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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY C. BYIAS,

Defendant and Appellant.

A138369

(Contra Costa County
Super. Ct. No. 50116293)

Defendant Gregory C. Byias appeals from the denial of his *coram nobis* petition. Defendant’s appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. Defendant was notified of his right to submit a supplemental brief on his own behalf. We have not received a response from defendant.

In 2001, defendant entered a no contest plea to felony possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and admitted the strike allegation that he had a prior felony conviction for second degree robbery in 1992 (Pen. Code, § 212.5), for which he served a prison term. He was sentenced to six years in state prison, representing the low term of three years, doubled pursuant to the Three Strikes law. (Pen. Code, § 667.)

In 2013, defendant filed a writ of *corum nobis* in the trial court, asking that his no contest plea be set aside and the judgment of conviction be vacated. He contended he was not advised of the maximum penalties that he faced; he did not understand the constitutional rights that he waived by the no contest plea; and the attorney who appeared for the first time at his change of plea hearing miscalculated his credits for time served

and misidentified the charges to which he entered the plea. Defendant claimed that he would not have entered the plea had he been properly advised about the maximum penalties he faced and his constitutional rights.

In support of his petition, defendant submitted a forensic evaluation conducted by the Federal Bureau of Prisons in September 2011, revealing that his level of intellectual ability was in the low average range and his verbal reasoning, comprehension, and conceptualization skills were borderline. According to the evaluation, defendant performed at a ninth grade reading level, a fifth grade comprehension level, and a third grade spelling level. Defendant argued that his cognitive abilities were “likely” lower at the time he entered his plea ten years earlier. And, as such, “the likelihood that he was able to read and understand the plea form he was presented is nil.”

Having reviewed the entire record, we find there are no arguable issues on appeal. The “writ of error *coram nobis* ‘ “does not lie to correct any error in the judgment of the court nor to contradict or put in issue any fact directly passed upon and affirmed by the judgment itself. If this could be, there would be no end of litigation The writ of error *coram nobis* is not intended to authorize any court to review and revise its opinions; but only to enable it to recall some adjudication made while some fact existed which, if before the court, would have *prevented the rendition of the judgment*; and which without fault or negligence of the party, was not presented to the court.” ’ [Citation.] As one Court of Appeal described it: ‘It is not a writ whereby convicts may attack or relitigate just any judgment on a criminal charge merely because the unfortunate person may become displeased with his confinement or with any other result of the judgment under attack.’ [Citation.]” (*People v. Kim* (2009) 45 Cal.4th 1078, 1092.)

Rather, “ ‘[t]he 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” [Citation.]” (*People v. Kim, supra*, 45 Cal.4th at p. 1093.)

Here, defendant failed to establish the prerequisites for *corum nobis* relief. The petition primarily raised legal issues. To the extent the petition asserted any issues of fact, defendant failed to establish that he exercised due diligence in bringing such issues to the court’s attention more than a decade after his plea and judgment.

Defendant has, by virtue of his appellate counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. The judgment is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.