

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
GEORGIA, MACON DIVISION

Gabriel Nunez v. United States

Nunez · No. 5:25-cv-380-TES-CHW · Decided December 16, 2025

SUMMARY

The United States District Court for the Middle District of Georgia dismissed Gabriel Nunez’s petition seeking coram nobis relief from his Georgia state convictions. The court held that federal courts lack jurisdiction to use a writ of error coram nobis to attack a state criminal judgment and noted that any claims concerning federal counsel must be raised in Nunez’s pending 28 U.S.C. § 2255 proceeding.

CASE DETAILS

COURT	United States District Court for the Middle District of Georgia, Macon Division
JURISDICTION	United States District Court for the Middle District of Georgia, Macon Division
DECIDED	December 16, 2025
DOCKET	5:25-cv-380-TES-CHW
DISPOSITION	dismissed
PROCEDURAL POSTURE	Nunez filed a petition seeking relief from his federal sentence and expungement by writ of error coram nobis, primarily attacking his state-court convictions and guilty pleas. The court dismissed the action for lack of subject-matter jurisdiction.
STANDARD OF REVIEW	Subject-matter jurisdiction was considered de novo because the court dismissed the action for lack of jurisdiction.
PRECEDENTIAL VALUE	Unknown
PARTIES	Gabriel Nunez v. United States

TOPICS

- post-conviction relief
- subject matter jurisdiction
- state post-conviction relief
- ineffective assistance

PRACTICE AREAS

- federal post-conviction relief
- subject-matter jurisdiction
- coram nobis

QUESTIONS PRESENTED

1. Whether a federal court may use a writ of error coram nobis under the All Writs Act to attack state criminal convictions.
2. Whether the court had subject-matter jurisdiction over Nunez's challenge to his state convictions.

HOLDINGS

1. A federal court may not issue a writ of error coram nobis as a means of attacking a state criminal judgment.

KEY QUOTATIONS

"Federal courts have authority to issue a writ of error coram nobis under the All Writs Act, 28 U.S.C. § 1651(a)."

"The All Writs Act, however, is "not a source of subject matter jurisdiction.""

"coram nobis is not available in federal court as a means of attack on a state criminal judgment."

FACTUAL BACKGROUND

Gabriel Nunez, a federal prisoner, received an 84-month federal sentence to run consecutively to sentences imposed in four Georgia state criminal cases. He contended that state-court counsel should have delayed or otherwise handled his state guilty pleas differently because the pleas affected his federal criminal-history calculation and resulted in a longer federal sentence. He sought to vacate the state convictions through a writ of error coram nobis.

PROCEDURAL HISTORY

Nunez was sentenced by the Middle District of Georgia to 84 months' imprisonment, consecutive to sentences imposed in Georgia state court. He filed this action after asserting that the timing of his state guilty pleas increased his federal criminal-history calculation and federal sentence. After the court sought clarification, Nunez confirmed that he was attacking his state convictions through coram nobis proceedings; the court dismissed the action for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- United States v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000)
- United States v. Denedo, 556 U.S. 904, 913 (2009)
- Theriault v. Mississippi, 390 F.2d 657, 657 (5th Cir. 1968) (per curiam)
- Llovera v. Florida, 576 F. App'x 894, 896-97 (11th Cir. 2014) (per curiam)
- Cavett v. Ellis, 578 F.2d 567, 569 n.4 (5th Cir. 1978)

- Jenkins v. Att'y Gen., No. 23-12794, 2024 WL 2860045, at *3 (11th Cir. June 6, 2024)
- Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)
- United States v. Nunez, 5:22-cr-18-CAR-CHW-1 (M.D. Ga. June 18, 2024), Dkt. No. 62

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
 MACON DIVISION GABRIEL NUNEZ,: Petitioner,,: NO. 5:25-cv-380-TES-CHW VS.:
 UNITED STATES,: Respondent.: _____: ORDER Petitioner
 Gabriel Nunez, a federal prisoner in Gilmer Federal Correctional Institution in Glennville, West
 Virginia, filed a “Petition for Relief from Sentence—Expungement by Error Corum Nobis—All
 Writs Act.” ECF No. 1.

Because Nunez has not paid the filing fee, the Court assumes he wishes to proceed in forma
 pauperis and will allow him to do so for purposes of this dismissal alone. This action is
 DISMISSED for lack of jurisdiction.

The United States District Court for the Middle District of Georgia sentenced Nunez to 84 months
 imprisonment to be served consecutively to the sentences imposed in the Superior Court of Henry
 County, docket numbers 2023-SU-CR-219, 2023-SU-CR-234, 2023-SU-CR- 331, and 2023-SU-
 CR-332.1 Id. at 1; See Judgment, United States v. Nunez, 5:22-cr-18- CAR-CHW-1 (M.D.

Ga. June 18, 2024), Dkt. No. 62. In the current petition, Nunez’s basic argument is that counsel in
 his state court criminal actions should not have advised or allowed him to enter guilty pleas in
 state court before he entered his guilty plea in this Court. ECF 1 It is unclear what sentences were
 imposed in the Superior Court of Henry County. No. 1 at 2. According to Nunez, had he not
 pleaded guilty and been sentenced in state court prior to entering his guilty plea in federal court,
 his criminal history points in this Court would have been zero.

Id. He, therefore, would have received a sentence of 54 months imprisonment, versus the 84
 months he is currently serving in federal prison.2 Id. He seeks to have his state convictions3
 vacated. Id. at 2, 3, 5. “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). The All Writs Act, however, is “not a source of subject matter jurisdiction.” United States v.
 Denedo, 556 U.S. 904, 913 (2009) (citation omitted). “[C]oram nobis is not available in federal
 court as a means of attack on a state criminal judgment.” Theriault v. Mississippi, 390 F.2d 657,
 657 (5th Cir. 1968) (per curiam); Llovera v. Florida, 576 F. App’x 894, 896-97 (11th Cir.

2014) (per curiam) (first citing Theriault, 390 F.2d at 657; and then citing Cavett v. Ellis, 578 F.2d
 567, 569 n.4 (5th Cir. 1978))4; Jenkins v. Att’y Gen., No. 23-12794, 2024 WL 2860045, at *3
 (11th Cir. June 6, 2024) (stating that district court did not have jurisdiction to 2 Specifically,

Nunez argues that his state court counsel was ineffective for (1) failing to “minimize his sentence by seeking a continuance until after [f]ederal [s]entencing...”; (2) failing to “investigate the effects [of his guilty plea in the Superior Court of Henry County] on his [f]ederal [s]entence... ”; (3) “misadvi[sing] [him] at sentencing...”; (4) “fail[ing] to object”; (5) “fail[ing] to communicate with [f]ederal [c]ounsel”; (6) “fail[ing] to seek ‘joinder’ to [f]ederal indictment”; and (7) “[f]ail[ing] to p[ur]sue mitigating factors.” ECF No. 1 at 2, 3, 5.

3 In response to the Court’s inquiry questioning the exact nature of Nunez’s action, Nunez clarified that he is attacking his state court convictions in “Coram Nobis proceedings.” ECF No. 4 at 1. Nunez states he is not currently in custody pursuant to the state court’s judgment and he cannot, therefore, file a 28 U.S.C. § 2254 petition. *Id.* As the Court previously explained to Nunez (ECF No. 3 at 3-4), to any extent that he argues counsel in his federal criminal proceedings (as opposed to state criminal proceedings) provided ineffective assistance, he must make raise those arguments or claims in his pending 28 U.S.C. § 2255 motion to vacate.

See Motion to Vacate under 28 U.S.C. § 2255, *United States v. Nunez*, 5:22-cr-18-CAR- CHW-1 (M.D. Ga. Feb. 10, 2025), ECF No. 76. 4 The decisions of the former Fifth Circuit handed down before October 1, 1981 are binding on this Court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc). consider petitioner’s coram nobis petition because he was attacking his state court conviction).

Because Nunez may not use a writ of error coram nobis to attack his state court convictions, it is ORDERED that Petitioner’s action is DISMISSED for lack of jurisdiction. SO ORDERED this 16th day of December, 2025. S/ Tilman E. Self, III TILMAN E. SELF, III UNITED STATES DISTRICT JUDGE