *See* 28 U.S.C. § 455(a). The Higs have not shown that the district court judge lacked impartiality in this case. Therefore § 455(a) did not require his recusal.

For the foregoing reasons, we affirm the order of the district court denying the Higs’ petition for writ of error *coram nobis* and the motions to appoint counsel and to recuse itself.

AFFIRMED.

A True Copy - Attested:
Clerk, U.S. Court of Appeals
Eleventh Circuit


Deputy Clerk
Atlanta, Georgia

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

GEORGE W. HIGH
VIRGINIA HIGH
PETITIONERS PRO SE
6715 JOJANNE LANE
LITHONIA, GEORGIA 30038

This 22nd day of December, 2003.



H. ALLEN MOYE
ASSISTANT UNITED STATES ATTORNEY