No. 20-5807

IN THE

SUPREME COURT OF THE UNITED STATES

GEOFFREY GRAHAM – PETITIONER Pro Se

vs.

GRADY PERRY, et al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

Geoffrey Graham
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ORIGINAL

QUESTION PRESENTED

1. Is a Pro Se [indigent] prisoner to be held to a higher standard than state courts? Are state courts exempt from following their own statutes and regulations?

LIST OF PARTIES

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

[X] 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:

Grady Perry, Warden, Coffee Correctional Facility
Greg Dozier, Commissioner, Georgia DOC
Hilton Hall, Warden (replaced Grady Perry)
Steve Upton, Warden (replaced Hilton Hall)

RELATED CASES

Graham v. Perry, et al, Supreme Court of Georgia,
Certiorari number S17H1155. Dismissed May 4, 2020.
Reconsideration denied June 1, 2020.

Graham v. Perry, et al, Coffee County Georgia Superior Court,
Habeas number 2014S06-414. Denied Dec. 23, 2016.

State v. Graham, McDuffie County Georgia Superior Court,
Indictment number 10CR-0248. Sentenced Oct. 31, 2011.

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TABLE OF AUTHORITIES CITED

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[ ] is unpublished.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[ ] is unpublished.

[X] 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,
[X] is unpublished.

The opinion of the habeas court appears at Appendix C to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 May 4, 2020. A copy of that decision appears at Appendix B.

[X] A timely petition for rehearing was thereafter denied on the following date: June 1, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 the Court is invoked under **28 U.S.C. §1257(a).**

Certiorari for denial of habeas corpus filed Pro Se in the Georgia Supreme Court on February 9, 2017. Dismissed on May 4, 2020.

Motion for reconsideration timely filed in the Supreme Court of Georgia on May 9, 2020, after May 4, 2020 dismissal of certiorari.

Certiorari filed in U.S. Supreme Court on July 1, 2020, returned by clerk of court on July 7, 2020. This application for certiorari timely filed on August 24, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

OFFICIAL CODE OF GEORGIA ANNOTATED (OCGA) 5-4-7, Time for Filing of Answer:

The answer to the writ of certiorari shall be filed in the clerk's office within 30 days after service thereof on the respondent unless further time is granted by the superior court. A copy of the answer shall be mailed or delivered to the petitioner by the respondent or by the clerk of the superior court.

OCGA 5-5-20, Verdict Contrary to Evidence and Justice:

In any case when the verdict of a jury is found contrary to evidence and the principles of justice and equity, the judge presiding may grant a new trial before another jury.

OCGA 5-6-3(b), Filing of Briefs:

Upon failure of counsel for the appellant to comply with the order of the court, where no sufficient excuse is shown for noncompliance, the case shall be dismissed for want of prosecution.

OCGA 5-6-41(a), Reporting, Preparation, and Disposition of Transcript:

In all felony cases, the transcript of evidence and proceedings shall be reported and prepared by a court reporter as provided in Code Section 17-8-5 or as otherwise provided by law.

OCGA 9-14-22(b), Appeals:

It shall be the duty of the Supreme Court to give a speedy hearing and determination in habeas corpus cases either under existing rules or under special rules to be formulated by the court for such purpose.

OCGA 9-14-49, Findings of Fact and Conclusions of Law:

It shall be the duty of the Supreme Court to give a speedy hearing and determination in habeas corpus cases either under existing rules or under special rules to be formulated by the court for such purpose.

OCGA 9-14-52(b), Appeal Procedure:

If an unsuccessful petitioner desires to appeal, he must file a written application for a certificate of probable cause to appeal with the clerk of the Supreme Court within 30 days from the entry of the order denying him relief. The petitioner shall also file within the same period a notice of appeal with the clerk of the concerned superior court. The Supreme Court shall either grant or deny the application within a reasonable time after filing. In order for the Supreme Court to consider fully the request for a certificate, the clerk of the concerned superior court shall forward, as in any other case, the record and transcript, if designated, to the clerk of the Supreme Court when a notice of appeal is filed. The clerk of the concerned superior court need not prepare and retain and the court reporter need not file a copy of the original record and a copy of the original transcript of proceedings. The clerk of the Supreme Court shall return the original record and transcript to the clerk of the concerned superior court upon completion of the appeal if the certificate is granted. If the Supreme Court denies the application for a certificate of probable cause, the clerk of the Supreme Court shall return the original record and transcript and shall notify the clerk of the concerned superior court and the parties to the proceedings below of the determination that probable cause does not exist for appeal.

OCGA 16-6-4(b)(1), Child Molestation:

Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.

OCGA 17-8-57, Expression or Intimation of Opinion by a Judge:

(a) (1) It is error for any judge, during any phase of any criminal case, to express or intimate to the jury the judge's opinion as to whether a fact at issue has or has not been proved or as to the guilt of the accused.

(2) Any party who alleges a violation of paragraph (1) of this subsection shall make a timely objection and inform the court of the specific objection and the grounds for such objection, outside of the jury's hearing and presence. After such objection has been made, and if it is sustained, it shall be the duty of the court to give a curative instruction to the jury or declare a mistrial, if appropriate.

(b) Except as provided in subsection (c) of this Code section, failure to make a timely objection to an alleged violation of paragraph (1) of subsection (a) of this Code section shall preclude appellate review, unless such violation constitutes plain error which affects substantive rights of the parties. Plain error may be considered on appeal even when a timely objection informing the court of the specific objection was not made, so long as such error affects substantive rights of the parties.

(c) Should any judge express an opinion as to the guilt of the accused, the Supreme Court or Court of Appeals or the trial court in a motion for a new trial shall grant a new trial.

OCGA 17-10-6.2(c)(1), Punishment of Sexual Offenders:

(c) (1) In the court's discretion, the court may deviate from the mandatory minimum sentence as set forth in subsection (b) of this Code section, or any portion thereof, when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum or provided that:

> (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;
>
> (B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;

(C) The court has not found evidence of a relevant similar transaction;

(D) The victim did not suffer any intentional physical harm during the commission of the offense;

(E) The offense did not involve the transportation of the victim; and

(F) The victim was not physically restrained during the commission of the offense.

OCGA 17-10-7(d), Punishment of Repeat Offenders:

For the purpose of this Code section, conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction.

OCGA 24-4-402, Relevant Evidence and Its Limits:

All relevant evidence shall be admissible, except as limited by constitutional requirements or as otherwise provided by law or by other rules, as prescribed pursuant to constitutional or statutory authority, applicable in the court in which the matter is pending. Evidence which is not relevant shall not be admissible.

OCGA 24-4-403, Exclusion of Relevant Evidence:

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

OCGA 24-5-506(a), Privilege Against Self Incrimination;

No person who is charged in any criminal proceeding with the commission of any criminal offense shall be compellable to give evidence for or against himself or herself.

OCGA 24-6-602, Lack of Personal Knowledge:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. The provisions of this Code section are subject to Code Section 24-7-703 and shall not apply to party admissions.

Georgia State Bar Rule 4-102:303(a)(4)

A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

Code of Judicial Conduct 2.10(a), Pending Proceedings:

Judges shall not make, on any pending proceeding or impending matter in any court, any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing.

Code of Judicial Conduct 2.11(a), Disqualification and Recusal:

Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned.

Georgia Court of Appeals Rule 13, Notice of Docketing:

Upon the docketing of every appeal and application for appeal, the Clerk shall deliver via email or the United States Postal Service notice of the docketing date and schedule for briefing to all counsel. The notice of docketing a direct appeal shall include a statement that failure to file the enumeration of errors and appellant's brief within the time required may result in the dismissal of the appeal and/or appropriate sanctions. The notice shall also state that failure to timely file responsive briefs may result in their non-consideration and/or appropriate sanctions. Failure of counsel to receive the docketing notice shall not relieve counsel of the responsibility to file briefs timely.

Georgia Court of Appeals Rule 23(b), Appellee's Brief:

Appellee's brief shall be due within 40 days after the appeal is docketed or 20 days after the filing of appellant's brief, whichever is later. Failure to timely file may result in non-consideration of the brief and may subject counsel to sanctions, including contempt. See Rule 7. A brief shall be filed by the State when it is the appellee in the appeal of a criminal case, and the State's representative may be subject to sanctions, including contempt, for failing to file a responsive brief.

Georgia Superior Court Rule 33.6, Consideration of Plea in Final Disposition:

(A) It is proper for the judge to grant charge and sentence leniency to defendants who enter pleas of guilty or nolo contendere when the interests of the public in the effective administration of criminal Justice are thereby served. Among the considerations which are appropriate in determining this question are:
(1) that the defendant by entering a plea has aided in ensuring the prompt and certain application of correctional measures;

(2) that the defendant has acknowledged guilt and shown a willingness to assume responsibility for conduct;

(3) that the leniency will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(4) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(5) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other off engaged in equally "serious or more serious criminal conduct;

(6) that the defendant by entering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(B) The judge should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law merely because the defendant has chosen to require the prosecution to prove the defendants guilt at trial rather than to enter a plea of guilty or nolo contendere.

Georgia Superior Court Rule 34, Unified Apeal, Note:

All proceedings in the Superior Court shall be recorded and transcribed. The defendant shall be present during all proceedings in the Superior Court.

Georgia Supreme Court Rule 42, Responses:

Responses to petitions for certiorari, filed within 20 days of the filing of the petition, are encouraged. See Rule 18. Failure to file a response shall be deemed to be an acknowledgment by respondent that the requirements of the rules for the granting of the petition for certiorari have been met, provided, however, that such acknowledgment shall not be binding on the Court.

Georgia Supreme Court Rule 50(2), Oral Argument:

Permissive argument. Oral argument may be permitted in all other cases if either party timely files a request for oral argument that complies fully with Rule 51. Requests that do not fully comply with Rule 51 ordinarily will be denied.(3) Orders requiring, refusing, expanding, or limiting argument. In any case, the Court may require, refuse, expand, or limit oral argument as it deems appropriate.

Georgia Uniform State Court Rule 31.1, Time for Filing; Requirements:

All motions, demurrers, and special pleas shall be made and filed at or before the time set by law unless time therefor is extended by the judge in writing prior to trial. Unless otherwise provided by law, notice of the state's intention to introduce child victim hearsay statements, notice of the defense's intention to raise the issue of insanity, mental illness, or intellectual disability by using expert or non-expert evidence, or the defense's intention to introduce evidence of specific acts of violence by the victim against third persons, shall be given and filed at least 10 days before trial unless the time is shortened or lengthened by the judge.

18 USC 3161, Time Limits and Exclusions:

(c)
(1)
In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.

(f)
Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

18 USC 3533(a)(1), Imposition of a Sentence:

Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider the nature and circumstances of the offense and the history and characteristics of the defendant

Federal Rules of Criminal Procedure Rule 32: Sentencing and Judgment:

(c) PRESENTENCE INVESTIGATION.

(1) *Required Investigation.*

(A) *In General.* The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

(i) 18 U.S.C. §3593 (c) or another statute requires otherwise; or

(ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. §3553, and the court explains its finding on the record.

(B) *Restitution.* If the law permits restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(2) *Interviewing the Defendant.* The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(d) PRESENTENCE REPORT.

(1) *Applying the Advisory Sentencing Guidelines.* The presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;

(B) calculate the defendant's offense level and criminal history category;

(C) state the resulting sentencing range and kinds of sentences available;

(D) identify any factor relevant to:

(i) the appropriate kind of sentence, or

(ii) the appropriate sentence within the applicable sentencing range; and

(E) identify any basis for departing from the applicable sentencing range.

(2) *Additional Information.* The presentence report must also contain the following:

(A) the defendant's history and characteristics, including:

(i) any prior criminal record;

(ii) the defendant's financial condition; and

(iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) information that assesses any financial, social, psychological, and medical impact on any victim;

(C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(D) when the law provides for restitution, information sufficient for a restitution order;

(E) if the court orders a study under 18 U.S.C. §3552 (b), any resulting report and recommendation;

(F) a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and

(G) any other information that the court requires, including information relevant to the factors under 18 U.S.C. §3553 (a).

(3) *Exclusions.* The presentence report must exclude the following:

(A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;

(B) any sources of information obtained upon a promise of confidentiality; and

(C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

Fourth Amendment to the U.S. Constitution: Search and Seizure:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the Constitution, Rights of Persons:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the Constitution, Rights of Accused:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Eighth Amendment to the Constitution, Criminal Cases:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment to the Constitution, Section 1, Due Process and Equal Protection:

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 26, 2010, the Petitioner's wife falsely accused him of molesting two of his three children. On July 30, 2010, he was arrested on two counts of child molestation and one count of aggravated child molestation, in violation of O.C.G.A. §16-6-4. After the State read two false statements from his wife, and the court refused entry into the courtroom to his parents and his Navy command representative, Petitioner was denied bond. After 60 days in jail (with no indictment), again denying entry into the courtroom to both his parents and his Navy command, bond was set at $150,000, and Petitioner was ordered to use a bonding agent instead of paying 10% as was the norm. Petitioner's parents used their own home as collateral and came up with the mandatory $22,500, and he was granted bail on October 1, 2010. He was active duty in the Navy at the time, with a wife and three children. His wife filed for divorce immediately after he was arrested, using his address instead of her Tennessee address in order to circumvent residency requirements.

On May 25, 2011, in a civil divorce hearing, McDuffie County Senior Judge Roger Dunaway ordered Petitioner to discuss his as-yet-untried criminal charges, and even opined about and based his ruling on the pending charges.

On October 31, 2011, Petitioner having failed to convince his lawyer of the necessity of a trial, was obliged to sign an Alford plea to the two child molestation charges in order to avoid a life sentence for the aggravated charge. While O.C.G.A. §16-6-4 allows five to twenty years for a first conviction on these charges, Judge Dunaway stated that the second count was a subsequent conviction, and sentenced Petitioner to 30 years, 15 in prison and 15 on probation. With no justification whatsoever for exceeding the maximum sentence, the same judge also sentenced Petitioner to every possible restriction, most of which have no relation to the charges.

In October 2012, Petitioner filed a timely motion for sentence modification in the McDuffie County Superior Court. With the motion he included 14 character reference letters written to the Navy on his behalf, along with many citations and medals he had received while in the Navy, which his paid attorney refused to introduce at sentencing. Citing false information, and stating falsely that Petitioner was court-martialed from the Navy, Dunaway summarily denied the motion. Soon thereafter Petitioner filed three further motions in the same court, attempting to obtain copies of transcripts in order to file a habeas corpus petition. Dunaway denied all of them, again citing false information as his justification.

In May 2014 Petitioner timely filed a petition for habeas corpus in the Coffee County Superior Court. The State demanded several continuances; an evidentiary

hearing was held a year later, in May 2015. At that hearing, Senior Judge Clarence Blount gave both the Petitioner and the State 30 days in which to submit briefs and proposed orders, commencing upon reception of the transcript of the hearing. The Petitioner complied, while the State did not: eight months later the State submitted an untimely proposed order with no brief. Blount merely signed the proposed order verbatim, in violation of O.C.G.A. §9-14-49, which requires the court to "make written findings of fact and conclusions of law upon which the judgment is based." This unlawful order was signed by Judge Blount on December 23, 2016, and filed by the clerk of court on December 27, 2016. Petitioner was not given prompt notification of said ruling as required by law; he was notified 18 days later, on January 13, 2017. Pro-se Petitioner promptly appealed the ruling 27 days later, on February 9, 2017, with proper service toi all concerned parties, to the Supreme Court of Georgia. After more than two years with no response to his petition, Petitioner wrote to the clerk of the Supreme Court, who informed him that the Supreme Court had not yet received the required case files from the Coffee County Superior Court. Petitioner promptly filed a motion to compel production of documents, to which Coffee County responded that they had indeed sent the records, albeit to the wrong court—they had sent them to the Court of Appeals instead of the Supreme Court. Petitioner also filed a motion for summary judgment, which was never acknowledged by any party.

Finally, on May 4, 2020, *thirty-nine months* after the petition for certiorari was filed, the Georgia Supreme Court dismissed the petition as untimely, holding that the Petitioner's thirty days in which to file began to run on the date that his habeas corpus was denied, rather than on the date Petitioner was actually notified—eighteen days later. Petitioner promptly filed a timely motion for reconsideration in the Supreme Court of Georgia on May 9, 2020. Petitioner's motion for reconsideration was denied on June 1, 2020, with no explanation. This petition for certiorari to the United States Supreme court follows.

Is a Pro-se [indigent] prisoner held to a higher legal standard than state courts? The Petitioner has been on multiple occasions, to wit as follows:

At the divorce hearing required by Petitioner's wife, Judge Dunaway opined that "it appears that [Petitioner] may be out of circulation for quite some time" [Divorce Transcript], then proceeded to rule as if the Petitioner were already tried and convicted and en route to prison. Already Petitioner was deprived of his due process right to a "trial by judge free from actual bias." Harrison v. McBride, 428 F. 3d 652 (7th Circuit 2005). See also Walker v. Lockhart, 763 F. 2d 942 (8th Cir. 1985), 478 U.S. 1020 (1986) and Terrance Williams v. Pennsylvania, 195 L. Ed. 2d 132, 2016 LEXIS 3774.

Dunaway had already made up his mind, in opposition to the Code of Judicial Conduct Rule 2.10(a), which states, "Judges shall not make, on any pending proceeding or impending matter, in any court, any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing." Dunaway did exactly what was forbidden by his rules, to the detriment of the Petitioner. According to CJC Rule 2.11(A), "Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned." Dunaway should have recused himself. He stated an opinion on what had not been proven. Alday v. State, No. A15A2236 (Mar. 29, 2016). "It is improper to show that [the defendant] has been charged with an offense, for which he has not been convicted." Banks v. The State, 131 Ga. App. 215, 205 S.E. 2d 520 (1974). Dunaway not only showed the Petitioner's charged, but publicly opined and based his judgment upon said charges. "Under O.C.G.A. §9-10-7, a new trial must be granted if the trial judge expresses or intimates his opinion as to what has or has not been proven." Hubbard v. Hubbard, 277 Ga. 729, 594 S.E. 2d 652 (2004). And on July 1, 2015, the Georgia Supreme Court stated in its opinion, "it is error for any judge in any criminal case to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused." Such action cannot be deemed harmless. Alexander v. State, 114 Ga. 266, 40 S.E. 231 and Mitchell v. State, 89 Ga. App. 80,85, 78 S.E. 2d 563. As a result of this bias, the sentence handed down to the Petitioner by the same judge "exceeds the most severe punishment for which the applicable penal statute provides." Von Thomas v. State, 748 S.E. 2d 446, 293 Ga. 569 (2013). This was after "failure to hold a presentence hearing [that] rendered sentence void." Williams v. State, 271 Ga. 686, 523 S.E. 2d 587 (1999). The convicting judge clearly deemed himself to be above the law, at the Petitioner's expense.

The habeas judge, Clarence Blount, was required to make "written findings of fact and conclusions of law" as the basis of his ruling in accordance with O.C.G.A. §9-14-49. He made none. "If a habeas court enters an order denying relief, but fails to make the requisite findings of fact and conclusions of law, the case must be vacated and remanded with instruction to the habeas court to enter a new order that complies with O.C.G.A. §9-14-49." Thomas v. State, 284 Ga. 327, 667 S.E. 2d 375 (2008). Apparently Georgia courts feel that this does not apply to them, as it was ignored by both Superior and Supreme courts.

Georgia State Bar Rule 4-102(d): 3.3(a)(4) states that "a lawyer shall not knowingly offer evidence that the lawyer knows to be false." The Plaintiff's paid attorney freely perjured herself while on the stand at the habeas evidentiary hearing; neither the State nor the Court objected.

Georgia Code, O.C.G.A. §5-6-21, requires prompt judicial action in habeas cases. The State, along with the Petitioner, was given 30 days in which to submit a brief and

proposed order. The State failed to respond until more than eight months later, thereby forfeiting their right to respond, in accordcance with Georgia statutes. The State, Petitioner's paid attorney, and the habeas judge all deemed themselves to be above the law, to the detriment of the Petitioner.

Petitioner was not notified of the adverse habeas ruling until 18 days after it was recorded. "Failure of court clerk to notify partiesof entry of order does constitute excusable neglect." Brotherhood Ry. Carmen Div. Of Transp. Etc. v. Chicago & North Western Transp. Co., 964 F. 2d 684 (1992). See also Vianello v. Pacifico, 905 F. 2d 699 (1990). When a prisoner received notification late, which made his filing untimely, the U.S. Court of Appeals deemed his petition to be timely filed. Long v. Atlanta City Police Dep't., 670 F. 3d 436 (Nov 9, 2011). Long stated that the court should engage in fact-finding if a prisoner alleges a delay in receiving notice: "Time lost due to prison delay cannot fairly be used in computing time for appeal." The Georgia Supreme Court seemed to believe the opposite is true. However, "an appellate court is not barred from reviewing a claim by a state procedural rule when the state courts themselves have not followed the rule." Bell v. Watkins, 692 F. 2d 999 (Dec 6, 1992). Petitioner was held to the very standard that the Georgia Supreme Court themselves ignored. But why did it take them *39 months* to dismiss? O.C.G.A. §9-14-22(b) states, "it shall be the duty of the Supreme Court to give a speedy hearing and determination in habeas cases." And O.C.G.A. 9-14-52(b) states that the "Supreme Court shall either grant or deny the application within a reasonable time after filing." In this case, 12 days is held as excessive and untimely, while 39 months is considered reasonable. Is the Supreme Court exempt from the very regulations that they enforce upon prisoners? In this case, yes. Murray v. State, 265 Ga. App. 119, 592 S.E. 2D 898 (2004) held that "Defendant was not responsible for failure to timely file an appeal, as he had not been informed of his appellate rights." Further, "Appellant was denied his right of appeal, as he was not adequately informed of his appeal rights. Such an appeal is appropriate when the defendant shows that he was entitled to a direct appeal, but lost that right through no fault of his own." See also Cambron v. Canal Ins. Co., 246 Ga. 147, 269 S.E. 2D 426 (1980). "Out-of-time appeals are granted when the defendant in a criminal case is not advised of his right to appeal." Birt v. Hopper, 245 Ga. 221, 265 S.E. 2D 276 (1980).

Petitioner moved the Supreme Court for reconsideration in a timely motion, citing these cases and "excusable neglect". A "court is vested with discretion whether to consider affidavits untimely served." Strickland v. DeKalb Hosp. Authl, 197 Ga. App 63, 397 S.E. 2D 576 (1990). See also Fremichael v. Doe, 221 Ga. App.698, 472 S.E. 2D 440 (1996), Rowland v State, 264 Ga. 872, 452 S.E. 2D 756 (1995), Jones v. Howard, 153 Ga. App. 137, 264 S.E. 2D 587 (1980), and Cambron (supra).

Finally, the Federal Rules of Criminal Procedure Rule 35 states that a court may correct an illegal sentence at any time. Petitioner applied to the McDuffie County

Superior Court, the Coffee County Superior Court (via habeas), and the Georgia Supreme Court to correct his plainly illegal sentence. Each of these courts have refused to correct an obviously illegal sentence, or to honor the statutes, rules, and regulations in place in the State of Georgia, thus placing themselves above the law—to the detriment of the innocent Petitioner.

Petitioner now appeals, through this petition for certiorari, to the highest court in the United States of America, the Supreme Court of the United States, for justice and fair treatment under the laws of this fine Nation and of the State of Georgia.

REASONS FOR GRANTING THE PETITION

The decisions below have all resulted in a substantial denial of justice. The Petitioner has been held to the letter of the law, while the State has ignored it completely, except as a benchmark for denying petitions.

Federal courts have long believed in justice and constitutional rights, and have allowed miscarriage(s) of justice to be addressed through habeas corpus and readdressed through a writ of certiorari. Georgia courts have shown that they believe in neither, and that they themselves are exempt from their own rules and laws. Prisoners, and all persons convicted of crimes, have been granted certain constitutional rights, including the right to redress. The basic rules of fundamental fairness require that the bodies that enforce the laws must first themselves obey the very laws granting them the power to enforce such laws before holding a deprived or indigent petitioner to the very standard the lawmakers and enforcers openly disobey.

The courts of Georgia must be held accountable to not only the Federal and Constitutional laws, but to their own laws and rules. And since the highest court in Georgia cannot and indeed will not hold themselves accountable to their own laws, it is incumbent upon the higher United States Supreme Court to hold them accountable so that justice may indeed be served.

Precedent must be set to order courts to obey their own rules and laws, at least in Georgia; otherwise, prisoners and persons convicted of crimes, whether rightfully or wrongfully, will continue to be denied their Constitutional rights to fair trial and redress.

CONCLUSION

Having shown herein that the courts of Georgia have refused to honor their own statutes, rules, and regulations, and even Federal and Constitutional requirements, Petitioner hereby prays the Honorable United States Supreme Court to grant him a Certificate of Appealability in order to pursue fairness and justice. Petitioner has strictly adhered to all herein-mentioned requirements, while the concerned Georgia courts have not. Thus, it appears that, in Georgia, a Pro-se prisoner is indeed held to a higher standard than the state courts.

Petitioner prays the U.S. Supreme Court to hold each of these courts to the appropriate standards in order for the Petitioner to receive the relief due to him, along with any other relief deemed appropriate by this Honorable Court.

This petition for a writ of certiorari should be granted.

Respectfully submitted this 24th day of August, 2020.

Geoffrey Graham, Pro Se
835 Eli Road
Bon Aqua TN 37025

SUPREME COURT OF GEORGIA
Case No. S17H1155

June 01, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

GEOFFREY GRAHAM v. GRADY PERRY, WARDEN et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

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.

Trina A Barnes
, Clerk