

No. 23-7701

IN THE SUPREME COURT OF THE UNITED STATES

Robin Jones, Petitioner,

v.

Angela Phams, et al.

PETITION FOR REHEARING

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

Robin Jones, Pro se
GDC# 422088
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Dated: October 16, 2024

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PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Robin Jones, respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the Supreme Court of Georgia.

The Supreme Court of Georgia's opinion heralds a vague and difficult decision that upholds the state habeas corpus denial. This facts at issue are not hyperbolic, but a fact unless this Court grants review.

The State of Georgia's courts essentially disregarded a guilty pleading defendant's right to a direct appeal, even when such an appeal is requested in a timely manner. Georgia, for over five decades, had implemented an uncodified "out-of-time appeal" procedure that was used to correct the denial of one's due process rights. This procedure was not without its faults as the defendant was required to show that he could succeed with viable grounds in order to be granted. The "out-of-time appeal" procedure was abolished on March 15, 2022, because it was deemed to give a windfall ruling in favor of defendant's. The changes to the law in Georgia were heavily lobbied for by the county district attorneys for years, a judicial entity that dominates the appeal process (often referred to as State Judicial Judo because it is hostile to defendants on appeal).

This petition shows just how misleading these procedures are, which the Supreme Court of Georgia relied on in coming to its one sentence decision.

PETITION FOR REHEARING

The original certiorari asked this Court to resolve four issues of first impression: (1) whether there were appealable issues on the record warranting appeal, (2) whether trial counsel engaged in pre-trial investigation as to the murder and rape allegations to present an actual innocence claim, (3) whether the state habeas corpus court conducted a hearing that utilized petitioner's due process rights, and (4) whether state law conflicts with prior U.S. Supreme Court rulings on trial counsel's failure to file a requested timely appeal.

The Supreme Court of Georgia's decision to deny the appeal affirmed a long history of Georgia court's abrogating defendants right to appeal after the entry of a guilty plea.

However, a court induced procedure existed in Georgia for five decades that permitted a portion of defendants to appeal errors in their case. In 2022, the Supreme Court of Georgia altered the "out-of-time appeal" procedure by abolishing its use as it was deemed "defendant friendly."

This change is brazen. Consider the same Georgia Supreme Court that acknowledged and implemented the out-of-time procedure made law by abolishing said procedure without the Georgia legislature. Petitioner's only option was a state habeas corpus to raise issues required to be heard on direct appeal by a trial court with petitioner provided with appellate counsel. This procedure prevented a conversation on the grounds raised and instead enabled the state to successfully argue a successive and untimely filed habeas corpus petition.

Petitioner was denied the only semblance of an appeal that the State provides when a defendant's appeal of right is lost due to trial counsel's negligence. Interestingly, this argument in its basic form is not novel to the United States Supreme Court as this Court has long held that when a defendant is deprived of his appeal of right then he is entitled an appeal, even in a succeeding term of court. See *Morgan v. United States*, 346 U.S. 502, 512, 74 S.Ct. 247, 253, 98 L.Ed. 248 (1954), *Roe v. Flores-Ortega*, 528 U.S. 470 (120 S.Ct. 1029, 145 L.Ed. 2d. 985) (2000).

Yet, the Georgia courts raised the bar significantly, instead holding that a defendant who has lost his direct appeal rights due to trial counsel's errors can not be heard in their trial court with the benefit of appellate counsel, but instead proceeding "pro se" in habeas corpus court at the cost of \$250.00. See *Cook v. State*, 313 Ga. 471 (870 S.E.2d. 758) (2022). The Supreme Court of Georgia has affirmed the lower court's denial of a petition for writ of habeas corpus because the district attorney's in Georgia complain that it would create a 'windfall' for defendants if their factual claims of ineffective assistance of counsel were granted.

It is hardly in dispute that the Supreme Court of Georgia's holding represents a stark departure from five decades of its own procedure, but from precedent of this Court regarding a guilty pleading defendant's appeal of right under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment. See *Garza v. Idaho*, 139 S.Ct. 738, 203 L.Ed. 2d. 77 (2019).

Petitioner's initial petition forthrightly pointed out that the Supreme Court of Georgia's opinion was not only a gift to the district attorney's of Georgia's 159

counties, but that a defendant in Georgia does not enjoy the same constitutional rights as defendants in the rest of this country. As this Court noted, the Supreme Court of Georgia has a penchant for deciding the case it wants to, not the case actually before it. *McElrath v. Georgia*, U.S. Supreme Court Case No. 22-721, (2022).

REASONS FOR REHEARING

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. See Rule 44.2.

Petitioner has described the shady and unconstitutional process used by the Georgia courts as to defendant's direct appeal rights. The core of that complaint was that application for certificate of probable cause was decided by the Supreme Court of Georgia with a mere sentence.

The Supreme Court of Georgia's opinion with throw a defendant's right to appeal into chaos, as different lower courts in Georgia will begin to use wildly differing standards. Litigants will no longer have a clear understanding what appeal rights a guilty pleading defendant is entitled to and what duties his attorney has to ensure this process. Thus, defendants in Georgia are left in the dark about whether they have the right to direct appeal, until this Court addresses these issues.

CONCLUSION

For the reasons set forth in this Petition, Robin Jones respectfully requests that this Honorable Court grant rehearing and his Petition for a writ of Certiorari.