

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-14385
Non-Argument Calendar

D.C. Docket No. 0:19-cv-61443-UU

BRUCE SIMMONS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(May 29, 2020)

Before WILLIAM PRYOR, GRANT and LUCK, Circuit Judges.

PER CURIAM:

Bruce Simmons appeals the denial of his *pro se* petition for a writ of error coram nobis under the All Writs Act. 28 U.S.C. § 1651(a). We affirm.

In 1999, the district court convicted Simmons of two counts of distributing cocaine. 21 U.S.C. § 841(a)(1); 18 U.S.C. § 2. The jury heard testimony from Agent Adrienne Sullivan of the Federal Bureau of Investigation that he gave a confidential informant cash on two occasions to purchase cocaine from Simmons, from a second agent about Simmons's interview, and from Simmons, who denied any wrongdoing and blamed the informant for deceiving Sullivan. The district court sentenced Simmons to concurrent sentences of 240 months of imprisonment.

Simmons filed several unsuccessful challenges to his convictions and sentence. In his direct appeal, he argued that the evidence was insufficient to support his convictions, and we affirmed. *United States v. Simmons*, 237 F.3d 634 (11th Cir. 2000). Simmons later filed several petitions for the writ of error coram nobis in which he argued that he was legally innocent and requested that the district court vacate his convictions and sentence. He also moved to vacate his sentence on the ground that his counsel was ineffective for failing to challenge the sufficiency of the evidence, but the district court denied the motion as moot and later we denied Simmons a certificate of appealability. Undeterred, Simmons filed additional postconviction motions and petitions, which the district court dismissed, for the most part, as successive. *Id.* §§ 2255, 2241; *see Simmons v. Warden*, 589 F.

App'x 919 (11th Cir. 2014) (recounting Simmons's litigation history and affirming a limitation on challenging his convictions).

In 2019, Simmons filed the petition for a writ of coram nobis that is the subject of this appeal. He argued that he was wrongfully convicted because the government failed to present scientific evidence connecting him to the crimes or to call the confidential informant as a witness because she was imprisoned on unrelated drug charges. He also argued that Sullivan's testimony was insufficient to support his convictions. The district court denied Simmons's petition because he had failed to identify any evidence to support his claim of innocence and was "attempting to re-litigate his conviction[s]."

We review the denial of a petition for a writ of coram nobis for abuse of discretion. *United States v. Peter*, 310 F.3d 709, 711 (11th Cir. 2002). A writ of error coram nobis "is an extraordinary remedy of last resort available only in compelling circumstances where necessary to achieve justice." *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000). The district court can issue the writ only when "there is and was no other available avenue of relief" and "the error involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and which renders the proceeding itself irregular and invalid." *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000).

The district court did not abuse its discretion by denying Simmons’s petition. Simmons alleged no facts to support a claim of actual innocence. *See Bousley v. United States*, 523 U.S. 614, 623 (1998) (“[A]ctual innocence’ means factual innocence, not mere legal insufficiency.”). He also failed to identify any errors during his trial that a writ of coram nobis could remedy. *See Carlisle v. United States*, 517 U.S. 416, 429 (1996) (“[A] writ of coram nobis . . . was traditionally available only to bring before the court factual errors ‘material to the validity and regularity of the legal proceeding itself’ . . .”). And the writ is unavailable to relitigate a conviction. *See United States v. Addonizio*, 442 U.S. 178, 186–88 (1979).

We **AFFIRM** the denial of Simmons’s petition.