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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO**

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

CHUMA MEGAFU,

Real Party in Interest.

E055741

(Super.Ct.No. FVA011435)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Stephen A. Mapes,
Judge. Petition granted.

Michael A. Ramos, District Attorney, and Grace B. Parsons, Deputy District
Attorney, for Petitioner.

No appearance for Respondent.

Milligan, Beswick, Levine & Knox and C. Patrick Milligan for Real Party in Interest.

INTRODUCTION

In this matter, we have reviewed the petition and the reply filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

Real party in interest Chuma Megafu is not in either the actual nor the constructive custody of petitioner or the State of California. As a result, he cannot rely on the ““Great Writ”” of habeas corpus to challenge his conviction. (*People v. Villa* (2009) 45 Cal.4th 1063, 1068-1069, 1077.) Megafu’s mistake with respect to the effect of his 1999 conviction was concerning the legal effect of the conviction, not a mistake of fact that would have prevented the rendition of the judgment (such as insanity) and, therefore, *coram nobis* relief is not available. (*People v. Kim* (2009) 45 Cal.4th 1078, 1102-1103.)

Megafu’s reliance on *Padilla v. Kentucky* (2010) ___U.S.___ [130 S.Ct. 1473] is therefore misplaced, even if the rule set forth by the Supreme Court applies retroactively. In that case, the defendant was exercising a recognized procedure for postconviction relief, and *Padilla* does not address this or related procedural issues.

Even if real party in interest, in 1999, did not receive the effective assistance of counsel as defined by *Padilla*, the lapse of time and his failure to seek relief for over 10 years has eliminated his remedy. Nor is this result, although unfortunate for him, “insane” as he argued below. Other than habeas corpus and perhaps *coram nobis*, there is no common law right to postconviction relief, and any such claim must be based upon a

constitutional or statutory provision. (See *People v. Dethloff* (1992) 9 Cal.App.4th 620, 624.) Real party in interest’s “motion” was unauthorized by law.

DISPOSITION

Accordingly, the petition is granted. The trial court erred in directing that an evidentiary hearing be set to examine real party in interest’s factual assertions, as it had no jurisdiction to do so.

Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino County to vacate its order as described above and to enter a new order denying the request for an evidentiary hearing, and further prohibiting further proceedings on real party in interest’s “motion” other than its denial.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

The previously ordered stay is lifted.

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McKINSTER
Acting P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.