

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 18, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LANCE C. MIGLIACCIO,

Defendant - Appellant.

No. 25-1237
(D.C. No. 1:09-CR-00292-REB-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **MATHESON**, and **McHUGH**, Circuit Judges.

Pro se Petitioner Lance Migliaccio appeals the district court's denial of his petition for a writ of *coram nobis* and related motions. He argues that an anonymous letter revealed constitutional errors in his 2009 conviction and urges this court to vacate his conviction and dismiss his indictment with prejudice. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the denial of his petition. He has

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

failed to show that the contents of the letter—or any of his other assertions—entitle him to *coram nobis* relief.

I. BACKGROUND

On December 9, 2009, Petitioner pleaded guilty to five counts of possession with intent to distribute and distribution of the drug Ecstasy. As part of his plea agreement, he stipulated that the government’s evidence would show that he knowingly and intentionally distributed the drugs in five transactions with a confidential informant. Petitioner also acknowledged his guilt in statements to the court under oath when he entered his plea and during sentencing.

Petitioner did not directly appeal his conviction or sentence. But, beginning in 2012, he pursued several avenues for postconviction relief. He filed five motions to vacate, set aside, or correct his sentences under 28 U.S.C. § 2255. He also petitioned for relief under the ancient writ of *audita querela*. All these petitions were denied. Petitioner was released from prison in 2013, and his supervised release was terminated in 2015.

Nine years later, he filed the present petition for a writ of *coram nobis*. He based his petition on an anonymous letter, which he calls the “Whistleblower Death Bed Confession Letter.” The letter was mailed to the district court in July 2023 and Petitioner allegedly obtained a copy of it in September 2023. He also filed a motion to vacate his conviction in which he reiterated many of the claims in his *coram nobis* petition and alleged that the government had received the letter and violated its

ethical and constitutional duties by failing to disclose it to him. As Petitioner sees it, this letter exculpates him and establishes the government's misconduct in his case.

The district court denied Petitioner's *coram nobis* petition and subsequent motion to vacate on the ground that he failed to assert actual innocence. But we have since clarified that actual innocence, while potentially relevant, is not a requirement for *coram nobis* relief. *See United States v. Salgueido*, No. 25-2088, 2026 WL 2221619, at *5 (10th Cir. Aug. 3, 2026).¹ Nevertheless, we can affirm denial on an alternative ground: the assertions in the letter do not establish that Petitioner would suffer a miscarriage of justice if denied relief. His other arguments are also meritless.

II. DISCUSSION

We review the district court's factual findings for clear error, its rulings on questions of law de novo, and its ultimate decision to deny the *coram nobis* writ for abuse of discretion. *See id.* at *1.

Because Petitioner is pro se, “we construe [his] pleadings liberally,” making “some allowances for deficiencies, such as unfamiliarity with pleading requirements, failure to cite appropriate legal authority, and confusion of legal theories.” *Lankford v. Wagner*, 853 F.3d 1119, 1121–22 (10th Cir. 2017) (internal quotation marks

¹ Our circuit has “focused on three requirements” for such relief, “each of which can be said to derive from the very nature of an ‘extraordinary’ remedy: (1) the petitioner cannot obtain or could not have obtained relief through other remedies; (2) absent relief, the petitioner will suffer extraordinary injury—a miscarriage of justice; and (3) petitioner has acted diligently to obtain *coram nobis* relief, as befitting the magnitude of the injury and the importance of finality.” *Salgueido*, 2026 WL 2221619, at *3.

omitted). “But we cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record.” *Id.* at 1122 (internal quotation marks omitted).

Petitioner has adequately presented only four arguments, none of which has merit. First, Petitioner suggests that the district court erred by mischaracterizing some of his filings. We disagree. Petitioner contends that the document filed by the district court on March 27, 2024 (Dist. Ct. Dkt. No. 135) was a motion for judicial oversight and discovery, and not—as the district court characterized it—a letter to the court. But the document, in both form and content, is unmistakably a letter. *See United States v. Griffith*, 928 F.3d 855, 876 (10th Cir. 2019) (“[W]e are not bound by a pleading’s title; rather, we consider its substance”). And regardless of how the document was characterized, it was addressed in the district court’s analysis of Petitioner’s *coram nobis* petition and motion to vacate.²

Second, Petitioner argues that the government “conced[ed] [his] claims of prosecutorial misconduct and constitutional violations” and “waiv[ed] [its] defenses” by failing to contest his “dispositive motions, including Doc #135.” Aplt. Br. at 26. But, as discussed above, Dist. Ct. Dkt. No. 135 is a letter to the court; it is not a motion that required a government response. And the

² Petitioner further contends that the district court erred by docketing the anonymous letter under seal and misattributing it to him. We fail to see how this prejudiced Petitioner. And, in any event, Petitioner already prevailed on this point below by successfully moving the district court to unseal the letter.

government addressed Petitioner's claims of prosecutorial misconduct and constitutional violations in its response to his *coram nobis* petition.

Third, Petitioner claims that the government received the anonymous letter in July 2023 but withheld it from his defense counsel. He says that by failing to disclose the letter, the government violated its "ethical duties," as well as "*Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959)." Apl't. Br. at 39. There is no *Brady*, *Giglio*, or ethical violation here because Petitioner received a copy of the letter in ample time before resolution of his petition. *See, e.g., United States v. Erickson*, 561 F.3d 1150, 1165 (10th Cir. 2009) ("[A] defendant is not deprived of due process by the government's failure to disclose information if the defendant has obtained the information through other means"). And *Napue* is inapposite because there was no trial, the only testimony presented was before a grand jury, and Petitioner voluntarily pleaded guilty. *Cf. United States v. Ruiz*, 536 U.S. 622, 628–29 (2002) ("When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees"); *Tollett v. Henderson*, 411 U.S. 258, 266–267 (1973) (no habeas relief available to petitioner who pleaded guilty but later learned that his grand jury had been unconstitutionally selected).

Finally, Petitioner argues that the district court should have granted him a writ of *coram nobis* in light of the assertions in the letter. To begin with, we

are very skeptical of this letter. It is anonymous, unverified, and unsworn. We doubt it would have been admissible had the district court proceeded to an evidentiary hearing. But even if the letter is genuine and accurate, we disagree with Petitioner's claim that the letter "undermine[s] the factual basis of [his] plea." Aplt. Br. at 15.

The district court summarized the contents of the letter as follows:³

[1] Federal agents coached a confidential informant . . . to convince Migliaccio to commit crime.

[2] Migliaccio refused the confidential informant's efforts to convince him to commit crime, and specifically refused to commit illegal drug transactions.

[3] "All the phone calls and recordings in which Mr. Migliaccio refused were either destroyed and or altered as to be unintelligible."

[4] "There were extensive violations of Brady and large quantities of exculpatory evidence that would have been very beneficial to Mr. Migliaccio's case which were destroyed and or altered."

[5] Agents illegally wiretapped Migliaccio's and family members' phones.

[6] Agents illegally placed GPS units on Migliaccio's and family members' automobiles.

[7] "Some surveillance equipment was installed by our team in Migliaccio's house with no warrants."

[8] On the day agents arrested Migliaccio at his home "his mother let us in" yet at the same time "we forcibly entered pushing her out of the way

³ Petitioner has not argued on appeal that the district court's summary of the letter was clearly erroneous or incomplete. Accordingly, we address the assertions in the letter as summarized by the court. *See United States v. Ozbirn*, 189 F.3d 1194, 1197 (10th Cir. 1999) (accepting as true unchallenged factual findings by district court).

not identifying ourselves” and initially searched the home without a warrant.

[9] A black bag seized at Migliaccio’s residence on the day of his arrest was not Migliaccio’s bag.

[10] A “G36” assault rifle that Migliaccio “was charged with was a prepared set up.”

[11] Agents drugged Migliaccio’s wife without her knowledge in hopes of obtaining information from her.

[12] Prior to Migliaccio’s arrest, and while he was detained pre-trial, agents decided to place him at the Jefferson County Holding Facility.

[13] The phone system “at Jefferson County was compromised.”

[14] Due to the “compromised” phone system, “nearly everyone on the Migliaccio investigation listened to Mr. Migliaccio’s privileged communications” while he was at the Jefferson County Holding Facility.

[15] “At some point Mr. Migliaccio became suspicious and identified that this was going on.”

[16] Migliaccio contacted his attorney, Harvey Steinberg, and told him that agents were listening to his privileged communications.

[17] Assistant U.S. Attorney Stephanie Podolak also told Mr. Steinberg that “DOJ and all the agents involved were listening to privileged communications of his client.”

[18] Mr. Steinberg met with Migliaccio and discussed the possibility of the case being dismissed “because of the DOJ’s intentional misconduct.”

[19] Mr. Steinberg “approached” Assistant U.S. Attorney Colleen Covell about the issue and she responded that “if Mr. Migliaccio pursued this direction, she would throw the entire kitchen sink” at Migliaccio and “the plea negotiations would be off.”

[20] “Mr. Steinberg assured Ms. Covell that he would coerce Mr. Migliaccio into accepting a plea and would influence him into dropping the phone issue” which “he did the next day.”

[21] “This man was wrongfully imprisoned. We created his case top to bottom. . . . This man was innocent.”

R. at 811–12 (Dist. Ct. Order) (quoting Whistleblower Deathbed Confession Letter, R. at 86–95) (original brackets and internal citations omitted).

The writ of *coram nobis* is available to “correct errors of the most fundamental character,” which we have taken to mean errors “that result in a complete miscarriage of justice.” *Salgueido*, 2026 WL 2221961, at *4 (internal quotation marks omitted). Several of the assertions in this letter (numbers 1–3, 5–8, 11, 12, and 19) may show violations of the law in the course of the investigation, but Petitioner fails to explain, and we fail to see, how they would have affected his decision to plead guilty. They therefore could not have resulted in a miscarriage of justice. As an example, the letter says that law enforcement officers drugged Petitioner’s wife to obtain information (number 11). But Petitioner has not specified what information the officers obtained or, more importantly, how that information factored into his own decision to voluntarily plead guilty or acknowledge his guilt under oath.

Other assertions in the letter lack specificity, are conclusory, or are not relevant to Petitioner’s conviction (numbers 4, 9–10, 21). They, too, do not suffice to show a miscarriage of justice. For example, the letter references “large quantities of exculpatory evidence” that was destroyed (number 4), but the letter does not describe the evidence or explain why it would have been exculpatory. It is hard to imagine what such evidence could be, in view of

Petitioner's guilty plea and his under-oath statements. And even if the "G36" assault rifle was a "prepared set up" (number 10), as asserted in the letter, there would be no miscarriage of justice because Petitioner was convicted only on drug charges.

As for the remaining assertions regarding the purported eavesdropping on privileged conversations (13–20), if the letter is to be believed, then Petitioner was fully aware before pleading guilty that officers had eavesdropped. *Coram nobis* is available only to a petitioner who "has acted diligently to obtain *coram nobis* relief, as befitting the magnitude of the injury and the importance of finality." *Salgueido*, 2026 WL 2221619, at *3. There is no indication that Petitioner raised this issue any time before his guilty plea, any time after his conviction or sentencing, or any time in the over 14 years from when he first became aware until he filed his petition.⁴ Because Petitioner was aware of this information before he pleaded guilty, he cannot show that he acted diligently.⁵

⁴ Even if Petitioner *had* diligently pursued his claims based on eavesdropping, he would need to show prejudice to prevail on those claims. *See United States v. Hohn*, 123 F.4th 1084, 1088 (10th Cir. 2024) (en banc) ("Sixth Amendment violation of the right to confidential communication with an attorney requires the defendant to show prejudice"). And he has not done so.

⁵ Petitioner also appeals the district court's denial of his motion to appoint a special master and his numerous motions seeking to compel discovery and unseal documents related to the letter. We review these discovery rulings for abuse of discretion. *See Harrington v. Sorelle*, 313 F.2d 10, 13 (10th Cir. 1963) (special master); *Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550 (10th Cir. 1995) (motions to compel); *United States v. Bacon*, 950 F.3d 1286, 1291 (10th Cir. 2020) (unseal documents). Because Petitioner would not be entitled to relief even if the assertions

III. CONCLUSION

We **AFFIRM** the district court's denial of the *coram nobis* petition and related motions. Petitioner's pending motions in this court are **DENIED**.

Entered for the Court

Harris L Hartz
Circuit Judge

in the letter were true, the district court did not err in denying Petitioner's discovery-related motions.