



SUPREME COURT OF GEORGIA
Case No. S23H1060

March 19, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROBIN JONES v. ANGELA REAVES, WARDEN et al.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur.

Trial Court Case No.

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 A. Barnes, Clerk

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

ROBIN JONES,
GDC #422088,

Petitioner,

v.

ANGELA REAVES, Warden, and
TYRONE OLIVER¹, Commissioner,

Respondents.

* CIVIL ACTION NO.
* SUCV2022050580
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* HABEAS CORPUS
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ORDER DISMISSING PETITION AS UNTIMELY, SUCCESSIVE,
AND FOR FAILURE TO STATE A CLAIM

This case came before the Hon. Hugh V. Wingfield, III for a hearing on November 30, 2022, on the Commissioner's motion to dismiss the petition as untimely under O.C.G.A. § 9-14-42(c)(1) and/or as successive under O.C.G.A. § 9-14-51 and/or for failure to state a claim for relief.² Upon consideration of the record established at that hearing, the Hon. Brenda H. Trammell dismisses the petition on all three bases, as outlined below.

This is Petitioner's second habeas corpus petition challenging the validity of his February 1986 Berrien County convictions for malice murder, kidnapping, rape, and robbery, arising from a guilty plea. Petitioner filed his first habeas corpus

¹ Corrections Commissioner Oliver is hereby substituted for his predecessor in office, Timothy Ward.

² This order has been prepared without the benefit of the transcript of the November 30, 2022, hearing. Citations to exhibits admitted at that hearing are "Resp. Ex." followed by the exhibit number.

petition challenging these Berrien County convictions in *Jones v. Jackson*, No. 08V-224 (Charlton Super. Ct., dismissed Jun. 17, 2011), which was dismissed as untimely. (Resp. Ex. 3, 4).

This petition was filed in this Court on September 26, 2022. Petitioner raises three grounds alleging that:

- (1) He received ineffective assistance of counsel in that plea counsel failed to file a requested timely appeal after the entry of Petitioner's guilty plea;
- (2) His due process and equal protection rights have been violated in that he has been denied access to the record of his case and guilty plea hearing for more than 37 years, even though he has tried to pay for the record, which has prevented him from mounting a proper and sufficient appeal; and
- (3) His due process and equal protection rights have been violated in that, after he filed an out-of-time appeal, the appeal was allegedly dismissed without a hearing, with his only recourse being a habeas corpus proceeding that does not meet his direct appeal rights.

I. UNTIMELY PETITION

O.C.G.A. § 9-14-42(c), enacted by Ga. L. 2004, p. 917, and effective on July 1, 2004, provides:

Any action brought pursuant to this article shall be filed within . . . four years in the case of a felony . . . from:

- (1) The judgment of conviction becoming final by the conclusion of direct review or the expiration of the time for seeking such review; provided, however, that any person whose conviction has become final as of July 1, 2004, regardless of the date of conviction, shall have until . . . July 1, 2008, in the case of a felony to bring an action pursuant to this Code section[.]

In construing the term "final," the Supreme Court of Georgia has 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.'" *Stubbs v. Hall*, 308 Ga. 354, 359, 840 S.E.2d 407 (2020).

In *Stubbs*, the Court also explained how to calculate when a conviction becomes final. Where, for example, a defendant is convicted of a crime, but "did not appeal the conviction, then the 'expiration of the time for seeking [direct] review' would occur when the defendant's time to appeal the conviction expired." *Stubbs*, 308 Ga. at 359 n. 8. This means that, for a conviction that is directly appealable to either state appellate court, "the expiration of the time for seeking direct review would occur when the defendant's time to file a notice of appeal . . . expired without the defendant doing so." *Id.*

Petitioner entered his guilty plea and was sentenced on February 21, 1986. (Resp. Ex. 2). Had Petitioner wanted to pursue a direct appeal of his convictions, he had thirty (30) days under O.C.G.A. § 5-6-38 from that date in which to file a notice

of appeal. However, Petitioner did not file a timely notice of appeal. Thus, his convictions were "final" on March 24, 1986, when his time for seeking appellate review expired.³

Petitioner thus had until July 1, 2008, to file a timely habeas corpus petition challenging his convictions. However, the petition shows that it was filed on September 26, 2022, more than fourteen years too late. Thus, grounds 1 and 2 of the petition are untimely and are dismissed as such.

II. SUCCESSIVE PETITION

Petitioner previously challenged his convictions in *Jones v. Jackson*, No. 08V-224 (Charlton Super. Ct., dismissed Jun. 17, 2011). That petition was dismissed as untimely under the four-year limitations bar. (Resp. Ex. 3, 4).

The successive petition rule of O.C.G.A. § 9-14-51 provides as follows:

All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition. Any grounds not so raised are waived unless the constitution of the United States or of this state otherwise requires or unless any judge to whom the petition is assigned, on considering a subsequent petition, finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

The purpose of this successiveness provision is to discontinue the practice of filing multiple petitions challenging a single judgment of conviction. *Hunter v.*

³ The thirtieth day, March 23, 1986, was a Sunday.

Brown, 236 Ga. 168, 223 S.E.2d 145 (1976). When faced with a second or subsequent petition, "the habeas court must determine, as a threshold matter, whether the petitioner is entitled to a hearing on the merits of his belated claims." *Smith v. Zant*, 250 Ga. 645, 647, 301 S.E.2d 32 (1983). "In order to be so entitled, the Petitioner must raise grounds which are either constitutionally nonwaivable or which could not reasonably have been raised in the earlier petition." *Id.*

The Georgia Supreme Court has not formulated a precise test for ascertaining whether claims could reasonably have been raised in a prior case. Rather, the Court looks to the facts and circumstances of the individual case to make that determination. *Tucker v. Kemp*, 256 Ga. 571, 575, 351 S.E.2d 196 (1987).

Grounds 1 and 2 either were raised or could reasonably have been raised in the prior habeas case, since they are based on facts and law in existence then. *Bruce v. Smith*, 274 Ga. 432, 553 S.E.2d 808 (2001); *Smith v. Zant*. Accordingly, they are dismissed as successive.

III. FAILURE TO STATE A CLAIM FOR RELIEF

Ground 3, in which Petitioner alleges that his due process and equal protection rights have been violated in that, after he filed an out-of-time appeal, the appeal was dismissed without a hearing, with his only recourse being a habeas corpus proceeding that does not meet his direct appeal rights, fails to state a claim upon which habeas corpus relief can be granted under O.C.G.A. § 9-14-42(a). This

ground does not allege a violation of a constitutional right in the proceedings giving rise to Petitioner's convictions. Accordingly, it is dismissed on this basis.

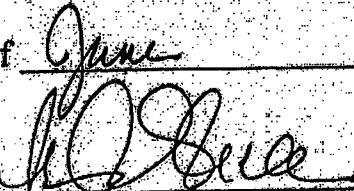
CONCLUSION

Wherefore, this petition is dismissed as untimely, successive, and for failure to state a claim for relief.

If Petitioner desires to appeal this order, he must file an application for a certificate of probable cause to appeal with the Clerk of the Georgia Supreme Court within thirty (30) days from the date this order is filed. Petitioner must also file a notice of appeal with the Clerk of the Baldwin County Superior Court within the same thirty (30) day period.

The Clerk is hereby directed to provide a copy of this order to Petitioner, Respondents, and the office of the Georgia Attorney General.

SO ORDERED, this 6 day of June, 2023.


BRENDA H. TRAMMELL Chief Judge
Superior Court, Ocmulgee Circuit

Prepared by:
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CERTIFICATE OF SERVICE

This is to certify that I, Brandi B. Boswell, Judicial Assistant to Judge Brenda H. Trammell that I have this day served all parties with the attached Order by hand-delivery, electronic transmission, facsimile and/or by depositing same in the United States Mail, with sufficient postage affixed thereto as follows:

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Original Filed with Clerk's Office

This 7 day of June, 2023

Brandi B. Boswell
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