

ORIGINAL

No. 23-7701

FILED

APR 19 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Robin Jones,
Petitioner,

v.

State of Georgia,
Commissioner For The Dept.
Of Corrections and Attorney
General For The State of
Georgia,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF GEORGIA

PETITION FOR CERTIORARI

Robin Jones, Pro se
Riverbend C.F.
196 Laying Farm Rd.
Milledgeville, Georgia 31061

RECEIVED

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SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

1. IF the MERITS of an appeal exist and are not evaluated by a State Court of review, should a Federal court address Ineffective Assistance of Trial Counsel claims on the merits to assess whether the claims are arguable before denying or dismissing a State Habeas Corpus and Certificate for Probable Cause relief of a U.S. Sixth Amendment claim that the petitioner was completely denied counsel on appeal for the State?

2. IF a defendant's trial counsel would not argue a criminal case, instead seeking plea negotiations and not briefing the factually clear merits of the case and notifying the defendant, what avenue of redress would the defendant have if State procedures bar redress; and would federal habeas corpus be unavailable for a State Ineffective Assistance of Trial Counsel claim that was defaulted by timeliness due to State trial counsel providing no advice that a collateral attack was available at that time?

3. Can Georgia's Official Code Annotated § 9-14-42 and 9-14-51 statutes bar relief of an ineffective assistance of trial counsel claim or habeas corpus relief thereof after four years, be squared with rulings in Roe v. Flores-Ortega, 529 U.S. 1029, 145 (2000) and Garza v. Idaho, 139 S.Ct. 738, 703 (2019), when State trial counsel caused the default of a timely appeal and knowingly abandoned the case?

LIST OF PARTIES

1. Supreme Court of Georgia
330 Capitol Ave.
Suite 1100
Atlanta, Georgia 30334
2. State of Georgia State Attorney General's Office
Christopher Carr
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
3. Baldwin County Superior Court - Habeas Corpus
121 N. Wilkinson St.
Milledgeville, Georgia 31061
4. Berrien County District Attorney
P.O. Box 158
Nashville, Georgia 31639

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FEDERAL STATUTES

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28 USC § 1254 (1)

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UNITED STATES SUPREME COURT RULES

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Rule 10 (c)

GEORGIA CRIMINAL CODE

O.C.G.A. § 9-14-42

O.C.G.A. § 9-14-51

O.C.G.A. § 17-10-7 (c)

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CASE CITATIONS FOR THIS CASE

State of Georgia v. Robin Allen Jones, 85-373; 374, 375, 376
Superior Court of Berrien County, February 21, 1986

Robin Jones v. Angela Reaves, Warden et al.
Habeas Corpus (Superior Court of Baldwin County, State of Georgia)

Robin Jones v. Angela Reaves, Warden et al. Habeas Corpus Appeal,
823K1060 (Supreme Court of Georgia) (2024)

BASIS FOR JURISDICTION

The petitioner alleges that this Court has jurisdiction to hear this case, pursuant to 28 USC § 1251 (b), 1254 (1) and 1257.

The first address of jurisdiction will be the habeus corpus appeal from the order of the Supreme Court of Georgia, pursuant to 28 USC § 1257.

The second address will be of original jurisdiction. The petitioner is alleging that there is a direct conflict between Georgia's Criminal Procedure statute, O.C.G.A. § 17-7-93 (b) that bars collateral attack on a guilty plea after sentencing and this Court's rulings, pursuant to 28 USC § 1251 (b) (2) and U.S. Supreme Court Rule 10 (c)

The third basis for jurisdiction is 28 USC § 1257, yet is untimely due to trial counsel and the State court's failure to notify the petitioner of the right to a timely appeal or had counsel filed the petitioner requested Notice of Appeal. The petitioner requests permission to appeal this decision as well, as this is the Court of last resort for this petition. The petitioner alleges that appeal directly to the U.S. Supreme Court would have been available, pursuant to U.S. Supreme Court Rule 10 (b) if collateral estoppel had not taken place.

CONSTITUTIONAL PROVISIONS

The petitioner alleges that the respondents have violated his U.S. Sixth Amendment Right to counsel, and the right to have effective counsel, and enforced upon the States pursuant to the U.S. Fourteenth Amendment due process of law and equal protection of law. 1985-1986 trial counsel was ineffective and filed no appeal or right on petitioners behalf.

The petitioners U.S. Fourteenth Amendment due process of law was violated when the State of Georgia Supreme Court upended fifty years of procedure pertaining to its "out-of-time appeal" by declaring the procedure as void while petitioner was in the pipeline on appeal.

The petitioner was denied due process of law, pursuant to the U.S. Fourteenth Amendment. The State of Georgia habeas corpus court and the Supreme Court of Georgia did not assess the procedural claims, that if addressed in the out-of-time appeal proceeding would have mandated a remand or reversal as proven by prior rulings in the Supreme Court of Georgia, the lower courts in Georgia, and the U.S. Supreme Court.

CONCISE STATEMENT OF THE CASE

The petitioner was arrested for murder, armed robbery, kidnapping and rape on May 31, 1985. On February 21, 1986, petitioner pled guilty to murder, kidnapping and rape, subsequently being sentenced to three (3) consecutive life sentences. Trial counsel did not file a requested notice of appeal.

In December of 2022, petitioner filed a state petition for writ of habeas corpus raising grounds of ineffective assistance of counsel. An evidentiary hearing was held in the Superior Court of Baldwin County, State of Georgia. The habeas corpus was dismissed as untimely. A timely application for a certificate of probable cause was filed in the Supreme Court of Georgia, Case No. 2311060. On March 19, 2024, the Supreme Court of Georgia denied petitioners application for certificate of probable cause with no explanation, preventing the filing of a motion for reconsideration.

ARGUMENT OF ISSUES

I. The 2023 appeal of this case, and procedural default thereafter was due to constitutionally ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668 (104 S.Ct. 2052, 80 L.Ed. 2d 674) (1984), and deprivation of counsel pursuant to *Roe v. Flores-Ortega*, 528 U.S. 470 (120 S.Ct. 1029, 145 L.Ed. 2d 985) (2000), on the grounds that appealable issues were present on the record for appeal. See *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). The petitioner prays that this will warrant complete review by this Court.

II. A reasonable jurist would not have convicted Jones of murder or rape, after his co-defendant was found guilty of the same crimes. Jones trial counsel was constitutionally ineffective on the grounds that he performed no pre-trial investigation, did not inform Jones of the essential elements of the charges in which he pled guilty. Actual innocence of rape should apply when no DNA evidence existed to convict Jones, as well as proceeding pro se, to excuse the procedural bar and grant Federal review of a constitutional claim. See *Dretke v. Haley*, 541 U.S. 386, 394 (2004); *House v. Bell*, 547 U.S. 518, 126 S.Ct. 2064, 164 L.Ed. 2d. 1 (2006).

III. The procedurally barred claims of ineffective assistance of counsel and denial of due process of law cannot rest on 'state law' if no procedural bar was advanced by the respondents, nor were the merits addressed by a properly filed petition in the respondent's state court. The Baldwin County Superior Court hearing the second habeas corpus petition denied

JONES due process of law and equal protection of law, under the Fourteenth Amendment, by refusing to rule on the merits of ineffectiveness of trial counsel that deprived Jones an appeal of right as alleged in the state Habeas Corpus petition. See Morgan v. United States, 346 U.S. 502, 512, 74 S.Ct. 247, 253, 98 L.Ed. 248 (1954).

IX. The State of Georgia, Official Code of Georgia Annotated O.C.G.A. § 9-14-42 and § 9-14-51 conflicts with the U.S. Supreme Court rulings in Roe v. Flores-Ortega, 528 U.S. 470 (120 S.Ct. 1029, 145 L.Ed.2d. 985) (2000) and Garza v. Idaho, 139 S.Ct. 738; 203 L.Ed.2d. 77 (2019), O.C.G.A. § 9-14-42 prevents an ineffective assistance of trial counsel claim or a denial of one's right to a timely appeal in the state in which a habeas corpus could not grant if the challenge was deemed untimely, O.C.G.A. § 9-14-51 prevents an ineffective assistance of trial counsel in the state, in which a habeas corpus could grant if the challenge was deemed successive.

ARGUMENT IN DEPTH

I. In United States v. Aviles, 380 Fed. Appx. 830, 831 (11th Cir. 2010), the Court stated,

"The bar for Coraam Nobis relief is high, "and the writ may only issue (1) "there is and was no other available avenue of relief" and (2) "the error involves a matter of fact of the most fundamental character which has not been put in issue or passed upon and renders the proceedings itself irregular and invalid." Alikhan v. United States, 200 F.3d. 732, 734 (11th Cir. 2000).

The petitioner has not located any court that has identified a Penson issue, (Penson v. Ohio, 488 U.S. 95) and did not remand for appeal until this present case. A Penson issue is unique and requires no Strickland analysis on the grounds of counsel abandonment of the case. Jones has been denied an appeal in the State of Georgia on these grounds. No withdrawal from the case was filed, yet no requested timely appeal was filed by trial counsel. Jones assumed that he had a timely appeal of right in the trial court.

The record is silent as to whether the Supreme Court of Georgia reviewed the record. (See Order on Application for Certificate of Probable Cause). According to the trial court index, no form of direct appeal was filed. The state docket sheet only shows the entry of a guilty plea.

Jones has shown by clear and convincing evidence that there were issues to be appealed in 1986, yet no appeal was filed by trial counsel on

behalf of JONES. SEE State Habeus Corpus, Robin Jones v. Angela Reaves.

THERE WAS NO RULING ON THE MERITS OF THE STATE habeus corpus petition. Habeus Corpus Transcript, Case No. 2022-SU-CV-50500 All issues herein this Federal extraordinary writ being appealed, were presented to the State of Georgia by out-of-time appeal and State habeus corpus. A ruling cannot rest on state law when the State did not rule on a validly filed petition with state law.

"This Court has repeatedly recognized that Federal court must carefully examine state procedural requirements to ensure that they do not operate to discriminate against claims of federal rights."

Walker v. Martin, 562 U.S. 307, 321 (2011).

No opinion of the Supreme Court of Georgia was given from the dismissal of the habeus corpus petition. Jones right to due process of law, and equal protection of laws, has been violated pursuant to the U.S. 14th Amendment. In the state petition, Jones addressed the unconstitutional ineffective assistance of trial counsel. This allegation also serves as an adequate ground for "cause and prejudice" to excuse procedural default, that no federal or state court has addressed.

The state habeus corpus court nor the Supreme Court of Georgia rulings on this issue reflect any consideration of a procedural default, pursuant to Martinez v. Ryan, 566 U.S. 1, and Trevino v. Thaler, 569 U.S. 413, "Martinez/Trevino" doctrine pertaining to ineffective

assistance of trial counsel, Coleman v. Goodwin, 833 F.3d. 537 (5th Cir. 2016), miscarriage of justice or actual innocence in regards to excusing the procedural bar. For a collection of cases, see Murray v. Carrier, 477 U.S. 478, 488, 497 (1986); Coleman v. Thompson, 501 U.S. 722, 747, 749-50 (1990); and Gideon v. Wainwright, 372 U.S. 335, 343-45 (1963).

As this case stands, it has eroded the principles of Gideon v. Wainwright, and the U.S. Sixth Amendment, as it applies to the states through the U.S. 14th Amendment.

Some courts have suggested that a petitioner's pro se status at the time of a procedural default is itself sufficient to make out "cause" for the default, see e.g., McCoy v. Newsome, 953 F.2d. 1252 (11th Cir.), cert. denied, 504 U.S. 944 (1992) (pro se petitioner can satisfy "cause" requirement by showing "either that an objective factor external to himself caused him to default his claim, or that the defaulted claim raises an issue that was 'intrinsically beyond (a) pro se petitioner's ability to present. (quoting HARMON v. BORTON, 894 F.2d. 1268, 1275 (11th Cir. 1990)).

"The bar to federal review may be lifted, however, if the petitioner can demonstrate cause for the (procedural) default (in state court) and actual prejudice as the result of the alleged violation of federal law." See Wainwright v. Sykes, 433 U.S. 72, 84-85, 97 S.Ct. 2497, 53 L.Ed. 2d. 594 (1977).

Maples, 181 L.Ed. 2d. at 821.

The petitioner alleges and believes that a hearing should be held to address the unanswered habeas corpus petition in the interest of justice. See O.C.G.A. §

9-14-42 and 28 U.S.C. § 1257. See Jackson v. Herring, 42 F.3d. 1350, 1366 (11th Cir.) cert. denied, 515 U.S. 1189 (1995).

"Careful consideration of this claim, including opportunity to present relevant facts, since (1) the prisoner's claims were not vague or conclusory, but instead contained factual allegations to the terms of the promise, and (2) the plea hearing omitted any language of rights waived or right to a timely appeal, and (3) there was no language in the transcript of the appeal of right.

Blackledge v. Allison, 431 U.S. 63, 52 L.Ed. 2d. 136, 97 S.Ct. 1621 (1977).

One of the undisputed claims of ineffectiveness of 1985-1986 trial counsel is that he failed to file a requested timely appeal after the entry of Jones' plea. This erroneous act prevented Jones from utilizing his right to direct appeal that is afforded to other defendants. Jones filed a number of post-conviction motions including an out-of-time appeal that was dismissed by the trial court. The respondent state has effectively removed the ability for Jones to appeal its decision as a matter of course. Respectfully, Jones alleges that the State applied procedural bars to Jones in error. See Edwards v. Carpenter, 529 U.S. 446, 451-52 (2000).

The petitioner in this case definitely wanted his his appeal of right from Georgia, and not afforded an appeal of issues facially present, in which

reliability of the proceeding cannot be presumed.

"The even more serious denial of the entire judicial proceeding itself, which a defendant wanted at the time and which he had a right, similarly demands a presumption of prejudice. Put simply, we cannot accord any "presumption of reliability," Robins, (528 U.S.) at 286, to judicial proceedings that never took place. Roe v. Flores-Ortega, 528 U.S. 470, 483, 126 S.Ct. 1029, 145 L.Ed. 2d. 985 (2000).

Jones hereby alleges that he did not knowingly bypass the state appeal or collateral review in this case. See Fay v. Noia, 372 U.S. 391, 439 (1963). Jones did not intentionally relinquish or abandon a known right, such as collateral review, in this case. See Francis v. Henderson, 425 U.S. 536 (1976) and Tollett v. Henderson, 411 U.S. 258 (1973). The State of Georgia has not defended the denial of the appeal process in the state petitions, and cannot assert any procedural arguments that are hereby waived. See Lee v. Kemna, 534 U.S. 362, 376 n.8 (2002); Adkins v. Holman, 710 F.3d. 1241, 1246-47 (11th Cir.), cert. denied, 134 S.Ct. 268 (2013). This Court will not imply any disrespect for the State of Georgia courts by entertaining the merits of the case. Humbly, Jones is requesting de novo review of this entire appeal, due to the fact that it completely rests on questions of law. As it seemed by the state court rulings, they could not hear cases like this when a complete deprivation of counsel has occurred.

II. The petitioner, JONES, alleges that no rational juror would convict him of the crime of Rape in 1996. The indictment omitted essential elements of the offense of Rape, i.e., the force used or type of force. These elements are defined by charging a predicate felony count of aggravated assault, O.C.G.A. § 16-5-21, to show the manner of force. Interestingly, in the State of Georgia, an armed robbery and murder statutorily require the charging of a predicate felony of aggravated assault for each individual count of murder, rape, or robbery in an indictment. See Smith v. Hordrick, 266 Ga. 54, 464 S.E.2d. 198 (1995).

A state prisoner may raise such claims of insufficient evidence on a federal collateral proceeding. See Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d. 560 (1979). The Rule of Consistency should apply when a jury did not decide JONES fate and all facts of DNA for the rape are non-existent and all counts of indictment are incomplete. The state's evidence was insufficient to support a conviction for rape or armed robbery by JONES. See United States v. Twigg, 588 F.2d. 373, 383 n. 11 (3rd Cir. 1978).

To this point, JONES has produced clear and convincing evidence that, (1) 1986 trial counsel should have challenged the counts of indictment and plea agreement as requested by JONES instead of remaining silent, and (2) the state habeas court in 2023 refused to hear any mention of claims of ineffective assistance of counsel on these issues, and (3) the Supreme Court of Georgia denied JONES application for a certificate of probable cause

with a mere sentence, and most of all, (4) Jones had no DNA evidence found to support a conviction for rape and given a life sentence.

Jones does not understand the reluctance and unresolved rulings on "actual innocence" in Drette v. Haley, 541 U.S. 386, 394 (2004). Eleventh Circuit cases allege that this has not been ruled upon as to this rule applying outside of the death penalty context. See McKay v. United States, 657 F.3d. 1190, 1199 (11th Cir. 2011) and Spencer v. United States, 773 F.3d. 1132, 1176 (11th Cir. 2014). If this Court finds no other issue to remand to the state on the grounds of actual innocence.

III. The issues presented herein were presented to the respondent state. The claim of a denial of an appeal of right, though raised on an out-of-time appeal and state habeas corpus was not addressed.

The state habeas corpus and judgment of the Supreme Court of Georgia in this case cannot rest on state law when the state never ruled on the claims presented and have not presented and have not asserted any procedural defenses to these claims, that are not waived. The appellant believes that the state courts were required to adhere to the U.S. Supreme Court judicial law, to construe a pro se litigant's petition to reach the merits of the claim. Castro v. United States, 540 U.S. 375, 381-82 (2003).

Jones state habeas corpus was filed on the belief that this was the only way to challenge the ineffectiveness of trial counsel, as held by the Supreme Court of Georgia. See Cook v. State, 313 Ga. 471 (870 S.E.2d. 758) (2022). Jones claims were dismissed as untimely without any form of review on the merits set forth.

JONES was not afforded an equal opportunity to be heard in state court, nor process of law to address a newly discovered abandonment of 1996 trial counsel. Newly discovered due to the state's refusal to provide JONES the discovery of his case. This issue is ongoing at present. The only remedy left to a defendant in Georgia being the state habeus corpus procedure.

JONES was not afforded a full and fair litigation of ineffective assistance of trial counsel on his claim of denial of an appeal of right, or his 2023 state habeus corpus petition, in accordance with Townsend v. Sain, 372 U.S. 293, 9 L.Ed. 2d. 770, 83 S.Ct. 745 (1963), by the State of Georgia. Submitted brief was dismissed in the Supreme Court of Georgia is at Appx.

The prejudice to JONES is that he was overcharged and oversentenced in the initial 1986 proceedings. The Supreme Court of Georgia has given relief under the provisions of O.C.G.A. § 16-6-1, O.C.G.A. § 16-8-41, and O.C.G.A. § 16-5-1, of the same type of error that JONES presents at this time. See Robinson v. State, 308 Ga. 285, 872 S.E.2d. 844 (2018).

The discretion in this case was exercised differently for two similarly situated defendants, Watkins v. Ballinger, 308 Ga. 387, 393 (840 S.E.2d. 378) (2020); Roe v. Flores-Ortega, 529 U.S. 1029, 145 (2000).

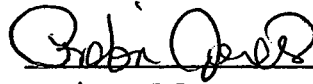
CONCLUSION AND RELIEF SOUGHT

The petitioner, Robin Jones, humbly and respectfully requests that this Court review this case de novo and remand to the State of Georgia for the 1986 appeal of right, or that his 1986 conviction be vacated, or in the alternative, vacate the conviction if the appeal of right is not granted in 90 days or any other relief that this Honorable Court deems just.

The petitioner, Robin Jones, believes all herein to be true, under penalty of perjury pursuant to 28 U.S.C. § 1746.

Date: April 18, 2024

Respectfully signed,



Robin Jones, pro se

GDC # 422088

Riverbend C.F.

196 Laying Farm Rd.

Milledgeville, Georgia 31061

CERTIFICATE OF COMPLIANCE

I, Robin Jones, petitioner, has prepared this petition in accordance with U.S. Supreme Court Rule 33.2, and this document is hand written, and less than 40 pages.

