



SUPREME COURT OF GEORGIA
Case No. S20H0635

June 16, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

ERIC BERNARD SCOTT v. ARTIS SINGLETON, 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. 2018-CV-129

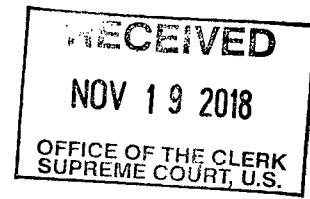
SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

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 D. Barnes, Clerk

THE SUPREME COURT
OF GEORGIA
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IN THE CASE OF:
ERIC BERNARD SCOTT
VS.
ARTIS SINGLETON
CASE NO. 2018-CV-129

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GA. STATE BAR NUMBER 676295

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FILED ON OCTOBER 28, 2019

IN THE SUPERIOR COURT OF WILCOX COUNTY
STATE OF GEORGIA

ERIC BERNARD SCOTT,

CASE NO:

v.

2018-CV-129

ARTIS SINGLETON, WARDEN

Defendant.

COPY

PROCEEDING:

HABEAS CORPUS HEARING

JUDGE:

HONORABLE DENISE D. FACHINI

DATE:

AUGUST 8, 2019

LOCATION:

WILCOX STATE PRISON
ABBEVILLE, GEORGIA

REPORTER:

STACEY FOLDS, CCR

On Behalf of the Attorney
General:

MATTHEW M. YOUN, ESQ.
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On Behalf of Defendant:

PRO SE

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PROCEEDINGS

THE COURT: We are here on case number 2018-CV-129.
You are Eric Bernard Scott; is that correct?

PETITIONER: Yes.

THE COURT: Mr. Scott, I am Denise Fachini, I am a Superior Court Judge. We're here for your habeas hearing, or a portion of that hearing. Are you represented by an attorney?

PETITIONER: No, ma'am.

THE COURT: Are you going to be representing yourself?

PETITIONER: Pro se; yes, ma'am.

THE COURT: Are you ready to proceed?

PETITIONER: All except that I requested the minutes of the grand jury and haven't gotten them yet.

THE COURT: There's rarely ever minutes to a grand jury. What county was it?

PETITIONER: Chatham County. Chatham did indict and I would need that to support my allegation that it's void.

THE COURT: Well, Mr. Youn is present and he represents the Warden in this case. Mr. Youn, are you ready to proceed?

MR. YOUN: We are, Your Honor, and I believe we would be ready to proceed on our motion to dismiss as

untimely, in which we are trying to assert in this case.

THE COURT: Okay. Well, I tell you what -- Mr. Youn, do you have any information regarding minutes from the Chatham County grand jury?

MR. YOUN: We do not, Your Honor. Our position would still be that, with our motion to dismiss as untimely, that would dismiss the case and that Mr. Scott hasn't produced any such minutes for a much older conviction.

THE COURT: All right. I tell you what, Mr. Scott, what I have is I've got your original habeas that you filed, that being on December 20th of 2018; then I have your amended motion that you filed in March of this year. I have an answer filed by the Attorney General on April 1st, so ordinarily, your habeas and their answer would form the issue for me to hear, but they have also, subsequently, filed a motion to dismiss petition as untimely or successive and you've received that motion on your behalf as well?

PETITIONER: Yes, ma'am.

THE COURT: When that happens, what I do is I will -
- because their motion means, Judge, you don't even need
to hear the habeas because these things have happened,
it's successive or it's untimely, and generally, what I
do is I hear this motion to decide whether or not I need

1 to go forward and hear the habeas. So that gives you
2 actually some more time, if you're still trying to pursue
3 some additional documents. So what I'm going to do today
4 is I'm going to go ahead and hear their motion to
5 dismiss. You can respond to that because that doesn't
6 deal with your minutes.

7 PETITIONER: Your Honor, can I say one thing?

8 THE COURT: I'll let you, let me finish explaining.
9 So I'm going to go ahead and hear this motion on the
10 issue of whether or not you have been untimely in your
11 petition for habeas, or whether it's something that's
12 already been heard before, those issues.

13 PETITIONER: Yes, ma'am.

14 THE COURT: Then I won't rule on that until I get
15 the transcript from the hearing; okay?

16 PETITIONER: Yes, ma'am.

17 THE COURT: In the meantime, your habeas still
18 remains pending.

19 PETITIONER: Yes, ma'am.

20 THE COURT: If you need to get additional
21 documentation for that, you can certainly work on getting
22 that done. Once I rule on this, I will either deny their
23 motion and we'll go forward with your habeas, or I'll
24 grant their motion and then you can appeal that, if you
25 wish; okay?

1 PETITIONER: Yes, ma'am.

2 THE COURT: Go ahead, what did you want to say?

3 PETITIONER: All I want to say is that I filed a
4 traverse --

5 THE COURT: You did. Let's see, that's the newest
6 thing.

7 PETITIONER: I filed a traverse as to the motion to
8 dismiss, attorney answer and the motion to dismiss.

9 THE COURT: You can make that argument now.

10 PETITIONER: Okay, I will, yes, ma'am. Your Honor,
11 I want to say one more thing. I asked for my attorney,
12 for my attorney to be here; right, my trial attorney and
13 my appellate attorney, and --

14 THE COURT: Did you subpoena them?

15 PETITIONER: Yes, ma'am, I got a subpoena right
16 here.

17 THE COURT: Who are they?

18 PETITIONER: My trial attorney was Charles Graham,
19 Mr. Charles Graham, and my appellate attorney was Mr. C.
20 Jackson Burch.

21 THE COURT: Okay. Well, since we're only hearing
22 the motion to dismiss today, that shouldn't be a problem.
23 I can't handle your subpoenas for you, that's on you.
24 You just need to see -- do you have some outside help,
25 family or somebody helping you?

1 PETITIONER: Yes.

2 THE COURT: You might want to get them to start
3 making some phone calls and seeing what happened with
4 your efforts to subpoena them.

5 PETITIONER: Yes, ma'am.

6 THE COURT: But I'll give you plenty of notice of
7 when the next hearing will be, and then if you get an
8 order from me where I've dismissed it, then you can
9 appeal that order yourself; okay?

10 PETITIONER: Yes, ma'am.

11 THE COURT: Mr. Youn, are you ready to proceed?

12 MR. YOUN: Yes, Your Honor.

13 THE COURT: All right.

14 MR. YOUN: I guess, first, just to --

15 THE COURT: If you would, just give us a quick
16 summation of where we are.

17 MR. YOUN: Yes, Your Honor. Quickly, to address the
18 traverse by Mr. Scott, I would note that there is no
19 default in habeas corpus for failure of Respondent to
20 file an answer, and we reference Huddleston v. Ricketts,
21 233 Ga. 112 for that. Then moving to the motion to
22 dismiss as untimely, I should note we have not been able
23 to interpret the successive argument; we were unable to
24 obtain anything from Lowndes about the 1995 habeas
25 petition. We believe that there might be some difficulty

1 with that in Lowndes and archives and the age of that
2 habeas petition, but we would still -- without waiving
3 the successive argument, we wanted to move forward with
4 our motion to dismiss as untimely.

5 THE COURT: So you're actual conviction was in 1981?

6 PETITIONER: '91.

7 THE COURT: '91.

8 MR. YOUN: '91, Your Honor. Mr. Scott had a 1991
9 jury trial, he received a life sentence for malice murder
10 and also possession of a firearm by a convicted felon and
11 possession of a firearm during the commission of a
12 felony. This was affirmed on appeal in Scott v. State,
13 263 Ga. 300 in 1993. I have a copy of the opinion, if
14 you would like, Your Honor.

15 THE COURT: Yes.

16 MR. YOUN: I have Mr. Scott a copy as well. This is
17 affirming the convictions. Afterward, he had a ninety-
18 day period to file with the U.S. Supreme Court;
19 Petitioner did not file a cert. petition, thus his
20 convictions were final on October 13, 1993. Because
21 these convictions were final before July 1, 2004, he had
22 until July 1, 2008 to file a timely habeas petition. His
23 petition shows that he filed with Wilcox County on
24 December 20th, 2018, over ten years too late, so we would
25 submit that this is untimely.

1 THE COURT: And your abandoning the successive
2 portion of your petition?

3 MR. YOUN: Yes, Your Honor.

4 THE COURT: Mr. Scott, would you like to respond?
5 What I understand is that their argument is they filed a
6 motion to dismiss as untimely and successive, but they're
7 not going forward on the successive. Their motion is
8 based on the untimeliness of your petition. So would you
9 like to address that?

10 PETITIONER: Your Honor, Respondent had twenty days
11 after the time of filing the petition to respond. They
12 didn't do that. They wanted seventy days and decided to
13 file their answer and motion to dismiss and that's wrong.
14 Based on that, I asked that it be dismissed, the answer
15 be dismissed, based on failure to respond within a timely
16 manner.

17 THE COURT: Okay, that's one argument, but go ahead
18 and go forward and make an argument regarding the
19 timeliness of your actual habeas petition. Give me
20 something else.

21 PETITIONER: I don't understand.

22 THE COURT: Why did you wait so -- Why did you not
23 file your habeas before now?

24 PETITIONER: For one, I didn't have the grand jury -
25 - I mean, my lawyer filed for the records, the minutes of

1 the grand jury, we never got that, so that's one of the
2 reasons.

3 THE COURT: You know, Mr. Scott, in my experience,
4 there are no minutes for the grand jury. The grand jury
5 is a closed proceeding. There's rarely ever -- I've
6 never had experience where there was a court reporter or
7 anyone taking notes of a grand jury proceeding. So I
8 mean, I've heard a lot of inmates basing a habeas on not
9 having had a transcript of what took place in a grand
10 jury proceeding, and there's no -- there aren't any.

11 Now, once a grand jury returns to open Court with an
12 indictment, the Clerk will put that on the minutes of the
13 Court. I mean, that would be a presentment filed with
14 the Clerk, but that's usually just a report from the
15 grand jury that we heard twenty cases and we returned
16 fifteen true-bills. It's that kind of note without a lot
17 of specific information. Do you believe that there's a
18 proceeding that the grand jury had where they heard
19 evidence and testimony and that was all transcribed and
20 that's what you want?

21 PETITIONER: Yes, ma'am.

22 THE COURT: Okay. I don't know that that exists.

23 PETITIONER: It exists because the prosecutor told
24 me that -- told my sister she would give them to me, but
25 she was busy at the time. So it does exist.

1 THE COURT: Okay.

2 PETITIONER: Your Honor, I want to say something
3 else. When I filed my traverse, Respondent, he had
4 thirty days -- had thirty days to respond and they didn't
5 do that. For him to come in now and raise that argument,
6 that the petition was untimely filed, it's way beyond
7 thirty days. I ask that the motion be dismissed on that
8 ground as well.

9 THE COURT: Mr. Youn, would you like to be heard?

10 MR. YOUN: Yes, Your Honor. I would just maintain
11 what I said earlier, and our argument would be that
12 there's no default in habeas corpus for failure of
13 Respondent to file an answer.

14 THE COURT: He has stated the law. There's no
15 default. I'm not dismissing his motion based on that.

16 PETITIONER: Yes, ma'am. Your Honor, Respondent
17 failed to comply with Uniform Superior Court Rule 6-2,
18 which states that he has thirty days to respond.

19 THE COURT: It's discretionary with the Court. I'm
20 not looking for y'all to -- I mean --

21 PETITIONER: Your Honor, if I've got to follow the
22 rules, then -- I mean, the rules should apply to
23 everyone. It states right here, pursuant to Uniform
24 Superior Court Rule 6-2, Respondent had thirty days in
25 which to file a response opposing Petitioner's motion.

1 However, Respondent's failure to file a response opposing
2 the petition or raise the right to present evidence in
3 opposition to the motion, that's the law. I mean,
4 Respondent just can't come in here and just -- in my
5 opinion, just can't come in here and just throw mine out
6 when he's not following the rules and he's telling me I'm
7 not following the rules. He ain't follow the rule in
8 which to have my petition dismissed.

9 THE COURT: But there's no automatic default.

10 There's no default on a habeas. Habeas is a different
11 animal.

12 PETITIONER: Yes, ma'am. I'm not saying he's in
13 default; I'm just saying -- I mean, it's the law under 6-
14 2, Uniform Superior Court Rule 6-2.

15 THE COURT: All right. Do you have anything
16 further?

17 PETITIONER: Yes, ma'am. I ask that his answer be
18 dismissed based on that.

19 THE COURT: Okay. I'm denying your motion to
20 dismiss his answer. There is no default in a habeas.

21 PETITIONER: Yes, ma'am. Your Honor, one more
22 thing, doesn't he has [sic] thirty days -- twenty days in
23 which to respond after the filing of the -- the docketing
24 the petition? I ask that it be dismissed on that ground.

25 THE COURT: I'll consider your motion. Anything

1 further, Mr. Youn?

2 MR. YOUN: No, Your Honor.

3 THE COURT: Mr. Scott, what I'm going to do is
4 consider these arguments --

5 PETITIONER: Yes, ma'am.

6 THE COURT: -- and the paperwork that you filed and
7 I'll make a decision. You'll get a response of whether I
8 grant or deny, and then you -- if I deny their motion,
9 then we'll schedule your next habeas proceeding, meaning
10 make sure you get your witnesses properly subpoenaed so
11 you can go forward with your habeas, should I deny the
12 motion to dismiss; okay?

13 PETITIONER: Yes, ma'am.

14 THE COURT: That concludes this hearing. Thank you.

15 (Proceedings concluded).

C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF LEE

I, Stacey L. Folds, Deposition Officer, being a Certified Court Reporter for the State of Georgia at large, hereby certify that the foregoing transcript is a true record of the proceedings held in the aforesaid matter on the date and time as specified; that I am neither a relative nor employee nor attorney nor counsel of any of the parties, nor an employee of such attorney or counsel, nor financially interested in the action.

WITNESS my hand and seal at Leesburg, Lee County, Georgia, this 31st day of August, 2019.

