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COMMON LAW: WRIT OF *CORAM NOBIS*

Summary

The Court determined issues: (1) whether the common law writ of *coram nobis* may be used in Nevada; and (2) whether a petitioner may use the writ of *coram nobis* to seek relief of judgment from his guilty plea to a felony when his counsel failed to warn him of the immigration implications of the plea.

Disposition

The common law writ of *coram nobis* is available in Nevada. However, the writ of *coram nobis* may only be used by a person who is no longer in custody on the judgment of conviction being challenged. Furthermore, the writ of *coram nobis* may be used only to challenge errors of fact outside the record that could not have been raised earlier and that affect the validity and regularity of the decision itself and would have precluded the judgment from being rendered. Therefore, because petitioner's claim involved an error of law, his writ of *coram nobis* was rejected.

Factual and Procedural History

On April 12, 1996, Petitioner, Trujillo, a citizen of Venezuela, was convicted of attempted burglary and sentenced to prison. The sentence was later suspended and a period of probation not to exceed 2 years was imposed. He honorably discharged probation on December 31, 1997. After sentencing, a federal judge ordered him deported to Venezuela. Trujillo successfully challenged the deportation order and was issued a green card and given permanent-resident status. He took no further action regarding citizenship until 2010. Learning in 2010 that he could not become a United States citizen because of his 1996 conviction, Trujillo filed a petition for a writ of *coram nobis* attacking the validity of his conviction. Specifically, Trujillo claimed that his counsel failed to notify him of the immigration implications of his plea.

The district court denied relief because Trujillo had not demonstrated that counsel's failure to inform him of the immigration consequences prejudiced him as he was an undocumented, illegal immigrant. Trujillo appealed arguing that the writ of *coram nobis* was his only available remedy to challenge the 1996 conviction.

Discussion

The writ of coram nobis exists in the state of Nevada

NRS 1.030 provides that the "common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State."² The writ of *coram nobis* was devised in 16th century England as a means of reviewing errors of fact outside the record

¹ By Jeffrey Lavigne.

² NEV. REV. STAT. § 1.030 (2013).

that affected the validity and regularity of the decision itself and would have precluded the judgment from being rendered had they been known.³ Given the writ's historical roots in English common law, the writ exists in Nevada so long as it is not in conflict with the laws of the United States or Nevada. The Court held that no such conflicts exist. Specifically, the United States Constitution makes no mention of the writ and presents no obstacles to recognizing it. Moreover, the Nevada Constitution grants the Court the power to issue all writs "proper and necessary to the complete exercise of their jurisdiction."⁴ Finally, though the state argued that the writ was abolished by the "exclusive remedy" language of NRS 34.724(2)(b),⁵ the Court determined Nevada's post-conviction habeas corpus scheme did not apply to a person who is not in custody. Accordingly, the common law writ of *coram nobis* exists in Nevada.

The writ of coram nobis is limited in scope

Given that the Court's recognition of the writ of *coram nobis* relied on its existence in English common law, the Court decided that that Nevada's application of the writ would have the same scope as its common law counterpart. Consistent with the common law, the writ of *coram nobis* may be used to address errors of fact outside the record that affect the validity and regularity of the decision itself and would have precluded the judgment from being rendered. Specifically, the writ is limited to errors involving facts that were not known to the court, were not withheld by the defendant, and would have prevented entry of the judgment.

Application to Trujillo

The court determined that, because he was no longer in custody on the judgment being challenged, the remedy of the writ of *coram nobis* was available to Trujillo. However, Trujillo's claim that he had ineffective legal counsel was a matter of law and not a matter of fact, and thus, the writ of *coram nobis* could not be used in his case.

Conclusion

The writ of *coram nobis* exists in the state of Nevada, though its scope is limited to errors involving facts that were not known to the court, were not withheld by the defendant, and would have prevented entry of the judgment. Therefore, the writ of *coram nobis* was not available to the petitioner when his claim involved an error of law.

³ Judge Stanley H. Fuld, *The Writ of Error Coram Nobis*, 117 N.Y.L.J. Nos. 130-132, at 2212, 2230, 2248 (1947).

⁴ NEV. CONST. art. 6, § 6.

⁵ NEV. REV. STAT. § 34.724(2)(b) (2013).