

No. 18-8073

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 04 2018

OFFICE OF THE CLERK

TONY D. THOMPSON PETITIONER

VS.

STATE OF GEORGIA RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

GEORGIA SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

TONY D. THOMPSON #964768
(Your Name)

SMITH STATE PRISON PO. BOX 726
(Address)

Glennville GA 30427
(City, State, Zip code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether, THE TRIAL COURT AND THE GEORGIA SUPREME COURT ABUSE THEIR DISCRETION FAILING TO REACH THE MERITS OF PETITIONER OUT-OF-TIME APPEAL AND whether, THE GEORGIA SUPREME COURT ABUSE ITS DISCRETION DISMISSING PETITIONERS OUT-OF-TIME APPEAL AS untimely, when CLEARLY THE PETITIONER FILED A TIMELY OUT OF TIME APPEAL,
- 2) Whether, THE TRIAL COURT AND THE GEORGIA SUPREME COURT ABUSE THEIR DISCRETION FAILING TO CONDUCT AN EVIDENTIARY HEARING AS TO WHO BORE THE RESPONSIBILITY FOR FAILURE TO FILE A TIMELY APPEAL.
- 3) Whether, PETITIONER WITHDRAW GUILTY PLEA HEARING WAS UNCONSTITUTIONAL WHERE, THE TRIAL COURT FAIL TO INFORM THE PETITIONER OF THE HEARING ON HIS WITHDRAW GUILTY PLEA, AND FAIL TO APPOINT HIM COUNSEL FOR THE HEARING NOR DID THE TRIAL COURT INQUIRE WHETHER PETITIONER WAIVE HIS RIGHT TO COUNSEL, AND WHETHER THE TRIAL COURT ERROR FAILING TO INFORM THE PETITIONER OF HIS RIGHT TO DIRECTLY APPEAL HIS WITHDRAW GUILTY PLEA. HIS FIRST INITIAL REVIEW COLLATERAL PROCEEDING.
- 4) Whether A WITHDRAW GUILTY PLEA QUALIFY AS A CRITICAL STAGE OF CRIMINAL PROSECUTION AND THE RIGHT TO COUNSEL ATTACH ON A DEFENDANT'S FIRST INITIAL-REVIEW COLLATERAL PROCEEDING.

Whether, Georgia's HABEAS CORPUS STATUTE IS UNCONSTITUTIONAL BARRING PETITIONER OF HIS CONSTITUTIONAL RIGHT TO FILE AN OUT-OF-TIME APPEAL AT A LATER DATE ON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE IN PETITIONER'S FIRST INITIAL REVIEW COLLATERAL PROCEEDING ON HIS WITHDRAW GUILTY PLEA THE PETITIONER DID NOT HAVE COUNSEL AND THE TRIAL COURT FAIL TO INQUIRE WHETHER THE PETITIONER WAIVE HIS RIGHT TO COUNSEL, AND THE TRIAL COURT FAIL TO INFORM THE PETITIONER OF HIS RIGHTS TO APPEAL. IN GEORGIA THE PASSAGE OF TIME DOES NOT PREVENT A DEFENDANT FROM FILING AN OUT-OF-TIME APPEAL AT A LATER DATE, IF THE DEFENDANT'S RIGHTS TO APPEAL HAS BEEN FRUSTRATED TO NO FAULT OF HIS OWN, AND WHETHER, MARTINEZ V. RYAN, APPLY TO GEORGIA'S HABEAS CORPUS STATUTE AS BEING UNCONSTITUTIONAL, BECAUSE THE UNITED STATES SUPREME COURT HELD WHERE UNDER STATE LAW INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM MUST BE RAISED IN AN INITIAL REVIEW COLLATERAL PROCEEDING, A PROCEDURAL DEFAULT WILL NOT BAR A FEDERAL HABEAS COURT FROM HEARING THOSE CLAIMS IF IN THE INITIAL REVIEW COLLATERAL PROCEEDING THERE WAS NO COUNSEL OR IN THAT PROCEEDING COUNSEL WAS INEFFECTIVE.

LIST OF PARTIES

- 1, CLARENCE D. BLUNT, CHIEF JUDGE WARE County Superior Court, GA
2. JIMMY BORTRIGHT, TRIAL ATTORNEY FOR DEFENDANT GA.
3. RICHARD CURRY, WARE County DISTRICT ATTORNEY GA,
4. DWAYNE H. GILLIS, CHIEF JUDGE Coffee County Superior Court
- 5, LISA C. RUTHER, CHIEF DEPUTY CLERK GEORGIA Supreme Court.

TABLE OF CONTENTS

LIST OF INTERESTED PERSONS - - - - -	6,
JURISDICTION - - - - -	6
CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED - - - - -	3,
QUESTIONS PRESENTED - - - - -	4, 5,
STATEMENT OF THE CASE - - - - -	6, 7
REASON FOR GRANTING THE PETITION - - - - -	8, 9
ARGUMENT AND CITATION OF AUTHORITY - - - - -	10, 11, 12, 13, 14, 15
CONCLUSION - - - - -	15,
DECLARATION UNDER PENALTY OF PERJURY - - - - -	16,
CERTIFICATE OF SERVICE - - - - -	17,

INDEX TO APPENDICES

- APPENDIX [A] STATE HABEAS COURT TRAFFALL SUPERIOR COURT DEC 20, 2013
AND GEORGIA SUPREME COURT DENYING CERTIFICATE OF PROBABLE CAUSE
ON - OUT - OF - TIME APPEAL SEPT 12, 2014
- APPENDIX [B] OUT-OF-TIME APPEAL DENIED IN TRIAL COURT AND THE
GEORGIA SUPREME COURT 2012, 2012, AND 2018
- APPENDIX [C] 1998 WITHDRAW GUILTY PLEA TRANSCRIPTS WARE
COUNTY SUPERIOR COURT
- APPENDIX [D] NOTICE OF APPEAL TO GEORGIA SUPREME COURT PETITIONER
IS APPEALING TO THE UNITED STATES SUPREME COURT OCT 29, 2018
- APPENDIX [E] TONY THOMPSON AFFIDAVIT IN SUPPORT OF WRIT OF
CERTIORARI

TABLE OF AUTHORITIES CITED

BOKIN V. ALABAMA	395 U.S. 238	— — — — —	1969
CARTER V. THE STATE	599 SE, 2d 170	— — — — —	2004
CABB V. THE STATE	663 SE, 2d 262	— — — — —	2008
COLEMAN V. ALABAMA	399 U.S. 1	— — — — —	1970
DOUGLAS V. CALIFORNIA	83 U.S. 814	— — — — —	1963
EVITT'S V. LUCEY	105 S.Ct. 830-834	— — — — —	1985
FORTSON V. THE STATE	532 SE, 2d 102	— — — — —	2000
GARDNER V. FLORIDA	430 S.Ct. 349-358	— — — — —	1977
GERSTEIN V. PHGH	95 S.Ct. 854	— — — — —	1975
GRIFFIN V. ILLINOIS	75 S.Ct 585-89-91	— — — — —	1965
HAMILTON V. ALABAMA	368 U.S. 52	— — — — —	1961
MARTINEZ V. RYAN	132 S.Ct. 1309	— — — — —	2012
MEMPHIS V. RAY	389 U.S. 128-137	— — — — —	1967
MOORE V. MICHIGAN	335 U.S. 115	— — — — —	1957
MONTERO V. LOUISIANA	556 U.S. 778	— — — — —	
MURRAY V. THE STATE	592 SE, 2d 321	— — — — —	2008
TOWNSEND V. BURK	334 U.S. 736	— — — — —	1948
UNITED STATES V. HUFF	512 F.2d 5th Cir	— — — — —	1975

STATUTES AND RULES

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART AS FOLLOWS: --IN AN CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY TRIAL ... AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE U.S. CONST. AM VI.

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART AS FOLLOWS: ... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS U.S. CONST. AM XIV.

STATEMENT OF JURISDICTION

THIS IS AN APPEAL FROM THE DISMISSAL OF PETITIONER OUT-OF-TIME APPEAL AS BEING untimely FILED. THE ISSUE ON APPEAL IS WHETHER THE TRIAL COURT AND THE GEORGIA SUPREME COURT ABUSE ITS DISCRETION FAILING TO REACH THE MERITS OF PETITIONER CLAIMS AS WHO BORE THE RESPONSIBILITY FOR FAILURE TO DO A TIMELY APPEAL ON THE DENIAL OF HIS WITHDRAW GUILTY PLEA. AND WHETHER ON A PETITIONER'S FIRST INITIAL COLLATERAL PROCEEDING DOES COUNSEL ATTACH FOR HIS FIRST APPEAL AND WAS IT ERROR OF THE TRIAL COURT FAILING TO INFORM THE PETITIONER OF HIS RIGHT TO APPEAL THE DENIAL OF HIS TIMELY FILED WITHDRAW GUILTY PLEA, AND IS A WITHDRAW GUILTY PLEA A CRITICAL STAGE OF CRIMINAL PROSECUTION AND DOES COUNSEL ATTACH FOR THAT PROCEEDING.

THIS HONORABLE COURT HAS JURISDICTION OVER THIS MATTER TO GRANT CERTIORARI? PURSUANT TO 28 USC, §1257

STATEMENT OF CASE

Appellant Tony Thompson pleaded guilty to numerous Georgia state crimes and was sentenced to life imprisonment on March 26, 1998. On April 1, 1998 Thompson filed a pro se motion to withdraw the guilty plea that he was incompetent to plead guilty due to mental illness. A hearing was held and the trial court denied relief on July 9, 1998.

(Thompson did not appeal), because the trial court did not inform the defendant of the hearing, nor did the trial court inform Thompson of his right to appeal, nor did the trial court appoint him counsel for the hearing ~~nor~~ counsel for appeal. . . . In 2001 Thompson filed a void judgment concerning errors in his withdraw guilty plea, the trial court and the Georgia Supreme Court recharacterize the void judgment as a untimely filed motion to withdraw guilty plea and dismissed the motion. See Thompson v. State, 559 SE2d 730 (2002). In 2011 Thompson filed an out-of-time appeal trying to appeal the denial of his 1998 withdraw guilty plea that the trial court denied. The trial court and the Georgia Supreme Court denied the out-of-time appeal as untimely filed withdraw guilty plea citing Thompson v. State, 559 SE2d 730 (2002). On May 26, 2015 there of Thompson filed an -

OTHER OUT-OF-TIME - APPEAL which The TRIAL COURT AND The GEORGIA Supreme Court DENIED THE OUT-OF-TIME AS A UNTIMELY FILED WITHDRAWN GUILTY PLEA citing Thompson V. STATE, 559 SE, 2d 730 (2002) which is clearly ERROR VIOLATING The DEFENDANTS DUE process TO APPEAL Directly The DENIAL OF his WITHDRAWN GUILTY PLEA which WAS DENIED ON The merits OF his CLAIMS. ON JULY 9, 1998 By Hon. Clarence D. Blount OF WARE county Superior Court WAYCROSS GEORGIA.

REASON FOR Granting The petition

1). THE PETITIONER DUE process Rights WAS VIOLATED WHEN THE TRIAL COURT AND THE GEORGIA SUPREME COURT ABUSE ITS DISCRETION DISMISSING HIS OUT-OF-TIME APPEAL THE DENIAL OF HIS 1998 TIMELY FILED WITHDRAW GUILTY PLEA AS UNTIMELY, WITHOUT REACHING THE MERITS OF HIS CLAIMS, AND FAIL TO CONDUCT A HEARING AS TO WHO BORE THE RESPONSIBILITY FOR FAILURE TO DO A TIMELY APPEAL, WHEN THE PETITIONER CONTEND THAT HIS RIGHT TO APPEAL DIRECTLY THE DENIAL OF HIS WITHDRAW GUILTY PLEA WAS FRUSTRATED, BECAUSE THE TRIAL COURT FAIL TO INFORM HIM OF HIS RIGHT TO APPEAL. (MUST REVERSE) See withdraw guilty plea TR, p. 1-7

2). THE PETITIONER HAS BEEN DENTED HIS DUE process Right OF his Sixth AND Fourteenth CONSTITUTIONAL RIGHT BECAUSE, THE TRIAL COURT held AN UNCONSTITUTIONAL hearing ON PETITIONER WITHDRAW GUILTY PLEA, WITHOUT INFORMING THE PETITIONER OF THE HEARING, AND THE TRIAL COURT FAIL TO Appoint him CO-UNSEL FOR THE HEARING, AND THE TRIAL COURT FAIL TO INQUIRE WHETHER OR NOT THE PETITIONER WAIVE HIS RIGHT TO COUNSEL, AND THE TRIAL COURT FAIL TO INFORM THE PETITIONER OF HIS RIGHT TO APPEAL. (MUST REVERSE)

3). THE PETITIONER DUE PROCESS RIGHT WAS VIOLATED under The Sixth And Fourteenth Amendment Right to A fair TRIAL, When The TRIAL Court FAIL TO INFORM THE PETITIONER OF HIS Right to be present At HIS WITHDRAW Guilty PLEA HEARING With out Benefit of Counsel, The petitioner Contend HE WAS INcompetent Suffering under mental Illness when HE plead Guilty, And The TRIAL Court Violated The petitioners SUBSTANTIAL DUE PROCESS RIGHTS when When The HEARING which INCLUDED INTRODUCTION OF EVI- dence, Advocacy By The prosecutor, such AS A STATE Doctors Report determination of whether The Guilty PLEA WAS Valid, Thus making The HEARING A critical Stage of criminal prosecution. The PETITIONER WAS NOT INFORMED OF The HEARING AND could not have an opportunity to present Evidence or defend him SELF, without BENEFITS of Counsel. (must REVERSE) See WITHDRAW Guilty PLEA TR. p. 1-7 See Exhibit [B]

4

The PETITIONER DUE PROCESS RIGHTS WAS VIOLATED OF The TRIAL Court Failing to ALLOW The DEFENDANT OF his Right to DEFEND HIS INcompetency PLEA HE WAS INcompetent TO STAND ~~PLEA~~, BECAUSE The DEFENDANT Filed A SPECIAL PLEA OF INSANITY AND The TRIAL Court ERROR Excepting The DE- fendants Guilty PLEA BECAUSE, The DEFENDANT DID NOT WAIVE his SPECIAL PLEA AND The conviction IS INVALID, AND The TRIAL Court ERROR Excepting The Guilty PLEA. MARTIN V. STATE, 448 SE.2d 235 (1978)

ARGUMENT AND CITATIONS OF AUTHORITY

THE LAW IS WELL SETTLED AN OUT-OF-TIME APPEAL IS THE REMEDY FOR A FRUSTRATED RIGHT OF APPEAL, WHERE THE APPELLANT WAS DENIED HIS RIGHT OF APPEAL THROUGH COUNSEL'S NEGLIGENCE OR IGNORANCE OR IF THE APPELLANT WAS NOT A DEQUATELY INFORMED OF HIS APPEAL RIGHTS. A DEFENDANT HAS A RIGHT TO APPEAL DIRECTLY THE DENIAL OF HIS TIMELY MOTION TO WITHDRAW A GUILTY PLEA. See CARTER V. JOHNSON, 599 SE.2d 170 (2001) MURRAY V. STATE 592 SE.2d 898 (2004) COBB V. STATE, 663 SE. 262 (2008). The petitioner contend the TRIAL COURT FAIL TO INFORM HIM OF HIS RIGHTS TO APPEAL THE DENIAL OF HIS WITHDRAW GUILTY PLEA, see WITHDRAW GUILTY PLEA TR. p. 1-6. The LAW IS WELL SETTLED THAT A WITHDRAW GUILTY PLEA IS A CRITICAL STAGE OF CRIMINAL PROSECUTION AND THE RIGHT TO COUNSEL ATTACHES see FORTSON V. THE STATE, 532 SE.2d 102 (2003) GERSTEIN V. PUGH, 95 S. CT. 854 (1975). The UNITED STATES SUPREME COURT HELD THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL IN CRIMINAL PROSECUTION APPLIES TO EVERY CRITICAL STAGE IN A CRIMINAL PROSECUTION. AND THE PETITIONER CONTEND THE TRIAL COURT FAIL TO APPOINTMENT OF COUNSEL FOR HIS HEARING ON HIS WITHDRAW GUILTY PLEA see WITHDRAW GUILTY PLEA TRANSCRIPTS TR. p. 1-3 NOR DID THE TRIAL COURT INFORM THE PETITIONER OF THE HEAR see WITHDRAW GUILTY PLE TR. p. 1-3 L. 11-12 The UNITED STATES SUPREME COURT HELD IN DOUGLAS V. CALIFORNIA, 83 S. CT. 814 (1963) (HOLDING STATES MUST APPOINT COUNSEL ON A PRISONERS FIRST APPEAL.). The PETITIONER CONTEND HIS WITHDRAW GUILTY PLEA WAS HIS FIRST INITIAL REVIEW COLLATERAL PROCEEDING AND HAD NO COUNSEL, VIOLATING HIS DUE PROCESS RIGHTS TO COUNSEL FOR HIS DEFENSE AND FOR APPEAL.

AND The petitioner ~~contend~~ he should have a hearing on the merits of his out-of-time appeal of a frustrated right of appeal because the trial court fail to appoint him counsel for his hearing and the trial court fail to inform him of his rights to appeal, in MARTINEZ V. RYAN, 132 S.Ct. 1309 (2012) The Supreme Court held where under state law, ineffective-assistance of trial counsel claims must be raised in an initial review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective, The petitioner contend HE FILED AN-OUT-OF-TIME APPEAL see EXHIBIT [B] TWO TIMES WHICH IS THE PROPER VEHICLE FOR A FRUSTRATED RIGHT OF APPEAL AND THE TRIAL COURT AND THE GEORGIA SUPREME COURT DISMISSED HIS OUT-OF-TIME APPEAL AS UNTIMELY FILED. WHICH IS ERROR, THE PETITIONER SENT AN AFFIDAVIT IN SUPPORT OF HIS APPEAL AND THE GEORGIA SUPREME COURT HAS ABUSE IT DISCRETION WITH OUT REACHING THE MERITS OF HIS CLAIMS IS ERROR. IN GEORGIA THE LAW IS WELL SETTLED THAT mere passage of time DOES NOT PRECLUDE A DEFENDANT FROM PURSUING AN OUT-OF-TIME APPEAL. BECAUSE, THE PETITIONERS RIGHTS TO APPEAL WAS FRUSTRATED THE TRIAL COURT FAIL TO HOLD A EVIDENTIARY HEARING ON HIS OUT OF TIME APPEAL see DYKES V. THE STATE, 579 SE.2d 468 (2004)

The petitioner FILED A STATE HABEAS CORPUS IN GEORGIA BECAUSE OF HIS FRUSTRATED RIGHT TO APPEAL AND A CLAIM THAT HE WAS NOT APPOINTED COUNSEL. ~~NOR~~ INFORMED OF HIS RIGHT TO APPEAL THE DENIAL OF HIS WITH PRAYER

AND THE GEORGIA COURTS HAS VIOLATED THE DEFENDANTS RIGHTS TO A FAIR TRIAL ON HIS WITHDRAW GUILTY PLEA TO BE HEARD. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART AS FOLLOWS: IN ALL CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL... AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE, US CONST AM VI, THE PETITIONER CONTENDS THE TRIAL COURT OF GEORGIA AND THE GEORGIA SUPREME COURT HAS VIOLATED THE DEFENDANTS DUE PROCESS RIGHTS DEPRIVING THE DEFENDANT OF HIS RIGHTS TO APPEAL HIS WITHDRAW GUILTY PLEA UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART AS FOLLOWS, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS, US CONST, AM, XIV. THE PETITIONER CONTENDS THE TRIAL COURT VIOLATED THE DEFENDANTS SUBSTANTIAL RIGHTS AND THUS SATISFIED THE TEST FOR DETERMINING WHETHER THE DEFENDANT WITHDRAW GUILTY PLEA HEARING QUALIFIED AS A CRITICAL STAGE OF CRIMINAL PROSECUTION, WHEN AT THE DEFENDANTS HEARING HELD ON JUNE 9, 1998 THE STATE PROSECUTOR INTRODUCTION OF EVIDENCE OF A DOCTORS REPORT AS TO WHETHER THE GUILTY PLEA WAS VALID CLEARLY EFFECTED THE DEFENDANTS RIGHT WITHOUT COUNSEL, AND THE DEFENDANT DID NOT HAVE A OPPORTUNITY TO DEFEND HIS CLAIM THAT HE WAS SUFFERING UNDER MENTAL ILLNESS WHEN HE ENTERED HIS GUILTY PLEA, OR CONFRONT HIS WITNESS AGAINST HIM, HAD THE DEFENDANT BEEN INFORMED OF THE HEARING HE WOULD HAVE SHOWN THAT THE DOCTORS REPORT WAS FALSE, THAT THE ALLEDGE DOCTOR MIC D. ALESENDRO WAS NOT A DOCTOR AND THE REPORT WAS ERRONEOUS SEE WITHDRAW TR, P. 5 L. 19-20.

THAT HIS CONSTITUTIONAL RIGHT WERE VIOLATED, THE GEORGIA HABEAS COURT DISMISSED HIS HABEAS CORPUS AS UNTIMELY AND ALL ISSUES WERE PROCEDURALLY BARRED. THE PETITIONER CONTENDS THAT GEORGIA'S HABEAS CORPUS STATUTE IS UNCONSTITUTIONAL BECAUSE IN GEORGIA MORE PASSAGE OF TIME ON A ROUT OF TIME APPEAL DOES NOT PRECLUDE A DEFENDANT FROM PURSUING AN OUT-OF-TIME APPEAL AND A STATE HABEAS COURT IS A STATE COURT THAT HEAR CONSTITUTIONAL VIOLATIONS. THE SUPREME COURT HELD, WHERE UNDER STATE LAW INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS MUST BE RAISED IN AN INITIAL-REVIEW COLLATERAL PROCEEDING, A PROCEDURAL DEFAULT WILL NOT BAR A FEDERAL HABEAS COURT FROM HEARING THOSE CLAIMS IF IN THE INITIAL-REVIEW-COLLATERAL PROCEEDING THERE WAS NO COUNSEL OR COUNSEL IN THAT PROCEEDING WAS INEFFECTIVE. SEE MARTINEZ V. RYAN, 132 S.Ct. 1309 (2012). THE PETITIONER CONTENDS THAT WAS HIS FIRST INITIAL REVIEW COLLATERAL REVIEW BECAUSE OF A FRUSTRATED RIGHT TO APPEAL AND THE HABEAS COURT ERROR DISMISSING HIS OUT-OF-TIME APPEAL SEE EXHIBIT [A] IS ERROR AND GEORGIA HABEAS CORPUS STATUTE IS UNCONSTITUTIONAL.

THE DEFENDANT CONTENDS GEORGIA HAS VIOLATED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO COUNSEL FOR HIS WITHDRAW GUILTY PLEA AND VIOLATED HIS CONSTITUTIONAL RIGHT TO APPEAL DIRECTLY THE DENIAL OF HIS 1998 WITHDRAW GUILTY PLEA BY FAILING TO INFORM HIM OF HIS RIGHTS TO APPEAL AND THE TRIAL COURT AND THE GEORGIA SUPREME COURT HAS ABUSED ITS DISCRETION WITHOUT REACHING THE MERITS OF HIS CLAIMS WITHOUT AN EVIDENTIARY HEARING.

THE PETITIONER contends the trial court failed to appoint him
Counsel for his withdrawn Guilty plea hearing, The SIX Amendment
GUARANTEE OF COUNSEL For indigent criminal DEFENDANTS
IS FULLY INCORPORATED BY THE Fourteenth Amendment The DEFENDANT
"cite" Monterey v. Louisiana, 556 US, 778 Cottman v. Alabama, 399 US 1
(1970) preliminary HEARING IS A CRITICAL STAGE, HAMILTON v. ALABAMA
368 US, 52 (1961) ARRAIGNMENT IS A CRITICAL STAGE MOORE v. MICHIGAN
335 U.S. 135 (1957) A GUILTY PLEA IS A CRITICAL STAGE BOKIN v. ALA-
BAMA, 395 US, 238 (1969) IS A CRITICAL STAGE, A WITHDRAWN
GUILTY PLEA IS A CRITICAL STAGE Gerstein v. Pugh, 98 S.Ct. 854
(1978), FORTSON v. THE STATE, 532 S.E.2d 102 (2000) SENTENCING IS A
CRITICAL STAGE GARDNER v. FLORIDA, 430 S.Ct. 349-358 (1977) Memph v
RAY, 389 US, 128-137 (1967) TOWNSEND v. BURK, 334 U.S. 736 (1948)
UNITED STATES v. HUFF, 512 F.2d 5th Cir (1975); IN Evitts v. Lucey, -US-
105 SC 830-84 1985 THE SUPREME COURT OF THE UNITED STATES
HELD THAT DUE PROCESS IS VIOLATED IF A CRIMINAL DEFENDANT'S
FIRST APPEAL OF RIGHT IS DISMISSED FOR PROCEDURAL DEFICIENCIES
ATTRIBUTABLE TO THE INEFFECTIVE ASSISTANCE OF HIS COUNSEL AL-
THOUGH THE EVITTS DECISION ESTABLISHES A RULE OF CONSTITUTIONAL
DIMENSION, THE STATE OF GEORGIA HAS LONG RECOGNIZED THE
RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL FROM
A CRIMINAL CONVICTION AND HAS PROVIDED FOR AMELIORATIVE
RELIEF IN THE FORM OF AN - OUT - OF - TIME APPEAL, "AN" AT-
TORNEY WHO THROUGH NEGLIGENCE, IGNORANCE OR MISINTERPRETATION
OF THE LAW ... FAILS TO PERFORM ROUTINE DUTIES RESULTING IN A
DISMISSAL OF HIS CLIENTS APPEAL, THEREBY DENYING SUCH CLIENTS
A RIGHT OF REVIEW AFTER CONVICTION CANNOT BE SAID TO
BE RENDERING EFFECTIVE ASSISTANCE ... THE APPELLANT WHO
WAS INDEED DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN ATTEMPTING

TO APPEAL HIS CONVICTION SHALL BE ALLOWED IF HE SO DESIRES TO
FILE AN OUT-OF-TIME APPEAL TO THE PROPER APPELLATE COURT.
THE PETITIONER CONTENDS GEORGIA HAS DENIED HIM HIS
RIGHTS TO APPEAL THE DENIAL OF HIS 1998 WITHDRAW GUILTY
PLEA IS AN ABUSE OF DISCRETION AND A VIOLATION
OF THE APPELLANT'S CONSTITUTIONAL RIGHTS AND MUST
REVERSE.

CONCLUSION

THE APPELLANT PRAYS THIS HONORABLE COURT
GRANT HIM A NEW TRIAL ON HIS WITHDRAW
GUILTY PLEA AND HAVE HIM APPOINTED COUNSEL
FOR HIS REPRESENTATION OF HIS CASE SO HE CAN
SHOW EVIDENCE WHY HIS GUILTY PLEA IS INVALID.

OR REMAND THE CASE BACK TO THE TRIAL COURT TO
CONDUCT AN EVIDENTIARY HEARING AS TO WHO BORE THE
RESPONSIBILITY FOR FAILURE TO APPEAL IN A TIMELY MANNER

REASONS FOR GRANTING THE PETITION

The PETITIONER contend ON March 26, 1998 ~~PLEAD~~ Guilty TO TWO counts of murder Among other Georgia STATE CRIMES AND WAS SENTENCE TO LIFE imprisonment, ON APRIL 18TH HE FILED A MOTION TO WITHDRAW HIS GUILTY PLEA. A HEARING WAS HELD ON JULY 9, 1998, The TRIAL COURT DID NOT APPOINT HIM COUNSEL FOR THE HEARING NOR DID THE TRIAL COURT INQUIRE WHETHER I WAIVE MY RIGHT TO COUNSEL, AND THE TRIAL COURT DID NOT INFORM ME OF MY RIGHT TO APPEAL THE DENIAL OF IT RULING. NOR DID THE TRIAL COURT GIVE ME AN ORDER THAT IT HAD DENIED MY MOTION TO WITHDRAW NOR DID THE TRIAL COURT INFORM ME OF THE HEARING HELD ON JULY 9, 1998. THAT WAS MY FIRST INITIAL COLLATERAL proceeding AND THE TRIAL COURT VIOLATED MY DUE PROCESS RIGHTS TO APPEAL MY CONVICTION AND THE DEFENDANT PRAY THIS HONORABLE COURT REVERS HIS CONVICTION SO HE CAN APPEAL HIS CONVICTIONS WITH APPOINTMENT OF COUNSEL.

DECLARATION UNDER PENALTY OF PERJURY

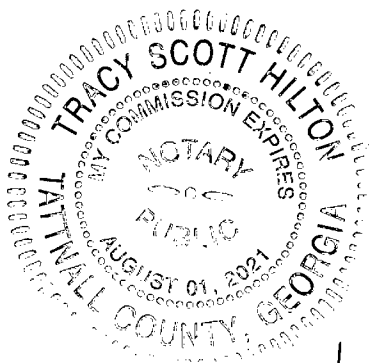
YOU MUST DECLARE UNDER PENALTY OF PERJURY THAT THE
ANSWERS AND INFORMATION YOU HAVE GIVEN HERIN ARE TRUE AND
CORRECT. GIVING FALSE ANSWERS OR INFORMATION WILL SUBJECT YOU TO
PERJURY CHARGES UNDER BOTH FEDERAL AND STATE LAW.

Understanding the above, I declare under penalty of
perjury that the foregoing answers and information provided me
are true and correct.

Executed this 28th day of NOV, 2018.

Tom Thompson #96476

Signature of Declarant



11/29/18
Notary: [Signature]