

24-6859 ORIGINAL
No. _____

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES

CECIL RAY,
Petitioner,

v.

STATE OF GEORGIA,
Commissioner for the Dept.
of Corrections,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

PETITION FOR CERTIORARI

Cecil Ray, Pro se
Riverbend C.F.
196 Laying Farm Rd.
Milledgeville, Georgia 31061

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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 the lack of a record of the case by the State court to assess whether the claims are arguable before denying or dismissing a State Habeus Corpus and Certificate of Probable Cause relief of a U.S. Fourteenth Amendment claim and a 28 U.S.C. § 753 (b) claim that the petitioner was completely denied access to court transcripts on all appeals for the State?

List of Parties

Supreme Court of Georgia
330 Capitol Ave.
Suite 1100
Atlanta, Georgia 30334

State of Georgia, Commissioner of Dept. of Corrections.
Tyronne Oliver
7 Martin Luther King, Jr., Dr., Suite 543
Atlanta, Georgia 30334

Robbie Markwalter, Trial Counsel
Deceased 2017

Bibb County Superior Court
601 Mulberry St.
Macon, Georgia 31201

Baldwin County Superior Court, Habeas Corpus Court
121 N. Wilkinson St.
Milledgeville, Georgia 31061

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OPINIONS BELOW

Baldwin Co. Superior Court Habeas Corpus Ruling ... Exhibit "A"

Supreme Court of Georgia Ruling on Habeas Corpus... Exhibit "B"

Case Citations And Statutes

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Federal Statutes

28 U.S.C. § 1251 (b) (2)

28 U.S.C. § 1254 (1)

28 U.S.C. § 1257, 753 (b)

United States Supreme Court Rules

Rule 10 (b)

Rule 10 (c)

Georgia Criminal Code

O.C.G.A. § 9-14-42

Basis For Jurisdiction

The petitioner alleges that this Court has jurisdiction to hear this case, pursuant to 28 U.S.C. § 1251 (b) (2), 1254 (1) and 1257, 753 (b)

The first address of jurisdiction will be the direct appeal from an order of the Supreme Court of Georgia, pursuant to 28 U.S.C. § 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. § 17-10-2 that does not guarantee a defendant a copy of his record of the case and this Court's rulings, pursuant to 28 U.S.C. § 1251 (b) (2) and 753 (b).

The third basis for jurisdiction is 28 U.S.C. § 1257, yet is untimely due to trial counsel and the State Court's failure to provide petitioner with the record of his criminal case for appeal purposes. The petitioner alleges that appeal directly to the U.S. Supreme Court would have been available, pursuant to U.S. S.Ct. 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 effective counsel, and enforced upon the States pursuant to the U.S. Fourteenth Amendment due process of law and equal protection of law. Trial counsel was ineffective when no direct appeal was filed in his criminal case, nor was he afforded a copy of his case record so that he may appeal in a "pro se" manner. The respondent state violated due process of law by refusing to provide a copy of his record.

The petitioner's U.S. Fourteenth Amendment right to due process of law was violated by the Georgia habeas corpus court and the Supreme Court of Georgia when this sole claim was not addressed. Neither court assessed the procedural claim, if addressed in the habeas corpus, 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.

Statement of The Case

In 1994, petitioner was arrested for the offense of possession of cocaine with the intent to distribute. A guilty plea was entered through the advice of counsel. Counsel informed petitioner that after serving a bit of time on the sentence that counsel would appeal the case back to the Superior Court of Bibb County, Macon, Georgia, the trial court.

When petitioner tried to obtain a copy of the record of this case for direct appeal purposes, he was told by the trial court that the record could not be found. (Appendix "A", 8/11/2016). Petitioner has at no time received a copy of the record. Though a diligent effort was made, the trial court finally told petitioner to stop requesting copies of the record as they do not exist. (See Appendix "B" dated 4/17/2017).

The lost record has prevented petitioner from utilizing his right to a direct appeal.

Argument In Depth

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

"The bar for Coram Nobis relief is high," and the writ may only issue when (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." *Alikhani v. United States*, 200 F.3d. 732, 734 (11th Cir. 2000).

The petitioner has not located any court that has identified a Person issue, (*Pewson v. Ohio*, 488 U.S. 75) and did not remand for appeal until this present case. A Person issue is unique and requires no Strickland analysis on the grounds of counsel abandonment of the case.

Ray 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, nor was a requested copy of Discovery or plea hearing transcripts given to Ray.

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's response to request for the record, the court held that no record exists.

Ray has shown by clear and convincing evidence that there were issues to be appealed in 1995, yet no appeal was filed and no record given to Ray by counsel or the trial court.

There was no ruling on the merits of the State habeus corpus petition. (State Habeus Corpus, Cecil Ray v. Angela Phams, Case No. 2023-SU-CV-50928). All issues within this federal extraordinary writ being appealed, were presented to the State by demand for records 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.

No opinion of the Supreme Court of Georgia was given on appeal from the dismissal of the habeus corpus petition. Ray's right to due process of law, and equal protection of laws, has been violated pursuant to the U.S. Fourteenth Amendment. In the state petition, Ray addressed the unconstitutionality of being denied the record of his case that prevented an appeal.

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.

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.); *United States v. Antoine*, 906 F.2d 1379 (CA9), (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 *Hannon v. Dorton*, 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 also *Jackson v. Herring*, 42 F.3d. 1350, 1366 (11th Cir.) (1995).

"Careful consideration of this claim; including opportunity to present relevant facts; (1) the petitioner's claims were not vague or conclusory, but contained factual allegations, and (2) the plea hearing omitted any language of rights waived or that petitioner was not entitled to the record of this case.

Antoine v. Byers & Anderson, Inc., 508 U.S. 429 (1993).

One of the undisputed claims of inadequate appellate review is that the trial court has failed to provide petitioner with a trial transcript or of Discovery. This erroneous act prevented Ray from utilizing his right to direct appeal that is afforded to other defendants. Ray filed a number of post-conviction motions without the benefit of having the record. See *Griffin v. Illinois*, 351 U.S. 12, 20, 76 S.Ct. 585, 591,

100 L.Ed.2d. 898, 55 A.L.R.2d. 1055 (1956). The courts in Georgia in this held that meaningful access doesn't require affirmative action by the state. The adversarial nature in which both sides present legal and factual issues before the habeas corpus judge did not occur. The state's experienced attorney's were unquestionably prepared to argue that the state did not have the record either, but that too much time had passed to produce any documents, contrary to O.C.G.A. § 9-14-42. See Gibson v. Jackson, 443 F.Supp. 239 (M.D. Ga. 1977).

The Supreme Court of Georgia has given relief under its Code for the same type of error that Ray presents at this time.

Conclusion And Relief Sought

The petitioner, Cecil Ray, humbly and respectfully requests that this Court review this case de novo and remand to the State of Georgia for the 1994 and 1995 appeal of right with him being afforded with the entire record, or any other relief that this Honorable Court deems just.

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

Date: Sept. 2, 2024

Respectfully signed,

Cecil Ray

Cecil Ray, Pro se
Riverbend C.F.

196 Laying Farm Rd.

Milledgeville, Georgia 31061

Certificate Of Compliance

I, Cecil Ray, 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.