

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 DENYING EXTRAORDINARY MOTION FOR NEW TRIAL

Defendant was convicted of murder and his conviction was affirmed in *Booth v. State*, 301 Ga. 678 (2017). Since then, he has had at least two other appeals relating to post-conviction motions.

Defendant has now filed an extraordinary motion for new trial alleging prosecutorial misconduct during a pre-trial competency hearing. The sole basis for relief seems to be that at the competency hearing the State, while cross-examining a defense expert, mentioned O.J. Simpson. The argument being made at the time was that when people are charged with a crime they can have a trial and sometimes they are acquitted and the fact that they have a different version of events than the State does not make them incompetent. Defendant's attorney and the prosecutor both referenced the Simpson trial in their closings.

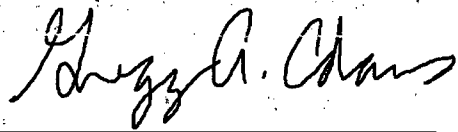
The motion is not notarized and no affidavit is attached.

A trial court does not err in denying an extraordinary motion for new trial in a criminal case without a hearing "if the pleadings ... do not contain a statement of facts sufficient to authorize that the motion be granted if the facts developed at the hearing warrant such relief." *Dick v. State*, 248 Ga. 898 (2020). To obtain a hearing, a defendant must "provide sworn affidavit testimony, or an explanation for the absence of such affidavit testimony, showing with clarity and specificity the

facts he or she intends to prove in a hearing and how those proffered facts support his or her claim that a new trial is warranted." *Davis v. State*, 283 Ga. 438 (2008).

Defendant has failed to make such a showing, either to warrant a hearing or the relief sought. Neither has Defendant shown any good cause for why this issue was not raised as part of his direct appeal. And finally, Defendant has failed to show what prejudice he might have suffered as a result of O.J. Simpson being mentioned given that O.J. was acquitted. The motion is DENIED.

SO ORDERED this the 26th day of June, 2023.

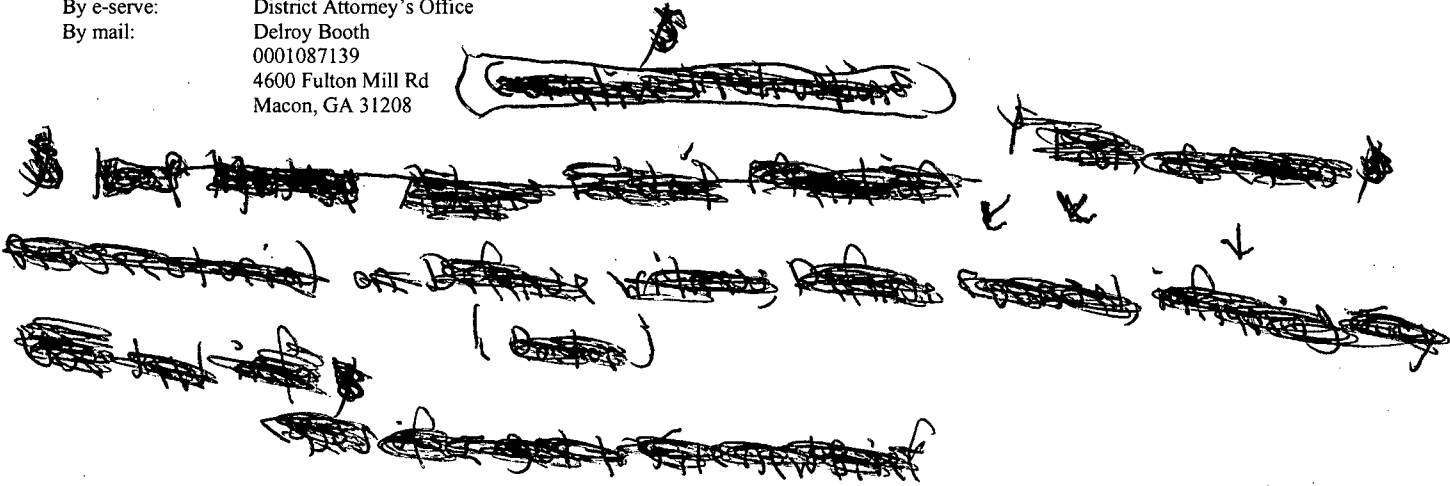


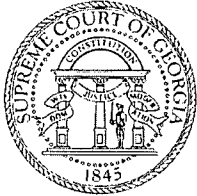
GREGORY A. ADAMS, Judge
DeKalb County Superior Court
Stone Mountain Judicial Circuit

* Old Prison Address *

Copy:
By e-serve:
By mail:

District Attorney's Office
Delroy Booth
0001087139
4600 Fulton Mill Rd
Macon, GA 31208





SUPREME COURT OF GEORGIA
Case No. S24D0042

August 23, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DELROY BOOTH v. THE STATE.

Applicant was convicted of murder and other offenses, and this Court affirmed in *Booth v. State*, 301 Ga. 678 (804 SE2d 104) (2017). Applicant then filed an extraordinary motion for new trial, which the trial court denied by order entered on June 29, 2023. Applicant seeks review of that order in this application for discretionary appeal, but the application, which was required to be filed no later than July 31, 2023, see OCGA §§ 5-6-35 (d); 1-3-1 (d) (3), was not filed with this Court until August 7, 2023. Therefore, the application is untimely and hereby is dismissed.

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.

 , Clerk

* Appendix C *

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: August 07, 2023

Delroy T. Booth

GDC# 0001087139

Johnson State Prison, J-1 Bed 211

P.O. Box 344

Wrightsville, Georgia 31096 — * Current Address *

Case No. S24D0042 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.

Use words in statement of case - Exhaustion section
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

Then Explain situation

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.