



SUPREME COURT OF GEORGIA
Case No. S18H0368

Atlanta, September 24, 2018

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

STEVEN JACOB SEIBERT v. ANTOINE CALDWELL, WARDEN

From the Superior Court of Wilcox 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. Melton, C. J., Nahmias, P. J., Benham, Hunstein, Blackwell, Boggs, and Peterson, JJ., concur. Warren, J., not participating.

Trial Court Case No. 2016-CV-146

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

APPENDIX E

IN THE SUPERIOR COURT OF WILCOX COUNTY
STATE OF GEORGIA

STEVEN J. SEIBERT,
GDC # 132507,

*

Petitioner,

* CIVIL ACTION NO. 2016-CV-146

v.

*

ANTOINE CALDWELL,
Warden, Wilcox State Prison,

*

Respondent.

*

ORDER

On May 11, 2017, this Court held a hearing regarding Respondent's Motion to Dismiss the above styled action. At the time, Petitioner expressed that he wished to supplement the record with a brief and exhibits because at the time, Petitioner did not have the exhibits he wished to submit. This Court allowed Petitioner 30 days in which the record would be left open for him to submit his brief and exhibits. On May 24, 2017, Petitioner sent a letter requesting that this Court extend the deadline to submit his brief and exhibits due to the fact that he still has not received the records he has requested.

Having read and considered said request, this Court HEREBY ORDERS that the deadline for the submission of the aforementioned brief and exhibits be extended an additional 30 days, to July 10, 2017.

SO ORDERED this 30th day of May, 2017.


DENISE D. FACHINI
JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

COPY

EXHIBIT 3

IN THE SUPERIOR COURT OF WILCOX COUNTY
STATE OF GEORGIA

STEVEN J. SEIBERT,
GDC # 132507,

Petitioner,

v.

ANTOINE CALDWELL,
Warden, Wilcox State Prison,

Respondent.

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CIVIL ACTION NO. 2016-CV-146

FILED IN OFFICE

AUG 18 2017

Janet A. Mauldin
CLERK OF SUPERIOR COURT
WILCOX COUNTY, GEORGIA

FINAL ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

Petitioner Steven Siebert filed an application for habeas corpus relief with this Court on December 14, 2016. Petitioner is challenging his 2006 Gwinnett County jury trial conviction for aggravated stalking and abandonment of a dependent child. Respondent filed a Return and Answer on January 30, 2017 and a Motion to Dismiss as Untimely on January 31, 2017. A hearing was held in this case on May 11, 2017 at the Wilcox State Prison in Abbeville, Ga with the Petitioner appearing *pro se* and Assistant Attorney General Meghan Hill representing the Respondent. Based on the record established at that hearing, this Court hereby **GRANTS** Respondent's Motion to Dismiss as Untimely.

PROCEDURAL HISTORY

On December 6, 2006, Petitioner was found guilty by jury of two counts of aggravated stalking and one count of misdemeanor abandonment of a dependent child in the Superior Court of Gwinnett County. Petitioner was represented by Dan Klump at trial. Petitioner was sentenced to 10 years to serve for one count of stalking, 10 years to serve 5 years on the other count of stalking, and one year of probation on the abandonment charge, for a total of 21 years to serve 15 years. Petitioner was

represented by Mark Yurachek on appeal. Petitioner's convictions were affirmed on appeal in *Siebert v. State*, 294 Ga. App. 202 (2008). Petitioner's petition for certiorari was dismissed by the Supreme Court of Georgia as untimely on June 1, 2010. Petitioner filed his first application for habeas corpus relief in the Superior Court of Chattooga County. This first petition was ultimately denied in *Siebert v. Brown*, Civil Action No. 2012-CA-38,376 (Chattooga Super. Ct. July 29, 2013). Petitioner sought an application for a Certificate of Probable Cause, which the Supreme Court of Georgia denied on November 4, 2013. Petitioner filed a motion for reconsideration, which the Supreme Court of Georgia also denied on December 11, 2013. Petitioner then filed the petition for habeas corpus relief currently before this Court on December 14, 2016.

ALLEGED GROUNDS FOR RELIEF

In ground one, Petitioner alleges new evidence of ineffective assistance of constitutionally guaranteed trial and appellate counsel based on *State v. Cusack*, 296 Ga. 534 (2015). In ground two, Petitioner alleges new evidence of trial court judicial bias requiring reversal of illegal alleged conviction, not available until April 2013 through May 2014. In ground three, Petitioner alleges new evidence of bias of the Chattooga County Habeas Judge, Brian House, based upon, in part, *State v. Cusack*, 296 Ga. 534 (2015).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Untimely

This Court finds that Petitioner's application for habeas corpus relief is untimely. In 2004, the Georgia legislature enacted a revision to the procedural aspects of habeas corpus law. Effective since July 1, 2004, persons convicted of felonies are required to file any petition for habeas corpus relief within four years of the "judgment of conviction becoming final." O.C.G.A. § 9-14-42(c).

The judgment of conviction becom[es] final by the conclusion of direct review or the expiration of the time for seeking such review; provided, however, that any person whose conviction has become final as of July 1, 2004, regardless of the date of conviction, shall have until ... July 1, 2008, in the case of a felony to bring an action pursuant to this Code section.

O.C.G.A. § 9-14-42(c)(1). As to the time for seeking review, parties have thirty days to file a notice of appeal. O.C.G.A. § 5-6-38. In the court of appeals, parties have ten days to notify the court that the defendant intends to petition for writ of certiorari. COURT OF APPEALS RULE 38. Therefore, the Georgia Supreme Court has held that a conviction is “final” under existing state law when direct review, including the time to file for certiorari to the United States Supreme Court, has concluded or where the time for seeking further appellate review has expired. *See Turpin v. Todd*, 268 Ga. 820, 830-31, 493 S.E.2d 900, 909 (1997); *Taylor v. State*, 262 Ga. 584, 586, 422 S.E.2d 430, 432-33 (1992).

In the case at hand, the Petitioner was found guilty on December 6, 2006. Petitioner then filed a direct appeal and his convictions were affirmed by the Georgia Court of Appeals on October 22, 2008. Petitioner then had ten days to notify the court of his petition to seek certiorari. Petitioner did not timely file for certiorari and as a result, his petition for certiorari was denied on February 9, 2009. Because Petitioner did not timely file his petition for certiorari, Petitioner’s conviction was “final” on or about November 1, 2008. Petitioner then had until November 1, 2012 to file a petition for habeas corpus. The Petitioner filed the current Application for Writ of Habeas Corpus on December 14, 2016, over four years after the deadline.

Petitioner’s three habeas grounds allege that he has new evidence that gave rise to these grounds and he could not have brought such grounds previously. O.C.G.A. § 9-14-42(c)(4) states that a Petitioner also has four years from the date on which “the facts supporting the claims presented *could* have been discovered through the exercise of due diligence.” (emphasis added). In Petitioner’s ground one, Petitioner alleges first that he has new evidence of ineffective assistance of his trial and

appellate counsel. Petitioner states that his appellate attorney Yurachek testified that he did not raise ineffective assistance of trial counsel because he did not see any deficiencies with Mr. Klump's performance. Petitioner further states that the 2015 decision from *Cusack* is new evidence that his trial and appellate counsel were both defective in their interpretation of the law. However, despite the fact that *Cusack* was decided in 2015, it is not the case that first illustrated the change in the aggravated stalking law that Petitioner is referring to. It is *State v. Burke*, which *Cusack* relies on, in which the Supreme Court of Georgia held that a single violation of a protective order, by itself, does not amount to aggravated stalking. *State v. Burke*, 287 Ga. 377, 378, 695 S.E.2d 649,650-51 (2010). The *Burke* case was decided on June 28, 2010 and as such, Petitioner could have discovered this change in that law through due diligence at that time. As stated above, a petitioner has four years from the date on which "the facts supporting the claims presented *could* have been discovered through the exercise of due diligence." O.C.G.A. § 9-14-42(c)(4). The 'due diligence' clock starts ticking when a person knows or through diligence *could discover* the vital facts, regardless of when their legal significance is *actually* discovered. *Cole v. Warden, Georgia State Prison*, 768 F.3d 1150, 1155 (11th Cir. 2014) (quoting 28 U.S.C. § 2244(d)(1)(A)-(D)) (emphasis added). Petitioner then had four years from when *Burke* was decided, or until June 28, 2014, to raise this ground and failed to do so.

Petitioner next alleges new evidence of trial court judicial bias requiring reversal of illegal alleged conviction, not available until April 2013 through May 2014. Specifically, Petitioner points to an incident in which "at the sentencing hearing and on the record, the trial judge, Debra K. Turner, stated that she would again prosecute [Petitioner] for aggravated stalking for any perceived conduct, even if the allegations did not violate or offend the statute, which she then maliciously did in 2011-2012." In Petitioner's Brief in Support, he points to other comments made by Judge Turner during his trial that Petitioner alleges amounts to bias. Petitioner also points to Judge Turner denying his Motion for Directed Verdict. This Court fails to see how this is new evidence. Certainly Petitioner

would have known about these alleged statements of bias at the time of his trial and then sentencing hearing because he alleges that Judge Turner said these things in front of Petitioner and on the record. Seeing as he was physically present to witness these acts of alleged bias, Petitioner could have raised these issues without requiring the record. Petitioner then had four years to bring this ground of judicial bias, which he failed to do.

Lastly, Petitioner's ground three fails to state a claim for habeas corpus relief. The habeas corpus statute allows that "any person imprisoned by virtue of a sentence imposed by a state court of record who asserts that *in the proceedings which resulted in his conviction* there was a substantial denial of his rights under the Constitution of the United States or of this state may institute a proceeding under this article." O.C.G.A. § 9-14-42(a) (emphasis added). Habeas corpus therefore allows for a Petitioner to assert a substantial denial of rights during the proceedings which resulted in his conviction. The habeas court does not have any role whatsoever in the proceedings which resulted in Petitioner's convictions. Any impropriety that allegedly took place during Petitioner's first habeas hearing is in no way related to constitutional violations concerning Petitioner's conviction. As such, ground three fails to state a claim under O.C.G.A. 9-14-42(a).

Petitioner could have brought ground two before November 1, 2012, and could have brought one before June 28, 2014, four years after the *Burke* decision about the change in the aggravated stalking law. Petitioner filed the current Application for Writ of Habeas Corpus on December 14, 2016, after the deadline for both grounds one and two. Accordingly, Petitioner's current petitions, or any that may be filed hereafter, are deemed untimely under the procedural guidelines established by the Georgia legislature, barring a change in the law.

II. Successive

This Court also finds Petitioner's application for habeas corpus relief is successive. Petitioner filed his first application for writ of habeas corpus in Chattooga County Superior Court in 2012. The

Court denied habeas relief on July 29, 2013. Petitioner submitted an Application for Certificate of Probable Cause to the Supreme Court of Georgia which was denied on November 4, 2013. Petitioner then filed a motion for reconsideration with the Supreme Court of Georgia regarding his certificate of probable cause, which was also denied on December 11, 2013. 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, 230, 327 S.E.2d 185, 187 (1985); *Smith v. Zant*, 250 Ga. 645, 647, 301 S.E.2d 32, 34 (1983). 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. Indeed, the very change in the aggravated stalking law that Petitioner points to occurred in 2010 with the *Burke* decision. Petitioner has failed to show that he could not have discovered this change in the law through due diligence and raised this issue in his prior habeas corpus petition.

Regarding the judicial bias, as stated above, Petitioner would have known about these alleged statements of bias at the time of his trial and then sentencing hearing because he alleges that Judge Turner these things in front of Petitioner and on the record. Seeing as he was physically present to witness these acts of alleged bias, Petitioner has failed to show how he could not have raised this ground in his prior habeas corpus petition. Lastly, Petitioner claims bias and prejudice of the judge during his last habeas hearing. Again, as discussed above, this ground fails to state a claim for habeas

corpus relief. The habeas corpus statute allows that “any person imprisoned by virtue of a sentence imposed by a state court of record who asserts that *in the proceedings which resulted in his conviction* there was a substantial denial of his rights under the Constitution of the United States or of this state may institute a proceeding under this article.” O.C.G.A. § 9-14-42(a) (emphasis added). The habeas court does not have any role whatsoever in the proceedings which resulted in Petitioner’s convictions. Any impropriety that allegedly took place during Petitioner’s first habeas hearing is in no way related to constitutional violations concerning Petitioner’s conviction. Ground three fails to state a claim under O.C.G.A. 9-14-42(a). Accordingly, all of the grounds raised in the present habeas petition are dismissed, alternatively, as successive.

CONCLUSION

Therefore, for the reasons stated above, the Respondent’s Motion to Dismiss 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 Wilcox County within the same 30-day period.

The Clerk of the Superior Court of Wilcox County is hereby directed to mail a copy of this order to the petitioner, the respondent, and the Office of the Attorney General.

SO ORDERED, this 10th day of August, 2017.



DENISE D. FACHINI
JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT



SUPREME COURT OF GEORGIA
Case No. S18H0368

Atlanta, October 22, 2018

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

STEVEN JACOB SEIBERT v. ANTOINE CALDWELL, WARDEN

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

All the Justices concur, except Warren and Bethel, JJ., not participating.

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.

Theresa A. Barnes
, Clerk

APPENDIX "A"