

Appendix A



SUPREME COURT OF GEORGIA
Case No. S18H0086

Atlanta, January 07, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NEVILLE TURNBULL v. GLEN JOHNSON, WARDEN

From the Superior Court of Dooly 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, except Boggs and Ellington, JJ., disqualified.

Trial Court Case No. 17DV0069

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.

Lee C. Fulton, Chief Deputy Clerk

Received 1-09-19

Appendix B



SUPREME COURT OF GEORGIA
Case No. S18H0086

Atlanta, February 04, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NEVILLE TURNBULL v. GLEN JOHNSON, WARDEN

The motion for reconsideration having been filed late, it is hereby dismissed as untimely. Supreme Court Rule 27.

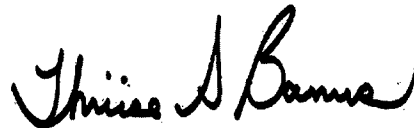
All the Justices concur, except Boggs and Ellington, JJ., disqualified.

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.



, Clerk

Appendix C

IN THE SUPERIOR COURT OF DOOLY COUNTY
STATE OF GEORGIA

NEVILLE TURNBULL,
GDC #1000976378

Petitioner,

v.

GLEN JOHNSON
Warden, Dooly State Prison,

Respondent.

*

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CIVIL ACTION NO. 17DV-0069

*

HABEAS CORPUS

*

FILED IN OFFICE

7-18-17

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Patsy Bridges

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DEPUTY CLERK OF SUPERIOR COURT
DOOLY COUNTY, GEORGIA

FINAL ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

Petitioner Neville Turnbull filed an application for habeas corpus relief with this Court on April 27, 2017. Petitioner is challenging his 2012 Clayton County jury trial convictions for aggravated child molestation, aggravated sodomy, rape, and child molestation. Respondent filed a Return and Answer and a Motion to Dismiss as Successive on May 25, 2017. A hearing was held in this case on June 20, 2017 at the Dooly County Justice Center in Pinehurst, Georgia with Petitioner appearing *pro se* and Assistant Attorney General Vanessa Meyerhoefer representing the Respondent. Based on the evidence established at that hearing, this Court makes the following findings of fact and conclusions of law and GRANTS Respondent's Motion to Dismiss.

PROCEDURAL HISTORY

On January 6, 2012 Petitioner was found guilty by jury in the Clayton County Superior Court of three counts of aggravated child molestation, three counts of aggravated sodomy, rape, and child molestation. Petitioner was sentenced to consecutive life sentences in prison. Petitioner's convictions were affirmed on appeal in *Turnbull v. State*, No. A13A1846 (Ga. App. Jan. 9, 2014) (unpublished). Petitioner filed his first application for habeas corpus relief on April 7, 2014 in the

Superior Court of Dooly County, where an evidentiary hearing took place. This first petition was ultimately denied by this Court in *Turnbull v. Gramiak*, Civil Action No. 14DV-0062 (Dooly Super. Ct. July 17, 2014). Petitioner then applied for a certificate of probable cause with the Supreme Court of Georgia, which denied Petitioner's application on March 2, 2015. Petitioner filed the petition currently before this Court on April 27, 2017.

ALLEGED GROUNDS FOR RELIEF

In ground one Petitioner alleges a fundamental miscarriage of justice, actual innocence, and newly discovered evidence, claiming that his trial and appellate counsel were ineffective for failing to discover exculpatory, impeaching, scientific, and alibi evidence. In ground two Petitioner alleges a fundamental miscarriage of justice, actual innocence, and newly discovered evidence. In ground three Petitioner alleges a fundamental miscarriage of justice, actual innocence, and newly discovered evidence of appellate counsel's conflict of interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Petitioner's application for habeas corpus relief is successive. Petitioner filed his first application for writ of habeas corpus in the Dooly County Superior Court in 2014 and this Court denied habeas relief. Petitioner then submitted an Application for Certificate of Probable Cause to the Supreme Court of Georgia which was denied on March 2, 2015. Georgia statutory law specifically provides that successive petitions are not valid barring special circumstances. O.C.G.A. § 9-14-51 states as follows:

All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition. Any grounds not so raised are waived unless the Constitution of the United States or of this state otherwise requires or unless any judge to whom the petition is assigned, on considering a subsequent petition, finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

Petitioner has failed to show that the claims in his application for habeas corpus relief could not have reasonably been raised in his prior habeas petition. O.C.G.A. § 9-14-51; *Bruce v. Smith*, 274 Ga. 432, 553 S.E.2d 808 (2001); *Stevens v. Kemp*, 254 Ga. 228, 327 S.E.2d 185, (1985); *Smith v. Zant*, 250 Ga. 645, 301 S.E.2d 32 (1983).

Petitioner claimed that because he did not receive his records from his open records request, that he didn't have knowledge to raise the grounds of newly discovered evidence. Petitioner's main piece of evidence that he relied on was a police report from 2009, which was in existence before his trial, that includes a statement by the victim's mother that all visitation between Petitioner and the victim occurred in North Carolina, not Georgia. Petitioner contends that this police report is proof he wasn't in Georgia. However, Petitioner admitted that he had this police report at the time he filed his first habeas petition. Therefore, this claim certainly could have been raised in his first habeas petition as Petitioner had access to it at that time. Petitioner's claim that he didn't receive certain open records documents until after his first habeas is also without merit. The question is whether petitioner possessed, or by reasonable means could have obtained, sufficient basis to allege the claim in the first petition and pursue matter through habeas process. *McCleskey v. Zant*, 111 S.Ct. 1454, 499 U.S. 467, 113 L.Ed.2d 517 (1991). Petitioner could have reasonably obtained those records through due diligence once his trial was over.

As to ground two, Petitioner primarily argued that his appellate counsel was ineffective for failing to raise several grounds on appeal, however Petitioner did in fact raise this exact issue of ineffective assistance of appellate counsel in his last habeas petition. At the evidentiary hearing, Ms. Flora testified as to her performance and Petitioner had the ability to question her. Petitioner argues that this Court should consider this ground because this Court "misapplied the standard" and was "objectively unreasonable" in its findings of fact. Again, the question in considering whether a habeas petition is successive is whether the claim was raised, or could have been raised,

in the prior habeas case. Petitioner raised ineffective assistance of counsel in his first habeas petition and a hearing was held on that exact issue. Petitioner has failed to show a substantive change in the law or facts that would allow him to proceed on this ground that has already been decided.

Lastly, Petitioner alleges that appellate counsel was ineffective due to a conflict of interest, as she eventually ceased employment as a public defender and resumed employment as a solicitor in Clayton County, where Petitioner was convicted. This Court already ruled in Petitioner's first habeas case that Ms. Flora was not ineffective. Petitioner could have reasonably discovered Ms. Flora's employment through due diligence to raise it in his first habeas petition. Additionally, the alleged conflict of interest of Ms. Flora's was indeed addressed at Petitioner's first habeas hearing. Ms. Flora disclosed her employment at that time and Petitioner was certainly able to question her about it and amend his petition at the first hearing to address this ground regarding an alleged conflict of interest. A party is not held to a different or more lenient standard merely because he elected to proceed pro se; one who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law. *Lewis v. State*, 330 Ga. App. 650, 768 S.E.2d 821 (2015). Petitioner has failed to show how Ms. Flora's eventual employment with the Clayton County Solicitor's Office in any way directly affected her representation regarding his appeal.

Petitioner has not shown that he could not have raised these grounds in his prior habeas petition, and Petitioner has failed to show a miscarriage of justice. Further, there has been no substantive change in the facts or law since relief was denied in Petitioner's prior habeas corpus case that would constitute a special circumstance justifying the allowance of a second petition. Accordingly, all of the grounds raised in the present habeas petition are dismissed as successive.

CONCLUSION

For the reasons stated above, Respondent's Motion to Dismiss Petitioner's Application for Writ of Habeas Corpus is GRANTED. If the Petitioner desires to appeal this Order, the Petitioner must file a written application for a certificate of probable cause to appeal with the clerk of the Supreme Court of Georgia within 30 days from the date of the filing of this Order and also file a notice of appeal with the Clerk of the Superior Court of Dooly County within the same 30-day period.

SO ORDERED, this 11th day of July, 2017.



T. CHRISTOPHER HUGHES
JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

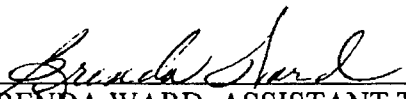
I have this day served the following parties with a copy of the foregoing Final Order Granting Respondent's Motion to Dismiss by placing same in the U.S. Mail with sufficient postage affixed thereon and addressed as follows:

Neville C. Turnbull
GDC #1000976378
Dooly State Prison
P.O. Box 750
Unadilla, GA 31091

Aimee F. Sobhani
ASSISTANT ATTORNEY GENERAL
GEORGIA DEPARTMENT OF LAW
Habeas Corpus Proceedings Div. 3
40 Capitol Square, S.W.
Atlanta, GA 30334

Glen Johnson, Warden
DOOLY STATE PRISON
P.O. Box 750
Unadilla, GA 31091-0750

This 12th day of July, 2017.



BRENDA WARD, ASSISTANT TO
T. CHRISTOPHER HUGHES
JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT



SUPREME COURT OF GEORGIA DEPUTY CLERK OF SUPERIOR COURT
Case No. S18H0086 DOOLY COUNTY, GEORGIA

FILED IN OFFICE

2-21-19

Fatay Bridges

Atlanta, January 07, 2019

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed.

NEVILLE TURNBULL v. GLEN JOHNSON, WARDEN

From the Superior Court of Dooly 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, except Boggs and Ellington, JJ., disqualified.

Trial Court Case No. 17DV0069

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.

Lee C. Fulton, Chief Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**