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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDEL HUTSON,

Defendant and Appellant.

B240661

(Los Angeles County
Super. Ct. No. GA042712)

APPEAL from an order of the Superior Court of Los Angeles County,
Teri Schwartz, Judge. Appeal dismissed, petition denied.

Ann Krausz, under appointment by the Court of Appeal, and Randel Hutson, in
pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Randel Hutson appeals from an order denying his petition for writ of error *coram nobis* to vacate a 2000 jury conviction of several sex crimes. His appointed counsel filed an appellate brief raising no issues, and asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441–442. In response to our letter advising him that he could submit arguments he wished this court to consider, defendant filed a supplemental brief, in which he argued that his conviction was based on “false evidence.” We have reviewed his brief and the record on appeal in accordance with *People v. Wende, supra*, 25 Cal.3d 436.

Where a judgment has been affirmed on appeal, a petition for writ of error *coram nobis* must be filed in the court that affirmed the judgment. (Pen. Code, § 1265, subd. (a).) We affirmed defendant’s conviction in *People v. Hutson* (Mar. 14, 2002, No. B145250 [nonpub. opn.].) Since the trial court did not have jurisdiction over defendant’s petition *coram nobis*, its order denying it was not appealable. (See *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208, citing Pen. Code, § 1237, subd. (b) [order of a court without jurisdiction does not affect substantial rights].) Dismissal of the appeal is, therefore, proper.

A defendant’s appeal from the trial court’s order denying an improperly filed petition *coram nobis* may be treated by this court as an original petition for a writ of error *coram vobis*. (See *People v. Brady* (1973) 30 Cal.App.3d 81, 83 [appeal from trial court’s order on *coram nobis* petition treated as *coram vobis* petition].) Except that they are addressed to different courts, the petitions are otherwise identical. (*Ibid.*) We treat defendant’s appeal as a petition *coram vobis*.

The writ of error *coram nobis* or *vobis* may issue only if the petitioner establishes that no other remedy is available to consider newly discovered evidence that was not presented to the trial court due to no fault of the petitioner, does not go to the merits of issues tried, could not have been discovered earlier, and will either compel or make probable a different result. (See *People v. Kim* (2009) 45 Cal.4th 1078, 1093; *In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1296.) Defendant’s petition does not meet these requirements.

Defendant's conviction stemmed from a 1998 sexual assault on a neighbor, involving a threat with a knife. During trial, the court admitted evidence of defendant's uncharged 1993 sexual assault on an ex-girlfriend that was committed in a similar fashion. In affirming defendant's conviction, we rejected his argument that the trial court abused its discretion in admitting the ex-girlfriend's testimony about the 1993 sexual assault.

In 2009, defendant filed a petition for writ of habeas corpus (case No. B215840), challenging the authenticity of a photograph of a knife, pertaining to the 1993 sexual assault. He offered as newly discovered evidence the affidavit of a professional photographer questioning the photograph's authenticity on the ground that the knife casts no shadow. In our order denying the petition, we explained that newly discovered evidence is a basis for relief only if it undermines the prosecution's entire case. (See *In re Clark* (1993) 5 Cal.4th 750, 766.)

Defendant's current petition, whether treated as *coram nobis* or *vobis*, relies on the same affidavit and makes the same argument we already rejected in 2009. The writ of error *coram nobis* or *vobis* "is not a catch-all by which those convicted may litigate and relitigate the propriety of their convictions *ad infinitum*. . . . It will be used to correct errors of fact which could not be corrected in any other manner. But it is well-settled law . . . that where other and adequate remedies exist the writ is not available." [Citation.]" (*People v. Kim, supra*, 45 Cal.4th 1078, 1094.)

We deny the petition *coram vobis*. The issue it raises was already raised and rejected in a previous proceeding.

DISPOSITION

The appeal is dismissed. The petition is denied.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.