[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13069
Non-Argument Calendar

D.C. Docket No. 8:17-cv-01314-VMC-MAP

CHARLES DANIEL MAYE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(April 25, 2019)

Before MARCUS, WILSON, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Charles Daniel Maye, a convicted felon no longer serving a period of incarceration or supervised release, appeals the district court's order denying his

petition for a writ of *coram nobis*. On appeal, he argues that the court erred by denying his petition because his conduct of accessing a federal law enforcement database for non-law enforcement purposes did not constitute obtaining information that "exceeds authorized access" within the meaning of the Computer Fraud and Abuse Act (CFAA). We disagree and affirm.[1]

In 2004, a federal grand jury indicted Maye and his codefendant, Leroy Collins. The indictment charged Maye with violating the CFAA for unlawfully accessing the National Crime Information Center (NCIC) federal database, which is restricted to law enforcement officers for law enforcement purposes, in order to obtain information about Collins' paramours and provide that information to Collins. The indictment charged that Maye was authorized to access the NCIC database only for law enforcement purposes and that Maye had been trained in this regard, but that he unlawfully accessed the database to provide information to Collins, with whom he had an ongoing financial relationship.

A jury found Maye guilty of all charges. The district court sentenced Maye to 97 months' imprisonment, followed by 3 years' supervised release, and ordered him to pay a $15,000 fine. Maye filed a notice of appeal, which he then

[1] Maye also petitions for an initial hearing en banc. An en banc hearing may be ordered where (1) en banc consideration is necessary to secure or maintain uniformity of the court's decision; or (2) the proceeding involves a question of exceptional importance. Fed. R. App. P. 35(a). Because this appeal does not satisfy those criterion, appellant's motion for initial hearing en banc is denied.

voluntarily dismissed. During his incarceration, Maye unsuccessfully filed several petitions for habeas corpus. When Maye filed the instant petition, he was no longer serving a period of incarceration or supervised release for his convictions.

We review a denial of *coram nobis* relief for abuse of discretion, keeping in mind that an error of law is a per se abuse of discretion. *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000) (per curiam). We review questions of subject matter jurisdiction de novo. *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1331 (11th Cir. 2001). We also review a district court's interpretation of a federal statute de novo. *Stansell, et al. v. Revolutionary Armed Forces of Colombia*, 704 F.3d 910, 914 (11th Cir. 2013) (per curiam).

"The 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 bar for *coram nobis* is high, and the writ may issue only when: (1) "there is and was no other available avenue of relief"; and (2) "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*, 200 F.3d at 734 (quotations and citations omitted). A claim is not facially cognizable on *coram nobis* review if the defendant could have, but failed to, pursue the claim through other available avenues. *Id*. Furthermore, district courts may consider *coram*

nobis petitions only when the petitioner presents sound reasons for failing to seek relief earlier. *Mills*, 221 F.3d at 1204. We have stated that it is difficult to conceive of a situation in a federal criminal case today, given the availability of habeas review, where *coram nobis* relief would be necessary or appropriate. *Lowery v. United States*, 956 F.2d 227, 229 (11th Cir. 1992) (per curiam). But claims of jurisdictional error have historically been recognized as fundamental, so the doctrine of procedural default does not apply to such claims. *United States v. Peter*, 310 F.3d 709, 712–13 (11th Cir. 2002) (per curiam). Thus, a genuine claim that the district court lacked jurisdiction may be a proper ground for *coram nobis* relief as a matter of law. *See Alikhani*, 200 F.3d at 734.

The CFAA makes it a crime for any person to intentionally access a computer without authorization or in a manner that "exceeds authorized access" and thereby obtain information from any department or agency of the United States. 18 U.S.C. § 1030(a)(2)(B). The Act defines "exceeds authorized access" as "access[ing] a computer with authorization and [ ] us[ing] such access to obtain or alter information in the computer that the accessor is not entitled to obtain or alter." *Id.* § 1030(e)(6). In *United States v. Rodriguez*, we interpreted the phrase "exceeds authorized access" and determined that a Teleservice representative who obtained personal information from a database for non-business reasons—which violated an administrative policy that authorized the employee to use the database

only for business reasons—exceeded his authorized access under the CFAA. 628 F.3d 1258, 1263 (11th Cir. 2010).

"Under the well-established prior panel precedent rule . . . the holding of the first panel to address an issue is the law of this Circuit, thereby binding all subsequent panels unless and until the first panel's holding is overruled by the Court sitting *en banc* or by the Supreme Court." *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001). We have categorically rejected any exception to the prior panel precedent rule based upon a perceived defect in the prior panel's reasoning or analysis as it relates to the law in existence at that time. *Id.* at 1303.

The issue on appeal—whether Maye stated a claim for *coram nobis* relief by asserting that his indictment did not charge a CFAA violation—potentially qualifies for *coram nobis* relief, as it alleges that the court lacked subject matter jurisdiction to convict him. But our holding in *Rodriguez* forecloses Maye's assertion that the conduct charged in his indictment did not violate the CFAA. *See Rodriguez*, 628 F.3d at 1263 (holding that an employee who accessed a database he was otherwise entitled to access for an improper purpose and in violation of administrative policy exceeded his authorized access under the CFAA); *see also Smith*, 236 F.3d at 1300 n.8, 1303. Because Maye only had authority to access the NCIC database for law enforcement purposes, his conduct of accessing the database for non-law enforcement purposes and misappropriating information from

the database exceeded his authorized authority under the CFAA. *See Rodriguez*, 628 F.3d at 1263. Accordingly, we affirm.

AFFIRMED.