

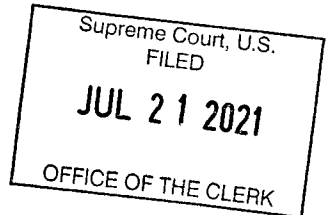
21-5236

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



MANVESTER EVANS III PROSE — 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)

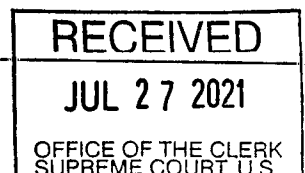
PETITION FOR WRIT OF CERTIORARI

MANVESTER EVANS III
(Your Name)

P.O. Box 276 Dodge State Prison
(Address)

Chester, GA 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. 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?

TABLE OF AUTHORITIES CITED

CASES Ringold v. STATE, 823 S.E.2d 342 (2014) PAGE NUMBER
Collier v. STATE, 307 GA. 363, 834 S.E.2d 769 (2014)
DOS SANTOS v. STATE, 834 S.E.2d 733 (2014)
Flores-ORTEGA SUPRA, 528 U.S. AT 478 (11X), 126 S.Ct 1029
Gable v. STATE, SUPRA, 290 GA. AT 85-86 (2X6) 720 S.E.2d
170.
CARTER v. JOHNSON, 278 GA. 202, 205, 599 S.E.2d 170
Rowland v. STATE, 264 GA. 872, 875 (2), 452 S.E.2d 756
White, 302 GA. AT. 318, 806 S.E.2d 489.

STATUTES AND RULES

Defendants who plead guilty to criminal charges in Georgia courts have a right to timely pursue post-conviction remedies, including a motion to withdraw the guilty plea and an appeal.

With respect to at least those two potential remedies, defendants have a Sixth Amendment right to the effective assistance of counsel to advise them about the potential remedy and to pursue the remedy if appropriate.

OTHER

Attorney General of Georgia stated in his brief to the Supreme Court of Georgia that Appellant EVANS has not been afforded an appeal of right and is due an out-of-time appeal according to the law. (See Attachment & attached decisions)

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 GEORGIA SUPREME 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 July 7, 2021
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
July 7, 2021, 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 this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Flores-Ortega, *Supra*, 528 U.S. at 484 (1)(B)(2) and (3), 120 S.Ct. 1029
Ringold, 823 S.E.2d 879

Accordingly, the United States Supreme Court has squarely rejected the argument that the defendant must show that he would have actually prevailed 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. *id.* at 485-486 (1)(B)(3), 120 S.Ct. 1029."

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~~ appellate proceeding altogether."

STATEMENT OF THE CASE

Appellant MAVESTER EVANS^{III} (A LAYMAN) filed a PRO-SE petition for a copy of the record of his October 2004 guilty plea, in which the Superior Court of Toombs County denied November 2005.

Appellant EVANS (A LAYMAN) also filed a petition for a copy of the record of his October 2004 guilty plea (NOT A DIRECT APPEAL OR AN OUT-OF-TIME APPEAL AS PREVIOUSLY ASSUMED) to the Georgia Court of Appeals which was later transferred to the Supreme Court of Georgia (CASE # S06A0940) in which the Supreme Court of Georgia dismissed Appellant EVANS Attempted Appeal as untimely (by 1 day).

In which therefore Appellant EVANS (A LAYMAN) clearly showing frustration, repeatedly continued to file motions for AN-OUT-OF-TIME APPEAL (S09A1704, S12A1919, S12D1148, S12A0913, S18A1140, S18D1050, S20D1456 and S21A0080) by which the Supreme Court of Georgia claims that Appellant EVANS, (A LAYMAN) "BECAUSE Appellant ^{has} sought to appeal the denial prior motion for out-of-time appeal, ~~AN APPEAL COULD NOT BE SUSTAINED AS TO THE DENIAL~~ of his second motion." (in which Appellant EVANS never was afforded his 1st opportunity to an appeal). "A party cannot obtain multiple bites at the appellant apple through such procedural machinations..." EVANS, S18D1050

REASONS FOR GRANTING THE PETITION

Defendants who ARE abandoned by their plea counsel have a remedy and if a defendant's right to appeal from a guilty plea is frustrated by the constitutionally ineffective assistance of plea counsel in advising the defendant about or pursuing those post-conviction remedies, then it would be correct that the defendant may seek an out-of-time appeal.

For an appellate 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,

Marshall E. Evans III

Date: July 20, 2021
