

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted June 23, 2023*

Decided June 26, 2023

BeforeDIANE P. WOOD, *Circuit Judge*DAVID F. HAMILTON, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2202

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*ANDREW J. JOHNSTON,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 1:08-cr-01065

Matthew F. Kennelly,
*Judge.***ORDER**

Andrew Johnston, a federal prisoner serving a sentence imposed in 2019, filed two motions contesting his earlier convictions from 2009 and their accompanying order of restitution. The district court denied both motions. Because he is both procedurally and substantively ineligible for collateral relief from the 2009 convictions, we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Johnston has been in a cycle of prison and supervised release since 2009, when he pleaded guilty to three counts of bank robbery, 18 U.S.C. § 2113(a). For the 2009 convictions, he was sentenced to 63 months' imprisonment, with three years' supervised release, and was ordered to pay \$32,480 in restitution (payment was also a condition of release). Johnston first entered supervised release from prison in 2013, but the district court ended his supervised release early when he was arrested for another bank robbery that same year. That arrest resulted in a 2015 conviction. Two years later, Johnston was again released on supervision and again arrested for bank robbery, resulting in a 2019 conviction, for which he is currently serving a prison sentence.

In 2022, Johnston filed two motions related to his 2009 convictions. First, he asked the district court to order the Bureau of Prisons to stop collecting the restitution. He argued that because the district court had terminated his supervised release, he no longer was responsible for the restitution. Second, seeking a writ of coram nobis, he moved to vacate his 2009 convictions based on what he asserted were two fundamental errors: The banks were not insured by the Federal Deposit Insurance Corporation (FDIC) against robberies and the indictment did not specify the mens rea, which he asserted had to be more than reckless conduct.

The district court denied both motions. First, it explained that the obligation to pay restitution does not end until either 20 years after the entry of judgment or 20 years after release from prison, 18 U.S.C. § 3613(b), and that neither of those dates had passed. Turning to the petition for a writ of coram nobis, it explained that Johnston's plea agreement had established that the deposits were FDIC-insured and that he had acted knowingly; therefore, no fundamental error undermined the court's confidence of Johnston's guilt. Johnston appeals both decisions.

We start with his restitution order. Johnston first argues that, because his conditions of supervised release included enforcement of restitution, the end of his supervised release ended any restitution debt. But his restitution obligation is "in addition to" any other part of his sentence, and it thus reflects an independent, extant portion of that sentence. 18 U.S.C. § 3551(b). Johnston replies that the restitution order is invalid for a different reason: The order delegated, improperly in his view, collection authority to the Bureau of Prisons. In *United States v. Sawyer*, 521 F.3d 792, 796 (7th Cir. 2008), we rejected a variation on that theory; as a result, Johnston asks us to overrule *Sawyer*. But his argument is undeveloped, and he raised it for the first time in his reply brief; thus, he has waived it. See *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021).

We next turn to Johnston's request for a writ of coram nobis to challenge his 2009 convictions. Coram nobis is a "rare form of collateral attack," available to defendants who are out of custody, allege a fundamental error that would render the conviction invalid, provide a sound reason for failure to seek relief earlier, and show continued harm from the conviction. *United States v. Delhorno*, 915 F.3d 449, 450–51 (7th Cir. 2019).

Johnston contends that his convictions are invalid because two elements of his § 2113 offenses—FDIC insurance and intent—were not established. His argument about FDIC insurance fails for several reasons. First, Johnston argues that the banks were not insured against bank robbery, but § 2113 requires only that FDIC insurance cover the institution's deposits, not that the insurance cover robberies. *See* 18 U.S.C. § 2113(f). Second, Johnston admitted in his plea agreement that the bank's deposits were FDIC-insured. Third, Johnston offers no reason why he could not have raised this issue earlier. Thus, he could not obtain coram nobis relief even if his claim of a fundamental error had any merit. *See Delhorno*, 915 F.3d at 450–51.

Johnston's contention that the indictment's failure to allege intent renders his conviction invalid is likewise unavailing. He relies on *Borden v. United States*, 141 S. Ct. 1817, 1834 (2021). *Borden* holds that reckless conduct is not a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e). Johnston maintains that § 2113(a) should similarly exclude reckless conduct and now argues that he only recklessly robbed the banks. But among other problems with seeking coram nobis relief under this theory, *Borden* is irrelevant to § 2113(a). The phrase "violent felony" is not in the bank-robbery statute, let alone defined the same as in § 924(e). In any event, the required state of mind is reflected in the indictment through its citation to § 2113(a), which the Supreme Court said, long before Johnston pleaded guilty, requires only knowledge that he robbed a bank. *See Carter v. United States*, 530 U.S. 255, 267–68 (2000). And Johnston, through his plea agreement, stipulated that he violated § 2113(a). Thus, the absence of additional wording in the indictment was not a fundamental error.

We have considered Johnston's other arguments, and none has merit.

AFFIRMED