

# ATTACHMENT 1

App 1

IN THE SUPERIOR COURT OF BUTTS COUNTY  
STATE OF GEORGIA

DONNIE CLEVELAND LANCE )  
Petitioner, )  
v. ) CASE NO. 03-V-490  
WILLIAM TERRY, Warden )  
Georgia Diagnostic and )  
Classification Prison, )  
Respondent. )

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AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner DONNIE CLEVELAND LANCE, by and through the undersigned counsel, Petitions this Court for a writ of habeas corpus, pursuant to O.C.G.A. §§ 9-14-41 *et seq.* Petitioner is an indigent person currently under sentence of death. Respondent is the Warden of the Georgia Diagnostic Prison in Jackson, Georgia. The allegations of this Petition are as follows:

HISTORY OF PRIOR PROCEEDINGS

1. On June 23, 1999, the Superior Court of Jackson County, Jefferson, Georgia (the "Trial Court") entered judgment against Petitioner on two counts of malice murder, two counts of felony murder, one count of burglary and one count of possession of a firearm.
2. Petitioner was sentenced to death by electrocution for the murders, twenty years for burglary and five years for possession of a firearm during the commission of a crime. The sentences are to be consecutively served.
3. The victims were Sabrina Joy Lance and Dwight Wood, Jr.
4. At his trial, Petitioner pled not guilty.

admitted into evidence. *Id.* at 1910:12-14. The Court should have excluded these types of testimony and evidence.

114. The prosecution's resulting reliance upon all of this evidence through repeated references to the characteristics and worth of the victims in opening and closing arguments, violated Petitioner's constitutional rights as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I § 1, ¶ 1 of the Georgia Constitution. Thus, Petitioner's death sentences should be vacated.

**XI. The Pools from Which Petitioner's Grand and Traverse Jury Were Drawn Were Unconstitutionally Composed and Discriminatorily Selected in Violation of Petitioner's Constitutional Rights**

115. All other Claims and facts in this Petition are incorporated into this Claim as if specifically pleaded herein.

116. Petitioner was denied his right to a fair and impartial jury, throughout all stages of the proceedings, in violation of Petitioner's rights as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I § 1, ¶¶ 2, 11 and 12 of the Georgia Constitution, and relevant case law.

117. But for such denial the outcome would have been different at all stages of the proceedings.

118. To the extent Trial Counsel failed to raise this claim at trial or to litigate it effectively, counsel was ineffective. To the extent Appellate Counsel failed to raise this claim on direct appeal or to research, brief and/or argue it effectively, Appellate Counsel was ineffective.

119. The grand jury and traverse jury in Petitioner's case were unconstitutionally composed, were the result of unconstitutional practices and procedures and consequently denied Petitioner his constitutional rights as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I § 1, ¶¶ 1, 2, 11 and 12 of the

Georgia Constitution. *See Vasquez v. Hillery*, 474 U.S. 254 (1986); *Hobby v. United States*, 468 U.S. 339 (1984); *Peters v. Kiff*, 407 U.S. 493 (1972); *Strauder v. West Virginia*, 100 U.S. 303 (1879). Accordingly, Petitioner's conviction and sentence should be vacated.

## **XII. The State Used Peremptory Challenges in a Discriminatory and Unconstitutional Manner**

120. All other Claims and facts in this Petition are incorporated into this Claim as if specifically pleaded herein.

121. The prosecution's reliance upon race and/or gender in the exercise of peremptory challenges violated Petitioner's constitutional rights as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I § 1, ¶¶ 1, 2, 11 and 12 of the Georgia Constitution, and relevant case law.

122. But for this misconduct, the outcome would have been different at all stages of the proceedings.

123. To the extent Trial Counsel failed to raise this claim at trial or to litigate it effectively, counsel was ineffective. To the extent Appellate Counsel failed to raise this claim on direct appeal or to research, brief and/or argue it effectively, Appellate Counsel was ineffective.

124. *Batson v. Kentucky*, 476 U.S. 79 (1986), *Powers v. Ohio*, 499 U.S. 400 (1991), and *JEB v. Alabama*, 511 U.S. 127 (1994), require that where a criminal defendant makes out a prima facie case that the prosecutor used his peremptory strikes in a discriminatory fashion the burden shifts to the prosecutor to "come forward with a neutral explanation" for the strikes. *See Batson*, 476 U.S. at 97. That explanation must be "related to the particular case to be tried" and must be "clear and specific" as well as "legitimate." *Id.* at 98 & n.20.

125. In the instant case, the prosecution impermissibly struck a disproportionate number of jurors based on racial and/or gender bias. *See* Trial Tr. at 766.

# ATTACHMENT 2

**IN THE SUPERIOR COURT OF BUTTS COUNTY  
STATE OF GEORGIA**

DONNIE CLEVELAND LANCE )  
Petitioner, )  
v. )  
WILLIAM TERRY, Warden )  
Georgia Diagnostic and )  
Classification Prison, )  
Respondent. )  
CASE NO. 03-V-490

PETITIONER DONNIE CLEVELAND LANCE'S POST-HEARING BRIEF

Petitioner DONNIE CLEVELAND LANCE (“Petitioner” or “Lance”) submits this post-hearing brief in support of his Amended Petition for Writ of Habeas Corpus, pursuant to O.C.G.A. §§ 9-14-41 *et seq.* Petitioner is an indigent person currently under sentence of death. Respondent is the Warden of the Georgia Diagnostic Prison in Jackson, Georgia. For the reasons explained below, Petitioner’s constitutional rights were violated during his trial and appeal such that his conviction, and the punishment of death resulting from the conviction, cannot be allowed to stand. As a result, his Petition should be granted.

## Introduction

On June 23, 1999, Donnie Cleveland Lance, an individual suffering from brain damage caused by multiple traumas and years of alcohol abuse, was convicted in the Superior Court of Jackson County of the murders of his ex-wife, Sabrina "Joy" Lance, and Dwight "Butch" Wood, Jr. Lance was sentenced to death by electrocution for the murders.

There were no witnesses to the crime. No murder weapon was ever found. And, despite the horrific nature of the murders and the fact that Lance was taken into custody within hours of

the murders, no blood or other physical evidence was found either at the scene or on Lance that tied him to the scene of the murder. In short, a man whom the state's own expert acknowledges suffers from mental impairment, apparently committed the perfect crime.

Deprived of any direct evidence, the state (acting through a district attorney who is now himself under indictment<sup>1</sup>) offered false testimony from Frankie Shields, a jailhouse snitch who has in these proceedings recanted his testimony in its entirety and described in detail the deal that he was offered by the state for the testimony. This false testimony, evidence of past violence by Lance directed at his wife, and unrebutted expert testimony from six prosecution experts (in a case where the defense was provided no money for true experts), provided the basis for the conviction.

At the penalty phase, Lance's sole counsel -- denied co-counsel to assist him in preparing or expert witnesses to testify (as the experts offered in these proceedings by both the state and Lance testified) that Lance's mental condition was severely impaired -- offered essentially no evidence. The jury never heard, for example, the statement of the state's expert at the habeas proceeding describing Lance's condition and acknowledging that information about such a condition would be very important in assessing whether a defendant should live or die.

Stated simply, the Lance case was an abomination of justice that presents a classic case for a writ of habeas corpus. Based on the evidence presented in this proceeding and under established principles of state and federal constitutional law, Lance's conviction and sentence should be vacated, and Lance should be afforded a new trial for the following reasons.

First, at both the guilt and the penalty phases of the trial, as well as on appeal, Lance was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments

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<sup>1</sup> A recent newspaper report from the Jackson County Herald detailing the indictment of former District Attorney Timothy Madison is attached hereto as Exhibit A.

# ATTACHMENT 3

**IN THE SUPERIOR COURT OF BUTTS COUNTY  
STATE OF GEORGIA**

DONNIE CLEVELAND LANCE )  
Petitioner, )  
v. )  
HILTON HALL, Warden, )  
Georgia Diagnostic and )  
Classification Prison, )  
Respondent. )  
CASE NO. 03-V-490

**PETITIONER DONNIE CLEVELAND LANCE'S REPLY IN OPPOSITION TO  
RESPONDENT'S POST-HEARING BRIEF**

Petitioner DONNIE CLEVELAND LANCE (“Petitioner” or “Lance”) submits this Reply in support of his Amended Petition for Writ of Habeas Corpus, pursuant to O.C.G.A. §§ 9-14-41 *et seq.* to address the issues raised by Respondent (“Respondent” or “the State”). For the reasons explained below, Petitioner’s constitutional rights were violated during his trial and appeal such that his conviction, and the punishment of death resulting from the conviction, cannot be allowed to stand. As a result, his Petition should be granted.

## Introduction

Five critical arguments demonstrate that the conviction and sentencing of Petitioner were the direct result of a violation of Petitioner's constitutional rights.

*First*, Trial Counsel's failure to investigate Petitioner's mental health resulted in inadequate assistance of counsel, both at the guilt/innocence and at the penalty phases of the trial. The State and Petitioner are in agreement on the critical facts that: (1) Petitioner suffers from a brain dysfunction; (2) trial counsel failed to investigate Petitioner's mental health; and (3)

testimony to determine whether such a deal or arrangement exists. (See Resp. Br. 141 (“In the event of conflicting testimony on whether or not there was a deal, the Georgia Supreme Court has held that a court is authorized to weigh conflicting testimony and to conclude that a petitioner failed to prove a *Brady* violation.”); *see also McGee v. State*, 272 Ga. 363, 364 (2000). Here, the weight of the testimony suggests that the State not only failed to disclose but concealed from Petitioner and from the jury inducements it offered to two of its key witnesses, Frankie Shields and Morgan Thompson, in exchange for their testimony.

#### **A. The State Concealed Inducements It Offered To Shields.**

The State violated Petitioner’s constitutional rights by not disclosing inducements it offered to Frankie Shields in exchange for his testimony at trial. The State has not denied that Shields’ testimony -- although replete with inaccuracies and inexplicable details -- was critical to its case against Petitioner. At the habeas hearing, Shields’ unequivocal, sworn testimony provided direct evidence of the State’s secret inducements and violations of Petitioner’s rights. Shields confessed not only that the State provided secret inducements to him in exchange for his trial testimony but also that his trial testimony was false.

Naturally, the State actors involved in the concealed arrangement with Shields denied its existence. Its disclosure is obviously adverse to their self-interest and possibly exposes them to legal and ethical sanctions.<sup>4</sup> Absent any apparent motive and because it was provided against his self-interest, Shields’ sworn recanted statement merits more weight than the declarations of the self-interested State participants and than Shields’ admittedly manufactured testimony at trial.

Two important factors bolster Shields’ testimony at the habeas hearing as correct and

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<sup>4</sup> Incidentally, one of the State participants -- former district attorney Tim Madison -- was recently “indicted on multiple felony theft counts by a Banks County grand jury.” *See Former DA Tim Madison Is Indicted*, Jackson Herald, Aug. 29, 2007, available at <http://www.mainstreetnews.com/2007/August/C0829B.html> (last visited May 19, 2008).

# ATTACHMENT 4

IN THE SUPERIOR COURT OF BUTTS COUNTY  
STATE OF GEORGIA



DONNIE CLEVELAND LANCE

Petitioner,

v.

HILTON HALL, Warden,  
Georgia Diagnostic and  
Classification Prison,

Respondent.

) CASE NO: 2003-V-490

) HABEAS CORPUS

BUTTS SUPERIOR COURT  
FILED  
2004 APR 28 A 10:42

BY RHONDA SMITH, CLERK

FINAL ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PURSUANT TO O.C.G.A. § 9-14-49

This matter comes before this Court on the Petitioner's Amended Petition for Writ of Habeas Corpus as to his convictions and sentences of death from his trial in the Superior Court of Jackson County. Having considered the Petitioner's original and amended Petition for Writ of Habeas Corpus (the "Amended Petition"), the Respondent's Answers to the original and amended Petitions, relevant portions of the appellate record, evidence admitted at the hearing on this matter on August 28-30, 2006, the documentary evidence submitted, the arguments of counsel, and the post-hearing briefs, the Court hereby DENIES the petition for writ of habeas corpus as to the convictions and GRANTS the writ of habeas corpus only as to the death sentences imposed and VACATES Petitioner's death sentences. This Court makes the following findings of fact and conclusions of law as required by O.C.G.A. § 9-14-49.

**Claim XIX**, wherein Petitioner alleges that capital punishment is cruel and unusual, (see Lance v. State, 275 Ga. at 26(37));

**Claim XX**, wherein Petitioner alleges that the trial court erred in refusing to excuse for cause numerous potential jurors (prospective jurors Casey, Dial, Braswell and juror Witcher), who were biased against Petitioner and/or whose views regarding the death penalty would have substantially impaired their ability to fairly consider a sentence less than death and to fairly consider and give weight and meaning to all proffered mitigating evidence, (see Lance v. State, 275 Ga. at 15-17(8)(9)(11));

**Claim XXI**, wherein Petitioner alleges that the trial court erred in excusing for cause prospective juror (McCullers) whose views on the death penalty were not extreme enough to warrant exclusion, (see Lance v. State, 275 Ga. at 17(10)); and

**Claim XXVII**, wherein Petitioner alleges that Georgia's statutory aggravating circumstances as defined and applied are unconstitutionally vague and arbitrary, (see Lance v. State, 275 Ga. at 26(37)).

#### **V. CLAIMS WHICH ARE PROCEDURALLY DEFAULTED**

In his petition, Petitioner raises several claims which are procedurally defaulted due to Petitioner's failure to raise the claims on trial and on direct appeal. This Court finds that Petitioner has failed to establish cause<sup>2</sup> and actual prejudice or a miscarriage of justice sufficient to excuse his procedural default of the following claims. See Black v. Hardin, 255 Ga. 239 (1985); O.C.G.A. § 9-14-48(d); Hance v. Kemp, 258 Ga. 649(4)(1988).

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<sup>2</sup> Petitioner has alleged that to the extent that counsel failed to raise these claims at trial or direct appeal, counsel rendered ineffective assistance of counsel in doing so. Except as set forth in Section VII.A.9 below, these claims of ineffective assistance of counsel are denied.

**The portion of Claim II** wherein Petitioner alleges that the trial court failed to provide Petitioner with the necessary assistance of a mental health expert, a polygraph expert, and a fingerprint expert;

**Claim III**, wherein Petitioner alleges that his execution would be unconstitutional because he suffers from mental retardation, illnesses, and disabilities;<sup>3</sup>

**Claim IV**, wherein Petitioner alleges that the jury committed misconduct throughout all phases of trial;

**The portion of Claim V** wherein the Petitioner alleges that the State engaged in misconduct by not disclosing relevant, material exculpatory files, documents and/or evidence regarding acts of misconduct by members of the jury venire, the actual jurors and/or the alternate jurors;

**The portion of Claim V** wherein Petitioner alleges that the State made improper arguments to the jury;

**Claim VII**, wherein Petitioner alleges that the prosecution suppressed material exculpatory evidence, including but not limited to, evidence of communications and meeting with certain key witnesses who testified against the Petitioner;<sup>4</sup>

**Claim IX**, wherein Petitioner alleges that the trial court erred in admitting gruesome and prejudicial photographs and videotape taken of the crime scene and the victims;

**Claim XI**, wherein Petitioner alleges that the grand jury and traverse jury were unconstitutionally composed and were the result of unconstitutional practices and procedures;

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<sup>3</sup> The Court addresses this claim on the merits in Section VII.B.1 below. See Schoefield v. Holsey, 281 Ga. 809, 816-17 (2007) (holding that the habeas court was correct in considering new claim of mental retardation under the "miscarriage of justice" exception to the rule of procedural default when issue was not raised at trial).

<sup>4</sup> To the extent Petitioner alleges that the State suppressed exculpatory evidence with regard to Frankie Shields, this claim was addressed and decided adversely to Petitioner on direct appeal. Lance v. State, 275 Ga. At 24 (28).

# ATTACHMENT 5

**PETITION FOR WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. SECTION 2254**

JUL 29 2010

Prisoner's Name: Donnie Cleveland Lance  
Prisoner's Number: UNO # 76862  
Place of Confinement: Georgia Diagnostic and Classification Prison  
Jackson, Georgia 30233

JAMES M. HATTEN, Clerk  
PS: *[Signature]*  
Court Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DONNIE CLEVELAND LANCE )  
Petitioner, )  
vs. )  
WILLIAM TERRY, Warden )  
Georgia Diagnostic Prison, )  
Respondent. )

2:10-cv- 143

Capital Habeas Corpus

-WCO

**INITIAL PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY**

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**COUNSEL FOR PETITIONER**

**XV. THE POOLS FROM WHICH PETITIONER'S GRAND AND TRAVERSE JURY WERE DRAWN WERE UNCONSTITUTIONALLY COMPOSED AND DISCRIMINATORILY SELECTED IN VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS.**

The grand jury and traverse jury in Petitioner's case were unconstitutionally composed, were the result of unconstitutional practices and procedures, and consequently denied Petitioner his constitutional rights as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I § 1, ¶¶ 1, 2, 11 and 12 of the Georgia Constitution. See *Vasquez v. Hillery*, 474 U.S. 254 (1986); *Hobby v. United States*, 468 U.S. 339 (1984); *Peters v. Kiff*, 407 U.S. 493 (1972); *Strauder v. West Virginia*, 100 U.S. 303 (1879).

Accordingly, Petitioner's conviction and sentence should be vacated.

**XVI. THE STATE USED PEREMPTORY CHALLENGES IN A DISCRIMINATORY AND UNCONSTITUTIONAL MANNER AND THE TRIAL COURT'S RULING ON *VOIR DIRE* DENIED PETITIONER HIS CONSTITUTIONAL RIGHTS.**

The Trial Court violated Petitioner's constitutional rights by excusing, for cause, potential jurors whose views on the death penalty were not extreme enough to warrant exclusion. A capital defendant's right to an impartial jury prohibits the exclusion of venire members "simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction." *Witherspoon v. Illinois*, 391 U.S. 510, 522 (1968). To permit the exclusion for cause of prospective jurors based on their views of the death penalty

# ATTACHMENT 6

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

DONNIE CLEVELAND LANCE,	:	CIVIL ACTION NO.
Petitioner,	:	2:10-CV-0143-WBH
	:	
v.	:	DEATH PENALTY
	:	HABEAS CORPUS
STEPHEN UPTON,	:	28 U.S.C. § 2254
Respondent.	:	

**ORDER**

This matter is before the Court for consideration of the parties' arguments regarding Respondent's contention that certain of Petitioner's claims are procedurally defaulted and that others are not cognizable claims under 28 U.S.C. § 2254. First, however, in reviewing the petition, this Court has discovered that Petitioner has not enumerated his claims. In the interest of efficiency, this Court will provide enumeration for Petitioner's claims and subclaims. In future pleadings, the parties are required to refer to Petitioner's grounds using this numbering system such that, for example, Petitioner's claim regarding the fact that the jury consulted the Bible during deliberations will be referred to as Petitioner's Claim 6a.

Petitioner's grounds for relief are as follows:<sup>1</sup>

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<sup>1</sup> This Court notes that Petitioner did not raise any stand-alone claims of ineffective assistance of appellate counsel. However, he does state in conclusory fashion in discussing other claims that appellate counsel was ineffective for failing to raise the issues of: proportionality; Witherspoon (death qualified jurors); the constitutionality of Georgia's death penalty statute; a violation of ex post facto because

procedurally defaulted. Because the Georgia Supreme Court reviewed this claim, it is ripe for review before this Court.

Petitioner asserts in his Claim 11 that the trial court erred in admitting prejudicial and inflammatory evidence, specifically some purportedly gruesome crime-scene photographs. This claim was held procedurally defaulted before the state habeas corpus court. [Doc. 20-18 at 6]. Petitioner argues ineffective assistance of appellate counsel as cause for the default. However, Petitioner never raised a claim of ineffective assistance of appellate counsel for failing to raise a claim on appeal regarding the photographs. Accordingly, as with his Claim 5, Petitioner may not rely on a procedurally defaulted claim to demonstrate cause, Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000), and Petitioner's Claim 11 remains defaulted before this Court.

In his Claim 13, Petitioner argues that the grand and petit jury pools from the Jackson County Superior Court were not constitutionally composed. The state habeas corpus court held that this claim was procedurally defaulted. [Doc. 20-18 at 6]. Petitioner attempts to establish cause by asserting ineffective assistance of counsel. Again, however, the ineffective assistance claim is itself defaulted and cannot establish cause. This Court further finds that Petitioner's Claim 13 is conclusory and fails to state a claim as Petitioner has provided no factual support for the claim.

# ATTACHMENT 7

Morgan V. Ward  
Morgan V. Ward, Clerk  
Butts County, Georgia

**IN THE SUPERIOR COURT OF BUTTS COUNTY  
STATE OF GEORGIA**

**DONNIE CLEVELAND LANCE,**

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**Petitioner,**

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**v.**

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**BENJAMIN FORD, Warden,  
Georgia Diagnostic and  
Classification Center,**

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**Respondent.**

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**ORDER**

This is Petitioner Donnie Cleveland Lance's second habeas petition before this Court. In the current petition, Petitioner argues that the grand jury that indicted his case was not randomly selected, making his death sentence invalid and unconstitutional. The Court finds this claim was previously raised by Petitioner in his first state habeas petition and this Court found it to be barred under state law as procedurally defaulted. Petitioner has submitted no new law or new facts with regard to this claim that were not previously available. The Court is now barred by res judicata from again reviewing this claim. The instant petition is DISMISSED.

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petitioner's claim in this second state habeas petition, that the grand jury was unconstitutionally composed and selected, was previously raised in his first habeas petition to this Court. (Respondent's Attachment 1, pp. 26-27). In his amended petition from that first proceeding, filed in 2005, Petitioner alleged:

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The grand jury and traverse jury in Petitioner's case were unconstitutionally composed, were the result of unconstitutional practices and procedures, and subsequently denied Petitioner his constitutional rights guaranteed under the Fifth, Sixth, and Fourteenth Amendments to the United States

Constitution and Article 1, §1, and ¶¶ 1, 2, 11 and 12 of the Georgia Constitution.

*Id.*

Applying state law, this Court found the claim to be procedurally defaulted as Petitioner did not raise this claim at trial or on appeal to the Georgia Supreme Court and Petitioner had failed to establish cause and prejudice or a miscarriage of justice to overcome that default. (Respondent's Attachment 2, p. 6 (citing *Black v. Hardin*, 255 Ga. 239 (1985); *Hance v. Kemp*, 258 Ga. 649 (1988); and O.C.G.A. § 9-14-48(d))).

Petitioner now raises this issue a second time. However, issues previously raised may not be relitigated in habeas corpus if there has been no change in the facts or the law or a miscarriage of justice. *Bruce v. Smith*, 274 Ga. 432, 434 (2001); *Gaither v. Gibby*, 267 Ga. 96, 97 (1996); *Gunter v. Hickman*, 256 Ga. 315 (1986); *Elrod v. Ault*, 231 Ga. 750 (1974).

Petitioner alleges that he has new evidence in the form of: (1) interviews of unnamed witnesses; (2) the conviction and sentence of the prosecutor in his case; and (3) documents received in response to an Open Records Act request from the Jackson County Clerk's Office. Petitioner alleges this evidence allows him to overcome the state law bar. However the evidence he submits is not new. First, just as he recently did in preparing for clemency, Petitioner's counsel could have spoken to witnesses prior to or during trial or during the three years of discovery in the first habeas proceedings before this Court. Second, although the prosecutor's conviction and sentence do not provide cause to overcome the default as they did not prevent Petitioner from raising this claim, Petitioner was aware, at least by the time of his briefing in this Court, that the prosecutor was under indictment. Third, documents concerning the composition of the grand juries in Jackson County were available to Petitioner prior to trial (O.C.G.A. 50-18-72 (6)), and if not then, certainly in his first habeas proceeding before this Court when he first raised this claim.

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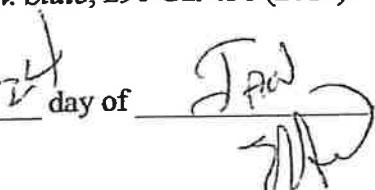
Once his direct appeal ended in 2003, he was able to request the same records through the Open Records Act just as his did in 2019. *See* O.C.G.A. § 50-18-70.

This claim is barred from review by the state bar of res judicata as Petitioner previously raised this claim in his first state habeas petition and this Court found it to be procedurally barred.

## II. CONCLUSION

As this Court is able to determine from the face of the pleadings that the claims in this petition are barred from this Court's review, the petition is dismissed without the necessity of a hearing. *See Collier v. State*, 290 Ga. 456 (2012).

SO ORDERED, this 24 day of July 2020.

  
THOMAS H. WILSON  
Chief Judge of the Superior Courts  
Towaliga Judicial Circuit

Prepared by:  
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