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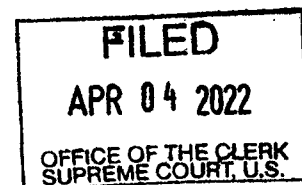
IN THE
SUPREME COURT OF THE UNITED STATES

CHARLIE BRANNER, JR.,
Petitioner,

ORIGINAL

VS.

STATE OF GEORGIA,
Respondent.



On Petition for Writ of Certiorari to the
Georgia Supreme Court
(Ga. Sup. Ct. No. S22C00371)

Petition for Writ of Certiorari

Charlie Branner, Jr.
GDC # 811297
Coffee Correctional Facility
P.O. Box 650
Nicholls, GA 31554

QUESTION PRESENTED

The Petitioner motion for reconsideration was postmarked on June 4, 2021 and received June 8, 2021, in the Georgia Appeals Court, which was denied by Order of the Georgia Appeals Court on June 22, 2021. The Georgia Appeals Court failed to notify all the parties of the dismissal of the motion for reconsideration¹, and the Petitioner did not learn the case had been dismissed until twenty-three (23) days later, when a remittitur was received by the Petitioner, on July 15, 2021, which remittitur was return July 12, 2021. The Petitioner never received an Order from the Georgia Court of Appeals ruling on his motion for reconsideration.

1. Was it Court error for the Georgia Supreme Court to deny Writ of Certiorari; when the Georgia Appeals Court failed in his/her duty to serve all parties, under OCGA § 15-6-21(c), a copy of, the Order dismissing the Motion for Reconsideration, violating the Petitioner's 14 Amendment to the due process clause?

1. The Georgia Appeals Court did not serve the ORDER dismissing the Reconsideration. It was only after petitioner requested a copy of the Order that a Order was provided. This Order was not received by petitioner until August 17, 2021, causing petitioner writ to be untimely and dismissed. Thus, solely because of the states negligence in failing to properly provide a copy of the Order was petitioner's writ deemed untimely.

LIST OF PARTIES

All parties to this Petition appear on the cover.

LIST OF RELATED PROCEEDINGS

Trial Court Judgment:

State v. Branner, No. 2018CP002 / 2018CR063 (Tift County, GA, Sup. Ct.). Judgment Entered May 26, 2020. Motion for discharge and acquittal denied May 27, 2020.

Appellate Judgment:

Branner v. State, No. A21A0619 (GA Appeals Court). Judgment entered November 6, 2020. Motion for discharge and acquittal denied May 26, 2021. Judgment entered June 8, 2021. Motion for reconsideration denied June 22, 2021.

Branner v. State, No. S22C0037 (GA Supreme Court). Judgment entered July 29, 2021. Certiorari denied January 11, 2022.

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Charlie Branner, Jr., respectfully petitions for a writ of Certiorari to review the judgment of the Georgia Supreme Court.

OPINIONS BELOW

The decision of the Georgia Supreme Court dismissing the Certiorari petition was entered on January 11, 2022, and is included in the Appendix. [App. A].

The decision of the Georgia Appeals Court Notice of Remittitur was entered on July 12, 2021, and is included in the Appendix. [App. B].

The decision of the Georgia Appeals Court dismissing the Motion for Reconsideration was entered on June 22, 2021, and is included in the Appendix. [App. C].

The decision of the Georgia Appeals Court dismissing the Motion for Discharge and Acquittal was entered on May 26, 2021, and is included in the Appendix. [App. D].

JURISDICTION

This Court has jurisdiction to review the judgment of the Georgia Supreme Court. 28 U.S.C. § 1257. Judgment below was entered on January 11, 2022. [App. A]. Writ of Certiorari was due by July 12, 2021, and dismissed as untimely.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

U.S. Const. Amend. XIV. § 1.

Statutes

O.C.G.A. § 15-6-21(c).

STATEMENT OF THE CASE

I. The Proceedings in the Trial Court.

Mr. Branner was indicted by a Tift County grand Jury on January 16, 2018, in a ten count indictment charging him with rape, and child molestation, the alleged victim being his step-daughter Kassayah Johnson, two counts of aggravated sexual battery, two counts of child molestation, enticing a child for indecent purposes, sexual exploitation of children, sexual battery against a child under 16, and false imprisonment, the alleged victim being his step-daughter Kasey Perkins. IS set forth in the Index at (2018CR002 R-24).

Mr. Branner was arraigned on February 15, 2018, during the September 2017 term, shortly, thereafter, on February 19, 2018, at Mr. Branner's request, trial counsel Jami L. Lewis, mailed to the Clerk for filing, a "DEMAND FOR SPEEDY TRIAL," pursuant to O.C.G.A. § 17-7-170, under docket No. 2018CR002. The Certificate of Service filed with the demand does show that trial counsel did serve this demand on Judge Melanie B. Cross (fax) and the Solicitor, perfectly serving all officials required by the Statute.

Due to Clerical delay, the demand was not filed in the September term, rather, interestingly, two days after the March 2018 term began; twenty-three (23) calendar days. Is set forth in the Index at (2018CR002 R- 54). It is undisputed as to why the Clerk did not file the demand until twenty-three (23) days after, February 19, 2018, on March 14, 2018.

The Tift County Superior Court has two terms per year beginning on the second Monday in March (which was March 12, 2018) and second Monday in September (which was September 10, 2018). O.C.G.A. § 15-6-3 (39) (B). There were jurors impaneled and qualified in both terms to try Mr. Branner. OCGA § 15-6-19. And thus the state had until September 9, 2018, the last day of the term to try Mr. Branner.

On May 10, 2018, trial counsel Jami Lewis, announced ready for trial, and trial initially was set for June 11, 2018, and that would have satisfied the demand in the second term without depriving Mr. Branner of his substantive right to a speedy trial. But that did not happen. The state reindicted Mr. Branner on May 16, 2018, under docket No. 2018CR063, for the exact same

Offenses. The new indictment made no substantive changes nor add language to the first indictment other than redact a nickname. A plain reading of the second indictment shows that the crimes charged are identical to those alleged in the First indictment, and speedy trial demand is effective as of the first indictment, and Adopted after reindictment as to the repeated charges in the second. *State v. Daniel*, 206 Ga.App.443, 445 (425 S.E.2d 366) (1992); *Hurt v. State*, 62 Ga.App.878 (10 S.E.2d 136) (1994). The reindictment had the same effect as a nolle prosequi of the first indictment. The entry of a nolle prosequi in a case does not prevent Mr. Branner as a matter of law from claiming the benefits of OCGA § 17-7-170, and there would be no controversy as to the propriety of Mr. Branner's motion. (docket No. 2018CR063 R-33)

II. Facts relevant to the constitutional claims asserted in this application.

On November 13, 2018, when Branner's case was called for trial during the September term, his trial counsel Jami Lewis failed to assert Branner's right under OCGA § 17-7-170

to have the charges dismissed, as Mr. Branner's discharge and acquittal take place by operation of law. Since the time to try Mr. Branner, had already expired, three (3) months after, the trial court had lack jurisdiction to accept his plea or try him, as the state failed to comply with the demand for the Speedy trial Statute. O.C.G.A. § 17-7-170 (b). *Mayfield v. State*, 264 Ga. App. 551, 552-555 (593 S.E. 2d 851) (2003). As Justice Gregory made clear in the 1985 case, *Hubbard v. State*, 254 Ga. 694 (333 S.E. 2d 827) (1985, citing *Smith v. State* and *Patterson v. State*, because of the express language of the statute, a defendant stands acquitted as a matter of law when the state fails to comply with a Statutory Speedy trial demand under OCGA § 17-7-170. A double jeopardy claimant is concerned with "...embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity..." *Green v. United States*, 355 U.S. 184, 187 (78 S.C. 221, 2 L. Ed. 2d 199) (1957). This is so because double jeopardy rights are implicated in a statutory speedy trial denial, because the statute provides that on violation of his rights under the statute, the defendant stands acquitted. In a OCGA § 17-7-170 Claim, the defendant is saying, "I may not now be tried because the time during which I must have been placed on trial has passed."

Hubbard, Supra at 695. The Plea was moot and unconstitutional.

On May 26, 2020, the Petitioner filed a Motion for Discharge and Acquittal, and Certificate of Service, with a returned address of: Charlie Branner, Jr., GDC # 811297 Coffee Correctional Facility, P.O. Box 650, Nicholls, GA 31554, in the Tift County Superior Court.

The Order entered on June 1, 2020, the Court denied Petitioner's motion for discharge and acquittal, under OCGA § 17-7-170 (b). When serving petitioner a copy of the Order denying his motion for discharge and acquittal, the Clerk sent said Order to an incorrect address: Charlie Branner, Jr., GDC # 811297 P.O. Box 206, Davisboro GA 31018, for Petitioner. This resulted, in the Petitioner not being served properly. The Petitioner was unable to file a timely direct appeal regarding said denial. See OCGA § 15-6-21 (c).

However, in spite of the delayed notice to the Petitioner by the Clerk, On May 26, 2021, the Georgia Court of Appeals dismissed Petitioner's direct appeal from the trial court's Order denying his motion for an out-of-time appeal. Petitioner then filed a motion for reconsideration in the Court of Appeals, which was dismissed On June 22, 2021. The Georgia Appeals Court did not serve the

ORDER dismissing the reconsideration. It was only after petitioner requested a copy of the Order that a Order was provided. This Order was not received by petitioner until August 17, 2021, causing Petitioner writ of Certiorari to be untimely and dismissed. Thus, Solely because of the States negligence in failing to properly provide a copy of the Order was petitioner's writ deem untimely.

The Petitioner filed a Motion for Reconsideration docketed in the Court of Appeals on June 8, 2021, which was dismissed by the Court of Appeals on June 22, 2021. The Georgia Appeals court violated OCGA § 15-6-21 (c) when it failed to notify all parties of its ORDER dismissing the RECONSIDERATION at issue, depriving the Petitioner of due process under the 14th Amendment.

Instead, the Georgia Appeals Court returned back to the trial Court on July 12, 2021, a NOTICE OF REMITTITUR. [App.B]. It was then that Petitioner filed his NOTICE OF INTENT to apply for Certiorari to the Supreme Court of Georgia on July 17, 2021, and filed in Office on July 19, 2021, in order to be timely. However, petitioner did not file his petition until July 29, 2021. Thus, Solely because of the States negligence in failing to properly provide a copy of the Order (Reconsideration) was petitioner's writ deem untimely.

REASONS FOR GRANTING THE PETITION

The Citizens of the State of Georgia should be able to be confident that its Courts of review, especially that highest Court, will uphold the laws of the State, and not overlook a State Statute in favor of a Court rule.

The rule of the Georgia Supreme Court, rule 38, should not have had precedent over State Statute, OCGA § 15-6-21 (c). It would be reasonable to say that the Georgia Supreme Court is in conflict with State law. The Petitioner's situation makes the Statute OCGA § 15-6-21 (c) rationally related to a legitimate public interest.

The Petitioner notified the Georgia Appeals Court Clerk, Mr. Stephen E. Castlen, of this infraction, in regard to his Motion for Reconsideration, and inquired of the status of the pending motion. Correspondence was mailed by Petitioner on July 16, 2021, and filed in office on July 19, 2021. Letter to Clerk included as Exhibit "1," and Exhibit "2," Certificate of Service.

Thus, depriving the Petitioner of the procedural process of being given notice that his Motion for Reconsideration had been dismissed, Violating the Petitioner's right to the U.S. Const. 14th Amendment to procedural due process.

ARGUMENT AND CITATION OF AUTHORITY

A. The motion for reconsideration was ruled on June 22, 2021, and the remittitur was returned back to the trial court on July 12, 2021. The Petitioner received a copy of remittitur on July 15, 2021. It would have been impossible to comply with Rule 38 of the Supreme Court, of filing a notice of intent to petition for Certiorari within 10 days of entry of the order denying petitioner motion for reconsideration. The reason it would have been impossible is because, the Petitioner had never receive notice of the denial of the motion for reconsideration and 20 days had already elapsed between the denial of the reconsideration and the return of the remittitur to the trial court. [App. B]

B. In considering whether the Georgia Appeals court's failure to serve all parties was erroneous because a party did not receive notice of the entry of judgment, the issue is not whether the losing party had knowledge that the judgment was entered, but rather whether the duty imposed on the court by OCGA § 15-6-21 (c) was carried out; it was necessary that the Georgia Supreme Court first make a finding regarding whether such duty was met and, if not, the earlier judgment must be set aside.

Morgan v. Starks, 214 Ga. App. 265, 447 S.E. 2d 661 (1994). Wright v. Wright, 300 Ga. 114, 793 S.E. 2d 96 (2016). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Petitioner notify the Georgia Supreme Court on July 29, 2021, of this Infraction.

CONCLUSION

WHEREFORE, for all of the above and forgoing reasons, Petitioner prays that the United Supreme Court issue a writ of Certiorari to review the judgment of the Georgia Supreme Court and grant the petitioner Certiorari.

Dated: March 28, 2022

Respectfully Submitted

CHARLIE BRANNER, JR.

Charlie Branner, Jr.

GDC # 811297

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