

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL JOHNSON	:	CIVIL ACTION
	:	
v.	:	NO. 04-4935
	:	
D.A. LYNN ABRAHAM	:	
A.D.A. ANTHONY VOCHI	:	
JUDGE TERESA SARMINA	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 1st day of November, 2004, upon consideration of the *pro se* submission of Michael Johnson entitled “petition for writs of coram nobis breve nominatum. (A) issuance of subpoena duces tecum” (Document No. 1, filed October 21, 2004), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the *pro se* submission of Michael Johnson entitled “petition for writs of coram nobis breve nominatum” is **DISMISSED WITHOUT PREJUDICE**. The request for issuance of subpoena duces tecum is **DENIED AS MOOT**.

MEMORANDUM

I. BACKGROUND

On October 20, 2004, Michael Johnson, appearing *pro se*, submitted a document entitled “petition for writs of coram nobis breve nominatum. (A) issuance of subpoena duces tecum.” In the petition he asks this Court to overturn his conviction in the Court of Common Pleas of Philadelphia County on the ground that his sentence and other orders of Judge Teresa Sarmina are unlawful. The alleged unlawfulness of the conduct of Judge Teresa Sarmina is based on the claim that “petitioner has never entered into any contract, of any kind with the Com of Penn or anyone else . . . and that petitioner is not under any agreement to follow any statutes issued by the legislature and therefore his trial, arrest, arbitrary imprisonment of 4 ½ years in jail and 40 yr

sentence . . . and other orders issued by the Judge Teresa Sarmina are unlawful.” Continuing, petitioner states that “. . . the refusal to correct these actions by . . . [t]he Philadelphia President Judge and also the State of Penn’s Supreme court are also unlawful.” For the reasons stated below, the *pro se* document entitled “petition for writs of coram nobis breve nominatum” is denied without prejudice. The request for issuance of subpoena duces tecum is denied as moot.

II. WRIT OF ERROR CORAM NOBIS

The writ of error coram nobis is available in federal courts in criminal matters under the All Writs Act, 21 U.S.C. § 1651(a). It is used to attack allegedly invalid convictions in federal court which have continuing consequences. *United States v. Morgan*, 346 U.S. 502 (1954); *United States v. Stoneman*, 870 F.2d 102 (3d Cir. 1989). Use of the writ in a federal trial court is appropriate to correct errors committed by that court in those few cases for which there was no remedy available at the time of trial and where sound reasons exist for failing to seek relief earlier. *Id.* at 512. An error which could be remedied by a new trial, such as an error in jury instructions, does not normally come within the writ. *United States v. Gross*, 614 F.2d 365, 368 (3d Cir. 1980), *cert denied* 447 U.S. 925 (1980). Earlier proceedings are presumptively correct and the petitioner has the burden to show otherwise. *United States v. Sammy Cariola*, 323 F.2d 180, 184 (3d Cir. 1963).

Coram nobis is an extraordinary remedy, and a court’s jurisdiction to grant relief is of limited scope. *Id.* at 184. Coram nobis relief is limited to correct errors “of the most fundamental character.” *United States v. Morgan*, 346 U.S. at 512. The interest in finality of judgments dictates that the standard for a successful collateral attack on a conviction under coram nobis is more stringent than the standard applicable on a direct appeal. *United States v.*

Gross, 614 F.2d 365, 368 (3d Cir. 1980). It is even more stringent than the burden on a petitioner seeking habeas relief. *United States v. Keogh*, 391 F.2d 138, 148 (2d Cir. 1968).

It is clear that the writ of error coram nobis is available only in the most extraordinary of circumstances and should be filed in the court in which the alleged unlawful judgment was issued. Thus, the writ in this case was filed in the wrong court - it should have been filed in the Court of Common Pleas of Philadelphia County. This conclusion makes it unnecessary for this Court to address the merits of the claim.¹

III. WRIT OF BREVE NOMINATUM

The writ of breve nominatum is described in *Black's Law Dictionary*, Eighth Edition, as “[a] writ in which the complaint particularly states the time, place and demand.” Reference to that writ in petitioner’s *pro se* submission makes no sense and does not entitle petitioner to any relief in this Court.

IV. CONCLUSION

For all of the foregoing reasons, the *pro se* submission of petitioner, Michael Johnson, entitled “petition for writs of coram nobis breve nominatum” is dismissed without prejudice. Petitioner’s request for issuance of subpoena duces tecum to the District Attorney of Philadelphia County is denied as moot.

BY THE COURT:

JAN E. DUBOIS, J.

¹This Court notes, but does not rule, that the grounds asserted for issuance of the writ are frivolous - they lack any merit whatsoever.