

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ALLEN P. GOLDEN PETITIONER
(Your Name)

vs.

ANTOINETTE COLWELL RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ALLEN P. GOLDEN
(Your Name)

199 AMOS BACON ROAD
(Address)

MIDWAY GEORGIA
(City, State, Zip Code) 31320

92-255-0458
(Phone Number)

QUESTION (S) PRESENTED

DO THE ORDER ENTERED BY THE ELEVENTH CIRCUIT COURT OF APPEALS ON AUGUST 29, 2017 AND MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION SO ORDERED AND REPORTED AND RECOMMENDED THIS 19TH DAY OF DECEMBER 2016 AS FOLLOWS:

28 U.S.C. 2244(D)(1) Suspends 28 U.S.C. 2254(A) IN VIOLATION OF The Suspension Clause of the United States Constitution specifically included the English common law procedure in Article One, Section 9, clause 2, which demands that "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it ?

SHOULD GROUNDS (1), (2) AND (4) BE HEARD ON THE MERITS OF EVIDENCE PRESENTED THAT IS A CONSTITUTIONAL VIOLATION?

CAN THE INSTANT BE TREATED AS A 28 U.S.C. 2241 AS APPLIED TO GROUNDS (1), (2) AND (4)?

DO ("AEDPA") APPLY TO NON-VIOLENT CRIMES AND WAS IT INTENDED TO BAR CONSTITUTIONAL CLAIMS?

ON CERTIORARI THE ORDER AND MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION SO ORDERED AND REPORTED AND RECOMMENDED THIS 19TH DAY OF DECEMBER 2016. U.S. CONST. AMEND. 1, 5, 8, AND 14.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ATTORNEY GENERAL
STATE OF GEORGIA

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

SLACK V. MCDANIEL, 529 U.S. 473, 478
(2000).

STATUTES AND RULES

28 U.S.C. 2241.
28 U.S.C. 2244.
28 U.S.C. 2253(c)(2).
28 U.S.C. 2254(A).

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is
☒ reported at 2:15-CV-*178 / 17:11296, or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is
☒ reported at 17:11296 *2:15-CV-178, or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is
☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 18, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUG. 29, 2017, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 2253(C)(2).

28 U.S.C. 2254(a).

28 U.S.C. 2241.

~~28 U.S.C. 2244.~~

U.S. CONST. AMEND. 1.

U.S. CONST. AMEND. 5.

U.S. CONST. AMEND. 6.

U.S. CONST. AMEND. 8.

U.S. CONST. AMEND. 9.

U.S. CONST. AMEND. 10.

U.S. CONST. AMEND. 14.

U.S. CONST. ART. 1 SEC. 9 C 2.

STATEMENT OF THE CASE

Golden pleaded guilty to child molestation in the Wayne County Superior Court on April 13, 2004. He received a split sentence of fifteen years— three years to serve in prison and the remaining twelve years to be served on probation. Golden filed several motions to withdraw his guilty plea, but his motions were dismissed because they were filed after the expiration of the term during which the judgment was entered. Golden v. State, 615 S.E.2d 617, 617 (Ga. Ct. App. 2005). Golden's probation was revoked by order dated August 29, 2012, and the Georgia Court of Appeals denied Golden's application for discretionary application to appeal. (Doc. 10, p. 9.)

Golden filed a petition for writ of habeas corpus in the Charlton County Superior Court on July 13, 2006. (Doc. 12-1, p. 1.) In that petition, Golden contended the case against him should have been dismissed because there was no reply within seven days. Golden also contended the warrant was illegal because, on the face of the warrant, a statute is listed which did not exist. Golden asserted the indictment conflicted with the warrant. Finally, Golden alleged his right against double jeopardy was violated. (Id. at pp. 3-4.) The Charlton County court determined Golden waived these claims by pleading guilty. (Doc. 12-2, p. 3.)

Golden also filed supplements to his petition. As to his claim that his plea was involuntary due to his incompetence, the Charlton County court concluded Golden failed to show he was unable to assist in his own defense. (Id. at p. 4.) The Charlton County court also concluded that Golden failed to show "overreaching, fraud or perjury" as to his guilty plea. (Id. at p. 5.) That court found no merit to Golden's ineffective assistance of counsel claims. (Id. at pp. 7-8.) The Charlton County court also concluded that Golden agreed to the portion of his sentence in which he was not allowed contact with his daughter and could not claim his plea was constitutionally infirm. (Id. at p. 10.) The Georgia Supreme Court denied Golden's application for probable cause to appeal on January 31, 2008. (Doc. 12-3.)

Golden then filed a motion for out-of-time appeal with the Wayne County Superior Court, which denied his motion. Golden appealed that denial, and the Georgia Court of Appeals affirmed that denial on July 17, 2009. Golden v. State, <https://casetext.com/case/golden-v-state-136> (Ga. Ct. App. 2009). On September 10, 2010, Golden filed a second petition for writ of habeas corpus in the Liberty County Superior Court, and his petition was transferred to the Telfair County Superior Court. (Doc. 12-4.) In that petition, Golden asserted that his guilty plea and resulting conviction should be vacated based on the transcripts from his plea hearing, which revealed he was not advised of all of his rights. (Id. at p. 5; Doc. 12-6, p. 2.) Golden amended his petition and argued, *inter alia*, that the probationary portion of his sentence should not have been revoked. After conducting an evidentiary hearing, the Telfair County court denied Golden's petition, as amended, on June 3, 2015. (Doc. 12-10.) The Georgia Supreme Court denied Golden's application for certificate of probable cause to appeal the denial of his second state habeas petition on November 16, 2015. (Doc. 12-11.)

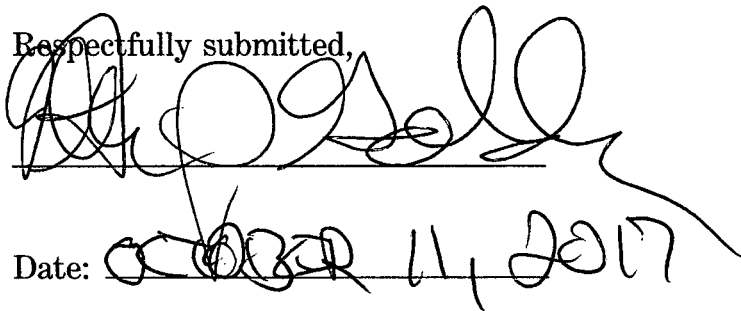
REASONS FOR GRANTING THE PETITION

THE CONSTITUTION OF THE UNITED
STATES REQUIRES IT.

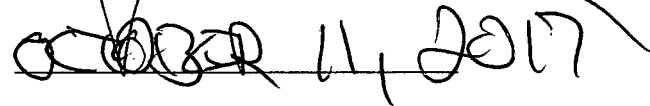
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "R. O. G. S. L. L." or similar.

Date:

A handwritten date in black ink, written over a horizontal line. The date is "OCTOBER 11, 2017".