

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1951

In re: KENYA ANTWAIN EVANS

Petitioner.

On Petition for a Writ of Error Coram Nobis
(No. 1:99-cr-00251-NCT-1)

Submitted: September 11, 2012

Decided: September 13, 2012

Before NIEMEYER, SHEDD, and AGEE, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Kenya Antwain Evans, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenya Antwain Evans petitions this court for a writ of error coram nobis pursuant to 28 U.S.C. § 1651(a) (2006). In his petition, Evans challenges the constitutionality of his convictions and sentence for carjacking and possession and brandishing of a firearm in relation to a crime of violence, based on Carachuri Rosendo v. Holder, 130 S. Ct. 2589 (2010), and United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc).

The writ of error coram nobis is an extraordinary remedy which may be used to correct fundamental error in a criminal conviction “presenting circumstances compelling its use to achieve justice.” United States v. Denedo, 556 U.S. 904, 911 (2009) (internal quotation marks omitted); see United States v. Akinsade, 686 F.3d 248, 252 (4th Cir. 2012). Remedy under the writ is limited to those petitioners who are no longer in custody pursuant to their convictions. Carlisle v. United States, 517 U.S. at 416, 429 (1996). Moreover, the remedy will not lie when an alternative remedy, such as habeas corpus, is available. Denedo, 556 U.S. at 911; Akinsade, 686 F.3d at 252.

Evans is currently in custody pursuant to his convictions, and he previously challenged his convictions and sentence in a motion filed pursuant to 28 U.S.C.A. § 2255 (West Supp. 2012). While Evans’s present challenge was not previously

raised in his § 2255 motion, he has not sought authorization to file a successive § 2255 motion. Thus, we conclude that Evans fails to establish entitlement to the extraordinary remedy of the writ.

Accordingly, we deny Evans's petition for a writ of error coram nobis. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED