

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 6, 2016

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN SCOTT PINKERTON,

Defendant - Appellant.

No. 16-8072
(D.C. No. 1:13-CR-00170-ABJ-1)
(D. Wyoming)

ORDER AND JUDGMENT*

Before **GORSUCH, BALDOCK**, and **McHUGH**, Circuit Judges.

John Scott Pinkerton, a federal prisoner proceeding pro se,¹ appeals the district court's denial of his motion for relief pursuant to a writ of coram nobis. However, coram nobis relief is unavailable to prisoners currently in custody. *See United States v. Torres*, 282 F.3d 1241, 1245 (10th Cir. 2002) (“[A] prisoner may not challenge a

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

¹ Because Mr. Pinkerton is proceeding pro se, we construe his filings liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). “[T]his rule of liberal construction stops, however, at the point at which we begin to serve as his advocate.” *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

sentence or conviction for which he is currently in custody through a writ of coram nobis.”). Because Mr. Pinkerton is challenging the conviction for which he is currently in custody, we AFFIRM the district court’s denial of Mr. Pinkerton’s motion.

We DENY Mr. Pinkerton’s motion for default judgment based on the government’s failure to file a response brief. *See* Fed. R. App. P. 31(c) (failing to file appellee brief results in exclusion from oral argument); *Boulware v. Baldwin*, 545 F. App’x 725, 731 (10th Cir. 2013) (unpublished) (“Electing not to file an appellee’s brief waives the right to participate in oral argument, Fed. R. App. P. 31(c), it does not concede the result of the appeal.”).

Entered for the Court

Carolyn B. McHugh
Circuit Judge