Filed 2/19/13 In re Joseph D. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOSEPH D., a Person Coming Under the Juvenile Court Law.	B241751 (Los Angeles County Super. Ct. No. J006635)
THE PEOPLE, Plaintiff and Respondent, v. JOSEPH D., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Philip K. Mautino, Judge. Appeal dismissed.

Joseph D., in pro. per.; and Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Joseph D. appeals from the trial court's denial of his petition for writ of error *coram nobis* and nonstatutory motion to vacate the judgment. Because the petition/motion failed to state a prima facie case for relief, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 1981 Joseph, then 16 years old, admitted the allegations in a juvenile delinquency petition that he had committed assault with intent to commit rape (Pen. Code, § 220),[1] attempted sodomy in concert (§§ 286, subd. (d), 664) and false imprisonment (§ 236). He was declared a ward of the court and committed to the California Youth Authority (CYA, now the Department of Corrections and Rehabilitation, Division of Juvenile Facilities). Joseph was discharged in 1987. Because he was found to have committed sex offenses specified in section 290, Joseph is subject to a lifetime duty to register as a sex offender. (§§ 290, 290.008.)

On April 9, 2012 Joseph filed a petition for writ of error *coram nobis* and moved to vacate the judgment, alleging the juvenile court and his defense counsel had failed to advise him at the time of his admissions of his constitutional rights or the consequences of admitting the offenses alleged, including the requirement he register as a sex offender. Joseph's supporting declaration asserted he "was young and inexperienced in 1981 and only pled guilty because [his] attorney told [him] to [do so]" and stated he was not told he would have to register as a sex offender until he attended a parole violation hearing in 2006. Joseph further declared he had only signed the section 290 registration document acknowledgment following the 2006 hearing "because [he] was compelled to sign it." Finally, Joseph asserted, "I would not have entered a plea of guilty if I had been advised of my constitutional rights or of the consequences of that plea."

Joseph's supporting memorandum contended a diligent search of juvenile court records failed to locate either a transcript or minute order showing he was advised of his rights or the nature and consequences of his admissions in the juvenile proceedings. Accordingly, Joseph maintained it must be presumed from both the "silent record" and

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[1] Statutory references are to the Penal Code.

his declaration that he was never so advised prior to admitting the offenses and therefore should be permitted to withdraw his admissions.

Joseph was represented by new counsel at the April 9, 2012 hearing on the petition/motion. After reviewing submissions from both sides, the trial granted defense counsel a continuance to make additional efforts to find the court file or a copy of the transcript of the disposition hearing. At the subsequent hearing on May 12, 2012 defense counsel informed the court neither the court file nor a transcript could be found. After hearing argument the court denied the petition/motion, explaining that, due to the lack of a complete record, Joseph had failed to carry his burden to establish a prima facie case for relief.

DISCUSSION

We appointed counsel to represent Joseph on appeal. On November 16, 2012 counsel filed an opening brief in which no issues were raised. On November 19, 2012 we advised Joseph he had 30 days in which to personally submit any contentions or issues he wished us to consider. On December 12, 2012 Joseph filed a handwritten brief with various exhibits, which appear to be documents from separate superior court proceedings in Riverside and San Bernardino counties, as well as from the 1981 juvenile court proceedings that are not part of the record on appeal. Joseph urges these exhibits establish his due diligence in seeking coram nobis relief.

We have examined the entire record and are satisfied Joseph's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A litigant may obtain relief through a petition for writ of error *coram nobis*, the legal equivalent of a nonstatutory motion to vacate the judgment, where he or she through fraud, coercion or excusable mistake was deprived of a fair trial on the merits. "'The writ of [error] *coram nobis* is granted only when three requirements are met. (1) Petitioner must "show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have

prevented the rendition of the judgment." [Citations.] (2) Petitioner must also show that the "newly discovered evidence . . . [does not go] to the merits of issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial." [Citations.] This second requirement applies even though the evidence in question is not discovered until after the time for moving for a new trial has elapsed or the motion has been denied. [Citations.] (3) Petitioner "must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ. . . ."'" (*People v. Kim* (2009) 45 Cal.4th 1078, 1093.)

Joseph has failed to raise any claims properly cognizable in a petition for writ of error *coram nobis*. A writ of error *coram nobis* does not issue to correct purported errors of law. (*People v. Kim, supra,* 45 Cal.4th at p. 1093; *People v. Banks* (1959) 53 Cal.2d 370, 378; *People v. McElwee* (2005) 128 Cal.App.4th 1348, 1352.) That Joseph was unaware his juvenile adjudications would subject him to a lifetime duty to register as a sex offender is not a mistake of fact, but one of law. (See *McElwee,* at p. 1352 [defendant's belief he would be paroled after serving 15 years in state prison was a mistake of law, not fact].) As a mistake of law purportedly attributable to his defense counsel,[2] it cannot be remedied by a petition for writ of error *coram nobis*. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 987 ["claim that the defendant was deprived of effective representation of counsel is not an appropriate basis for relief by writ of error *coram nobis* and must be raised on appeal or by petition for writ of habeas corpus instead"]; see *People v. Chien* (2008) 159 Cal.App.4th 1283, 1290.) Similarly, Joseph

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[2] Prior to 1995 former section 290 imposed mandatory sex offender registration on juveniles found to have committed specified sex offenses and sent to the CYA only until the age of 25. (Former § 290, subd. (d)(4), Stats. 1993, ch. 595, § 7, p. 3137.) Effective January 1, 1995 mandatory sex registration was modified to a lifetime obligation for offenders who had been paroled or discharged from CYA. (Former § 290, subd. (d)(1), Stats. 1994, ch. 863, § 1, pp. 4274-4275; Stats. 1994, ch. 864, § 1, ch. 867, § 2.7, p. 4391.) Nothing in the record suggests Joseph's counsel at his December 1981 disposition hearing should have anticipated this change in the law.

cannot use a petition for writ of error *coram nobis* to attempt to vacate his judgment of conviction by attacking various incidents of the plea itself, such as the claim he was improperly advised of the consequences of entering his plea or the constitutional rights he lost thereby, particularly when he was represented by counsel. (See *People v. Banks, supra,* 53 Cal.2d at pp. 377-378; *People v. Rodriguez* (1956) 143 Cal.App.2d 506, 507.)

Because the claims asserted by Joseph are not properly raised by a petition for writ of error *coram nobis* or a nonstatutory motion to vacate the judgment, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.