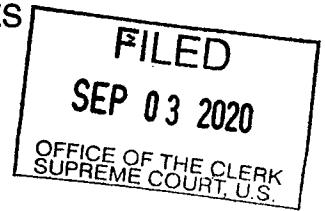


20-5683
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



CARLTON SMITH
(Your Name)

vs.

ORIGINAL

HILTON HALL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT STATE OF GEORGIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carlton Smith
(Your Name)

1153 N. Liberty St.
(Address)

Nicholls, Georgia 31554
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1)

Does the State's waiver standard of fundamental constitutional rights violates the established standard of the Federal constitution?

(2)

Does a state collateral review court's failure to review and rule upon the merits of the constitutional claim violates the constitutional requirement of review?

(3)

Does a violation of Batson v. Kentucky establishes the structural defect, on the record, that renders a judgment of conviction constitutionally invalid and void?

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:

RELATED CASES

Smith v. Hall, No. 2018S10-605, Superior Court Coffee County. Judgment entered January 2nd, 2020.

Smith v. Hall, No. S20H0794, Georgia Supreme Court. Judgment entered June 29, 2020

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A Judgment Order Superior Court Coffee County

APPENDIX B Judgment Order Georgia Supreme Court

APPENDIX C Georgia Supreme Court Order Denying Stay of Remittitur

APPENDIX D Transcript Habeas Corpus Hearing

APPENDIX E Order of Denial Superior Court Tiftwell County

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985)	pg. 6
Alden v. Maine, 527 U.S. 706, 119 S.Ct. 2240 (1999)	pg. 7
Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986)	pg. 4
Bowden v. Kemp, 256 Ga. 70, 344 S.E.2d 233 (1986)	pg. 9
Brown v. Ricketts, 233 Ga. 809, 213 S.E.2d 672 (1975)	pg. 8
Connor v. Hall, 645 F.3d 1277 (11th Cir. 2011)	pg. 10
Currier v. Virginia, 585 U.S. ___, 138 S.Ct. ___, 201 L.Ed.2d 650	pg. 13
Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822 (1963)	pg. 8
Foster v. Chapman, 578 U.S. ___, 136 S.Ct. 1737 (2016)	pg. 14
Michigan v. Jackson, 475 U.S. 625, 106 S.Ct. 1404 (1986)	pg. 8

STATUTES AND RULES

O.C.G.A. § 9-12-16	pg. 4
O.C.G.A. § 9-14-51	pg. 6
O.C.G.A. § 9-14-42 (c)	pg. 11

OTHER

TABLE OF AUTHORITIES

Cont.

	Page No.
Miller-El v. Dretke, 545 U.S. 239, 125 S.Ct. 2317 (2005)	pg. 6
Murphy v. Murphy, 263 Ga. 280, 430 S.E.2d 749 (1993)	pg. 4
Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827 (1973)	pg. 12
Rivera v. Illinois, 556 U.S. 148, 129 S.Ct. 1446 (2009)	pg. 5
Smith v. Zant, 250 Ga. 645, 301 S.E.2d 32 (1983)	pg. 9
Snyder v. Louisiana, 562 U.S. 472, 128 S.Ct. 1203 (2008)	pg. 6

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 _____ 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 _____ 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 B 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 Superior Court Coffee County court appears at Appendix A 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 _____.

[] 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: _____, 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. § 1254(1).

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

The date on which the highest state court decided my case was June 29, 2020. A copy of that decision appears at Appendix B.

[] 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

Fourteenth Amendment Equal Protection Violation

U.S. Const. Art. I, Sec. 1, Cl. 1: Laws impairing
obligation of contracts.

U.S. Const. Art. VI, Cl. 2: Supremacy Clause.

Georgia Constitution. Art. I, Sec. 1, Par. x: Prohibits
passing of retroactive laws that impairs or injuriously
affect vested rights.

O.C.G.A. § 9-14-42 (c)

O.C.G.A. § 9-14-51

O.C.G.A. § 9-12-16

STATEMENT OF THE CASE

Petitioner filed a state habeas alleging that because the timely objection under Batson v. Kentucky, 476 U.S. 79 (1986) established a prima facie case of racial discrimination in jury selection and that the trial court's failure to require the prosecution to bring forth any explanation, race neutral or otherwise, that his jury was unconstitutionally impaneled and that the judgment of conviction is constitutionally invalid and void. Georgia law gives a party standing to attack a void judgment at any time and such a class of judgments is not legally amendable to any statute of limitations or waived by a failure to attack it before.

(see Murphy V. Murphy , 263 Ga. 280 (1993))

O.C.G.A. § 9-12-16 :

"The judgment of a court having no jurisdiction of the person or the subject matter or which is void for any other cause is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it."

The fact that the habeas court and the Georgia Supreme Court failed to exempt from the Statutes of prohibition the instant petition, in light of the indisputable evidence submitted by the petitioner, is obvious that the Georgia Judicial System does not recognize this fundamental constitutional violation as rendering a judgment constitutionally invalid and void.

In Rivera v. Illinois, 556 U.S. 148 (2009), the court expressed that the language articulated in Batson draws a conclusion of a structural error requiring automatic reversal. However, because there is no express holdings of this court that a violation of the Batson three-step process, in failing to rebut the prima facie case, renders the jury unconstitutionally impaneled and the actions of the jury constitutionally invalid and void. The petitioner seeks this court to clarify does such a constitutional violation entitles the petitioner to the benefits of O.C.G.A. § 9-12-16.

(2)

The conjunction of two prior rulings of this court clearly mandated a constitutional obligation upon a state collateral review courts in reviewing federal constitutional claims.

In Ake v. Oklahoma, 470 U.S. 68 (1985), this court held that where the state has made the procedural bar depend on an antecedent ruling of federal law, the state reviewing court must rule upon the merits of the constitutional question before applying the waiver doctrine. O.C.G.A. § 9-14-51 by its express language depends on a ruling of federal law.

"All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition. Any grounds not so raised are waived unless (1) the constitution of the United States or of this State otherwise requires".

O.C.G.A. § 9-14-51

The second ruling that placed an mandated obligation upon state reviewing court was Miller-El v. Dretke, 545 U.S. 239 (2005). In which this court ruled that: "... in reviewing a ruling claimed to be Batson error, all of the circumstances that bear upon the issue of racial animosity must be consulted."

(cited in Snyder v. Louisiana, 552 U.S. 472 (2008))

There is evidence at the voir dire stage of the jury selection proceedings that the habeas court failed to review, in that, the prosecutor waived all voir dire questions of the excluded jurors. Thus, their exclusion was based upon a stereotypical belief. This evidence has never been considered in any state collateral proceeding. At the initial habeas hearing in the year 1996, the respondent's never submitted the transcripts and all later attempts was dismissed without reaching the merits.

Because U.S. Const. Art. VI, Cl. 2, require state courts to enforce federal law and state court judges to be bound by it.

(see Alden v. Maine, 527 U.S. 706 (1999))

The fact that the Georgia Judicial System has failed to enact review procedures that satisfy the constitutional obligation over a decade after these rulings, is clear evidence of defiance and the need for this court to exercise its authority to determine does the failure of the state reviewing court to reach and rule upon the merits violates the constitutional requirement.

(3)

"Waiver affecting federal rights is a federal question."
Fay v. Noia, 372 U.S. 391 (19).

In the instant action the evidence was indisputable that petitioner made timely objection pursuant to Batson and that such claim was raised on direct. (see Appendix D: Habeas Transcript Pet. Ex.# 4 pg. 13,14 and Pet. Ex. 3)

Because Georgia law prohibits claims raised on direct appeal to be raised in habeas proceedings in absence of a change in the facts or law, the petitioner could not raise this claim in the initial petition in the year of 1996.

See Brown v. Ricketts, 233 Ga. 804 (1975)

Because the courts "should indulge every reasonable presumption against waiver of fundamental constitutional rights." Michigan v. Jackson, 475 U.S. 625

The petitioner seeks this courts reviewing authority to determine if it is reasonable for a state to find

waiver of a federal constitutional claims where the petitioner complied with the state's legal process and if the federal constitution concurs waiver under said circumstances.

Moreover, the state's waiver doctrine is inconsistently applied to constitute an adequate waiver ground.

In *Smith v. Zant*, 250 Ga. 645 (1983), the petitioner raised challenges to his grand and traverse juries in a second petition. The habeas hearing court found petitioner did not make any challenge to his grand or traverse juries prior to trial as law required and found issue to be waived under O.C.G.A. § 9-14-51 successive doctrine.

In *Bowden v. Kemp*, 256 Ga. 70 (1986), petitioner filed second habeas corpus petition based solely upon the proposition set forth in the opinion of *Batson v. Kentucky*, 476 U.S. 79 (1986). Trial court denied the petition on the grounds that at the trial court level nor in any habeas corpus petition has this matter been objected to or raised. Thus, petition is successive.

In the instant action the evidence established that the petitioner made timely objection and that the State's attorney conceded that under Georgia law a prima facie case of racial discrimination was made. (see Habeas Transcript Petitioner's Ex #4 pg. 13, 14. attached at Appendix 1D). The evidence further established that this issue was raised on direct appeal. (see Habeas Transcript Petitioner's Ex #3).

The United States Court of Appeals for the Eleventh Circuit has previously ruled the Georgia's applies its state procedural bar in a inconsistent manner to similarly situated individuals. (See Connor v. Hall, 645 F.3d 1277 (2011) 11thcir.)

Thus, because this courts judicial supervisory is paramount in protecting federal constitutional rights against arbitrary state action, the petitioner seeks this court to determine if the State's application of a procedural waiver to the constitutional question violates the federal constitutional standard for waiver of constitutional rights.

While the petitioner could present an argument of the habeas court applying O.C.G.A. § 9-14-42 (c), as a ground to dismiss the petition under the State's statute of limitations and rebut such findings with how such application of § 9-14-42 (c) violates the U.S. Const. Art. I, Sec. X, Cl. 1, Laws Impairing Obligation of Contracts and violates Georgia Const. Art. I, Sec. 1, Para. X, which prohibits retroactive laws that impairs or injuriously affects vested rights. The petitioner will forgo such an argument. Georgia law exempts an attack on a void judgment from any statute of limitations and the State's habeas court agreed with the petitioner on this legal point. (See Appendix D: Habeas Transcript pg. 18)

Thus, if this court grants a review and find that a violation of Batson v. Kentucky establishes a structural error that renders the verdict of the jury constitutionally invalid and void, the statute of limitations argument should be legally moot.

REASONS FOR GRANTING THE PETITION

"The traditional function of the writ is to secure release from illegal custody."

(Preiser v. Rodriguez, 411 U.S. 475 (1973))

For this objective to be obtainable in any state collateral proceedings, the reviewing process must be meaningful and adequate. Appendix A: Order dismissing the petition as untimely / successive, clearly shows the merits of the claims where never under consideration by the reviewing court. The order holds: "This matter came before the court upon respondent's motion to dismiss."

Thus, the state's collateral court reviewing process unjustifiably places a petitioner as a respondent and required to rebut the motion to dismiss.

Thus, the state court has conducted a judicial proceeding in such a way as to render it meaningless and inadequate to redress claims of constitutional violations and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

(Confer: Ake v. Oklahoma, 470 U.S. 68 (1985)).

The state has enacted a waiver doctrine that conflicts with the federal standard of waiver of fundamental constitutional rights. After the petitioner's timely objection and raising this issue on direct appeal, state law prevented the petitioner from raising the Batson claim in his initial state habeas petition. There exist a detrimental conflict between the state and federal courts concerning waiver of fundamental constitutional rights. Thus, this Court's supervisory power is needed to compel the state to enact a waiver procedure that does not violate the federal standard of waiver of fundamental constitutional rights.

"Where, however, a defendant takes no action inconsistent with the assertion of a right, the defendant will not be found to have waived the right."

Currier v. Virginia, 585 U.S. ___, 138 S.Ct. ___, 201 L.Ed. 650 (2018).

There is litigants throughout this state being placed in a procedural maze of entrapment and being denied any meaningful and adequate redress of constitutional violations. Thus, this Court deciding the instant petition serves a public importance to others similarly situated.

The petitioner has submitted five state collateral petitions attacking this Equal Protection violation pursuant to *Batson v. Kentucky*. Even when this court issued subsequent rulings that more clarified the constitutional application of the *Batson* framework, the collateral review court failed to conduct the appropriate legal review to this constitutional claim.

(see Appendix E)

Those acting under color of state law has performed unethical conduct to keep the evidence of the prosecutor's conduct during the voir dire phase of the jury selection proceedings from being reviewed by the reviewing court.

In *Foster v. Chapman*, 578 U.S. ___, 136 S.Ct. 1737 (2016), this court held these same actors under color of state law accountable for their unethical judicial conduct. In the instant action, it is imperative for this court to exercise supervisory power and hold those acting under state law accountable not only for the fundamental constitutional violation that occurred at the petitioner's trial, but also for the purposeful denial of a meaningful and adequate state collateral review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlton Shuford

Date: August 26, 2020