

IN THE SUPREME COURT OF THE UNITED STATES

THERIAN WIMBUSH
V.

APPLICATION NO.

STATE OF GEORGIA

19A141

BRIAN KEMP, Governor

TIMOTHY C. WARD, Corrections Commissioner

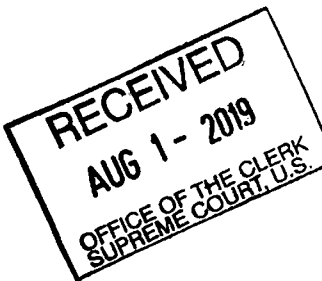
WILLIE SUE MICKENS, Warden

APPLICATION/MOTION FOR BOND PENDING APPEAL

NOW COMES Therian Wimbush, applicant and petitioner in Petition for Writ of Certiorari, ~~the~~ case no. 19-5209 (and 19-5210) now pending before this Court, pursuant to Rule 36 of the Rules of the Supreme Court of the United States and hereby moves this Court to grant her release/bail pending review of her habeas corpus matter. In support of this Motion, applicant states the following facts:

1. Pursuant to Rule ~~36~~ ~~36.3(a)~~ 36.3(a) of the Rules of the Supreme Court of the United States, "pending review of a decision failing ~~and~~ or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the Court of appeals, this Court, or a judge or Justice of either court."

2. On July 17, 2019, applicant's petition for writ of certiorari was placed on the docket for the 2019 Court Term, as case no. 19-5209



2. In said petition, applicant raises four (4) questions:

- (1) Does the timely and legally sufficient filing of a Notice of Appeal of a directly appealable pretrial statutory speedy trial motion preclude the trial court of jurisdiction to impose and execute a judgment of conviction and sentence?
- (2) When a VOID JUDGMENT of conviction and sentence is imposed and executed can habeas corpus relief be PREMATURE?
- (3) When a state habeas petitioner provides the state courts, including the state's highest court, with one full round of appellate review, is the petitioner required to file repetitious state petitions for relief before entering the federal forum?
- (4) What is the "Barker v. Wingo", "Doggett v. United States" type of criteria for excusing the federal habeas exhaustion requirement? [how long is too long?]

3. Moreover, applicant raised three (3) grounds in her state and federal petitions, for which orders have been rendered:

- (1) VOID JUDGMENT of conviction for LACK OF JURISDICTION pursuant to U.S. Constitution Amendment XIV
- (2) DENIAL OF ~~THE~~ PROCESS, including kidnapping and false imprisonment pursuant to U.S. Constitution Amendment XIV
- (3) SUBJECTION TO FORCED SLAVERY in violation of U.S. Constitution Amendments XIII and XIV

4. ~~Pet~~ Applicant asserts that ALL three grounds cumulatively constitute a Denial of Due Process of law under the Fourteenth Amendment to the U.S. Constitution.

5. Thus, applicant shows that she does NOT come to this Court forum raising frivolous non dilatory grounds, but grounds that are, an issue of law and demonstrate that the judgment of conviction and sentence MUST BE REVERSED, because they are NULL, VOID on their face, under both state and federal law.

6. In case no. 19-5209 the state concedes that:

- (1) applicant's statutory speedy trial motion, filed in her original indictment on August 28, 2015, was heard and orally denied on January 5, 2017.
- (2) Said oral order was reduced to writing, signed by the judge, and filed with the Clerk on January 6, 2017.
- (3) On January 30, 2017, applicant filed her timely and legally sufficient Notice of Appeal of the denial of the statutory speedy trial motion.
- (4) The Gwinnett County Superior Court filed a Judgment of Conviction and sentence on February 1, 2017.
- (5) Applicant was transferred to the custody of the Georgia Department of Corrections on February 3, 2017.

7. Applicant filed her first instant habeas corpus petition in the Pulaski County Superior Court on March 13, 2017, which bore case no 2017U-15279. On April 11, 2017, without a hearing on the petition, the Pulaski County entered an order dismissing and denying applicant's petition, on the merits.

"Petitioner contends that the filing of her Notice of Appeal of the trial court's order denying her [statutory speedy trial] motion for discharge and acquittal operated as a supersedeas of her case and stripped the trial court of the necessary jurisdiction

to enter a final order in her case or justify the imposition of a sentence following her [jury verdict]... This ground provides no basis for relief." See ~~exhibit~~ Appendix "D" to the petition in Case no. 19-5209

8. Applicant filed a Notice of Appeal in the Pulaski County Superior Court and an Application for Certificate of Probable Cause in the Supreme Court of Georgia. Said Application was docketed on April 30, 2017.
9. After applicant filed her instant (joint) habeas corpus petition in the United States District Court for the Northern District of Georgia on May 5, 2018, the Supreme Court of Georgia rendered an opinion, both granting the application for certificate of probable cause and vacating the ~~for~~ habeas court's ruling on the merits denying the petition, remanding the case back with instructions for the habeas court to enter an order dismissing the habeas corpus petition as premature, on June 18, 2018.
10. Applicant notes that while the application was pending in the Supreme Court of Georgia, she filed her second (and third) petition for writ of habeas corpus in the Pulaski County Superior Court on June 30, 2017.
11. Said petition was heard on October 2, 2018 and was subsequently denied on the merits on December 2, 2018.

"Petitioner contends that the trial court lacked the jurisdiction to convict and sentence her because she filed a notice of appeal prior to sentencing... Petitioner filed a Notice of Appeal from the January 6, 2017 denial of her Motion for Discharge and Acquittal

on January 30, 2017. The denial of a motion for acquittal on statutory speedy trial grounds is immediately appealable. See Hubbard v. State, 254 Ga. 694 (1985)... Petitioner did not file a notice of appeal until after the jury had returned a verdict. Petitioner's premise that the trial court was then divested of jurisdiction to [convict and] sentence her lacks merit. Following a conviction, a criminal defendant may appeal the conviction, sentence, and pretrial issues such as the denial of a motion for acquittal in a single action... As petitioner had been convicted and sentenced, there was no error in remitting her into the custody of the Department of Corrections pending appeal." See Appendix "F" of Petition in case no. 19-5209

12. Applicant filed her Notice of Appeal in the Pulaski County Superior Court on December 10, 2018 and docketed her Application for Certificate of Probable Cause on December 28, 2018, in the Supreme Court of Georgia in strict compliance with OCGA § 9-14-52. See Appendix "E" of Petition in case no. 19-5209
13. Hence, applicant shows that she has already filed repetitious applications for relief in the state court forum.
14. Briefly, applicant surrendered to the Gwinnett County Sheriff's Office in response to arrest warrants issued charging her with false imprisonment and cruelty to children in the first degree, part b on June 27, 2014 and has been incarcerated since that day without bail.

15. On September 4, 2014 a FRAUDULENT (no grand jury hearing was ever held) indictment was filed in the Guinnett County Superior Court accusing her of two counts of cruelty to children in the first degree part b. See Appendix "H" of petition in case no. 19-5209
16. On October 27, 2014, during the next succeeding term, applicant filed a Statutory "Demand for Speedy Trial", in strict compliance with OCGA § 17-7-170. Said Demand, pursuant to OCGA § 17-7-170 guaranteed that either applicant would be taken to trial by February 27, 2015 or that she would be acquitted, AUTOMATICALLY.
17. Applicant was not taken to trial by that date, but the judge entered an order denying applicant's statutory demand for speedy trial on December 2, 2014. See Exhibit "A" to this Motion/Application.
18. The Court can take judicial note of the transcripts of the arraignment on November 6, 2014, that both the assigned trial judge and the prosecuting attorney acknowledged receipt of the Demand for Speedy Trial. See Exhibit "A" to this Motion/Application.
19. OCGA § 17-7-170 provides that a defendant in a criminal case shall be absolutely discharged and acquitted if, after timely filing a demand for trial, he is not then tried during the term in which the demand is made or the next succeeding regular term, thereafter, provided at both terms there were jurors impaneled and qualified to try him. When a demand has been regularly made and ~~entered~~, two regular terms of court are thereafter held, and the accused is not placed on trial, no motion to acquit is necessary, but the

discharge of the accused results AUTOMATICALLY, by operation of law, provided qualified juries are impaneled, competent to try the case. Smith v. State, 169 Ga. App. 251 (1983)

20. Juries were qualified and impaneled during both the September 2014 and December 2014 Terms of Gwinnett County Superior Court, yet, applicant was not brought to trial.
21. In fact, after the trial court denied applicant's Demand for Speedy Trial, essentially depriving applicant of her statutory right to a speedy trial, applicant filed a timely and legally sufficient Notice of Appeal on December 14, 2014.
22. No record on appeal was ever transmitted to the Court of Appeals ~~was~~ for docketing of an appeal of the directly appealable order, thereby demonstrating a further denial of access to the courts and due process of law.
23. Nevertheless, on August 28, 2015, applicant filed a Motion for Discharge and Acquittal pursuant to OCGA § 17-7-170. Said Motion was heard under a new indictment on January 5, 2017. See Appendix I of petition in case no. 19-5209.
24. In regards to appeals stemming from the two Notices of Appeal filed in the superseding indictment, applicant filed the January 30, 2017 Notice of Appeal to challenge the denial of the Motion for Discharge and Acquittal pursuant to OCGA § 17-7-170 and applicant filed the February 3, 2017 Notice of Appeal, exercising extreme caution, challenging the February 1, 2017

VOID judgment of conviction and sentence. See Appendices "G", "J", "K" of petition in case no 19-5209

25. Hence, applicant had appeals A17A1901 and A17A2056 docketed in the Court of Appeals of Georgia on June 16, 2017 and July 3, 2017, respectively.
26. To date, NO remittitur has been filed in the trial court from the appeal A17A1901, stemming from the January 30, 2017 Notice of Appeal, in order to confer jurisdiction back on the Gwinnett County Superior Court, which means, applicant's criminal case is, effectively, STILL ON APPEAL to the Georgia Court of Appeals.
27. An appellate's court's jurisdiction over a case is at an end AFTER the remittitur therefrom has been FILED in the office of the court below and the resumption of jurisdiction by a trial court follows immediately. Chambers v. State, 262 Ga. 200 (1992)
28. Supreme Court of Georgia precedents indicated that a jurisdictional defect due to a supersedeas from the filing of a Notice of Appeal cannot be waived. Any proceeding so conducted in the trial court is coram non iudice, and the resulting want of jurisdiction cannot be waived so as to give effect to the VOID judgment. ~~Wetherington v. State~~ Wetherington v. State, 295 Ga. 172 (2014)
29. Applicant notes that she raised the same void-conviction claim under an enumeration of error named Denial of Due Process in BOTH Appeals A17A1901 and A17A2056, and A17A1901 was dismissed while A17A2056 affirmed, determining that all claims made were without merit. See Appendices "G" and "K" of petition in case no. 19-5209

30. Finally, applicant asserts the denial of access to the state and federal court forums, as an unlawfully, and unconstitutionally held prisoner.
31. Not only has prison staff confiscated ALL of applicant's legal materials, and refuse to provide her with access to them, she has been denied & indigent legal supplies, has been placed in LOCKDOWN without reason, has been threatened verbally and physically by staff, has been denied a kosher diet, as is required by her religious practices, has been denied access to the grievance process, ~~and~~ has been made to live in conditions that rise to the level of cruel and unusual punishment, and is constantly subjected to failure to protect due to GROSS, EXCESSIVE understaffing, doors that CANNOT lock, and food with knots and ~~the~~ flies in and on it.
32. Moreover, legal documents that applicant mail out sometimes do NOT reach their destination. For example, Applicant mailed out her report on objections to the magistrate's report and recommendations on August 26, 2018. Said legal mail NEVER reached the District Court. Another, more recent example is that applicant mailed out her 3rd Motion for Extension of Time to file her petition for rehearing en banc in her civil suit, Case no. 17-13047-FF, on June 26, 2019, and said motion was NEVER received by the US Court of Appeals for the 11th Circuit.
33. Applicant also asserts that & to the state of Georgia's detriment, she has been falsely imprisoned for over 5 years in the county detention center / Jail and, now the state prison system, under a VOID JUDGMENT of conviction and without due process of law.

34. Applicant also notes her sister petition, also docketed in this Court on July 17, 2017 to the 2019 Court Term, in case no. 19-5210, where, while she has been UNLAWFULLY and unconstitutionally incarcerated without bail, the State of Georgia, by and through the Attorney General of Georgia has been simultaneously pursuing not only the termination of her parental rights, but also adopting her children out.
35. In fact, although a petition is pending in this Court, and has been served on respondents in case no. 19-5209, respondents in that case continue to pursue adoption, without jurisdiction to do so.
36. Hence, Applicant asserts the NEED for her release as the Court leans on an order that is pending appeal, filed on March 16, 2015, that to this date, has NOT been docketed in the Court of Appeals of Georgia, and the VOID JUDGMENT of conviction and sentence coupled with applicant's current incarceration.
37. Thus, the Gwinnett County Juvenile and Superior Courts show a pattern of denying pro se, incarcerated, indigent litigants access to the appellate court forum, while applicant has a Petition for Injunction pending since February 4, 2019, in the Superior Court of Gwinnett County, concerning these very issues, and the Court refuses to prosecute her injunction.
38. To exacerbate this situation, applicant has been denied contact with her ten (10) biological children since they were UNLAWFULLY and

UNCONSTITUTIONALLY taken from their home and family, with there NEVER having been made ANY findings of Parental Unfitness, on June 19, 2014.

WHEREFORE, based on the premises, applicant respectfully requests that this Court:

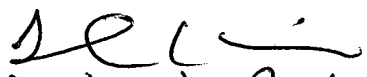
- (A) GRANT her release on her own recognizance pending final resolution of this Court's review of her petition and review on certiorari, and
- (B) GRANT her any, other, different, alternate, or additional relief that the Court deems just and proper, in the interest of furthering justice, and preventing the further miscarriage thereof.

This 25th day of July, 2019.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing APPLICATION/MOTION FOR BOND PENDING APPEAL on the opposing parties, by depositing a copy in the U.S. Mail, with sufficient postage affixed thereon, addressed as follows
Christopher M. Carr, Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, GA 30334

This 25th day of July, 2019.


Applicant, Pro Se
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