



Received by
Coffee Correctional Institution

JUL 1 2020

SUPREME COURT OF GEORGIA

Case No. S20H0794

June 29, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

CARLTON SMITH v. HILTON HALL, WARDEN.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur.

Trial Court Case No. 2018S10-605

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.

Theresa N. Barnes

, Clerk

"Appendix B"



SUPREME COURT OF GEORGIA
Case No. S20H0794

Received
Coffee Correctional Facility
JUL 23 2020

July 15, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

CARLTON SMITH v. HILTON HALL, WARDEN.

Upon consideration of the Motion to Stay Remittitur filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

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SUPREME COURT OF THE STATE OF GEORGIA

Our 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.

Thrice A. Barnes

, Clerk

COURT OF
Our Clerk's Office

cc : abc

Appendix C

FILED - TATTNALL CO.
CLERK OF COURTS
IN THE SUPERIOR COURT OF TATTNALL COUNTY
STATE OF GEORGIA

2007 DEC 4 AM 10 35

CARLTON SMITH.
GDC#293554,

Debbie Crum
CLERK OF COURTS

Petitioner,

) CASE NO. 2007-HC-14

v.

HUGH SMITH, Warden,
Georgia State Prison,

Respondent.

)

ORDER DISMISSING PETITION

This is petitioner's third petition for a writ of habeas corpus challenging his 1993 Fulton County jury trial convictions and sentences for two counts of aggravated sodomy, for which petitioner received concurrent life sentences; kidnapping, for which petitioner received 20 years to serve; and armed robbery, for which petitioner received 20 years to serve. The convictions were affirmed on direct appeal. Smith v. State, No. A94A2405 (Ga. App. March 3, 1995) (Unpublished).

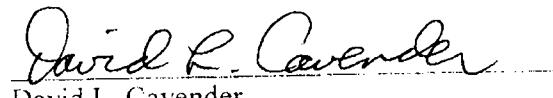
Petitioner previously challenged the same Fulton County convictions in Smith v. Sikes, No. 96-CA-20719 (Chattooga Superior Court Feb. 19, 1996) and in Smith v. Smith, No. 2005-HC-25 (Tattnall Superior Court). This court on January 5, 2006 dismissed Smith v. Smith, *supra*, as being successive.

Petitioner is attempting to re-litigate his claim that the state violated his constitutional rights by using its peremptory strikes to exclude African Americans from the jury on the basis of race. This claim was raised and decided adversely to petitioner on direct appeal. Smith v. State, *supra*. He contends that the U.S. Supreme Court decision

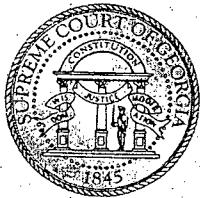
in Johnson v. California, 125 S. Ct. 2410 (2005) constitutes an intervening change in the law so that he can now re-litigate the claim. However, Johnson v. California, *supra*, did not change the law that was correctly applied in petitioner's direct appeal. That case merely held that California's law requiring a defendant to make a *prima facie* showing that it was "more likely than not" the prosecutor used discriminatory reasons to exercise a peremptory challenge does not fall within the framework set forth in Batson v. Kentucky, 106 S. Ct. 1712 (1986).

Petitioner's claims have already been litigated and decided adversely to him. Accordingly, this petition is denied.

This 3rd day of December, 2007.



David L. Cavender
Judge Superior Court
Atlantic Judicial Circuit



SUPREME COURT OF GEORGIA
Case No. S14H0465

Atlanta, May 19, 2014

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

CARLTON SMITH v. RALPH KEMP, WARDEN

From the Superior Court of Jenkins County.

Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied. All the Justices concur.

Trial Court Case No. 1J13CV071P

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.

See C. Fulton, Chief Deputy Clerk



IN THE SUPERIOR COURT OF JENKINS COUNTY
STATE OF GEORGIA

FILED

2013 NOV -7 AM 9:43

CARLTON SMITH,

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§

ELIZABETH L. KING
CLERK OF COURTS
JENKINS COUNTY, GA

Petitioner,

vs.

RALPH KEMP, WARDEN,
JENKINS CORRECTIONAL CENTER,
Respondent.

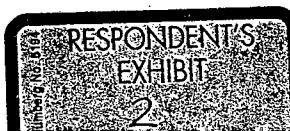
CIVIL ACTION NO. 1J13CV071P

FINAL ORDER

The petitioner filed the instant Application for Writ of Habeas Corpus in the Jenkins County Superior Court on June 19, 2013, challenging his April 2, 1993 Fulton County jury conviction for aggravated sodomy, robbery and kidnapping. An evidentiary hearing was held on September 17, 2013. At the evidentiary hearing the respondent moved to dismiss the petition as successive and/or untimely, and this Court heard arguments on that motion. Based upon the following findings of fact and conclusions of law, this court grants the respondent's motion and dismisses the petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The petitioner is currently incarcerated pursuant to an April 2, 2013 Fulton County jury conviction for aggravated sodomy, robbery and kidnapping for which the Petitioner was sentenced to life imprisonment. The petitioner appealed, and the judgment was affirmed. *Smith v. State*, 283 No. A94A2405 (Ga. App. March 3, 1995) (unpublished). The petitioner has filed four prior Applications for Writ of Habeas Corpus challenging the same Fulton County Conviction. Respondent submitted documentation from the Petitioner's most recent habeas filed. Respondent's Exhibit 1 is a copy of the Application for Writ of Habeas Corpus filed on February 21, 2012 in the Telfair County Superior Court and Respondent's Exhibit 2 is a copy of the order filed on December



21, 2012 dismissing the petition for being impermissibly successive. In the order, the Judge found that the Petitioner had previously challenged his Fulton County conviction through Habeas Corpus in the Chattooga County Superior Court, and through two separate petitioners filed in the Tattnall County Superior Court. (See, Respondent's Exhibit 2).

Application for Writ of Habeas Corpus is Successive

All grounds for habeas corpus relief must be raised in the original or amended habeas corpus petition or else they are waived. O.C.G.A. § 9-14-51. Claims which were not raised in the initial action are barred, absent a showing by the petitioner that the new claims could not have reasonably been raised in the initial action or that the claims were constitutionally non-waivable. *Id.; Bruce v. Smith*, 274 Ga. 432 (2001); *Stevens v. Kemp*, 254 Ga. 228 (1985); *Smith v. Zant*, 250 Ga. 645 (1983).

The petitioner argues that the current Habeas petition is not successive or untimely in that his conviction is void and raises an alleged *Batson* violation in the selection of the trial jury which ultimately convicted him, in reference to a Motion to Vacate and Set Aside to Correct Sentence which was filed in August 2012 in the Fulton County Superior Court under his original indictment. However, as held by the court in Telfair County, the claims raised by the Petitioner are barred as impermissibly successive. *Smith v. Zant*, 250 Ga. 645 (1983), *Tucker v. Kemp*, 256 Ga. 571 (1987). As a result, this Court finds that the claims asserted in the instant Application for Writ of Habeas Corpus are successive, and barred from reconsideration.

Application for Writ of Habeas Corpus is Untimely

Petitioner's convictions and sentence were affirmed by the Georgia Court of Appeals on March 3, 1995. *Smith supra*. The convictions were final when the period of limitations went into effect on July 1, 2004, with the Petitioner's habeas rights expiring on July 1, 2008. All complaints alleged wrong-doing arise from the February 2002 conviction which was affirmed in February 2007.

The authority provided under O.C.G.A. §17-9-4 does not extend to give the Petitioner another bite at habeas relief.

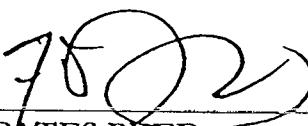
CONCLUSION

Wherefore, for the foregoing reasons, the respondent's Motion to Dismiss is GRANTED. The current petition for writ of habeas corpus is DISMISSED AS SUCCESSIVE and UNTIMELY.

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

The Clerk of the Superior Court of Jenkins County is hereby directed to mail a copy of this Order to the petitioner, the respondent, and the office of the Attorney General.

SO ORDERED, this 6 day of Nov, 2013.


F. GATES PEED
Judge, Superior Court of Jenkins County
Ogeechee Judicial Circuit

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

Received by
Coffee Correctional Facility
JAN 10 2020

CARLTON SMITH,
GDC # 293554,

Petitioner,

vs.

HILTON HALL, Warden,
TIMOTHY WARD¹, Commissioner,

Respondents.

CIVIL ACTION NO.
2018S10-605

HABEAS CORPUS

ORDER DISMISSING PETITION AS UNTIMELY AND SUCCESSIVE

This case came before the Court for a hearing on May 15, 2019, on

Respondent's motion to dismiss this habeas corpus petition as untimely under the four-year limitations provision of O.C.G.A. § 9-14-42(c) and/or successive under O.C.G.A. § 9-14-51.² Upon consideration of the record as established at the hearing, the Court finds that the petition is both untimely and successive and dismisses it on both bases.

Petitioner filed this petition on October 4, 2018, challenging – for the sixth time – his April 1993 Fulton County jury trial convictions and sentences for

Filed in Office this

1 day of Jan 2020

Julia Bellin

¹ Timothy Ward has replaced Greg Dozier as the Commissioner of Corrections and is substituted as a party Respondent for his predecessor.

² Citations to the May 15, 2019, hearing transcript are "HT." followed by the page number(s).

aggravated sodomy and kidnapping, affirmed on direct appeal in *Smith v. State*, No. A94A2405 (Ga. App. March 3, 1995) (unpublished). *See* HT. 31-35.

The Petition Is Untimely

O.C.G.A. § 9-14-42(c), enacted in 2004, requires that:

Any action brought pursuant to this article shall be filed within . . . four years in the case of a felony . . . 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, 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) in 2004, Georgia law recognized that a conviction is "final" when direct review has concluded or where the time for seeking further appellate review has expired. *See, e.g., Turpin v. Todd*, 268 Ga. 820, 830(3) (1997); *Taylor v. State*, 262 Ga. 584, 586 (1992).

Petitioner's conviction were affirmed in 1995 and had been final for nearly a decade when the period of limitations went into effect on July 1, 2004, but Petitioner did not file the petition by July 1, 2008, as required by O.C.G.A. § 9-14-42(c). Thus, the petition is dismissed on this basis.

The Petition Is Successive

This is also Petitioner's **sixth** habeas corpus petition challenging the same convictions, as he previously challenged them in: (1) *Smith v. Sikes*, No.

96CA20719 (Chattooga Super. Ct.); (2) *Smith v. Smith, Warden*, No. 2005HC-25 (Tattnall Super. Ct. Jan. 5, 2006); (3) *Smith v. Smith, Warden*, No. 2007-HC-14 (Tattnall Super. Ct. Dec. 3, 2007); (4) *Smith v. Frazier*, No. 12-CV-028 (Telfair Super. Ct. Feb. 21, 2012); and (5) *Smith v. Kemp, et al.*, No. 1J13CV-071P (Jenkins Super. Ct. Nov. 7, 2013).

The purpose of the successive petition rule of O.C.G.A. § 9-14-51 is to discontinue the practice of filing multiple petitions challenging a single judgment of conviction. *Hunter v. Brown*, 236 Ga. 168, 223 S.E.2d 145 (1976). When faced with a second or subsequent petition, “the habeas court must determine, as a threshold matter, whether the petitioner is entitled to a hearing on the merits of his belated claims.” *Smith v. Zant*, 250 Ga. 645, 647, 301 S.E.2d 32 (1983). “In order to be so entitled, the petitioner must raise grounds which are either constitutionally nonwaivable or which could not reasonably have been raised in the earlier petition.” *Id.*

The Georgia Supreme Court has not formulated a precise test for ascertaining whether claims could reasonably have been raised in a prior case. Rather, the Court looks to the facts and circumstances of the individual case to make that determination. *Tucker v. Kemp*, 256 Ga. 571, 575, 351 S.E.2d 196 (1987).

In this, his sixth petition, Petitioner alleges one compound ground:

(1) An equal protection violation in that the judgment of conviction is constitutionally void, the verdict was returned by an unconstitutionally impaneled jury, the trial court failed to require a race-neutral explanation and complete the three-step process mandated by constitutional law upon time jury objection.

All of these sub-claims are based on matters occurring at trial and, as such, could reasonably have been raised in Petitioner's first habeas corpus case, as well as the four filed since then. This petition is dismissed as successive.

CONCLUSION

Wherefore, this petition is dismissed as untimely and successive.

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

The Clerk of the Superior Court is hereby directed to provide a copy of this order to Petitioner, Respondent, and the Attorney General's Office.

SO ORDERED, this 31 day of Dec, 2019



JOHN R. TURNER, Senior Judge
Sitting by Designation

Prepared by:



KATHERINE D. EMERSON
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 656-3331

2018S10-605 SMITH V HALL

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing **ORDER DISMISSING PETITION AS UNTIMELY AND SUCCESSIVE**, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

CARLTON SMITH
GDC# 293554
COFFEE CORRECTIONAL FACILITY
P O BOX 650
NICHOLLS, GA 31554

KATHERINE EMERSON
GEORGIA DEPARTMENT OF LAW
40 CAPITOL SQUARE SW
ATLANTA, GA 30334

eMailed

TIMOTHY WARD
COMMISSIONER OF CORRECTIONS
756 FLOYD VETERAN'S MEMORIAL BLDG
2 MARTIN LUTHER KING, JR SE
ATLANTA, GA 30334-4099

STEVE UPTON, WARDEN
COFFEE CORRECTIONAL FACILITY
P O BOX 650
NICHOLLS, GA 31554

eMailed

This 7TH day of JANUARY 2020.

Elisa Gillis, Clerk of Court

Debbie Harper D/C
Deputy Clerk