

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 92-18-P-H
)	(Civil No. 98-31-P-H)
PEDRO ARISMENDY OLIVIER-DIAZ,)	
)	
Defendant)	

RECOMMENDED DECISION ON
DEFENDANT’S MOTION FOR WRIT OF CORAM NOBIS

Defendant Pedro Arismendy Olivier-Diaz moves pursuant to the All Writs Act, 28 U.S.C. § 1651, for a writ of *coram nobis* — suggesting that such extraordinary relief is appropriate because he was deprived of the effective assistance of counsel during the underlying criminal proceedings. The defendant has previously filed a motion for post-conviction relief under 28 U.S.C. § 2255 (Docket No. 24), which was denied by the court (Docket No. 29). Ineffective assistance of counsel was among the grounds raised by the defendant in his section 2255 motion. *See* Recommended Decision on Defendant’s Motion for Collateral Relief Under 28 U.S.C. § 2255 (Docket No. 27) at 5-8.

As the defendant notes, section 2255, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“Antiterrorism Act”), places strict limits on second or successive petitions for relief thereunder and requires such petitions to be submitted in the first instance to the Court of Appeals.¹ The defendant concedes that such a route would be fruitless for him because his asserted

¹ The Court of Appeals must certify that a second or successive petition under section 2255 involves

(continued...)

grounds for relief do not fall within the limits for such petitions.

The extraordinary relief now requested by the defendant is inappropriate in the circumstances. As the Supreme Court has noted,

the 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.’” *Hager v. United States*, 993 F.2d 4, 5 (1st Cir. 1993) (quoting *United States v. Morgan*, 346 U.S. 502, 511 (1954)).

The Antiterrorism Act 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) (holding that Antiterrorism Act not an unconstitutional “suspension” of habeas corpus). While there is recent authority suggesting that the new strictures imposed by the Antiterrorism 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,

¹(...continued)

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255, as amended by Pub. L. 104-132, §§ 105-06, 110 Stat. 1220-21 (Apr. 24, 1996).

380 & n.24 (2d Cir. 1997); *In re Dorsainvil*, 119 F.3d 245, 248 (3d Cir. 1997); *United States v. Ransom*, 1997 WL 749512 at *3 (D.Kan. Oct. 20, 1997), the instant motion does not allege such a situation. Rather, the defendant now simply seeks to present additional premises for the ineffective-assistance claim he brought in his unsuccessful bid for section 2255 relief. 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 the [Antiterrorism Act] — to place limits on federal collateral review.” *Triestman*, 124 F.3d at 376 (construing language in section 2255 authorizing writ of habeas corpus in certain circumstances).

For the foregoing reasons, I recommend that the defendant’s motion for a writ of *coram nobis* be **DENIED**.

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 13th day of February, 1998.

David M. Cohen
United States Magistrate Judge