

No. 23-7311

ORIGINAL

FILED

APR 01 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Holly Harvey — PETITIONER
(Your Name)

VS.

State of Georgia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Georgia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Holly Harvey
(Your Name)

P.O. Box 709
(Address)

Alto, GA 30504
(City, State, Zip Code)

N/A
(Phone Number)

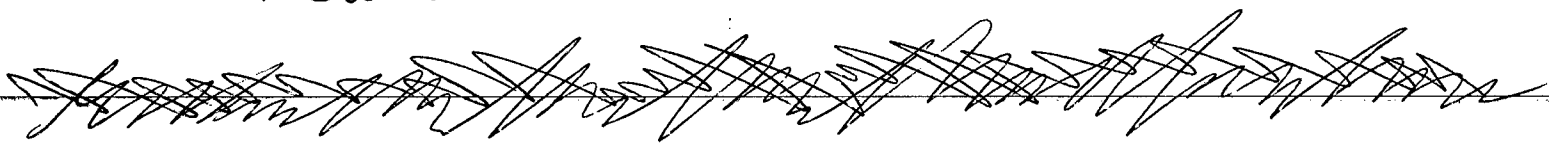
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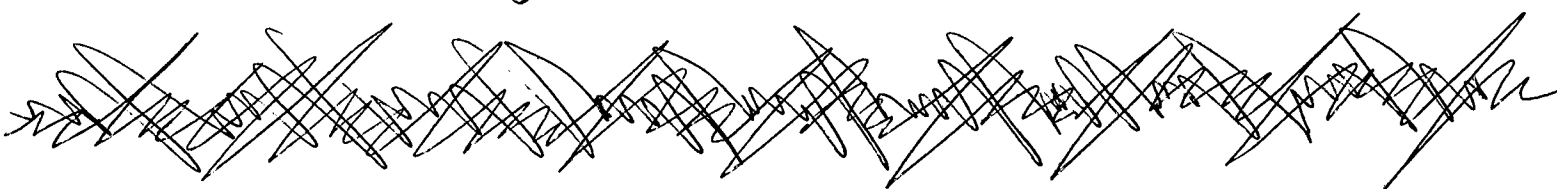
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

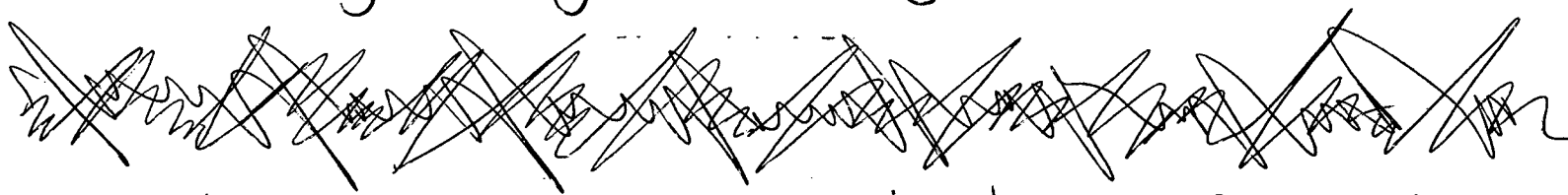
1. Does Georgia law arbitrarily disregard Jurisdiction and/or the Proper Sequence of Judicial Review.



2. Is a Motion For Reconsideration an avenue from which the date of appeal runs? i.e. does it toll the time for filing a Notice of Appeal?



3. Is Georgia law violating Due Process and/or Access to Courts, by not requiring ACTUAL RECEIPT of orders by losing Pro Se Litigants?



4. Did the Habeas Court err by denying Petitioner's application as untimely, when the Statute of Limitations was never invoked under the MANDATORY language of State law?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
-

RELATED CASES

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- Dix v. Dix, 132 Ga 630 (1909)
- Shewchun v. United States, 797 F.2d 941 (1986)
- Jiminez v. Quarterman, 555 US 113 (2009)
- Cambren v. Canal Corp. Inc.,
- Wright, 297 Ga @ 684 n.3
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STATUTES AND RULES

- OCGA § 15-16-21 (c)
- § 9-11-60 et seq.
- U.S.C.S. Sup. Ct. R. 13 (pt. 3)
- § 9-14-52 (b) (OCGA)
- ~~§ 9-14-52 (b) (OCGA)~~
- § 13-1 (d) (3)
- § 9-14-42 (d)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at S23H0899 1/9/24; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Supreme Court of Georgia court appears at Appendix B to the petition and is

- ☐ reported at S23H0899 2/6/24; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 1/9/24.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 2/6/24, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 5th + 14th Amendments, U.S. Constitutional rights to Due Process, and similar provisions Ga Constitution § 1983.
- 1st Amendment U.S. Constitutional right to Access the Courts, and similar provisions Ga Constitution § 1983.
- Statutory right to Appeal, State of Georgia

STATEMENT OF THE CASE

• Petitioner was convicted as a juvenile on 4/14/05 via guilty plea for the deaths of her adoptive grandparents. She tendered what Counsel testified was "the most horrific, THE WORST PLEA IN HISTORY"; see 12/29/20 Exhibit DX1 p.5; Trans. (T) 34:3-37:5. The nature of the colloquy rendered Petitioner's desire to plead obsolete. T. 58:12-59:3.

• At no point was she informed she had a RIGHT, or even the ability, to STOP the proceedings and change her plea to not guilty. OCGA § 17-7-93(b). This right is protected by the 4th Amendment. Wright v State, 314 Ga. 355 (2022).

• IMMEDIATELY after the plea, Petitioner told Counsel she changed her mind and asked what could be done and what Counsel advised. T. 34:1-7; 38:1-8; 41:7-9.

• Counsel testified TWICE that she ERRONEOUSLY informed 15-year-old Petitioner that she WAIVED her right to appeal, forfeiting the entire proceeding. T. 32:22-33:23; 38:16-18; 39:11-25.

• Counsel erroneously advised petitioner she could "APPEAL her sentence" to a defunct Sentence Review Panel, which lacked jurisdiction Id. 33:18. Petitioner, IN FACT, pursued this avenue WITHIN 30 days, proving she would have petitioned a Court of COMPETENT JURISDICTION, absent substandard advice or representation. Application filed 5/12/05.

• Counsel erroneously advised petitioner her only option was a Motion To Withdraw the plea, but "would be" a waste of time, because she "was not ineffective in the least" and "to file it would be frivolous" [instead of preserving petitioner's right]. Dos Santos, 307 Ga. 151, 834 S.E2d 433 (2019); T. 39:3-25; 43:13-20.

Statement of the Case - (Cont.)

- At sentencing, the Judge FAILED TO PERFORM his duty under the MANDATORY LANGUAGE of OCGAS 9-14-42(d) and inform 15-year-old petitioner of her right to seek Habeas relief, nor the statutory time period to pursue such.
- Petitioner was sent to adult prison 14 DAYS after her plea and held in confinement until her 17th Birthday (3/23/06). She did not have access to legal information nor legal materials up to this point.
- Counsel ABANDONED petitioner 19 DAYS after the plea. DX1 p.5; T.42:5-21, during TWO critical stages (time to Directly Appeal, and Move to withdraw the plea). Knowing Petitioner was unhappy with the plea and sentencing, Counsel did not attempt to contact Petitioner until TWO YEARS later, only urging Petitioner to do a magazine interview.
- Within 4 months after gaining access to Courts and to resources, now 17-year-old Petitioner began requesting copies of records at government expense to obtain an Out of Time Appeal (OTA). to comply with controlling precedent in Morrow v State, 266 Ga 3, 463 SE2d 472 (1995) (overruled by Collier v. State, (2019)), which held "an appeal will lie from a guilty plea only if the issue on appeal can be resolved from facts appearing in the record."
- Attempts include filings: 7/31/06; 6/2/08; 5/26/09; 6/21/11; 9/28/11; several state bar grievances, countless letters and SIX petitions for Mandamus - amongst mention in motions.
- To DATE, petitioner has NOT received her file, and the majority of her filings lay unaddressed after 2 decades. Nevertheless, she filed her OTA 6/22/12. T.90-91,

which laid unaddressed until Collier v State, 834 SE2d 769 (2019) set the course for the elimination of OTA's in trial courts.

- The trial court failed to "consider all relevant facts" laid out by Roe v Flores-Ortega, 528 US 470 (2000) @ 480. Accord Gaston v. United States, 318 Fed Appx 750 (11th Cir 2008) @ 752 (HN4); Davis v. State, 310 Ga 547 (2020) @ 551 (HN3).

by BLATANTLY disregarding the misadvice that she'd WAIVED her right to appeal, nor that she TIMELY pursued an interest in appeal by filing what Counsel called "appealing her sentence".

- Instead of renewing the rights stripped of a teenager, the trial court refused the Flores-Ortega MANDATE that a "presumption of prejudice WILL NOT BEND" @ 480; Garza v. Idaho, 139 S. Ct. 738 (2019) @ HN 14. And despite ~~not~~ raising this on appeal, the Supreme Court claimed Petitioner pointed to NO EVIDENCE she demonstrated an interest that triggered the duty to consult. They found 15-year-old petitioner among the small minority of cases where consultation was unnecessary. Flores-Ortega 528 US @ 481 ("We expect that courts evaluating the reasonableness of Counsel's performance using the inquiry we have described will find, in the vast majority of cases, that counsel had a duty to consult with the defendant about an appeal." Harvey v State, 312 Ga 623, 862 SE2d 120 (2021), cert. den. 2021 US LEXIS 250, 142 S. Ct. 817, 211 LEd 2d 507.

- Petitioner promptly filed a successive OTA in the trial court, asserting erroneous application of federal law, it was denied on res judicata.

- Petitioner filed a timely Notice of Appeal. Yet, a month later the Georgia Supreme Court decided Cook v. State, 313 Ga 471 (2022) eliminating OTAs in trial courts, finding at HN35, "The

- Supreme Court holds that there was and is no legal authority for motions for out-of-time appeals in trial courts" and established "habeas corpus is the exclusive post-appeal proceeding." @ HN13.
- Petitioner URGED recalling the remittitur under Jackson v. State, 286 Ga 407 (2010), where by its OWN MISTAKE, it deprived her of appellate review that the law permitted at the time.
- Petitioner filed what she believed to be a timely state habeas, ~~as~~ she knew a restored right to appeal was lost under Cook. The ~~grant or denial~~ of an OTA is the functional equivalent of the entry of a judgment. Schocket v. State, 312 Ga 825 (2021) @ fn 16 citing Moore v. State, 303 Ga 743, 745, 814 SE2d 676 (2018)
- To comply with the 1 year AEDPA guideline, she further filed a Petition for Federal Habeas relief, asserting absolute absence of a corrective process for those who took the state at their word and ended up losing all their avenues of relief.
- The district court found that the OTA hearing was a corrective process, despite there NEVER being legal authority for trial court OTA's. stating "Harvey made unfortunate choices about how to pursue her rights." Harvey v. Dills, 2023 US Dist LEXIS 234882 @ [*6].
- The Supreme Court of Georgia denied relief, remanding for dismissal for lack of jurisdiction under Cook. Harvey v. State, 315 Ga 395, 882 SE2d 238 (2022). It further raised res judicata, although they FAILED to address the claims on the merits. at fn.2 "... and the denial of these claims became final when affirmed in Harvey I".
- After admitting there was NEVER legal authority for OTA's, the Supreme Court TWICE erred for lack of jurisdiction AND misapplication of the Flores-Ortega standard, it holds Harvey! binding. It is well

Settled that a "judgment by a court without jurisdiction is a mere nullity... and may be so held... in whatever way it is sought to be used as a valid judgment." Dix v Dix, 132 Ga 630 (1909), and does not afford any basis for applying doctrine of res judicata, Waldor v. Waldor, 217 Ga at 498 (1962).

• The Habeas Court denied petitioner's request for writ of Habeas Corpus WITHOUT a hearing 2/3/23, yet Petitioner was NOT served. Petitioner learned of the order on 2/24/23 via a family member on PeachCourt.com. This left Petitioner with NINE DAYS to file BOTH a Notice of Appeal and Application For Certificate of Probable Cause (CPC), which is virtually IMPOSSIBLE due to the restrictions of law library access.

• This very day, 2/24/23 Petitioner filed BOTH a Motion For Reconsideration and a Motion To Set Aside, asserting noncompliance with OCGA § 15-6-21(c). Both Motions were denied, in lieu of an affidavit of Amber Dorsey, a judicial assistant who claimed she mailed the order to Petitioner.

• Once denied, Petitioner filed timely Notices of Appeal and An Application for Certificate of Probable Cause.

• The Georgia supreme Court DISMISSED her appeal and Application for CPC on 1/9/24, finding these Motions were not final orders in which to appeal the denial of Habeas relief. They further denied Rehearing on 2/6/24.

REASONS FOR GRANTING THE PETITION

1. Does Georgia law arbitrarily disregard jurisdiction and/or The Proper Sequence of Judicial review?

Not only have Georgia Courts held binding rulings that lack jurisdiction, and asked similarly situated litigants to seek a POST-APPEAL proceeding FIRST, i.e. State Habeas Corpus, they have further urged Petitioner to seek review in an illogical sequence.

O.C.G.A. § 9-11-60 sets a Motion To Set Aside as the PROPER remedy for failure to serve Notice to a losing party as required by O.C.G.A. § 15-6-21(c).

Amber Dorsey, filed an affidavit (of perjury) that she mailed a copy of the order to the Prison. Yet prison logs show no mail received by Petitioner from this Court during 30 days. IN FACT, Petitioner still has NOT received service of the order - TO DATE. She only found out by her own diligence:

On 1/9/24 The SCG refused merits review, being her 7th attempt for relief in that court, never addressing her ACTUAL CONVICTION!

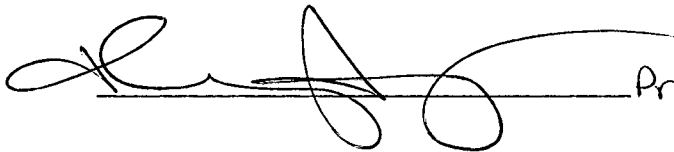
To file a Notice of Appeal as the Supreme Court's order suggests would Confer ALL JURISDICTION to the Court of Review. THEREFORE it would involve a TOTAL waiver or acquiescence of the right to have her appeal time restored by foregoing the reconsideration and/or Motion To Set Aside.

Even if Petitioner complied and filed a Notice of Appeal at the same time as her 2 other motions, for intents of preserving ALL her rights, the Notice of Appeal would override the others and the Habeas Court could NOT

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Pro Se

Date: 4-1-24

REASONS FOR GRANTING (CONT)

entertain them for want of jurisdiction. See Dix v. Dix (Supra) at HNS + HN15. This is true whether or not jurisdiction is urged before the Court, because the filing of a Notice of Appeal is an event of jurisdictional significance. Shewchun v. United States, 791 F.2d 941 (1986).

Accord Tracy Jones, another pro se habeas petitioner in Hapersham. Her petition was denied in March (one month of Petitioner's order). Tracy was not served and also learned via PeachCourt that it was denied. However, it was already a month after the time had expired, to appeal.

Tracy filed a Notice of Appeal and then filed a Motion To Set Aside. The clerk conceded they were bulked up and had not served her, so the Motion was granted. However, the NEXT day it vacated the order for LACK OF JURISDICTION due to the Notice of Appeal, untimely as it was.

After withdrawing her appeal, she refiled and had the order set aside for a New Timely appeal. Which she also refiled and her CPC.

NEVERTHELESS, this is what Georgia's Supreme Court suggests I should have done.

2. Is a Motion For Reconsideration an avenue from which the date of appeal runs? i.e. does it toll the time for filing a Notice of Appeal?

In Jemenez v. Quarterman, 555 US 113 (2009). this Court found at HN6 that finality "depends on context". Further USCS Sup. Ct. R 13

(part 3) states a writ of cert runs from the date of denial of rehearing.

Rehearing and Reconsideration are the same thing.

Therefore if our U.S. Supreme Court acknowledges and respects total exhaustion for review, WHO is Georgia to make their own rules, when Motions For Reconsideration are entertained in the State of Georgia?

If they do not toll the appeal period, when should they be filed to preserve appellate rights?

3. Is Georgia law violating Due Process and/or Access To Courts, by not requiring ACTUAL RECEIPT of orders by losing Pro Se Litigants?

The precedential case Cambron Canal Corp Inc., which stated the remedy for failure to serve Notice is a Motion To Set Aside under OCGA § 9-11-60 et. seq. was OVERRULED. In Moore v. State, 308 Ga 556 (2010) at HN2 - the GSC stated OCGA § 15-6-21(c) only requires the trial court give notice to losing parties. If they give notice, a Motion To Set Aside may be properly denied "whether ~~or~~ not the losing party actually received the notice". Citing Wright, 297 Ga @ 684 n. 3.

This logic places incarcerated Pro Se Litigants at a disadvantage concerning the calculation of the limitations period.

All an official has to do is say they mailed it, irregardless of whether they're telling the truth. This is a huge hurdle and the State Courts on these obstacles. Effectively foreclosing meaningful

access to Courts, or judicial review. Georgia has a State-wide Corruption problem and creates laws as they go to keep this hidden and to deny avenues of relief for those seeking Superior intervention.

4. Did the Habeas Court err by denying Petitioner's application as untimely, when the Statute of Limitations was never invoked under the MANDATORY language of State law.

OCCGA § 9-14-42(d) provides: "At the time of sentencing, the Court shall inform the defendant of the periods of limitation set forth in subsection (c) of this Code section."

HOWEVER, in Stubbs v. Hall, 840 SE2d 407 (2000), this Court found there is no tolling provision for the violation of this Code section. TO BE CLEAR, petitioner DOES NOT argue she should receive tolling, but rather the statutory timeframe does NOT apply, because subsection (d) is a MANDATE requiring strict compliance, and the failure of the sentencing judge to comply WAIVES the statute in totality.

The GSC often points out: it "must presume the General Assembly meant what it said and said what it meant, To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would..."

Moreover, "[w]hen we consider the meaning of a statutory provision, we do not read it in isolation, but rather, we read it in the context of the other statutory

provisions of which it is a part."

To be sure, the term "~~shall~~" is not a leeway word, given to discretion. It is a COMMAND, rather than a SUGGESTION.

The USSC has said the term "shall" "normally creates an obligation, impervious to judicial discretion." Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 US 26, 35, 118 S. Ct. 956, 962, 140 L. Ed 2d 62 (1998). That is, where Congress uses the word "shall" to describe a party's obligation, Congress intends to command rather than suggest.... See United States v. Quirante, 486 F.3d 1273 (11th Cir 2007).

Accord In re Barber, 2016 US App LEXIS 13540 @ [*12] "shall" means "must", not "may" or "should".... if it is not mandatory what language could be mandatory?

Compare Georgia's Statutory Demand For Discharge and acquittal. The failure to meet the STRICT STATUTORY REQUIREMENTS for a demand for Speedy Trial results in an AUTOMATIC waiver of this right, Levester v. State, 512 SE2d 258 (1999), "the statutory requirements are plain and mandate strict adherence, and a defendant may waive the right to a speedy trial by his actions or inaction."

Likewise, failure of the sentencing judge to INVOKE the statute by performing his MANDATORY duty which STARTS the clock of limitations, resulted in waiver of the statute and petitioner should not be penalized, nor held accountable for the TRIAL COURT's error.

BECAUSE OF THE TRIAL COURT'S OMISSION, Petitioner (a juvenile) was left to interpret law on her own.

The OTA is the crux of the judicial emergency in Georgia. They have been allowed in the trial court since Rowland v. State, 264 Ga 842, 452 SE2d 756 (1995).

The trial court option was more favorable, because it was free, it was not as complex where only one specific instance of ineffective counsel was at issue, it was resolved faster, with no transfer of records or evidence, it allowed a direct appeal for an adverse ruling, and often pro se petitioners were appointed counsel to perfect the motion and hearing.

Maxwell stated "the grant of an out-of-time appeal permits a defendant, by the grace of the court, to start the post-conviction process anew." 262 Ga at 542-543, 422 SE2d 543. Commonly, this included remedies like 'Motions For New Trial or to Withdraw the Guilty Plea, and THEN a direct appeal, and THEN state habeas corpus.

However, because of Morrow, a defendant had to show they could win the appeal BEFORE they had their frustrated right restored. Morrow was not overruled UNTIL 2019 by Collier, as inconsistent with Federal law.

In Schoicket, the Court eliminated Motions To Withdraw upon granted OTAs., Then Cook eliminated the proceeding outright.

In Dougherty v. State, 315 Ga 188, 880 SE2d 523 (2013), the GSC admitted their error and the prejudice it caused.

@fn6 *Again, we referred abandoned defendants to the remedy of OTA.

@fn8 - our standard advisory was not to pursue OTAs in Habeas courts, but rather the trial court. "For some who took us at our word and filed motions for

OTA in their trial courts... the time wasted in seeking an OTA in the trial court potentially consumed the time allowed for pursuing an OTA through habeas."

They went further in Johnson v State, 2023 Ga LEXIS 62.

Habeas is a POST-APPEAL proceeding. It only makes sense to pursue post-conviction review in the LOGICAL and CHRONOLOGICAL sequence. See Cook @ fn. 28, acknowledging "the whole point of an out-of-time-appeal motion is that the defendant has not yet had their appeal."

In Harvey v. State, Petitioner was referred to seek relief in Habeas proceedings. Therefore the Habeas Court erred in granting respondent's motion to dismiss, because the State conceded in its Return and Answer that many of her grounds were cognizable for relief. See Tate v. Habib, 2023 Ga App LEXIS 1163 "we review de novo the trial court's grant of a motion to dismiss. A motion to dismiss may be granted only where a plaintiff would not be entitled to relief under any set of facts that could be proven in support of the plaintiff's claim."

Despite Maximum feasible diligence, Petitioner has never had post-conviction review of her case. Johnson v. Zerbst, 304 US 458 (1938) @ 464 states, "... it has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights [12] and that we 'do not presume acquiescence in the loss of fundamental rights' [13] A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege."

Not only was petitioner abandoned as a 15-year-old defendant, she was further ROBBED of post-

conviction review by the laws of this State and by the Highest Court of the state overstepping judicial authority, judicially creating FAVORABLE remedies for 60 years, only to overrule them and find petitioner, and those like her, liable for the ERROR OF THE STATE.

These errors should be deemed structural error, Harmful beyond a reasonable doubt, defying harmless error standards, because many defendants will NEVER have review of their convictions, not because they didn't want it, nor because they failed to be diligent, but rather because it was stripped away. See Weaver v. Massachusetts, 137 S. Ct. 1849 (2017),

Petitioner NEVER relinquished her right to Habeas review. And she should have been given an evidentiary hearing on the merits.

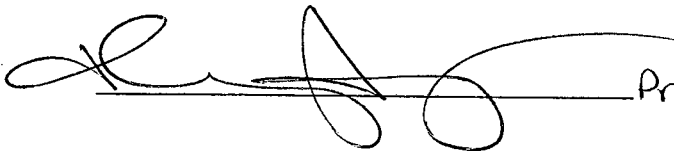
Petitioner is a victim of what Georgia Court's created and acknowledge to be a "tangled web of confusing post-conviction jurisprudence". Collier (2019)

Petitioner has been pursuing relief since 2006, to no avail. She has been more diligent than licensed attorneys, yet has never been able to litigate her FACTUAL INNOCENCE, nor the Unconstitutionality of her conviction, which was obtained by the Coersion of a child to sign a plea for Two consecutive life sentences, basically the maximum sentence allowed. And further upheld this conviction by denying meaningful access to court for the past 20 years.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Pro Se

Date: 4-1-24