

ORIGINAL

N23-6590

FILED

OCT 30 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

BRIEF OF PETITIONER

Johnny Eugene Holton - Petitioner

PRO-SE

VS.

STATE OF GEORGIA - Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF GEORGIA

Name of Court That Last Ruled on Merits

PETITION FOR WRIT OF CERTIORARI

Johnny Eugene Holton

Wheeler Correctional Facility

P.O. Box 466

Alamo, Ga. 30411

PRO-SE

QUESTIONS PRESENTED

- 1) Was Petitioner Deprived of His Due Process Clause of His Fourteenth Amendment Rights and Equal Protection of the law in Violation of His Rights Provided by His United States Constitution and The Clearly Established Georgia Law Holding In Yelverton v. State 300 Ga.312 at 315 (794 SE2d 613) 2016 Scott v. State 306 Ga.507 (832 SE2d 426) 2019 and Scott v. State 356 Ga App 152 at 163 #3 (846 SE2d 241) 2020
- 2) Did the Georgia Court of Appeals Error in Ruling that The Appeal Court was without Jurisdiction to vacate a void sentence, And Petitioner was barred by Res-Judicate then put a judgment that a void sentence maybe attacked anytime in any court, Where the sentence on count 1 is void in violation of O.C.G.A 17-10-6.2(b) Mandatory Minimum term of 5 years Shall be included. Followed by Probation.
- 3) Did The Court of Appeals Errorously interpret the legislators intent under O.C.G.A 17-10-6.2(b) and O.C.G.A 16-6-4(a)(1)(b)(1) in 2014
- 4) Did The Georgia Courts have the power to add a word(s) or line(s) to a Clearly Statutory law set by the legislators without violated Art I, Sec I, Para III of the Georgia Constitution, Total Separation of Powers

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S23C0890

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A23A0816

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The D.A and Judge agreed on 5 years.

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PETITION

Comes Now Johnny Eugene Holton, The Petitioner in above Styled case, hereby Petitions This Honorable United States Supreme Court to issue a Writ of Certiorari to The Court of Appeals of Georgia In the Direct Appeal case Styled in that Court as Holton v. State Case No. A23A0816 The underlying Petition must be Granted Based on The Reason's stated and submitted below

OPINION AND JUDGMENT OF COURT BELOW

The Opinion and Judgment of the Court Below is Attached hereto Marked as Appendix (B) This is the Judgment which Petitioner in the Instant Action Request This Honorable Supreme Court to Review and Reverse

JURISDICTION

The Judgment under review was rendered on February 27, 2023 Appendix (B) Petitioner now Filed Notice of Intent to File Certiorari on Feb. 28, 2023 in the Georgia Supreme Court the Filed Certiorari on March 10, 2023 Gat Died on August 21, 2023 Then Filed Notice to File Writ to This

Honorable Supreme Court on August 21, 2023
Now Petitioner Files His Writ of Certiorari in to
This Honorable Supreme Court of The United States
This Honorable Supreme Court retains Certiorari
Jurisdiction in this Case.

CONSTITUTIONAL AND STATUTORY PROVISION

- 1) Fourteenth Amendment of The United States
Constitution - Due Process Clause and Equal Protection
Rights of The law.
- 2) O.C.G.A 16-6-4(a)(1)(b)(1)
- 3) O.C.G.A 17-10-6.2(b) 2014
- 4) O.C.G.A 17-9-4
- 5) Georgia Constitution 1983 Art I, Sec I, Para I & II
- 6) Georgia Constitution 1983 Art I, Sec I, Para III

STATEMENT OF THE CASE

Petitioner Filed a motion to vacate a void sentence in Superior Court of Lee County on August 12, 2020. The Trial Court agreed and Resentenced Petitioner on Feb. 3, 2021, Petitioner Then Filed another Motion to vacate a void sentence on count 1 on December 4, 2022 because Sentence is still void in violation of the O.C.G.A 17-10-6.2(b), The Trial Court Sentenced Petitioner to 15 years to serve and 5 years probation, The Trial Court was required to Sentence Petitioner under The Mandatory Minimum term of 5 years under the Controlling Authority of O.C.G.A 17-10-6.2(b) and Yelverton v. State 300 Ga 312 at 315 (794 SE2d 613) 2016. The Trial Court Denied the Motion to vacate the void sentence on December 19, 2022, Petitioner file a timely Notice of appeal in the Superior Court of Lee Co. on December 28, 2022. The Court of Appeals Ruled on February 27, 2023 That it didnt have Jurisdiction and then petitioner was barred by Res-Judicata to Appeal the Trial Courts Decision, Petitioner is NOT Barred by ResJudicata, Where the Sentence is still void under O.C.G.A ~~17-9-4~~ 17-9-4 code 110-709 and O.C.G.A 17-10-6.2(b). In This case subjudice the 15 year sentence is still void in violation of the Mandatory Minimum term of 5 years that "SHALL" be issued under O.C.G.A 17-10-6.2(b) For O.C.G.A 16-6-4(a)(b)(1)

in accordance with Due Process and Equal Protection of the law under Petitioners 14th Amendment Rights of the United States Constitution, Where a sentence is still void it must be vacated. The Mandatory Minimum term of imprisonment shall be included under O.C.G.A 17-10-6.2(b) Yelverton v. State 300 Ga 312 at 315 (2016) Supra The Court of Appeals Ruled that They lacked Jurisdiction, and they Tried to Apply rule of Res Judicata to a void sentence which doesn't Apply, A void sentence is always void and until it is vacated it remains void upon the Face of the Record, and is unconstitutional the void sentence cannot stand O.C.G.A 16-6-4 Minimum term of imprisonment is 5 years Mandatory under O.C.G.A 17-10-6.2(b) Followed by probation, and Court of Appeals Had Jurisdiction to reverse the void sentence of 15 years To serve on Count 1.

GROUND FOR RELIEF

Petitioner Argues That The Georgia Court of Appeals Judgment is Erroneous in Two Ways

FACTS

The Court of Appeals Fail to address the Constitutional violations of Due Process and Equal Protection clause of the 14th Amendment of The United States Constitution and Erroneously violated O.C.G.A 17-10-6.2(b.) and The Trial Judge of Superior Court has taken the Word "AT-LEAST" and placed it in Front of The Mandatory Minimum of 5 years after D.A. and Judge Both agree on the 5 year prison sentence (SEE Appendix D) The Mandatory Minimum "shall" be included and by The Superior Court Judge not including the 5 years on count 1 as The Judge did On Count 2 violated The Total Separation of Powers Art I, Sec I, Para III of The Georgia Constitution, Where The Legislative, Judicial, and Executive Powers The Legislative, Judicial and Executive powers shall forever remain separate and distinct and no person discharging the duties of one shall at anytime exercise the Functions of either of the others except as herein provided and ~~then~~ Then in violation of The Fourteenth Amendment of The United States Constitution And Any act Repugnant to the Constitution is void, Marbury v. Madison (1803)

FACTUAL BASIS

Petitioner Filed a motion to vacate a void sentence in Superior Court of Lee Co. on Dec. 4, 2022. The Trial Court Denied said Motion on Dec. 19, 2022. Petitioner File a timely Notice of Appeal on Dec 28, 2022. The Court of Appeals Denied the Appeal on Feb 27, 2023 ruling that the court had no Jurisdiction then stated Petitioner was barred by Res Judicata, Then a Judgment of a void sentence may be attacked at anytime in any court, The Judgment of the Court of Appeals is void upon the Face of the record, The Trial Courts sentencing provision under O.C.G.A 17-10-1 is void under O.C.G.A 17-10-6.2(b). The Statute clearly states such action "Shall" be subject to the provisions of Code section O.C.G.A 17-10-6.2(b). For O.C.G.A 16-6-4(a)(1)(b)(1) The Legislators intended that the First offense of child molestation Shall be subject to punishment under the O.C.G.A 17-10-6.2(b). For the Mandatory Minimum term of 5 years Followed by probation, The Courts have taken the Words "at least" and placed it in front of the Mandatory Minimum Sentence of 5 years. O.C.G.A 16-6-4(a)(1)(b)(1) sets out the Mandatory Minimum 5 year sentence.

The Georgia Judges have Stepped over Both Constitution of The United States Constitution and The Georgia Constitution and Created Their own courts in violation to Uphold the Laws and the Constitutions Which is a total Separation of powers and Any Judge who violated O.C.G.A 17-10-6, 2(b) has violated His/her Oath of office in Failure to administer Justice in accordance with the Laws and The Legislative intent.

OATH OF THE Judge

O.C.G.A 15-6-6, I _____ Swear that I will administer Justice without Respect to person and do equal rights to The POOR and Rich and I will Faithfully and Impartially Discharge and Perform all duties of the State according to the best of My ability and understanding and agreeably to the laws and the Constitution of The State: SO HELP ME GOD:::

LEGAL BASIS

Petitioner has been Deprived of His Due Process clause and His Equal Protection Rights of His Fourteenth Amendment Rights Under His United States Constitution

The Fourteenth Amendment of The United States Constitution, "States and Provides"

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. US Const XIV

The United States Constitution is superior paramount law, unchangable, any act Contrary to the Constitution is not Law, The Framers of My Written Constitution Contemplated the Constitution as Forming the Fundamental and paramount Law of the Nation any act Repegnant to the Constitution is Void.
Marbury v. Madison US 5, 137 (1803)

The Court of Appeals Denied the Appeal on February 27, 2023 Ruling that Court had no Jurisdiction then Stated that Petitioner was barred by Res Judicata. The Court of Appeals Errored. The Judgment of the Appeal Court is void upon the Face of the record. When a sentence is void it is always void until it has been Corrected and the Court of Appeals has Jurisdiction to correct the void sentence at anytime, A void Judgment not barred by Res Judicata or Estopped A void judgment for want of jurisdiction does not afford any ground for applying Res-Judicata Wilbanks v. Bowman 212 Ga 809 (96 SE2d 255) 1957 A Judgment of a court without Jurisdiction of the parties is void and maybe Attacked at anytime and any court where such judgment is attempted to be enforce. Jones v Jones 181 Ga 747 (184 SE 271) 1936, and Hogan v Hogan 209 Ga 313 (72 SE2d 295) 1952 and in Royal Indem Co. v. Mayor of Savannah 209 Ga 383 (73 SE2d 205) 1952, Any Judge who violates O.C.G.A 16-6-4(a)(1)(b)(1) and O.C.G.A 17-10-6.2(b) has violated his oath of office in Failure to administer Justice in accordance with the Legislative Intent, In a set of Statutory ~~provisions~~ provisions We look at its terms giving their plain and ordinary meaning and where the plain language

of a statute is clear and susceptible of only one Reasonable Construction We Must Construe the Statute according to its term Here The Statute of Child Molestation is

O.C.G.A 16-6-4 is Clear and (provides and states) Petitioner Plea Guilty to Two ~~counts~~ counts of Child Molestation under O.C.G.A 16-6-4(a)(1)

O.C.G.A 16-6-4 states -

(A) A person commits the offense of child molestation when such person

(1) Does any immoral or indecent act to or in the presence of or with any child under the age of 16 with the intent to arouse or satisfy the sexual desire of either the child or the person.

(b)(1)

A person convicted of a first offense of child molestation shall be punished by imprisonment for not less than 5 nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code sections 17-10-6.2,

O.C.G.A 17-10-6.2 Provides

(b) any person convicted of a sexual offense shall be sentenced to a split-sentence which shall include the minimum term of imprisonment specified in the code section applicable to the offense. No portion

of the Mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred or withheld by the sentencing Court and such sentence shall include, in addition to the Mandatory minimum imprisonment, and addition probated sentence of at least one year. Here in this statute is the word or words At least but only addition probated sentence of at least one year.

The Georgia Court Judges "Don't" have Jurisdiction to move the words at least and place them in front of the Mandatory minimum term of imprisonment. Petitioner can only be sentence to serve 5 years in prison on each count. The 15 years to serve on count 1 is void and must be vacate and resentence to a 5 year prison term, The Same as the 5 year on count 2 is. (Appendix D) shows on page 6 Lines 3-7 Then D.A Lewis Lamb shows and tells Judge that this statute applies to each count at exist time of sentence in 2014 Then on page 7 Lines 9-12 Judge ask D.A I thought that there was a minimum sentence of 5 years, A minimum prison sentence Lines 13-15 D.A answers You're Right Judge, You're right, You're absolutely right, and look at (Appendix E) letter

Appendix (E) shows That Judge James Sizemore Jr. The Superior Judge shows the D.A Lewis Lamb That The sentence is void and must apply O.C.G.A 17-10-6.2(b) to Petitioner sentence and resentence Petitioner to each count under the Old O.C.G.A 17-10-6.2(b) in 2014 Because the Amendment to this statute is not retroactively and can not apply to Petitioner Holton, The legislators amended this statute in 2017 so Court could run all counts consecutive and all the probation would apply to last consecutive sentence, which means Petitioners 2 counts of Child molestation must be run concurrent because Petitioner can not complet the First sentence to start the second second without being release on count 1 to serve his probation and then return to prison to start his Second prison sentence, Petitioner 15 year sentence is void on count 1 and must be reverse and resentence to The Mandatory Minimum 5 years on count 1 and count 2 to be run concurrent with count 1. Now Petitioner has been Deprived of His Due Process clause and Equal Protection Rights under His Fourteenth Amendment of His United States Constitution.

REASON FOR Granting THE WRIT

1) The Georgia Court of Appeals Failure to address The Constitutional violation of the Fourteenth Amendment of The United States Constitution Due Process and Equal Protection Rights

2) The Georgia Court of Appeals Ruling that it was without Jurisdiction is void, Where the sentence is void, The Georgia Court of Appeals ruling does not Govern the Regulation of the O.C.G.A 17-9-4 Attack on a void sentence. A void sentence maybe Attack at any time in any court.

3) The State Court Judges stepped over the United States Constitution and created their own courts and broken their oath of office when The Judges don't apply correct sentences under the O.C.G.A 16-6-4(a)(1)(b)(1) and the O.C.G.A 17-10-6.2(b).

CONCLUSION

Based Here On The Foregoing Reason's
The Petitioner For This Writ of Certiorari
Should be Granted.

Wherefore Petitioner Respectfully
Pray's That This Honorable Supreme
Court of The United States Will Please
Grant This Petition For The Great
Writ of Certiorari.