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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SULEIMAN ABD QAZZA,

Defendant and Appellant.

G045739

(Super. Ct. No. M-13402)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig E. Robison, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In 2001 a jury convicted defendant Suleiman Abd Qazza, now a resident of Jordan, of one count of making criminal threats (Pen. Code, § 422) against his probation officer and found true he had a prior serious felony (Pen. Code, § 667, subd. (a)). The court sentenced him to seven years in prison.

In 2011 defendant filed a petition for writ of error coram nobis, seeking to vacate his conviction. He made multiple claims in the petition including false arrest, search of his residence without consent or a warrant, false statements from the complaining victim, improper detention at the jail prior to transfer to ICE (United States Immigration and Customs Enforcement), and failure to provide an interpreter at trial. He also made what amounts to an insufficiency of the evidence *claim* and asserted his trial lawyer did not make any of the referenced arguments during trial. The court denied the petition on the grounds the remedy was not available to defendant and it had no authority or jurisdiction to vacate the judgment.

After defendant appealed we appointed counsel to represent him. Counsel filed a brief that set forth the facts of the case and the disposition. He did not argue against defendant but advised the court he had not found any issues to present on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.)

Defendant was given 30 days to file written argument on his own behalf, which he did, reiterating some of the arguments made in his writ petition. Although the brief is unclear, as was his original petition, as best we can determine, defendant is claiming he did not commit any crime, he was not provided an interpreter during trial despite his limited English, and insufficiency of the evidence. We examined the entire record to determine if any arguable issues were present, including those suggested by counsel and defendant, and found none. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111-112.)

To prevail on the petition for writ of coram nobis defendant had to show three things: 1) The existence of a fact that, through no fault of his own, was not

introduced at trial and, had it been, would have resulted in a judgment in his favor; 2) the fact ““[does not go] to the merits””; and 3) he could not reasonably have discovered the fact before he filed the petition. (*People v. Kim* (2009) 45 Cal.4th 1078, 1093.)

Defendant did not satisfy these requirements.

In addition, a writ of error coram nobis is available only when a defendant has no other remedies at law. (*People v. Kim, supra*, 45 Cal.4th at pp. 1093-1094.) The petition does not include an explanation of why defendant failed to avail himself of those remedies, including a direct appeal or petition for writ of habeas corpus. Likewise, defendant had the burden to show diligence in filing the petition. (*Id.* at p. 1096.) He did not explain why, when he was sentenced to seven years in 2001, he did not file the petition until 2011.

Several days before he filed his supplemental brief defendant filed a very brief motion to vacate his conviction. It is not uncommon to refer to a coram nobis petition and as a motion to vacate a conviction and vice versa. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 982.) We will treat this motion as if it were a part of defendant's supplemental brief. It is impossible to determine the basis of the motion, defendant noting only that apparently during trial the prosecutor put on evidence defendant had had prior serious felony. He then cites only to *Barnett v. Superior Court* (2010) 50 Cal.4th 890, which is inapt because it deals with a postconviction discovery request.

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.