

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-35157

Plaintiff-Appellee,

D.C. No. 2:14-cr-00072-JLQ

v.

MEMORANDUM*

TIMOTHY JOSEPH CARLSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Timothy Joseph Carlson appeals pro se from the district court's order denying his petition for a writ of error coram nobis. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

This court reviews de novo the district court's denial of a coram nobis

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

petition. *See Matus-Leva v. United States*, 287 F.3d 758, 760 (9th Cir. 2002). The district court correctly denied Carlson’s petition. Carlson is still in custody and, therefore, cannot show that a more usual remedy is unavailable to attack his conviction. *See id.* at 761 (“A person in custody may seek relief pursuant to 28 U.S.C. § 2255. Because the more usual remedy of a habeas petition is available, the writ of error *coram nobis* is not.” (footnote omitted)).

AFFIRMED.