

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
Respondent,	)	
v.	)	
	)	
RICHARD A. RAMOS-MIRELES	)	C.A. No. 0504010753
	)	
Petitioner.	)	
	)	
	)	
	)	

Submitted: July 17, 2014
Decided: August 18, 2014

Upon Petitioner's Motion for Writ of Error *Coram Nobis*
DENIED

ORDER

1. Petitioner filed a Motion for Writ of Errors *Coram Nobis* pursuant to Delaware Superior Court Criminal Rule 35(a).¹ A writ of errors *coram nobis* is “a species of a writ of error for review of facts only, directed to the same court which entered the judgment.”²

¹ “The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.” Del. Super. Ct. Crim. R. 35(a).

² *In re Nicholson*, 637 A.2d 828, at *1 (Del. 1994); *Tweed v. Lockton*, 167 A. 703, 705 n.2 (Del. Super. 1932).

2. Petitioner pled guilty to third degree trafficking of a controlled substance on December 7, 2005. He was sentenced to five years at Level V, suspended for 18 months at Level III. On February 8, 2007, Petitioner was taken into custody by the Immigration and Naturalization Service and subsequently deported to the Dominican Republic on March 21, 2007. Petitioner was discharged from the probation portion of his state sentence on June 29, 2011, due to the fact that he was serving a federal sentence.

3. Petitioner seeks relief from his 2005 conviction in this Court on the grounds that: (1) he is “actually innocent” of third degree trafficking controlled substance; (2) his plea was invalid due to trial counsel’s failure to advise him of the crime’s elements; and (3) defense counsel provided ineffective assistance.

4. The Delaware Supreme Court consistently has held that the writ of error *coram nobis* has been abolished in Delaware.³ The writ of *coram nobis* “has been supplanted by modern rules of procedure for reopening a judgment. In Delaware, Superior Court Criminal Rule 61 is the exclusive remedy for seeking to set aside a final judgment of conviction.”⁴ Rule 61 precludes postconviction relief for petitioners not “in custody or subject to future custody.”⁵ However, the Superior

³ *Heron v. State*, 2001 WL 58742, at *1 (Del.); see *In re Nicholson*, 637 A.2d 828, at *1.

⁴ *Heron v. State*, 2001 WL 58742, at *1; see Super. Ct. Crim. R. 61(a)(2).

⁵ Super. Ct. Crim. R. 61(a)(1).

Court, in the 1989 case *State v. Ledezma*, found that the language in Rule 61 “does not preclude postconviction relief in an extraordinary circumstance by writ of error *coram nobis*.”⁶ The *Ledezma* Court found that the petitioner’s possible deportation—as a result of the conviction the defendant was challenging—constituted an extraordinary circumstance and warranted relief.⁷

5. In *State v. Hinson*, this Court reiterated that the writ of error *coram nobis* has in fact been abolished.⁸ The *Hinson* Court found that the *Ledezma* interpretation of writ has been implicitly overruled by the subsequent cases *Heron v. State*,⁹ *Fullman v. State*,¹⁰ and *Guinn v. State*.¹¹ In *Hinson*, the defendant pled guilty to Aggravated Menacing in Superior Court in 1998 and was discharged from probation in 2002.¹² In 2005, the defendant was indicted for Murder in the First Degree. The prior Aggravated Menacing conviction potentially made the defendant eligible for the death penalty. In 2005, the defendant argued for relief from the 1998 conviction under the theory that she entered the plea without knowledge that it could be used as an aggravating factor under 11 *Del. C.* § 4209.

⁶ 1989 WL 64151, at *1 (Del. Super.).

⁷ *Id.* at **1-2.

⁸ 2006 WL 337031, at *4 (Del. Super.).

⁹ 2001 WL 58742 (Del. Super.).

¹⁰ 746 A.2d 276 (Del. 2000).

¹¹ 625 A.2d 279 (Del. 1993).

¹² 2006 WL 337031, at *1.

The *Hinson* Court “decline[d] to follow *Ledezma* and thus [did] not reach the issue of whether the alleged deficiencies in Defendant's 1998 guilty plea colloquy constitute[d] an ‘extraordinary circumstance’ warranting potential *coram nobis* relief since the writ of error *coram nobis* is now extinct in Delaware.”¹³

6. Consistent with *State v. Hinson*,¹⁴ this Court declines to follow *Ledezma* and finds that reopening Petitioner’s judgment is not available pursuant to a writ of error *coram nobis*.

7. Petitioner has also filed a motion for the appointment of counsel. The Court denies this motion, finding that it would be futile to appoint counsel because relief is not available through the abolished writ of error *coram nobis*.

THEREFORE, Petitioner’s Motion for Writ of Error *Coram Nobis* is hereby **DENIED**. Petitioner’s Motion for the Appointment of Counsel is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston

¹³ *State v. Hinson*, 2006 WL 337031, at *4.

¹⁴ *Id.*