

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3707
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES P. McNALLY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-80-249"M"

- - - - -
June 22, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:¹

On 18 August 1982, James R. McNally was sentenced to three years imprisonment after pleading guilty to making false claims against the United States in violation of 18 U.S.C. § 287. He has since completed his sentence. On 24 June 1992, McNally filed his § 2255 petition alleging that he was denied the effective assistance of counsel, that his constitutional rights were violated, and that his conviction was predicated on evidence obtained pursuant to an unlawful arrest. In a separate

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

memorandum, McNally requested the district court vacate his sentence and "take off his F.B.I. record."

The magistrate judge recommended dismissing McNally's petition because: (1) McNally's prison term has been served and § 2255 relief is not available after the complained-of sentence has expired; (2) McNally did not demonstrate that he was suffering civil disabilities as a consequence of his criminal conviction that would entitle him to a writ of error coram nobis; and (3) he did not challenge the validity of his plea agreement and therefore waived other errors. The district court dismissed McNally's § 2255 motion with prejudice. McNally filed a timely notice of appeal.

On appeal, McNally failed to address the grounds on which the district court dismissed his claim. In his reply brief, however, McNally argues that he has been denied jobs, cannot be bonded, and cannot get a Small Business Administration loan as a result of his sentence. Section 2255 relief is available to "[a] prisoner in custody under sentence of a court established by Act of Congress." 28 U.S.C. § 2255. Relief under § 2255 is not available to a person filing a motion to vacate after the complained-of sentence has completely expired. Reed v. United States, 471 F.2d 721, 722 (5th Cir. 1973).

A writ of coram nobis, pursuant to the All Writs Act, 28 U.S.C. § 1651, is the proper avenue of relief for challenging a conviction for which the petitioner has already completed his sentence. United States v. Bruno, 903 F.2d 393, 395 (5th Cir. 1990). To be entitled to coram nobis relief, this Court has held

that a petitioner must establish that (1) he is suffering civil disabilities as a result of the challenged criminal conviction and (2) that the error is of sufficient magnitude to justify the extraordinary relief. United States v. Drobny, 955 F.2d 990, 996 (5th Cir. 1992) (quoting United States v. Marcello, 876 F.2d 1147, 1154 (5th Cir. 1989)); see also United States v. Morgan, 346 U.S. 502, 512-13, 74 S.Ct. 247, 98 L.Ed. 248 (1954).

McNally did not allege any civil disability in his petition before the district court. The factual allegations in his reply brief were raised for the first time on appeal; therefore, they are not properly before this Court. See Varnado v. Collins, 920 F.2d 320, 321 (5th Cir. 1991). McNally has not shown that he is entitled to the extraordinary relief of a writ of error coram nobis.

McNally did not challenge the validity of his guilty plea; nor did he enter a conditional plea. FED. R. CRIM. P. 11(a)(2). He has thus waived all of the claims he now raises on appeal. United States v. Brice, 565 F.2d 336, 337 (5th Cir. 1977). Specifically, he has waived his right to contest the alleged statute of limitations,² Speedy Trial Act,³ and search and seizure⁴ violations.

² See United States v. Parrino, 212 F.2d 919, 922 (2d. Cir), cert. denied, 348 U.S. 840 (1954).

³ See United States v. Broussard, 645 F.2d 504, 505 (5th Cir. 1981), disapproved of on unrelated grounds, United States v. Broce, 488 U.S. 563 (1989).

⁴ See United States v. Bell, 457 F.2d 1231, 1234 n.1 (5th Cir. 1972).

No. 92-3707

-4-

The decision of the district court is AFFIRMED.