

SUPREME COURT OF GEORGIA
Case No. S22H0821

App
LEGAL MAIL

DEC 28 2022

WASHINGTON, D.C.

December 20, 2022

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EUGENE HAMMOND v. KARL FORT, WARDEN.

On August 9, 2021, the habeas court entered its final order in this matter, in which order it dismissed the petition for habeas corpus underlying this appeal. In order to properly initiate an appeal, appellant was required to timely file a notice of appeal in the habeas court and an application for a certificate of probable cause to appeal in this Court. See OCGA § 9-14-52 (b). Appellant timely filed the required notice of appeal on August 25, 2021, and he obtained an extension of time from this Court for filing his application for a CPC until November 8, 2021. See Case No. S22T0099 (Oct. 13, 2021). However, appellant did not file his application for a CPC until March 14, 2022. Accordingly, given appellant's failure to comply with the requirements of § 9-14-52 (b), his appeal is dismissed. See *Fullwood v. Sivley*, 271 Ga. 248 (517 SE2d 511) (1999).

All the Justices concur.

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 S. Davis, Clerk

Appendix A and B

App A.1

MEGAN CRAMER

CLERK OF SUPERIOR, STATE, AND JUVENILE
COURTS OF WASHINGTON COUNTY

P.O. Box 231
Sandersville, GA 31082

(478) 552-3186
F: (478) 553-9969

May 17, 2022

LEGAL MAIL

MAY 20 2022

Eugene Hammond, GDC # 103914
Washington State Prison
P.O. Box 206
Davisboro, Georgia 31018

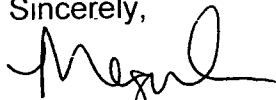
WASHINGTON STATE PRISON

RE: Eugene Hammond vs. Karl Fort, Warden
Civil Action No.: SUCV2021000098
Superior Court, Washington County, Georgia

Dear Mr. Hammond:

We received notification from the Supreme Court of Georgia that your Certificate of Probable Cause was received. The case number for the Supreme Court of Georgia is S22H0821. In addition, enclosed is a copy of the Appearances and Index submitted to the Supreme Court of Georgia concerning the appeal of your habeas case.

Sincerely,



Megan Cramer, Clerk
Superior, State, and Juvenile Courts
of Washington County

IN THE SUPERIOR COURT OF WASHINGTON COUNTY

STATE OF GEORGIA

**EUGENE HAMMOND,
GDC # 103914
APPELLANT**

CASE FILE NO: SUCV2021000098

VS

**KARL FORT, WARDEN
WASHINGTON STATE PRISON
APPELLEE**

APPEARANCES

FOR THE APPELLANT

**EUGENE HAMMOND
PRO SE
GDC # 103914
WASHINGTON STATE PRISON
P.O. BOX 206
DAVISBORO, GEORGIA 31018**

FOR THE APPELLEE

**PAULA K. SMITH
SENIOR ASSISTANT ATTORNEY GENERAL
GEORGIA DEPARTMENT OF LAW
40 CAPITOL SQUARE, S.W.
ATLANTA, GEORGIA 30334-1300
GA BAR # 662160
(404) 656-5172
psmith@law.ga.gov**

**IN THE GEORGIA SUPREME COURT
FROM
WASHINGTON COUNTY SUPERIOR COURT**

**EUGENE HAMMOND,
GDC # 103914
APPELLANT**

VS.

**KARL FORT, WARDEN
WASHINGTON STATE PRISON
APPELLEE**

INDEX TO CASE NO. 2021-SU-CV-98

	PAGES
1. NOTICE OF APPEAL FILED ON AUGUST 25, 2021	1 ~ 1
2. REQUEST TO PROCEED IN FORMA PAUPERIS FILED ON MARCH 25, 2021	2 ~ 6
3. APPLICATION FOR WRIT OF HABEAS CORPUS FILED ON MARCH 25, 2021	7 ~ 43
4. SUMMONS FOR KARL FORT FILED ON MARCH 25, 2021	44 ~ 44
5. GENERAL CIVIL AND DOMESTIC RELATIONS CASE FILING INFORMATION FORM FILED ON MARCH 25, 2021	45 ~ 45
6. NOTICE OF HEARING FILED ON MARCH 25, 2021	46 ~ 47
7. SHERIFF'S RETURN OF SERVICE FILED ON MARCH 29, 2021	48 ~ 48
8. RETURN AND ANSWER TO APPLICATION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS TIME-BARRED AND SUCCESSIVE APPLICATION FILED ON JULY 16, 2021	49 ~ 61
9. RETURN AND ANSWER TO APPLICATION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS TIME-BARRED AND SUCCESSIVE APPLICATION WITH EXHIBITS FILED ON JULY 16, 2021	62 ~ 85
10. ORDER GRANTING MOTION TO DISMISS FILED ON AUGUST 9, 2021	86 ~ 94
11. MOTION FOR EXTENSION OF TIME FILED ON AUGUST 25, 2021	95 ~ 97
12. REQUEST UNDER GEORGIA OPEN RECORDS ACT FILED ON OCTOBER 14, 2021	98 ~ 98
13. MOTION TO COMPEL COURT REPORTER TO SURRENDER THE HABEAS CORPUS EVIDENTIARY HEARING TRANSCRIPT FILED ON JANUARY 24, 2022	99 ~ 102
14. CERTIFICATE OF SERVICE FOR HABEAS TRANSCRIPT FROM HEARING ON JULY 21, 2021 FILED ON FEBRUARY 15, 2022	103 ~ 103
15. CERTIFIED MAIL RECEIPT FILED ON FEBRUARY 15, 2022	104 ~ 104
16. RETURN RECEIPT FILED ON FEBRUARY 17, 2022	105 ~ 106
17. CERTIFICATE OF SERVICE FOR HABEAS TRANSCRIPT FROM HEARING ON JULY 21, 2021 SIGNED BY PETITIONER FILED ON FEBRUARY 24, 2022	107 ~ 107
18. NOTICE OF APPEAL DOCKETING FILED ON MARCH 24, 2022	108 ~ 108

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: March 14, 2022

Eugene Hammond
GDC# 103914 EF-441-080
Washington State Prison
PO Box 206
Davisboro, Georgia 31018

Case No. S22H0821 EUGENE HAMMOND v. KARL FORT, WARDEN

This is to notify you that your application for certificate of probable cause to appeal denial of the writ of habeas corpus has been received and docketed in this Court and assigned the docketing date and case number shown above.

You must also file a notice of appeal with the habeas trial court clerk if you have not already done so. See OCGA § 9-14-52. That clerk will transmit the record in your case to this court so that it can consider the application.

When your application is ruled on, you will be notified immediately.

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.

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 lower court record through the e-file system.

Lower Court Case Number(s): SUCV2021000098

Therese S. Barnes, Clerk

Eugene Hammond
GDC# 103914 EF-441-080
Washington State Prison
PO Box 206
Davisboro, Georgia 31018

S22T0099



SUPREME COURT OF GEORGIA
Case No. S22T0099

LEGAL MAIL

OCT 15 2021

October 13, 2021

WINSTON-SALEM PRISON

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EUGENE HAMMOND v. KARL FORT, WARDEN.

Your request for an extension of time to file an Application for Certificate of Probable Cause to Appeal in the above case is granted. An extension is given until November 8, 2021. No further requests for extension will be granted absent of a showing good cause.

A copy of this order **MUST** be attached as an exhibit to the document for which an extension is received.

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 S. Lawrence, Clerk

Eugene Hammond
GDC# 103914 EF-441-080
Washington State Prison
PO Box 206
Davisboro, Georgia 31018

S22T0099



SUPREME COURT OF GEORGIA
Case No. S22T0099

LEGAL MAIL
AUG 31 2021
WASHINGTON STATE PRISON

August 27, 2021

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EUGENE HAMMOND v. KARL FORT, WARDEN

The motion for an extension of time to file an Application for Certificate of Probable Cause to Appeal in the above case is granted. An extension is given until October 8, 2021.

A copy of this order MUST be attached as an exhibit to the document for which an extension is received.

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 S. Bame, Clerk

MAR 25, 2021 09:35 AM


Megan Cramer, Clerk
Washington County, Georgia

IN THE SUPERIOR COURT OF WASHINGTON COUNTY
STATE OF GEORGIA

**EUGENE HAMMOND,
GDC #103914**

Petitioner

vs

**CIVIL ACTION NO.
SUCV2021000098**

HABEAS CORPUS

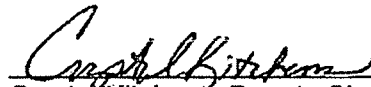
**KARL FORT,
WARDEN**

Respondent

NOTICE OF HEARING

The parties are hereby notified that the above-styled matter is scheduled for an **Evidentiary Hearing on Friday, July 21, 2021 at 10:00 a.m.** before the Honorable Tommy J. Smith, Judge at the Washington County Courthouse in Sandersville, Georgia. The Respondent shall produce the Petitioner at said time and place and the Petitioner shall present evidence as to why the prayers of the petition should be granted. In the event that the Respondent is unable to produce the Petitioner in person, the hearing will be held virtually.

This the 25th day of March, 2021.


Crystal Kitchens, Deputy Clerk
Washington County Superior Court

CERTIFICATE OF SERVICE

I, Crystal Kitchens, Deputy Clerk of Superior Court, do hereby certify that I have this day served upon the parties and or their attorney the within **Notice of Hearing** in reference to **SUCV2021000098** by mailing a true copy of the same by U.S. Mail in an envelope having sufficient postage thereon to ensure delivery and addressed as follows:


Eugene Hammond, GDC #103914 (via USPS only)
Washington State Prison
P. O. Box 206
Davisboro, Georgia 31018

Daniel W. Hamilton, Esq. (via electronic service)
Shepard, Plunkett & Hamilton, LLP
429 Walker Street, Upper Level
Augusta, Georgia 30901

Karl Fort, Warden (via Service only)
Washington State Prison
P. O. Box 206
13262 Hwy 24 East
Davisboro, Georgia 31018

Department of Corrections CPO Clerk (via electronic service)
P. O. Box 1529
Forsyth, Georgia 31039

This the 25th day of March, 2021.



Crystal Kitchens, Deputy Clerk
Washington County Superior Court

All

LEGAL MAIL

FEB 16 2022

WASHINGTON STATE PRISON

WASHINGTON COUNTY, GEORGIA
FILED IN OFFICE

2022 FEB 15 PM 2:46

MEGAN CRAMER
CLERK OF SUPERIOR STATE
& JUVENILE COURT


Civil Action No. SUCV2021000098
Eugene Hammond, GDC # 103914 vs Karl Fort, Warden

CERTIFICATE OF SERVICE

I hereby certify that I, Megan Cramer, Clerk of Superior Court of Washington County, provided the Petitioner in this action with a copy of the transcript of the Habeas Hearing from July 21, 2021. If the Petitioner is indigent the transcript was provided at state expense.

Service was perfected by mailing the transcript to Eugene Hammond, GDC # 103914 at Washington State Prison, P.O. Box 206, Davisboro, Georgia 31018.

This is the 15th day of February, 2022.



Megan Cramer, Clerk
Superior Court, Washington County

LEGAL MAIL

Signature of Prison
Personnel: _____

FEB 16 2022

WASHINGTON STATE PRISON

Date Received: _____

Signature of Petitioner:  _____

Date Received: _____

A12

MEGAN CRAMER

CLERK OF SUPERIOR, STATE, AND JUVENILE
COURTS OF WASHINGTON COUNTY

P.O. Box 231
Sandersville, GA 31082

(478) 552-3186
F: (478) 553-9969

Please sign the enclosed Certificate of Service.

- * One **signed** copy is for you to keep.
- * One **signed** copy is to be mailed back to Clerk's office in the self-addressed, stamped envelope.

LEGAL MAIL

FEB 16 2022

WASHINGTON STATE PRISON



SUPREME COURT OF GEORGIA
Case No. S21T0729

May 25, 2021

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JARIUS B. MOORE v. JERMAINE WHITE, WARDEN.

The motion for an extension of time to file an Application for Certificate of Probable Cause in the above case is granted. An extension is given until 30 days after the transcript of the evidentiary hearing held on the petition for a writ of habeas corpus is served on the petitioner. See *Edwards v. State*, 288 Ga. 459, 460-461 (707 SE2d 335) (2011). The motion for a stay of proceedings is denied as moot.

A copy of this order MUST be attached as an exhibit to the document for which an extension is received.

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

8/10/2021
Jara Boatright CO II

FILED IN OFFICE
CLERK OF SUPERIOR COURT
WASHINGTON COUNTY, GEORGIA
SUCV2021000098

TJS
AUG 09, 2021 01:04 PM

IN THE SUPERIOR COURT OF WASHINGTON COUNTY

STATE OF GEORGIA

EUGENE HAMMOND,
GDC# 103914

Petitioner,

VS.

KARL FORT,

Respondent.

Civil Action File No. SUCV2021000098

ORDER GRANTING MOTION TO DISMISS

Petitioner Eugene Hammond filed his application for writ of habeas corpus on March 25, 2021 challenging the validity of his March 10, 2000 jury conviction for felony murder, aggravated assault, and terroristic threats in the Superior Court of Dekalb County. Respondent filed a return and answer and contemporaneously moved to dismiss this action as untimely under § 9-14-42 and as impermissibly successive under O.C.G.A. § 9-14-51. A hearing on Respondent's motion was conducted on July 21, 2021. Upon consideration of the record as established at the hearing, the Court grants Respondent's motion to dismiss based upon the following findings of fact and conclusions of law.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Petitioner was convicted of felony murder, aggravated assault, and terroristic threats following a jury trial before the Dekalb County Superior Court on March 10, 2000. Hammond v. State, 273 Ga. 442, 442, n.1, 542 S.E.2d 498, 498 (2001). Petitioner appealed his conviction to the Supreme Court of Georgia enumerating the following six issues on appeal: 1) the evidence was insufficient to sustain Petitioner's conviction, 2) the trial court erred in refusing to permit the examination of jurors in panels of twelve, 3) the trial court erred in denying his motion for additional time to prepare for jury selection and to exercise jury strikes, 4) the trial court erred in

Appendix C

omitting certain voir dire questions proposed by Petitioner, 5) the trial court erred in denying his motion to sever offenses, and 6) that the trial court erred in concluding that Petitioner's statement to detectives was given freely and voluntarily. Id. at 442-43, 542 S.E.2d at 499-500. Petitioner's conviction was affirmed on direct appeal on February 16, 2001. Id. Petitioner then had 90 days to seek a writ of certiorari from the United States Supreme Court, which he did not do. U.S. Sup. Ct. R. 13. Thus, Petitioner's conviction became final on May 17, 2001.

Petitioner filed his first application for a writ of habeas corpus challenging this conviction in the Superior Court of Hancock County in Civil Action file Number 05HC-0005. (R-2, Final Order issued by the Hancock County Superior Court). Petitioner raised the following grounds for relief in his first application: 1) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel for not requesting a jury charge on defense of habitation, 2) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal certain trial court errors, 3) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel on several issues, 4) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error on admitting an unauthenticated transcript of a 911 telephone call, 5) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error on the admission of the wrong knife into evidence and permitting the admission of certain testimony relative to the knife, 6) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error in admitting a transcript of Petitioner's confession into evidence, and 7) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel for failing to utilize police crime scene reports and G.B.I. forensic reports in support of Petitioner's defense at trial. (R-2, pp. 3-5).

The Hancock County Superior Court denied Petitioner's initial application on its merits on December 12, 2005. Id.

Petitioner then filed a second application for habeas corpus relief in the United States District Court for the Northern District of Georgia in Case Number 1:06-CV-2776-RLV. (R-3, Order issued by the U.S. District Court for the Northern District of Georgia). The U.S. District Court denied Petitioner's application on January 18, 2007. Id.

Petitioner filed the instant application on March 25, 2021. In his application, Petitioner alleges eighteen (18) grounds for relief:

- 1) that the prosecution allegedly withheld favorable evidence in the form of a missing undershirt worn by the victim;
- 2) that Petitioner's post-Miranda¹ statements were allegedly involuntary and inadmissible;
- 3) ineffective assistance of trial counsel for allegedly failing to adequately pursue plea negotiations and advise Petitioner accordingly;
- 4) ineffective assistance of trial and appellate counsel for allegedly failing to challenge the validity of the search warrant issued in his case;
- 5) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal a challenge to the trial court's jury instruction on terroristic threats;
- 6) that the trial court allegedly erred in the manner in which it delivered voir dire questions to the jury;
- 7) that the trial court allegedly erred in refusing to permit Petitioner to have additional time to prepare for jury selection and to make jury strikes;

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

- 8) that the trial court allegedly erred in omitting certain voir dire questions proposed by Petitioner;
- 9) that the trial court allegedly erred in denying Petitioner's motion in limine and to sever offenses;
- 10) that Petitioner's statement to detectives was allegedly not given freely and voluntarily;
- 11) that the evidence was allegedly insufficient to sustain Petitioner's conviction;
- 12) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel for not requesting a jury charge on defense of habitation;
- 13) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal certain trial court errors;
- 14) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel on several issues;
- 15) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error on admitting an unauthenticated transcript of a 911 telephone call;
- 16) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error on the admission of the wrong knife into evidence and permitting the admission of certain testimony relative to the knife;
- 17) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal trial court error in admitting a transcript of Petitioner's confession into evidence; and

18) ineffective assistance of appellate counsel for allegedly failing to raise as an issue on appeal ineffective assistance of trial counsel for failing to utilize police crime scene reports and G.B.I. forensic reports in support of Petitioner's defense at trial.

The Court notes that grounds six through eleven are identical to the issues raised by Petitioner on direct appeal to the Supreme Court of Georgia. Hammond, 273 Ga. at 442-43, 542 S.E.2d at 499-500. The Court further notes that grounds twelve through eighteen of Petitioner's instant application are identical to the grounds raised in Petitioner's prior habeas application filed with the Superior Court of Hancock County. (R-2, pp. 3-5). Respondent filed his return and answer to Petitioner's application on July 16, 2021² and contemporaneously moved to dismiss this action as impermissibly time barred and successive. Petitioner appeared pro se at the evidentiary hearing held on July 21, 2021, and Respondent was represented by Special Assistant Attorney General Daniel W. Hamilton and Jason R. Graves.

CONCLUSIONS OF LAW

1. Successiveness

All grounds for habeas relief must be raised in the original or amended petition seeking habeas relief and are waived unless the Constitutions of the United States or the State of Georgia require otherwise or if there is a finding that the grounds for relief could not have been raised in the original petition. O.C.G.A. § 9-14-51. In considering a successive petition, the Court must first determine whether Petitioner is entitled to a hearing on the merits of his claims. Smith v. Zant, 250 Ga. 645, 647, 301 S.E.2d 32, 34 (1983). "In order to be so entitled, the petitioner must

² At the hearing, Petitioner raised the fact that Respondent's return and answer was not filed within the time required under O.C.G.A. § 9-14-47. However, "the failure of respondent to file an answer within 20 days of the filing of the petition, as required by [Georgia law], does not provide grounds for the release of the prisoner." Gooding v. Dudley, 232 Ga. 321, 323, 206 S.E.2d 490, 492 (1974).

raise grounds which are either constitutionally nonwaivable or which could not reasonably have been raised in the earlier petition.” Id.

The Court need not examine the merits or cognizability of Petitioner’s claims under these circumstances. See, Zant, supra. Grounds six through eighteen of Petitioner’s instant application were previously raised either in his direct appeal to the Supreme Court of Georgia or in his prior habeas application before the Hancock County Superior Court,³ and thus were obviously available to Petitioner prior to the filing of this action. The Court has reviewed the remaining grounds one through five and finds that Petitioner could have raised each of these grounds in his initial application for habeas corpus filed in the Superior Court of Hancock County. Petitioner has also failed to show that these claims are constitutionally nonwaivable pursuant to O.C.G.A. § 9-14-51. Therefore, Petitioner’s application for a writ of habeas corpus is impermissibly successive and must be dismissed for this reason.

2. Untimeliness

Petitioner’s application is also time-barred. For felony convictions such as Petitioner’s, habeas must be filed “within four years . . . from [t]he judgement of conviction becoming final by the conclusion of direct review or expiration of the time for seeking such review.” O.C.G.A. § 9-14-42(c). This statute was analyzed by the Georgia Supreme Court in Stubbs v. Hall, 308 Ga. 354, 840 S.E.2d 407, 412 (2020). In Stubbs, the court held that:

for purposes of O.C.G.A. § 9-14-42 (c) (1), a judgment of conviction becomes “final” when the United States Supreme Court either affirms a conviction on the merits or denies a petition for writ of certiorari, i.e., at “the conclusion of direct review,” or when the time for pursuing the next step in the direct appellate review process expires without that step having been taken, i.e., “the expiration of the time for seeking such review.”

³ Though not raised by Respondent in his motion to dismiss, these claims are barred by the doctrine of *res judicata* as a separate basis for dismissal in addition to being impermissibly successive. O.C.G.A. § 9-12-40.

Id. at 359 (emphasis added).

Petitioner's conviction was affirmed by the Supreme Court of Georgia on February 16, 2001. Hammond, 273 Ga. at 442. Petitioner therefore had until May 17, 2001 to seek a writ of certiorari from the United States Supreme Court, which he did not do. See, U.S. Sup. Ct. R. 13 (providing 90-day deadline to seek writ of certiorari from the denial of discretionary review from state court of last resort). As a result, Petitioner's conviction became final on May 17, 2001, over twenty years ago. Petitioner had until May 17, 2005 to seek habeas review. However, the present action was filed on March 25, 2021, which is well outside the deadline imposed by O.C.G.A. § 9-14-42(c). Therefore, Petitioner's application is time-barred and must be dismissed.

At the hearing on Respondent's motion to dismiss, Petitioner argued that his claims should proceed because they relate to newly discovered evidence under O.C.G.A. § 9-14-42(c)(4) and that the miscarriage of justice exception contained in O.C.G.A. § 9-14-48 applies. However, none of Petitioner's grounds for relief involve newly discovered evidence because all of "*the facts supporting the claims* presented" were known and available to Petitioner prior to the expiration of the deadline to seek habeas review. O.C.G.A. § 9-14-42(c)(4) (emphasis added).

Petitioner has also failed to show that miscarriage of justice exception applies. "The miscarriage of justice exception is an extremely high standard and is very narrowly applied." Walker v. Penn, 271 Ga. 609, 611, 523 S.E.2d 325, 327 (1999). The Supreme Court of Georgia articulated the standard in Valenzuela v. Newsome, 253 Ga. 793, 796, 325 S.E.2d 370, 374 (1985):


the term is by no means to be deemed synonymous with procedural irregularity, or even with reversible error. To the contrary, it demands a much greater substance, approaching perhaps the imprisonment of one who, not only is *not* guilty of the specific offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry. (A plain example is a case of mistaken identity.)

Petitioner has provided no evidence to meet this standard. Thus, the exceptions articulated by

Petitioner do not apply, and his application must be dismissed for the reasons set forth herein.

WHEREFORE, it is hereby ordered that the subject application for writ of habeas corpus be dismissed and that the Petitioner, Eugene Hammond, be remanded to the custody of the Warden/Respondent for the remainder of his lawful sentence. If Petitioner desires to appeal this Order, he must file a written application for certificate of probable cause to appeal with the Clerk of the Georgia Supreme Court within thirty (30) days from the date of the entry of this Order and file a Notice of Appeal with the Clerk of the Superior Court of Washington County within the same thirty (30) day period. No appeal shall be allowed by an unsuccessful Petitioner unless the Supreme Court of this state issues a certificate of probable cause for the appeal. O.C.G.A. § 9-14-52(a). In the event of appeal, the Court Reporter is hereby directed to provide certification on the record that Petitioner has been provided with a copy of the habeas hearing transcript at the State's expense, and the manner and date such service was effectuated. Furthermore, the Clerk of the Superior Court of Washington County is hereby respectfully directed to mail a copy of this Order to Petitioner, Petitioner's counsel, if any, and Respondent/Warden through the undersigned counsel, as Special Assistant Attorney General.

SO ORDERED this 3rd day of ~~July~~^{August}, 2021.



Tommy J. Smith, Judge
Washington County Superior Court
Middle Judicial Circuit

Prepared by:

Daniel W. Hamilton
Special Assistant Attorney General
429 Walker Street, Upper Level
Augusta, Georgia 30901
(706) 722-6200

CERTIFICATE OF SERVICE

I, Crystal Kitchens, Deputy Clerk of Superior Court, do hereby certify that I have this day served upon the parties and/or their attorney the within **Final Order Granting Motion to Dismiss** in reference to **SUCV2021000098** by mailing a true copy of the same by U.S. Mail in an envelope having sufficient postage thereon to ensure delivery and addressed as follows:

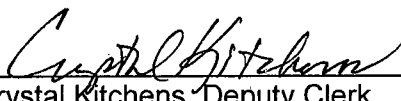
Eugene Hammond, GDC # 103914 (via USPS only)
Washington State Prison
P.O. Box 206
Davisboro, Georgia 31018

Daniel W. Hamilton
Jason Graves (via electronic service)
429 Walker Street, Upper Level
Augusta, GA 30901

Warden (via USPS only)
Washington State Prison
P.O. Box 206
Davisboro, Georgia 31018

Department of Corrections CPO Clerk (via electronic service)
P. O. Box 1529
Forsyth, Georgia 31039

This 9th day of August, 2021.



Crystal Kitchens, Deputy Clerk
Washington County Superior Court