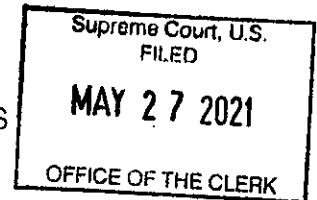


20-8393

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



ROBERT STEVEN McDANIEL ^{Pro-Se} — PETITIONER
(Your Name)

vs.

SUPREME COURT of GEORGIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ROBERT STEVEN McDANIEL
(Your Name)

DODGE STATE PRISON P.O. Box 276
(Address)

CHESTER, GEORGIA 31012-0276
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. If a defendant, who is a LAYMAN, HAVE A STATUTORY RIGHT TO AN APPEAL by the STATE OF GEORGIA AND IS DENIED THAT RIGHT TO AN APPEAL, WOULD THAT BE A VIOLATION OF THE DEFENDANT'S DUE PROCESS RIGHT TO AN APPEAL OR OUT-OF-TIME - APPEAL?
2. IS THE ABANDONMENT OF COUNSEL FOR THE DEFENDANT AFTER A PLEA HEARING OR SENTENCING OF CONSTITUTIONAL MAGNITUDE, VIOLATING THE SIXTH AMENDMENT OF EFFECTIVE ASSISTANCE OF COUNSEL?
3. IF THE DEFENDANT, A LAYMAN, SHOWS THAT HIS COUNSEL WAS INEFFECTIVE IN NOT INFORMING HIM OF HIS RIGHT TO A DIRECT APPEAL OR ANY POST-CONVICTION REMEDIES AFTER HIS PLEA, AND THAT COUNSEL WAS DEFICIENT IN FAILING TO FILE A TIMELY NOTICE OF APPEAL, AND THAT, BUT FOR COUNSEL'S DEFICIENCY, HE WOULD HAVE APPEALED, IS THE DEFENDANT ENTITLED TO AN OUT-OF-TIME APPEAL AND WOULD THAT BE A VIOLATION OF DEFENDANT'S DUE PROCESS RIGHTS?
4. DOES THE TRIAL COURT HAVE A DUTY TO INFORM CRIMINAL DEFENDANTS OF THEIR RIGHTS TO APPEAL AND THUS ARE DEFENDANTS ENTITLED TO AN OUT-OF-TIME APPEAL IF NOT SO ADVISED?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3 4
STATEMENT OF THE CASE	4+5
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A	Decision of The Supreme Court of Georgia
APPENDIX B	Decision of Paulding County Superior Court State of Georgia
APPENDIX C	Decision of The Supreme Court of Georgia Denying Review
APPENDIX D	Decision of The Supreme Court of Georgia Denying Rehearing
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Ringold v. STATE, 823 S.E. 2d 342 (2019)	
Collier v. STATE, 307 GA. 363, 834 S.E. 2d 769 (2019)	
DOS SANTOS v. STATE, 834 S.E. 2d 733 (2019)	
CARTER v. JOHNSON, 278 GA. 202, 205, 599 S.E. 2d 170 (2004)	
Flores-Ortega Supra, 528 U.S. at 478 (11A), 120 S.Ct 1029	
Gable v. STATE, Supra, 290 GA. 85-86 (2Xb) 720 S.E. 2d 170	
Rowland v. STATE, 264 GA. 872, 875 (2), 452 S.E. 2d 756 (1995)	
White, 302 GA. 318, 806 S.E. 2d 489	

STATUTES AND RULES

THE SIXTH AMENDMENT OF EFFECTIVE ASSISTANCE OF COUNSEL
AND THE ABANDONMENT OF COUNSEL AFTER THE PLEA OR
THE SENTENCING.

O.C.G.A § 5-6-33 (A)(1) THE DEFENDANT IN ANY CRIMINAL PROCEEDING IN THE
SUPERIOR, STATE, OR CITY COURTS MAY APPEAL FROM ANY SENTENCE, JUDGMENT,
DECISION, OR DECREE OF THE COURT, OR OF THE JUDGE THEREOF IN ANY MATTER
HEARD AT CHAMBERS.

O.C.G.A § 5-6-34 (A) APPEALS MAY BE TAKEN TO THE SUPREME COURT AND THE
COURT OF APPEALS FROM THE FOLLOWING JUDGMENTS AND RULINGS OF THE SUPERIOR
COURTS, THE CONSTITUTIONAL CITY COURTS, AND SUCH OTHER COURTS OR TRIBUNALS
FROM WHICH APPEALS ARE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE.

WHILE O.C.G.A § 5-6-38 (A) GENERALLY REQUIRES THAT A NOTICE OF APPEAL BE FILED
WITHIN 30 DAYS OF THE APPEALABLE DECISION OR JUDGMENT COMPLAINED OF, GEORGIA
COURTS MAY EXCUSE COMPLIANCE WITH THAT STATUTORY REQUIREMENT "WHERE TO AVOID
OR REMEDY OF A CONSTITUTIONAL VIOLATION CONCERNING THE APPEAL."

OTHER Collier v. STATE, 307 GA. 363, 834 S.E. 2d 769 (2019)

Collier ESTABLISHES THE NEW PRECEDENT THAT A DEFENDANT SEEKING AN
OUT-OF-TIME APPEAL "MUST ALLEGE AND PROVE AN EXCUSE OF CONSTITUTIONAL
MAGNITUDE FOR FAILING TO FILE A TIMELY DIRECT APPEAL," USUALLY BY
SHOWING THAT COUNSEL'S INEFFECTIVENESS DEPRIVED THE DEFENDANT HIS
RIGHT TO AN APPEAL. Id. FURTHERMORE, WHEN A DEFENDANT ALLEGES HE WAS
DEPRIVED OF HIS APPEAL OF RIGHT DUE TO TRIAL COUNSEL'S INEFFECTIVE
ASSISTANCE, THE COURT MUST DETERMINE WHETHER COUNSEL WAS RESPONSIBLE
FOR THE FAILURE TO PURSUE A TIMELY APPEAL.

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 A 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 Paulding County Superior of Georgia court 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.

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 April 5, 2021.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: May 3, 2021, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

VI (Sixth) Amendment: TO HAVE THE ASSISTANCE OF (EFFECTIVE) COUNSEL FOR HIS DEFENSE.

XIV (FOURTEENTH) Amendment: NO STATE SHALL MAKE OR ENFORCE ANY LAWS 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.

FLORES-ORTEGA, SUPRA, 528 U.S. AT 484 (11XBX3), 120 S.Ct. 1029.

THE U.S. SUPREME COURT, "WE EXPECT THAT COURTS EVALUATING THE REASONABLENESS OF COUNSEL'S PERFORMANCE USING THE [TEST SET FORTH IN FLORES-ORTEGA] WILL FIND IN VAST MAJORITY OF CASES, THAT COUNSEL HAD A DUTY TO CONSULT WITH THE DEFENDANT ABOUT AN APPEAL." ID AT. 481(11XA), 120 S.Ct. 1029

THE U. S. SUPREME COURT HAS SQUARELY REJECTED THE ARGUMENT THAT THE DEFENDANT MUST SHOW THAT HE WOULD ACTUALLY PREVAIL IN A TIMELY APPEAL, AS WELL AS "ANY REQUIREMENT THAT THE WOULD-BE APPELLANT SPECIFY THE POINTS HE WOULD RAISE WERE HIS RIGHT TO APPEAL REINSTATED, "AS "IT IS UNFAIR TO REQUIRE AN INDIGENT, PERHAPS PRO-SE DEFENDANT TO DEMONSTRATE THAT HIS HYPOTHETICAL APPEAL MIGHT HAVE HAD MERIT BEFORE ANY ADVOCATE HAS EVER REVIEWED THE RECORD IN HIS CASE IN SEARCH OF POTENTIALLY MERITORIOUS GROUNDS FOR APPEAL."

INSTEAD, "WHEN COUNSEL'S CONSTITUTIONALLY DEFICIENT PERFORMANCE DEPRIVES A DEFENDANT OF AN APPEAL THAT HE OTHERWISE WOULD HAVE TAKEN" THE DEFENDANT IS ENTITLED TO AN APPEAL BECAUSE HE EFFECTIVELY HAS BEEN DEPRIVED OF AN APPELLANT & PROCEEDING ALTOGETHER. ID. AT 483-484 (11XB2) AND (3), 120 S.Ct. 1029.

STATEMENT OF THE CASE

ON November 4, 2014, PETITIONER McDANIEL plead guilty to Malice murder, possession of a firearm, Aggravated stalking AND Aggravated Assault.

IN 2018, McDANIEL file A MOTION FOR AN OUT-OF-TIME Appeal, which the Superior Court of Paulding County Georgia denied without A hearing. McDANIEL filed AN Application FOR discretionary Appeal, which the Supreme Court of Georgia GRANTED under O.C.G.A. § 5-6-35 (j) STATING McDANIEL had A right of direct Appeal. SEE CASE# S18D1312 (JUNE 15, 2018)

IN October 21, 2019 the Supreme Court of Georgia VACATED Paulding County Superior Court's order denying McDANIEL's MOTION FOR OUT-OF-TIME Appeal AND remanded the CASE for the TRIAL COURT to hold AN Evidentiary hearing AND determine whether plea counsel's CONSTITUTIONALLY ineffective ASSISTANCE WAS RESPONSIBLE for McDANIEL FAILURE TO PURSUE A timely Appeal. SEE CASE# S19A0660 Collier V. STATE, 307 GA. 363, 376 (834 S.E2d 769) (2019) (October 21, 2019)

IN July 2020 Paulding County Superior Court of Georgia held A hearing ON McDANIEL's OUT-OF-TIME Appeal AND found THAT plea counsel did NOT Advise OR CONSULT McDANIEL ABOUT his Right TO Appeal FROM A plea OR WITHDRAW his plea.

Counsel for McDANIEL testified THAT APART FROM the plea Agreement, she did NOT Advise McDANIEL ABOUT his Right TO Appeal FROM the plea. The TRIAL COURT found THAT plea counsel did NOT consult WITH McDANIEL ABOUT his Right TO Appeal Following the ENTRY of his plea, AND the STATE does NOT dispute THAT finding ON Appeal.

The TRIAL COURT concluded THAT plea counsel's FAILURE TO consult WAS NOT CONSTITUTIONALLY DEFICIENT BASED ON the CONSIDERATIONS SET FORTH in Flores-Ortega, 528 U.S. AT 480, AND the Supreme Court of Georgia concluded THAT the TRIAL COURT did NOT ERR in REACHING THAT conclusion.

STATEMENT OF THE CASE

CONT:

The Supreme Court of Georgia also quoted case law *Fields v. United States*, 577 Fed Appx. 916, 919 (11th Cir 2014) and *Davis, GA. At* (852 S.E.2d at 521) concluding that the trial court did not abuse its discretion in denying the defendant's motion for out-of-time appeal based on ineffective assistance of counsel because "nothing in the record before the trial court supported a finding that a rational convicted defendant would have sought an appeal" where, among other things, "the record showed] that [the defendant] got the benefit of the plea bargain offered by the prosecutor," did not express any dissatisfaction with the plea agreement, and "reserved no ground for an appeal."

On April 5, 2021 the Supreme Court of Georgia affirmed in part the denial of McDaniel out-of-time appeal and dismissed in part.

Petitioner McDaniel immediately filed a motion for reconsideration to the Supreme Court of Georgia which was denied on May 3, 2021.

REASONS FOR GRANTING THE PETITION

ALL CRIMINAL DEFENDANTS ARE LAYMAN, AND AS LAYMAN, DEFENDANTS ARE NOT IGNORANT TO THE LAW BUT INSTEAD UNEDUCATED TO COURT ROOM PROCEDURES AND REMEDIES (INCLUDING APPEALS + POST CONVICTION REMEDIES) UNLESS THE DEFENDANTS ARE INFORMED BY COUNSEL, THEREBY ABANDONING THE DEFENDANT AND FORCING THE DEFENDANT TO FILE FOR AN APPEAL OR ANY OTHER POST-CONVICTION MOTION REMEDIES PRO-SE.

THE UNITED STATES SUPREME COURT RECOGNIZE THAT UNFORTUNATELY, SOME CRIMINAL DEFENSE LAWYERS MAY NOT BE AS CONSCIENTIOUS ABOUT THEIR DUTIES AFTER THEIR CLIENTS PLEAD GUILTY ARE SENTENCED.

DEFENDANTS WHO ARE ABANDONED BY THEIR PLEA COUNSEL HAVE A REMEDY AND IF A DEFENDANT'S RIGHT TO APPEAL FROM A GUILTY PLEA (DIRECTLY OR AFTER FILING A MOTION TO WITHDRAW THE PLEA) IS FRUSTRATED BY THE CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF PLEA COUNSEL IN ADVISING THE DEFENDANT ABOUT OR PURSUING THOSE POST-CONVICTIONS REMEDIES, THEN IT WOULD BE CORRECT THAT THE DEFENDANT MAY SEEK AN OUT-OF-TIME APPEAL IN THE TRIAL COURT OR IN HABEAS CORPUS.

FOR AN APPELLANTE COURT ON ANY LEVEL IN ALL STATES TO MISQUOTE PORTIONS OF CASE LAW TO DENY DEFENDANTS THEIR RIGHT TO AN APPEAL IS AN ABUSE OF DISCRIMINATION AND A VIOLATION OF DUE PROCESS RIGHTS,

WHICH IS A VIOLATION OF CONSTITUTIONAL MAGNITUDE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Robert Steven McD

Date: 05-20-2021