



SUPREME COURT OF GEORGIA
Case No. S17H1661

Atlanta, August 27, 2018

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NORMAN HAMPTON v. GREGORY MCLAUGHLIN, WARDEN

**Upon consideration of the Motion for Reconsideration filed in this case, it is
ordered that it be hereby denied.**

**Hines, C.J., Melton, P.J., Benham, Hunstein, Nahmias, Blackwell, Boggs, and
Peterson, JJ., concur.**

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Thomis N. Banus
, Clerk



SUPREME COURT OF GEORGIA
Case No. S17H1661

Atlanta, August 02, 2018

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NORMAN HAMPTON v. GREGORY MCLAUGHLIN, WARDEN

From the Superior Court of Macon County.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied. All the Justices concur.

Trial Court Case No. 216-CV-0020

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Suz C. Fulton, Chief Deputy Clerk

COPY

IN THE SUPERIOR COURT OF MACON COUNTY
STATE OF GEORGIA

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MAY 11 2017

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GEORGIA, MACON COUNTY
FILED IN OFFICE THIS 5th
DAY OF May 20 17
AT 10 AM CRM
Debra M. Angula
Dep. CLERK

NORMAN HAMPTON,
GDC #270113,

Petitioner,

V.

GREGORY McLAUGHLIN,
WARDEN,

Respondent.

CIVIL ACTION FILE NO.:

2016CV0020

FINAL HABEAS CORPUS ORDER

Hearing was held in this matter on November 1, 2016, and the court heard evidence as provided by law. The court determines that petitioner is not entitled to habeas relief.

I. PROCEDURAL BACKGROUND

Petitioner was convicted after a jury trial of felony theft by shoplifting and giving false information a law enforcement officer. Petitioner was sentenced to ten years in prison as a recidivist.

Petitioner's convictions were affirmed on appeal. Hampton v. State, Case Number A-14A0316 (May 30, 2014). Petitioner was represented at trial by attorney Billy Grantham and on appeal by attorney Kevin Armstrong.

Petitioner raises two grounds in this matter. First, petitioner contends that he received an “illegal sentence” as there was no mention during his sentencing of him being sentenced as a recidivist. Petitioner also alleges ineffective assistance of trial counsel for failing to object to the sentence.

II. FACTUAL FINDINGS

Petitioner testified at his hearing. Petitioner testified that the transcript did not set out the recidivist nature of his sentence, and petitioner complained that this matter was not raised on appeal.

The respondent entered into evidence the complete record from the Superior Court of Decatur County including the trial transcript, Clerk's file, and appellate record. No other evidence was presented at hearing.

III. LEGAL CONCLUSIONS AND CITATION OF AUTHORITY

Petitioner's claims fail for several reasons. First, petitioner's claims of ineffective assistance of trial counsel are defaulted as they were not raised at trial or on appeal.

O.C.G.A. § 9-14-48(d) of Georgia's habeas corpus statute provides:

The court shall review the trial record and transcript of proceedings and consider whether the petitioner made timely motion or objection or otherwise complied with Georgia procedural rules at trial and on appeal and whether, in the event the petitioner had new counsel subsequent to trial, the petitioner raised any claim of ineffective assistance of trial counsel on appeal; and absent a showing of cause for noncompliance with such requirement, and of actual prejudice, habeas corpus relief shall not be granted.

Actual prejudice can be shown by satisfying either the prejudice standard of Strickland or the actual prejudice test of United States v. Frady, 456 U.S. 152 (1982). Todd, 268 Ga. at 829. Frady requires that a petitioner show not merely that errors at trial created a possibility of prejudice, but that the errors "worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." Frady, 456 U.S. at 170. "[A] habeas petitioner who meets both prongs of the Strickland test has established the necessary cause and

prejudice to overcome the procedural bar of OCGA § 9-14-48(d).” Battles v. Chapman, 269 Ga. 702, 506 S.E.2d 838 (1998).

The claims of ineffective assistance of trial counsel now raised by petitioner are defaulted under O.C.G.A. § 9-14-48(d) as they were not raised on appeal. Gaither v. Gibby, 267 Ga. 96, 97, 475 S.E.2d 603 (1996); Black v. Hardin, 255 Ga. 239, 336 S.E.2d 754 (1985). Petitioner has further failed to establish cause and actual prejudice as defined in Turpin v. Todd to overcome the default.

❖ Petitioner had separate appellate counsel and, in fact, raised ineffective assistance of trial counsel. Petitioner has failed to demonstrate that trial counsel could have done anything to prevent petitioner from being sentenced as a recidivist, especially in light of the determination on appeal that the trial court was correct in sentencing petitioner as a recidivist. Petitioner has not demonstrated cause or prejudice.

It is not clear to the court exactly what legal basis petitioner claims justify his assertion that his sentence is “illegal.” It does appear to the court, however, that this matter was resolved adversely to petitioner on direct appeal. Petitioner’s appellate counsel raised three errors, one of which addressed the issues as to whether or not “the trial court erred in sentencing him as a recidivist pursuant to O.C.G.A. §17-10-7(c) because the State’s notice did not show that he had been convicted of three prior felonies.” Hampton v. State, Case No.: A14A0316 (Ga. App. May 30, 2014). The Court of Appeals discussed this issue in detail and concluded that the petitioner was properly sentenced as a recidivist. Petitioner cites no “new law” or other authority which suggest that he was not properly considered as a recidivist by the trial court, nor does petitioner