No. 19-8047

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Richard Daniel — PETITIONER
(Your Name)

vs.

Commissioner, GA. Dept. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard Eugene Daniel
(Your Name)

3404 Kent Farm Drive
(Address)

Millen, Georgia 30442
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) Is It Lawful For A Defendant Whom Has Waived Arraignment In Writing With A Plea Of Not Guilty To Be Brought Before A Trial Judge over The Course of Several Hearings, And Be Subjected To Coercion And Threats By Both The Judge And Public Defender In Open Court, In An Attempt To Induce The Defendant To Change His Plea To Guilty?

(2) Is It Lawful For A Trial Court Once Having Gained A Defendant's Plea By Coercion And Threats To Conceal And Withhold The Pretrial Transcripts That Recorded The Coercion And Threats That The Defendant Had Been Subjected To In Order To Deny The Defendant A Fair Review On Appeal And or Post Conviction Proceedings?

(3) If A Defendant Raises The Claim That He Was Being Coerced And Threaten Into Changing His Plea To Guilty, And That He Did Not Freely And Voluntarily Enter The Plea Of Guilty, And He Filed Pro-se Pleadings Into Every Singl State Court Making This Claim, Does He Have A Constitutional Right To Have The Claim Addressed And Adjudicated? Within The Federal Proceedings?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

EACH APPENDIX WILL CONTAIN ITS OWN TABLE OF CONTENT, ON THE COVER SHEET ASSIGNED TO THAT APPENDIX, FOR EASY REFERENCE, EACH TABLE OF CONTENTS WILL WILL LIST ALL DOCUMENTS AND THE NUMBER OF PAGES EACH CONTAINS IN THE EXACT ORDER THAT THEY ARE BEING PROVIDED.

TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A-C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Jenkins county superior court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 8, 2019.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 30, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was July 5, 2017. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) Constitutional Amendment Number One. The Constitutional Right To Petition The Government For A Redress Of Grievances,

(2) Constitutional Amendment Number Five. The Constitutional Right Against Being Compelled In Any Criminal Case to Be Witness Against Himself, Nor Be Deprived Life, Liberty, Or Property Without Due Process Of Law.

(3) Constitutional Amendment Number Six. The Constitutional Right To Have Compulsory Process For Obtaining Witnesses In His Favor, And To Have The Assistance Of Counsel For His Defense.

(4) Constitutional Amendment Number Fourteenth. The Constitutional Right To Due Process And Equal Protection Of The Law.

Statement of Case

Petitioner Herein After Referred To As Mr. Daniel, Was Arrested On August 5, 2013, For Trafficking In Methamphetamine, And Other Related Charges In Whitfield County Georgia. Shortly Thereafter, While In Jail Mr. Daniel, Was Served With A Notice Of Seizure Concerning His Work Truck And The U.S. Currency He Had On His Person At The Time Of His Arrest, Because Mr. Daniel, Intended To Dispute All The Charges Made Against Him, He Quickly Submitted His Claim Pursuant To O.C.G.A. § 16-13-49 (N)(4) For His Personal Property As Required By Georgia Law.
~~(See: Appendix G. Which Contains Both The Seizure Notice As Well As Mr. Daniel, Claim For His Property).~~

The State Immediately Abandoned The Attempted Seizure Of Mr. Daniel, Person Property Based On The Facts Stated Within Mr. Daniel Claim. A Public Defender Had Been Appointed To Mr. Daniel, And At The Direction Of Mr. Daniel, The Public Defender Filed A Waiver Of Arraignment And Entered Mr. Daniel's Plea Of Not Guilty. On October 8, 2013, (See: Also Appendix G, Which Contains Filing From The Original Trial Court. Between The October 8, Filing And Mr. Daniel, Third And Final Visit By Mr. Manfredi, His Public Defender, On November 27, 2013. Mr. Daniel, Had Became Very Upset Because Mr. Manfredi, Had Refused To Start Preparing His Defense, Instead Mr. Manfredi, Seemed To Be Working For The Prosecution, He Wasn't Gathering The Evidence That Would Support Mr. Daniel's Defense, Which Mr. Daniel, Believed Would Force The State To Also Abandon The Criminal Charge's. Just As They Had Done Regarding The Civil Seizure Of His Property.

Mr. Manfredi, Had Told Mr. Daniel, That If He Refused To Plea Guilty, That The Court Could And Would Sentence Him To Life In Prison Without Any Possibility Of Parole. He Suggested That Mr. Daniel, Simply Plea Guilty And Except A 15 Year Sentence In Prison Without Any Chance Of Parole. A Deal He Had Already Worked Out He'd Said. Mr. Daniel, Knew That Without The Evidence He Knew Existed, And That He'd Requested, His Pass Criminal History Alone Could Assure His Conviction. Mr. Daniel, Therefore, Demanded That He Be Taken

BEFORE THE JUDGE SO HE COULD REQUEST PERMISSION TO TAY AND DEFEND HIMSELF. A HEARING WAS SCHEDULED FOR DECEMBER 12, 2013. AT THE VERY START OF THE DEC. 12TH HEARING MR. DANIEL, WAS SHOCKED WHEN IT BECAME VERY CLEAR THAT EVERYONE THERE, INCLUDING THE TRIAL JUDGE WAS AGAINST HIM, AND HAD ALREADY DECIDED AMONG THEMSELVES THAT MR. DANIEL, WOULD GO TO PRISON. MR. DANIEL'S VERY FIRST ATTEMPT TO ASK THE JUDGE FOR PERMISSION TO BE ALLOWED TO PURCHASE LAW BOOK'S IN ORDER THAT HE HIMSELF MIGHT BEGIN TO PREPARE HIS DEFENSE, WAS ABURPTLY CUT SHORT BY THE JUDGE WITH THE ANSWER "NO". MR. DANIEL'S SECOND ATTEMPT REQUESTING PERMISSION TO PURCHASE LAW BOOK'S WAS AGAIN ABURPTLY CUT SHORT BY THE JUDGE WITH THE ANSWER "NO". (SEE: DECEMBER 12, 2013, PRETRIAL TRANSCRIPTS AT PAGE 4.) THE TRIAL JUDGE CLEARLY DION'T WANT ANY QUESTIONSAND OR STATEMENTS FROM MR. DANIEL, AT THAT POINT THE TRIAL JUDGE BEGAN A PLEA NEGOTIATION AS IF MR. DANIEL'S GUILTY HAD ALREADY BEEN DECIDED, AND THAT THE ONLY THING LEFT TO DETERMINE WAS THE SENTENCE THAT MR. DANIEL, WOULD RECEIVE. THE BEHAVIOR DISPLAYED BY A SUPERIOR COURT IS SIMPLY DISGRACEFUL TO SAY THE LEAST, THE CONDUCT IS ALSO PROHIBITED BY GEORGIAS UNIFORM SUPERIOR COURT RULE'S RULE. 33.5 (a) AS WELL AS THE FEDERAL RULES OF CRIMINAL PROCEDURE RULE 11 (e) (1) TITLE 18 U.S.C.
THESE RULES FORBID ANY JUDICIAL PARTICIPATION BY JUDGE'S IN PLEA NEGOTIATIONS. HERE, IN MR. DANIEL'S CASE THE TRIAL JUDGE BEGAN THESE PLEA DISCUSSIONS WITHOUT ANYONE ELSE EVEN MENTIONING THE WORD PLEA. AT THE END OF THAT FIRST HEARING, THE TRIAL JUDGE ORDERED THAT MR. DANIEL, BE BROUGHT BACK ON DECEMBER 30, 2013, AND INSTRUCTED MR. DANIEL, THAT HE'D NEED TO HAVE AN ANSWER ON THAT DAY AS TO WHICH PLEA OFFER HE WANTED. (SEE: DECEMBER 12, 2013 TRANSCRIPT AT PAGE 13.)

THE CONDUCT AND BEHAVIOR AT THAT FIRST HEARING VIOLATED MR. DANIEL'S RIGHT TO DUE PROCESS AS DESCRIBED WITHIN THE FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THOSE SAME TACTIC'S WERE USED BY THE TRIAL JUDGE DURNING THE SECOND HEARING AS WELL, AT THE DECEMBER 31, 2013 HEARING JUDGE MORRIS, THREATENED MR. DANIEL WITH 65 YEARS WITHOUT ANY POSSIBILITY OF PAROLE, BETWEEN THE FIRST AND SECOND HEARING, MR. DANIEL, PREPARED A HAND WRITTEN MOTION FOR JUDGE MORRIS, RECUSAL 10

He Filed The Recusal Motion in Open Court December 31, 2013. This Motion has also been provided within Appendix G. Mr. Daniel, Filings in The Original Trial Court.

The Federal Courts have been quite clear concerning Judicial Participation by Judge's in Plea Negotiations saying it obliterates Due Process. United States ex. rel. Elksnis v. Gilligan, 256, F. Supp 244, 254 (S.D.N.Y. 1966).

The two Hearings Transcripts from December 12, 2013 and December 31, 2013 can and will prove that Mr. Daniel, was not only subjected to coercion and ~~threats in an open public forum, but that those threats were being made by a Superior Court Judge, as well as an alleged Public Defender. Mr. Daniel,~~ finally submitted and entered a plea of Guilty, not because he was Guilty but because he had no other choice based on the Court's clear and undeniable intent. Shortly after entering the Guilty plea, Mr. Daniel, filed his pro-se Notice of Appeal, Again (see: Appendix G).

Instead of the Clerk transmitting the Record to the Appeals Court of Georgia as required by law, the Record seems to indicate that another Public Defender Mr. Michael McCarthy, along with the Clerk and the Trial Judge had decided to withhold and conceal those first pre-plea Hearing transcripts. So instead of Mr. Daniel, Direct Appeal proceeding the Court brought Mr. Daniel, back from Prison, and deceived Mr. Daniel, into allowing another Public Defender to be appointed so as to help the Court in concealing those first Disgraceful pre-plea Hearing transcripts in order to continue their intentional Denial of Due Process in Mr. Daniel's case.

The withheld and concealed transcripts were finally filed into the Trial Court Record in October of 2017 after having been withheld thru-out every State Court. The Record submitted by the State Attorney General within the U.S. District Federal Court does not contain the transcripts either. This concealment has interfered and impeded any attempt by Mr. Daniel, to have his claims reviewed. A showing of cause and prejudice according to the U.S. Supreme Court in Murray v. Carrier, 477 US. 478, 488 (1986). Mr. Daniel, has filed his case within six courts thus far, four State Courts and two Federal Courts.

THIS UNITED STATES SUPREME COURT IS THE SEVENTH. MR. DANIEL, HAS BEEN DENIED REVIEW THRU THE STATE COURTS AND NOW THE FEDERAL COURTS ARE RULING THAT ALL MR. DANIEL, CLAIMS ARE PROCEDURALLY DEFAULTED, MR. DANIEL, HAS PROVIDED AN APPENDIX FOR EACH STATE COURT IN WHICH HE SOUGHT REVIEW, WITHIN THE APPENDIX'S THIS COURT CAN SEE THAT MR. DANIEL, A PRO-SE DEFENDANT HAS FILED SEVERAL HAND WRITTEN DOCUMENT'S WITHIN EACH AND EVERY STATE COURT, AND WITHIN EVERY STATE COURT HE HAS ATTEMPTED TO HAVE HIS CLAIMS HEARD AND DECIDED ON THE MERITS.

MR. DANIEL'S, FILING TO THE APPEALS COURT OF GEORGIA ON DIRECT REVIEW CAN BE REVIEWED WITHIN APPENDIX F. WITHIN DAYS MR. DANIEL'S, HAD CONTACTED THE APPEAL COURT VIA CERTIFIED MAILING IN HIS ATTEMPT TO MAKE SURE HIS CLAIMS WERE GOING TO BE ADDRESSED, THEN HE WAS FORCED TO WAIT UNTIL HE COULD GET THE PUBLIC DEFENDER REMOVED SO HE COULD ACTUALLY FILE HIS OWN CLAIMS AND EVEN THEN THE APPEAL'S COURT BASICALLY REFUSED TO EVEN RESPOND TO MR. DANIEL'S, MOTION'S UNTIL THEY MADE THEIR DECISION, AND THEN THEY MISCONSTRUED THE PLEADINGS, THE DECISION WAS REACHED MARCH 2, 2015.

THE DECISION WAS MAILED TO MR. DANIEL, APRIL 13, 2015, HE RECEIVED IT ON APRIL 16, 2013, THE VERY NEXT DAY MR. DANIEL, MAILED HIS MOTION FOR RECONSIDERATION VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THAT MOTION WAS RECEIVED BY THE APPEAL'S COURT ON APRIL 21, 2015, HAVING BEEN RECEIVED 8 DAY'S AFTER THEY HAD MAILED THEIR DECISION TO MR. DANIEL, AS OF THIS DAY MR. DANIEL, HASN'T EVEN RECEIVE ANY RESPONSE CONCERNING THE MOTION FOR RECONSIDERATION, THE APPEALS COURT OF GEORGIA FAILED TO EVEN FOLLOW THEIR OWN LAW'S CONCERNING MR. DANIEL'S, APPEAL. UNDER O.C.G.A. 5-6-48(F). MR. DANIEL, HAD THE LEGAL RIGHT TO HAVE HIS CLAIM DECIDED.

THE APPEALS COURT OF GEORGIA DURNING MR. DANIEL, DIRECT APPEAL REFUSED TO ALLOW HIM A COPY OF THE TRIAL COURT TRANSCRIPTS. THEY ALSO REFUSED MR. DANIEL'S, HIS SIXTH AMENDMENT RIGHT TO FILE HIS OWN BRIEF AS A PRO-SE DEFENDANT, AS WELL AS HIS RIGHTS TO EQUAL PROTECTION OF THE LAW. VEGA V. JOHNSON, 149 F.3d 354 (5TH CIRCUIT 1998).

Myers v. Johnson, 76 F.3d 1330 (5th Circuit 1996).
Gleen v. Brigano, 123 F.3d 917 (6th Circuit 1997).

Mr. Daniel, Then Filed A Pro-se Motion For Estopper It Was Received May 21, 2015, And Then Return To Mr. Daniel, Without Response. This Unprecedented Attempt By Mr. Daniel, To Have His Claims Reviewed By The Appeals Court Of Georgia Duaning His Direct Review From The Trial Court, Is A Mirror Image Of The Sane Method Used In The State Habeas Court, And The Georgia Supreme Court By Mr. Daniel, In An Attempt To Be Heard. Mr. Daniel's, Filing Within The Appeals Court Of Georgia Can Be Review Within Appendix (F). Mr. Daniel's, Filing In The State Habeas Court Can Be Review Within Appendix (E). Mr. Daniel's, Filing In The Georgia Supreme Court Can Be Reviewed Within Appendix (D). Mr. Daniel's, Filing In The Original Trial Court Can Be Reviewed Within Appendix (G). Anyone Who Contends That Mr. Daniel's, Hasn't Allowed All State Courts An Opportunity To Review His Claim, That His Guilty Plea Was Induced By The Use Of Coercion And Threats And Not Freely Or Voluntarily Entered, Isn't Looking At The Actual Facts As They Are Preserved Quite Clearly On The Record As Just Discribed.

The Indivioual Appendix's As Just Discribed. The Indivioual Appendix's Contained Herein Are The Documents Submitted To The State Courts In Mr. Daniel's, Attempt To Be Heard. The Panel's Decision In The 11th Circuit Court Of Appeals Does Not Address Mr. Daniel's, Claim And Contents That Mr. Daniel Claim That His Plea Was Induced By The Use Of Coercion And Threats Is And Or Would Be Procedurally Defaulted Under State Law As Well, This Is In Direct Conflict With Georgia State Law.

Smith v. Magnuson, 297 Ga. 210, 212 N.3 (2015)

Which Doesn't Allow Any Procedural Default Concerning This Claim. Federal Law Does Not Allow This Claim To Be Procedurally Defaulted Either.

Boykin v. Alabama, 395 U.S. 238, 243 N.5. (1969)

Mr. Daniel, Is Simply Requesting A Plain Error Review of One Claim, And That Claim Is; That Mr. Daniel's, Plea of Guilty Was Induced By The Use of Coercion and Threats and Not Freely and or Voluntarily Entered. In Direct Violation of His Constitutional Rights to Due Process and The Equal Protection of the Law.

This Coercion and Threat's is Recorded on the Very Face of the Record and Was Carried out By and Thru The Public Defender as Well as The Trial Judge Herself.

(See: The Pretrial Transcripts From December 12, 2013, and December 31, 2013).

Mr. Daniel, Attached Copys of These Transcripts to The Objection He Filed Within The U.S. District Court. Docket Entry #13

Respectfully Submitted

Richard E. Daniel

Richard E. Daniel, Petitioner

U.S. citizen, Pro se.

REASONS FOR GRANTING THE PETITION

(1) THE UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH CONTROLLING DECISIONS OF THE UNITED STATES SUPREME COURT. IN THAT, THE APPEALS COURT PROCEDURALLY BARRED MR. DANIEL'S CLAIM THAT HIS PLEA OF GUILTY WAS INDUCED BY THE USE OF COERCION AND NOT FREELY AND OR VOLUNTARILY ENTERED. THIS OPINION IS IN DIRECT CONFLICT WITH, BOYKIN V. ALABAMA, 395 U.S. 238, 248 N.5 (1969).

(2) THE UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION, IN A WAY THAT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AND REQUIRE FOR THE EXERCISING OF THE COURT'S SUPERVISORY POWER.

(3) IF THE COURT DOES NOT GRANT THIS PETITION, AND CORRECT THE COMPLETE DENIAL OF DUE PROCESS AS SEEN ON THE VERY FACE OF THE RECORD, A GLAVE MISCARRIAGE OF JUSTICE WILL HAVE BEEN ALLOWED TO CONTINUE.

CONCLUSION

CONCLUSION: MR. DANIEL'S, CASE CONTAINS MANY VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS THRU-OUT EACH AND EVERY COURT IN WHICH MR. DANIEL, HAS SOUGHT REVIEW. MR. DANIEL, IS REQUESTING THE REVIEW OF A SINGLE ISSUE WITHIN THIS COURT, AND THAT ISSUE IS THAT MR. DANIEL, GUILTY PLEA WAS OBTAINED BY THE USE OF COERCION AND THREATS AND NOT FREELY AND OR VOLUNTARILY ENTERED.

MR. DANIEL, ASK FOR A FUNDAMENTALLY FAIR REVIEW IN ACCORDANCE WITH THE CONTROLLING FEDERAL LAW USING THE PLAIN ERROR STANDARD AS DECRIBED BY THIS UNITED STATES SUPREME COURT IN THE CASE OF BOYKIN V. ALABAMA, 395 U.S. 238, 243 N. 5 (1969).

THIS REQUESTED REVIEW WOULD SIMPLY REQUIRE THIS COURT TO ORDER THE STATE TO PRODUCE THE PRETRIAL TRANSCRIPTS FROM DECEMBER 12, 2013, AND DECEMBER 31, 2013, WHICH MR. DANIEL, BELIEVES WILL SUPPORT HIS CLAIM THAT A SUPERIOR COURT JUDGE USED COERCION AND THREATS IN ORDER TO GAIN MR. DANIEL'S, GUILTY PLEA IN DIRECT VIOLATION OF MR. DANIEL'S, CONSTITUTIONAL RIGHTS. AS DESCRIBED IN AMENDMENTS FIVE, SIX, AND FOURTEEN OF THE U.S. CONSTITUTION. THE STATE OF GEORGIA HAS WITHHELD AND CONCEALED THESE PRE-PLEA TRANSCRIPTS FOR THAT REASON ALONE, AND IF THIS COURT ALLOWS THIS MISCARRIAGE OF JUSTICE TO CONTINUE. IT WILL BE A VERY SAD DAY FOR THE CITIZENS OF THE UNITED STATES OF AMERICA, BECAUSE A POOR MAN WILL CONTINUE TO SPEND YEARS OF HIS LIFE IMPRISONED BECAUSE HE COULD NOT AFFORD TO FIGHT THE TYRANICAL SYSTEM OF JUSTICE THAT NOW REIGNS IN THIS COUNTRY.

THE 11TH CIRCUIT COURT OF APPEALS GRANTED MR. DANIEL'S, APPEAL SPECIFICALLY POINTING TO THE CLAIM THAT MR. DANIEL, PLEA WASN'T FREELY AND OR VOLUNTARILY ENTERED. (SEE: THAT ORDER IN APPENDIX (A).

THE 11TH CIRCUIT COURT OF APPEALS THEN DENIED MR. DANIEL'S, APPEAL WITHOUT A SINGLE WORD CONCERNING THE ACTUAL CLAIM THE APPEAL HAD BEEN GRANTED FOR TO BEGIN WITH AGAIN (SEE: APPENDIX (A).

UNDER BOTH STATE AND FEDERAL LAW, MR. DANIEL, HAS A CONSTITUTIONAL RIGHT TO HAVE HIS CLAIM THAT HIS PLEA OF GUILTY WAS INDUCED BY THE USE OF

Coercion and Threats and Not Freely and or Voluntarily Entered Reviewed and Decided on the Merits.

Smith v. Majnuson, 297 Ga. 210, 212 N.3 (2015)
Boykin v. Alabama, 395 U.S. 238, 243 N.5 (1969)

In-Stead The State Has Contended That Mr. Daniel, Failed To Allow The State Supreme Court An Opportunity To Review This Issue Which Is Absurd When Reviewing All The Filings Submitted By Mr. Daniel, To The Georgia Supreme Court.

(See: Appendix (D) Which Contains The Filings By Mr. Daniel's, Over The Course of A Year July 1, 2016 Until July 5, 2017 While His Case Was Pending Before That Court).

The Point Being Is That Even If The Controlling Law Didn't Prohibit Any Procedural Default Of This Claim, The Claim Could Not Be Barred Because Mr. Daniel, Had Allowed Each And Every State Court To Review And Decide The Claim. (See: Appendix (D), (E), (F), And (G). The Filings In The Four State Courts Submitted By Mr. Daniel.

Mr. Daniel, Could Not Make These Courts Review And Decide His Claim, But No One Can Say That Mr. Daniel, Didn't Do Everything Within His Power And Knowledge Within Every Court To Have His Claims Reviewed. That Also Includes The Filing Submitted Within The U.S. District Court As Well As The 11th Circuit Court of Appeals From Which This Petition Was And Is Being Sought.

Respectfully Submitted
Richard E. Daniel
Richard E. Daniel, Petitioner
U.S. Citizen - Pro-Se
Jenkins Core Civic
3404 Kent Farm Drive
Millen, Ga. 30442

APPENDIX B

CONTENT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
ROME, GEORGIA
CASE NO. 4:17-CV-00226-HLM-WEJ

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

RICHARD E. DANIEL, GDC No. 216862, Petitioner pro se, v. GREG DOZIER, Respondent.	: : : : : : : :	PRISONER HABEAS CORPUS 28 U.S.C. § 2254 CIVIL ACTION NO. 4:17-CV-226-HLM-WEJ

ORDER AND
FINAL REPORT AND RECOMMENDATION

Petitioner pro se, Richard E. Daniel, confined in the Jenkins Correctional Facility in Millen, Georgia, submitted a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody in order to challenge his conviction in the Superior Court of Whitfield County. (Pet. [1] 1.) Petitioner later submitted five additional filings regarding the Petition [4, 9, 13, 16, 18] and a Motion for Summary Judgment [22]. Respondent submitted an Answer-Response [10], Brief in Support [10-1], and Exhibits [12].

Petitioner also submitted a Motion for Clarification and Motion for Ruling on Parties' Dispute [21], in which he argues that respondent failed to comply with the Court's Order to transmit "all available pleadings, transcripts, and decisions needed to determine the issues raised." (Order of Oct. 3, 2017 [5], at 2.) After

reviewing the case, the Court is satisfied that respondent complied with the Order. Accordingly, petitioner's Motion for Clarification and Motion for Ruling on Parties' Dispute [21] are **DENIED.**

For the reasons stated below, the undersigned **RECOMMENDS** that the Petition [1] and the Motion for Summary Judgment [22] be **DENIED.**

I. PROCEDURAL HISTORY

The Georgia Court of Appeals summarized the facts of petitioner's criminal case as follows:

> [Petitioner] was charged with . . . possession of methamphetamine with intent to distribute . . . . At the hearing [on petitioner's motion to suppress], the State introduced into evidence recordings of telephone conversations of [petitioner] and a confidential informant making arrangements for a purchase of methamphetamine. A narcotics officer with the Whitfield County Sheriff's Office testified that on the basis of the recorded conversations, he directed two other officers to pull [petitioner] over on the way to deliver the methamphetamine to the confidential informant. The narcotics officer arrived at the scene shortly thereafter and found methamphetamine in [petitioner's] truck and on his person.

Daniel v. State, No. A14A2334, at 2 (Ga. Ct. App. Mar. 2, 2015). (Resp't Ex. 9 [12-9], at 54.) On January 10, 2014, petitioner pleaded guilty. Id. at 2-4. (Id. at 54-56.) Petitioner was sentenced to thirty years of imprisonment, suspended after twenty years, followed by ten years of probation. Id. at 4-5. (Id. at 56-57.)

Petitioner presented the following claim on direct appeal: "[B]ecause the trial court erred when it concluded that trial counsel had not been ineffective at the entry of [petitioner's] guilty plea, it also abused its discretion in denying his motion to withdraw that plea." Daniel, No. A14A2334, at 6. (Resp't Ex. 9 [12-9], at 58.) The Georgia Court of Appeals affirmed on March 2, 2015. Id. at 1. (Id. at 53.)

On September 17, 2015, petitioner filed a habeas corpus petition in the Superior Court of Jenkins County. (Resp't Ex. 1 [12-1], at 1.) Petitioner presented the following claims:

1. Trial counsel provided ineffective assistance.
2. Appellate counsel provided ineffective assistance.
3. The trial court was not impartial.
4. The trial court violated petitioner's right to prepare his own defense.
5. The trial court used "coercion and threats" to obtain petitioner's conviction.
6. The trial court improperly failed to recuse.
7. The Georgia Court of Appeals violated petitioner's right to due process.
8. The Whitfield County Superior Court tampered with petitioner's case record.

35

9. Petitioner's sentence "is contrary to established law."

(Id. at 5-16.) The state habeas court denied relief in an Amended Final Order filed on May 16, 2016. (Resp't Ex. 2 [12-2], at 1.) The state habeas court notified petitioner that if he

> desires to appeal this Order, he must file a written application for a certificate of probable cause to appeal with the Clerk of the Georgia Supreme Court within thirty (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 Jenkins County within the same thirty (30) day period.

(Id. at 8 (emphasis in original).) Petitioner did not follow the state habeas court's instruction. Instead, petitioner submitted a "motion to set aside void judgment," which the state habeas court (1) construed as a motion for reconsideration, and (2) denied in an Order filed on June 13, 2016. (Resp't Ex. 3 [12-3], at 1.)

On July 1, 2016, petitioner filed an application for a certificate of probable cause to appeal. (Resp't Ex. 4 [12-4], at 1.) On July 11, 2016, petitioner filed a notice of appeal regarding the denial of his "motion to set aside void judgment." (Resp't Ex. 5 [12-5], at 1.) On June 5, 2017, the Georgia Supreme Court struck petitioner's application for a certificate of probable cause to appeal and re-docketed it as an application for discretionary appeal. (Resp't Ex. 6 [12-6], at 1.)

On July 5, 2017, the Georgia Supreme Court denied petitioner's application for discretionary appeal. (Resp't Ex. 8 [12-8], at 1.)

Petitioner executed the § 2254 Petition on September 20, 2017. (Pet. 14.) Respondent does not dispute that the Petition is timely filed pursuant to 28 U.S.C. § 2244(d). Petitioner presents the following grounds for relief:

1. Petitioner's guilty plea "was induced by the use of coercion and threats and not freely and voluntarily entered."

2. "Official judicial records of proceeding[s] conducted against [petitioner] were withheld . . . ."

3. The trial court used threats and coercion against petitioner, was not impartial, and denied his right to prepare his own defense.

4. Appellate counsel provided ineffective assistance.

(Id. at 5-10, 30-34.) Respondent argues that all of petitioner's grounds are procedurally defaulted. (Resp't Br. 5-12.)

II. DISCUSSION

A federal habeas petitioner must first exhaust his state court remedies or show that a state corrective process is unavailable or ineffective to protect his rights. See 28 U.S.C. § 2254(b)(1). In order to exhaust, a state prisoner must present his claims, on direct appeal or collateral review, to the highest state court according to that state's appellate procedure. See Mason v. Allen, 605 F.3d 1114,

1119 (11th Cir. 2010) (per curiam). When a federal habeas petitioner raises unexhausted claims that would be procedurally barred in state court pursuant to state law, a federal court may "treat those claims now barred by state law as no basis for federal habeas relief. . . . The unexhausted claims should be treated as if procedurally defaulted." Ogle v. Johnson, 488 F.3d 1364, 1370 (11th Cir. 2007) (citations and internal quotation marks omitted). However,

> [a] federal court may still address the merits of a procedurally defaulted claim if the petitioner can show cause for the default and actual prejudice resulting from the alleged constitutional violation. . . . To show cause, the petitioner must demonstrate some objective factor external to the defense that impeded his effort to raise the claim properly in state court. . . . [I]f the petitioner fails to show cause, [the court] need not proceed to the issue of prejudice. . . . [I]n order to show prejudice, a petitioner must demonstrate that the errors at trial actually and substantially disadvantaged his defense so that he was denied fundamental fairness.

Ward v. Hall, 592 F.3d 1144, 1157 (11th Cir. 2010) (citations and internal quotation marks omitted). Alternatively, the petitioner may obtain federal habeas review of a procedurally defaulted claim if he presents "proof of actual innocence, not just legal innocence." Id. (citation omitted). To demonstrate actual innocence, the petitioner must "support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial." Schlup v. Delo, 513 U.S. 298, 324 (1995). "[T]he petitioner must show that it is more likely than not that

no reasonable juror would have convicted him in the light of the new evidence." Id. at 327.

Petitioner raised all of his § 2254 grounds in his state habeas petition. The state habeas court denied relief on May 16, 2016, and denied petitioner's "motion to set aside void judgment," construed as a motion for reconsideration, on June 13, 2016. Petitioner did not follow the state habeas court's instruction to file (1) an application for a certificate of probable cause to appeal by June 15, 2016, which was thirty days after May 16, 2016, and (2) a notice of appeal by that same date. Petitioner waited until (1) July 1, 2016, to file an application for a certificate of probable cause to appeal, and (2) July 11, 2016, to file a notice of appeal.

The Georgia Supreme Court (1) struck petitioner's application for a certificate of probable cause to appeal and re-docketed it as an application for discretionary appeal on June 5, 2017, and (2) denied petitioner's application for discretionary appeal on July 5, 2017. Therefore, the Georgia Supreme Court determined that petitioner did not file a proper application for a certificate of probable cause to appeal, as required by O.C.G.A. § 9-14-52(b). Petitioner's "motion to set aside void judgment," construed as a motion for reconsideration, did not toll the thirty-day time period in which he was required to file a proper application for a certificate of probable cause to appeal and a notice of appeal

after the state habeas court denied relief on May 16, 2016. See O.C.G.A. § 5-6-38(a); Masters v. Clark, 269 Ga. App. 537, 538 (2004).

Accordingly, all of petitioner's § 2254 grounds are procedurally defaulted. See Pope v. Rich, 358 F.3d 852, 853-54 (11th Cir. 2004) (per curiam) (determining that § 2254 petition was procedurally barred for failure to comply with O.C.G.A. § 9-14-52(b)). To the extent that petitioner claims ineffective assistance of appellate counsel to establish cause for procedural default, that claim is itself unexhausted. Therefore, petitioner has not shown cause for the default, and the issue of prejudice does not need to be considered. Petitioner has also not presented proof of actual innocence.

Accordingly, the undersigned **RECOMMENDS** that the Petition [1] and Motion for Summary Judgment [22] be **DENIED**.

III. CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Section 2253(c)(2) states that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a

constitutional right." A substantial showing of the denial of a constitutional right "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing Slack, 529 U.S. at 484) (internal quotation marks omitted).

The undersigned **RECOMMENDS** that a certificate of appealability be **DENIED** because the resolution of the issues presented is not debatable. If the District Court adopts this recommendation and denies a certificate of appealability, petitioner is advised that he "may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." 28 U.S.C. foll. § 2254, Rule 11(a).

IV. CONCLUSION

For the reasons stated above, the undersigned **ORDERS** that petitioner's Motion for Clarification and Motion for Ruling on Parties' Dispute [21] are **DENIED**. The undersigned **RECOMMENDS** that the Petition [1] be **DENIED**, a certificate of appealability be **DENIED**, and petitioner's Motion for Summary Judgment [22] be **DENIED**.

The Clerk is **DIRECTED** to terminate the referral to the undersigned.

SO ORDERED AND RECOMMENDED, this 4th day of February, 2019.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE

42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

RICHARD E. DANIEL,

Petitioner,

v.

GREG DOZIER,

Respondent.

CIVIL ACTION FILE
NO. 4:17-CV-0226-HLM-WEJ

ORDER

This is a petition for a writ of habeas corpus filed by a state prisoner under 28 U.S.C. § 2254 ("§ 2254 Petition"). The case is before the Court on Petitioner's Motion for Summary Judgment [22], on the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [23], and on Petitioner's Objections to the Order and Final Report and Recommendation [25].

43

I. Standard of Review

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court therefore must conduct a de novo review if a party files "a proper, specific objection" to a factual finding contained in the report and recommendation. Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006); Jeffrey S. by Ernest S. v. State Bd. of Educ., 896 F.2d 507, 513 (11th Cir. 1990). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort, 208 F. App'x at 784. Legal conclusions, of course, are subject to de novo review even if no party specifically objects. United States v. Keel, 164 F.

App'x 958, 961 (11th Cir. 2006); United States v. Warren, 687 F.2d 347, 347 (11th Cir. 1982).

II. Discussion

On February 4, 2019, United States Magistrate Judge Walter E. Johnson issued his Order and Final Report and Recommendation. (Order & Final Report & Recommendation (Docket Entry No. 23).) Judge Johnson recommended that the Court deny Petitioner's § 2254 Petition. (Id.)

Petitioner filed Objections to the Order and Final Report and Recommendation. (Objs. (Docket Entry No. 25).) The Court finds that no response to those Objections from Respondent is necessary, and it concludes that the matter is ripe for resolution.

Judge Johnson correctly set forth the governing standards under 28 U.S.C. § 2254. (Order & Final Report & Recommendation at 5-7.) Judge Johnson also properly found that all of Petitioner's claims are procedurally defaulted, that

45

Petitioner has not shown cause to excuse the procedural default, and that Petitioner has not demonstrated actual innocence. (Id. at 7-8.) Judge Johnson properly concluded that Petitioner is not entitled to federal habeas relief. With all due respect to Petitioner, nothing in his Objections warrants a different conclusion. (See generally Objs.)[1] The Court therefore adopts this portion of the Order and Final Report and Recommendation, overrules Petitioner's corresponding objections, and denies this portion of Petitioner's § 2254 Petition.[2]

The Court also agrees with Judge Johnson that Petitioner is not entitled to a certificate of appealability. (Order & Final Report

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[1] The Court rejects any contention by Petitioner that Judge Johnson was somehow biased against Petitioner or that Judge Johnson acted improperly. (Objs.)

[2] Judge Johnson correctly denied Petitioner's Motion for Clarification and Motion for Ruling on Parties' Dispute. (Order & Final Report & Recommendation at 1-2.) To the extent that Petitioner objects to this ruling, the Court overrules the Objection.

& Recommendation at 8-9.) The Court adopts this portion of the Order and Final Report and Recommendation, and declines to issue a certificate of appealability.

III. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [23], **OVERRULES** Petitioner's Objections to the Order and Final Report and Recommendation [25], **DENIES** Petitioner's § 2254 Petition and **DENIES** Petitioner's Motion for Summary Judgment [22]. The Court **DECLINES** to issue a certificate of appealability. Finally, the Court **DIRECTS** the Clerk to **CLOSE** this case.

IT IS SO ORDERED, this the 20th day of February, 2019.

SENIOR UNITED STATES DISTRICT JUDGE

47

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

Richard E. Daniel,
Petitioner,

vs.

Greg Dozier,
Respondent.

CIVIL ACTION FILE

NO. 4:17-cv-00226-HLM

JUDGMENT

This action having come before the court, Judge Harold L. Murphy, United States District Judge, for consideration of the magistrate's report and recommendation, and the court having adopted the same, it is

Ordered and Adjudged that the petition for a writ of habeas corpus be, and the same hereby is denied. The court declines to issue a certificate of appealability.

Dated at Rome, Georgia this 20th day of February, 2019.

JAMES N. HATTEN
CLERK OF COURT

By: s/J. Acker
Deputy Clerk

Prepared, filed, and entered
in the Clerk's Office
February 20, 2019
James N. Hatten
Clerk of Court

By: s/J.Acker
Deputy Clerk

48

APPENDIX C

CONTENT

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10923-AA

RICHARD E. DANIEL,

Petitioner - Appellant,

versus

WARDEN,

Respondent,

COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILLIAM PRYOR, JORDAN and NEWSOM, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

50

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