IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50105
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILSON DAVID WATSON, JR.,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Texas
(MO-93-CA-196)

(August 26, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Wilson David Watson, Jr. appeals the district court's dismissal of his § 2255 motion to vacate, set aside, or modify his sentence. We affirm the district court.

I

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*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Watson was indicted on nine counts of making false statements on a loan application for the purpose of influencing a federally insured bank, in violation of 18 U.S.C. § 1014, and one count of selling assets pledged to the Small Business Administration ("SBA"), in violation of 15 U.S.C. § 645(c). The grand jury thereafter returned a two-count superseding indictment, charging him with one count of making false statements on the loan application and one count of selling assets pledged to the SBA. The superseding indictment consolidated all of the alleged false statements into one substantive offense instead of charging each as a separate crime.

Pursuant to a written plea agreement, Watson pleaded guilty to count one, making false statements on a loan application, and the government dismissed count two. On January 11, 1988, Watson was sentenced to two years in prison, but the district court suspended that sentence and ordered him to serve five years of supervised probation. The court also ordered him to reside in a halfway house for six months and to pay $182,708.14 in restitution.

Watson filed a motion to set aside the judgment based on newly discovered evidence. Then, he filed a 28 U.S.C. § 2255 motion, alleging numerous grounds for relief. After receiving the government's response, the district court denied both motions. His appeal to this court was dismissed for failure to prosecute.

On August 31, 1993, Watson filed a second § 2255 motion to vacate, set aside, or modify his sentence and moved for production

of the grand jury concurrence forms to verify that he was in fact indicted. Without requiring a response from the government, the district court denied both motions. This timely appeal followed.

A

Watson's probation expired on January 11, 1993, and he is no longer "in custody" for purposes of § 2255. See United States v. Drobny, 955 F.2d 990, 995-96 (5th Cir. 1992). Nevertheless, the court may construe Watson's motion as a petition for a writ of error coram nobis and address his claims. See United States v. Bruno, 903 F.2d 393, 395 (5th Cir. 1990). Coram nobis relief is available upon proof that the petitioner is suffering civil liabilities as a result of the challenged criminal conviction, and that the error is of sufficient magnitude to justify the extraordinary relief. Drobny, 955 F.2d at 996. This standard is more demanding than the standard for relief under § 2255, and the writ "should issue to correct only errors which result in a complete miscarriage of justice." United States v. Castro, 1994 WL 326763 (5th Cir. July 11, 1994). It is clear that none of Watson's claims meet this test. Indeed, each claim lacks merit of any degree.

B

Watson argues first that Congress did not intend § 1014 to apply to all loans by institutions insured by the FDIC. Instead, he maintains that Congress intended the law to apply only to home loans and farm loans. Because his loan was neither of these, he

concludes that § 1014 does not criminalize his actions. The plain language of the statute does not limit the law's coverage to home loans or farm loans. By its terms, the statute covers any loan made by an institution insured by the FDIC. Furthermore, contrary to the argument that Watson makes, we have stated that § 1014 "proscribes not only fraudulent statements given in connection with farm and construction loan[] but all undertakings which might subject the FDIC insured bank to risk of loss." United States v. Payne, 602 F.2d 1215, 1219 (5th Cir. 1979)(citations and internal quotations omitted).

C

Watson's next contention is that § 1014 violates his First Amendment right to free speech by making it a crime to lie on a loan application. This court rejected a similar frivolous argument to 18 U.S.C. § 1001, which prohibits knowingly making false statements to government agencies, in United States v. Daly, 756 F.2d 1076, 1081-82 (5th Cir. 1985).

D

Watson next maintains that "his superseding indictment is an illegal procedure, in that it violates both the Fifth and Sixth Amendments," because there is no specific statutory authority for obtaining a superseding indictment. Watson's argument is meritless.

A superseding indictment is a tool that prosecutors use to amend an indictment, United States v. Schmick, 904 F.2d 936, 940

(5th Cir. 1990), and it may be returned "any time before a trial on the merits," United States v. Strickland, 591 F.2d 1112, 1116 n.1 (5th Cir. 1979), absent prejudice to the defendant. United States v. Grossman, 843 F.2d 78, 83 (2d Cir. 1988). The superseding indictment in this case simply consolidated all of the false statements alleged in the initial indictment as separate violations of § 1014 into one charge. Watson makes no showing that he was prejudiced by the return of the superseding indictment. Further, the record reflects that the superseding indictment was presented to the grand jury and signed by the same foreperson who signed the original indictment.

E

Finally, Watson argues that the district court erred by denying his motion for production of the grand jury concurrence forms or an affidavit from the court indicating that the forms were valid. Rule 6(c) of the Federal Rules of Criminal Procedure require the foreperson of the grand jury to keep a record of the number of jurors concurring in every indictment and to file the record with the clerk of court. The Rule prohibits release of this record "except on order of the court." Watson does not contend that a insufficient number of jurors concurred on the indictment, but instead wants to review the form to "validate the indictment."

As the government points out, Watson has made no showing of "particularized need" for this record. See United States v. Miramontez, 995 F.2d 56, 60 (5th Cir. 1993). Thus, the district

court did not abuse its discretion in denying the motion. Id. Furthermore, Watson's guilty plea, which is an admission of all of the elements of the offense charged in the indictment, see United States v. Broce, 488 U.S. 563, 570 (1989), arguably renders any defect in the grand jury proceeding harmless. See United States v. Mechanik, 475 U.S. 66, 70 (1986)(jury's verdict of guilty rendered harmless violation of Rule 6(d), which allows only one witness at a time to appear before a grand jury).

III

For the foregoing reasons, the judgment is

A F F I R M E D.