



SUPREME COURT OF GEORGIA
Case No. S19H0630

August 5, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MICHAEL D. DYER v. AIMEE SMITH, WARDEN et al.

On January 8, 2018, the habeas court dismissed petitioner's habeas petition as untimely and successive. Petitioner sought to appeal that dismissal to this Court, but his appeal was dismissed because of his failure to comply with the provisions of OCGA § 9-14-52 (b). See Dyer v. Smith, S18H0831 (Nov. 5, 2018). Shortly thereafter, petitioner filed the document now before this Court in the Court of Appeals, which transferred it to this Court on the basis that petitioner sought to have reversed the habeas court's January 8, 2018 order. In addition to the relief noted by the Court of Appeals, petitioner also seeks mandamus relief, damages under 42 USC § 1983, and reconsideration of this Court's order dismissing his habeas appeal. However, petitioner forfeited his ability to seek review of the habeas court's judgment by his failure to comply with the provisions of § 9-14-52 (b), and he forfeited his ability to challenge this Court's dismissal order by his failure to file a timely motion for reconsideration. Petitioner has no further right to challenge the dismissal orders issued by this Court and the habeas court. As to petitioner's request for § 1983 relief, there is no authority supporting the invocation of this Court's original jurisdiction for such a purpose. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV ("appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo

(Appendix A) No. B
No. 3) SEE
Exhibit (C) (1) & m-3

warranto, and injunction"). As for petitioner's requests for mandamus, they fail to present the extraordinarily rare case in which the invocation of this Court's power to issue original process in the nature of mandamus would be appropriate. See Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983). For all of the foregoing reasons, this appeal is dismissed.

All the Justices concur, except Ellington, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

IN THE SUPERIOR COURT OF LEE COUNTY
STATE OF GEORGIA

MICHAEL D. DYER,
GDC #116953,

Petitioner,

v.

AIMEE SMITH,
WARDEN,

Respondent.

CIVIL ACTION FILE NO.:

2017CV226JS

**ORDER DISMISSING HABEAS CORPUS PETITION AS UNTIMELY
AND/OR SUCCESSIVE**

Hearing was held in this matter on December 7, 2017, and the court heard evidence as provided by law. The court finds that petitioner's habeas corpus petition should be dismissed as untimely.

I. FINDINGS OF FACT

Petitioner filed this habeas corpus petition on July 25, 2017, challenging his June 2007 Hall County guilty plea convictions and sentences for two counts of aggravated child molestation.

II. LEGAL CONCLUSION AND CITATION OF AUTHORITY

The court finds that respondents motion to dismiss as untimely and successive should be granted.

A. The Petition is Untimely.

O.C.G.A. § 9-14-42(c) requires that:

Any action brought pursuant to this article shall be filed within one year in the case of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, other than one challenging a

Exhibits (A)(3)(N)

conviction for which a death sentence has been imposed or challenging a sentence of death, from:

(1) The judgment of conviction becoming 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, 2005, in the case of a misdemeanor or until July 1, 2008, in the case of a felony to bring an action pursuant to this Code section.

Prior to the enactment of O.C.G.A. § 9-14-42(c), Georgia law recognized that a conviction is “final” when direct review, including the time to file a petition for a writ of certiorari to the United States Supreme Court, has concluded or where the time for seeking further appellate review has expired. See, e.g., Turpin v. Todd, 268 Ga. 820, 830(3), 493 S.E.2d 900 (1997); Taylor v. State, 262 Ga. 584, 586, 422 S.E.2d 430 (1992).

Petitioner pled guilty on June 11, 2007 and was sentenced on the same day. Petitioner’s convictions became final on July 11, 2007 because petitioner did not file a notice of appeal within the thirty-day period prescribed by O.C.G.A. § 5-6-38(a). Because Petitioner’s convictions were final as of July 11, 2007, pursuant to O.C.G.A. § 9-14-42(c)(1), he had until July 11, 2011, to file a timely habeas corpus petition. The petition shows it was filed by the Clerk of the Superior Court of Lee County on July 25, 2017, more than six years after the limitations period expired. Thus, the petition is untimely filed and should be dismissed as such. Petitioner has failed to cite any authority which suggests that he is excused from the time bar.

B. The Petition is Successive.

This petition should also be dismissed as successive under O.C.G.A. § 9-14-51, as this is petitioner’s second habeas corpus action challenging these same 2007 Hall County convictions, as the grounds raised either were raised in Petitioner’s previous habeas corpus petition or are new but could reasonable have been raised in the prior case as there has been no change in the facts or applicable law. Bruce v. Smith, 274 Ga. 432, 533 S.E.2d 808 (2001); Stevens v. Kemp,

254 Ga. 228, 327 S.E.2d 185 (1985); Smith v. Zant, 250 Ga. 645, 301 S.E.2d 32 (1983). Petitioner first challenged his 2007 Hall County guilty plea convictions in Dyer v. Danforth, Civil Action No. 2009-CV-1387 (Lowndes Super. Ct. 2015, dismissed pursuant to plea agreement Jan. 15, 2017). Any new claims should be dismissed as successive under O.C.G.A. § 9-14-51, as they are not based on new facts or new law. Smith v. Zant, 250 Ga. 645, 301 S.E.2d 32 (1983).

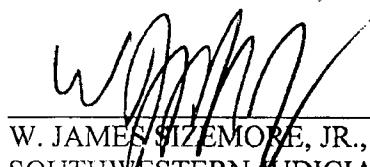
III. CONCLUSION

Wherefore, the instant petition seeking habeas relief is hereby DISMISSED as untimely.

If Petitioner desires to appeal this order, Petitioner must file a notice of appeal with the Clerk of the Superior Court of Lee County within thirty (30) days from the date of the filing of this order. Petitioner must also file within the same thirty (30) day period a written application for a certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia.

The Clerk of the Superior Court of Lee County is hereby DIRECTED to mail a copy of this order to Petitioner, Respondent and the Office of the Attorney General.

SO ORDERED this 4th day of January, 2018.



W. JAMES SIZEMORE, JR., JUDGE
SOUTHWESTERN JUDICIAL CIRCUIT

Order prepared by court
drawing heavily from pleadings
prepared by:

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Assistant Attorney General
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the within and foregoing Order has this date been served upon:

Michael D. Dyer
Lee State Prison
153 Pinewood Drive
Leesburg, Georgia 31763

Mr. Matthew B. Crowder
Assistant Attorney General
Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334-1300

by placing the same in the United States Mail, with sufficient postage.

This 4th day of January, 2018.

Sherrie W. Watkins
Sherrie W. Watkins
Secretary to Judge Sizemore