

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<i>v.</i>	)	<b>Docket No. 98-333-P-C</b>
	)	<b>(Criminal No. 87-99-P-C)</b>
<b>DALE SCOTT HUNNEWELL,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED SUMMARY DISMISSAL OF  
DEFENDANT’S MOTION FOR WRIT OF CORAM NOBIS**

The defendant, Dale Scott Hunnewell, appearing *pro se*, has filed a motion for a writ of coram nobis, asserting that he is entitled to resentencing on his conviction of possession with intent to distribute cocaine, a violation of 21 U.S.C. § 841, due to the fact that an underlying state court conviction was used to enhance his sentence in violation of federal statutory law, apparently 21 U.S.C. § 851. This is the same issue raised by the defendant in a pleading filed with this court in August 1997, which was ordered stricken and returned to the defendant as an attempt to file a second motion under 28 U.S.C. § 2255 to vacate, set aside, or correct this sentence without an order from the United States Court of Appeals for the First Circuit authorizing this court to consider the motion, a prerequisite for the filing of second or successive motions seeking the relief provided by section 2255, pursuant to section 105(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, § 105, 110 Stat. 1220 (Apr. 24, 1996). The instant motion is simply an attempt to cast the same claim in a different guise, and it is subject to summary dismissal for the same reasons. Rule 4(b), Rules Governing Section 2255 Proceedings for the United States

District Courts.

A writ of coram nobis is available under the All Writs Act, 28 U.S.C. § 1651, to provide extraordinary relief. “[T]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling.” *Carlisle v. United States*, 116 S.Ct. 1460, 1467 (1996) (quoting *Pennsylvania Bureau of Correction v. United States Marshals Serv.*, 474 U.S. 34, 43 (1985)). Moreover, the writ of coram nobis

is an unusual legal animal that courts will use to set aside a criminal judgment of conviction only under circumstances compelling such action to achieve justice. Those circumstances include an explanation of why a coram nobis petitioner did not earlier seek relief from the judgment; a showing that the petitioner continues to suffer significant collateral consequences from the judgment; and a demonstration that an error of the most fundamental character, relevant to the [judgment], occurred.

*Hager v. United States*, 993 F.2d 4, 5(1st Cir. 1993) (internal quotation marks and citations omitted).

AEDPA specifically addresses the particular issue at hand by imposing a “modified res judicata rule” designed to curb what Congress perceived to be abuses of the post-conviction process. *Felker v. Turpin*, 116 S.Ct. 2333, 2340 (1996). While there is recent authority suggesting that the strictures imposed by the Act do not foreclose relief outside the traditional section 2255 pathway in circumstances where a federal inmate is innocent or is imprisoned for conduct the law has come to regard as not criminal, *see Triestman v. United States*, 124 F.3d 361, 380 & n.24 (2d Cir. 1997); *In re Dorsainvil*, 119 F.3d 245, 248 (3d Cir. 1997); *United States v. Ransom*, 985 F.Supp. 1017, 1019 (D. Kan. 1997), the instant motion does not allege such a situation. Rather, the defendant now simply seeks to present an additional argument for relief that was not presented in his first section 2255 motion. If a federal prisoner could invoke the All Writs Act in such circumstances, “then

Congress would have accomplished nothing in all its attempts — through statutes like [AEDPA] — to place limits on federal collateral review.” *Triestman*, 124 F.3d at 376.

The defendant has made no attempt to show why he could not have earlier sought the relief requested in the instant motion. The argument that he makes here was available if he had filed an appeal of his sentence in 1987 and when he filed his first section 2255 motion. In addition, the defendant presents a legal argument rather than an alleged error of fact, which is the historical justification for the writ of coram nobis recognized by the First Circuit. *United States v. Michaud*, 925 F.2d 37, 39 (1st Cir. 1991).

The defendant could not be entitled to coram nobis relief on the showing made. *See United States v. LaPorta*, \_\_\_ F.Supp.2d \_\_\_, 1998 WL 661317 at \*3-\*4 (W.D.N.Y. Aug. 6, 1998). Accordingly, I recommend that his motion be summarily dismissed.

### **NOTICE**

***A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.***

***Dated this 22nd day of October, 1998.***

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***David M. Cohen  
United States Magistrate Judge***