

**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

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