



SUPREME COURT OF GEORGIA
Case No. S22D0683

February 22, 2022

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DELROY BOOTH v. THE STATE.

Applicant, whose convictions for murder and other crimes were previously affirmed by this Court, see *Booth v. State*, 301 Ga. 678 (804 SE2d 104) (2017), filed in the court of conviction a “motion to vacate, set aside, or correct sentence.” The trial court entered an order dismissing the motion, and applicant now seeks to appeal that order. However, while applicant argues that he raised claims based on “newly available evidence,” a review of the application demonstrates that his claims of trial court error and ineffectiveness of trial and appellate counsel are not the type that would support a valid extraordinary motion for new trial based on newly discovered evidence. See OCGA § 5-5-41; *Mitchum v. State*, 306 Ga. 878, 881-885 (834 SE2d 65) (2019). Instead, his motion is an unauthorized attempt to challenge his conviction, and because a trial court’s order properly dismissing such a motion is not subject to appellate review, see, e.g., *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009), the Court dismisses the application.

All the Justices concur.

* Appendix A *

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.

 , Clerk

Appendix A

SUPREME COURT of GEORGIA
Nathan Deal Judicial Center
330 Capitol Avenue S.E., Room 1100
Atlanta, Georgia 30334
(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Docketing Date: February 07, 2022

Delroy T. Booth
GDC# 0001087139
Baldwin State Prison
P.O. Box 218
Hardwick, Georgia 31034

Case No. S22D0683 DELROY BOOTH v. THE STATE

The above-styled application for discretionary appeal has been docketed in the Supreme Court of Georgia and has been assigned the docketing date and case number shown above.

A response to the application, due within 10 days of the docketing of the application, is encouraged but is not mandatory. See Supreme Court Rule 30.

Important Rule Requirements and Information

Notice of Amended Rules – Effective immediately, the Supreme Court of Georgia amended its Court Rules by revising Rule 4 (Requirements for Attorneys Practicing Before the Supreme Court), Rule 10 (Briefs of the Parties: Time of Filing), Rule 20 (Briefs: Page Limitations), Rule 23 (Amicus Briefs), Rule 24 (Supplemental Briefs), Rule 50 (Oral Argument), and Rule 51 (Requests for Oral Argument) and by adding new Rule 96 (Appearance and Argument before the Georgia Supreme Court). The amended rules are available on the Supreme Court of Georgia website: www.gasupreme.us.

**Appendix A **

Counsel – Unless exempted, all counsel are required to submit documents to the Court electronically. Submitting documents electronically is not a substitute for service on the opposing party. Counsel listed in this case may view the record through the e-file system.

Lower Court Case Number(s): 11CR51405

Therese S. Barnes, Clerk

* Appendix B *

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
vs.)	CRIMINAL ACTION FILE
)	NO. 11-CR-5140-5
DELROY BOOTH,)	
Defendant.)	

ORDER DISMISSING PRO SE MOTION

Defendant was convicted of murder and related offenses and his conviction was affirmed in *Booth v. State*, 301 Ga. 678 (2017).

On 1/5/22, he filed a "Motion to Vacate, Set Aside, or Correct Sentence." The motion makes no mention as to how his sentence is void, and the Supreme Court has already addressed the sentence as part of the direct appeal.

It appears that Defendant's actual intention is to file a habeas petition for the purpose of alleging ineffective assistance of appellate counsel.

Venue for a habeas is in the county of incarceration, and it must be filed as a separate civil action. The Defendant is incarcerated at Baldwin State Prison, which is in Baldwin County.

The motion is DISMISSED.

SO ORDERED this the 28th day of January, 2022.



GREGORY A. ADAMS, Judge
DeKalb County Superior Court
Stone Mountain Judicial Circuit

Copy:

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By mail: Delroy Booth
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Hardwick, GA 31034