

IN THE SUPERIOR COURT OF BALDWIN COUNTY
STATE OF GEORGIA

CECIL RAY,
GDC # 622867,

Petitioner,

v.

ANGELA PHAMS, Warden,
TYRONE OLIVER, Commissioner,

Respondents.

* CIVIL ACTION NO.
* 2023-SU-CV-50928
*

* HABEAS CORPUS
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ORDER DISMISSING PETITION AS UNTIMELY AND SUCCESSIVE

This case came before the Court for hearing on September 27, 2023,¹ on the Commissioner's motion to dismiss this petition as untimely under the four-year limitations provision and/or as successive.

Petitioner filed this, his second, habeas corpus petition to challenge his 2007 Houston County bench trial convictions for: (1) possessing cocaine with intent to distribute; (2) possessing a firearm during the commission of a crime; (3) giving a false name; (4) obstruction; (5) making a false statement or writing; (6) fleeing or attempting to elude; (7) driving without insurance; (8) operating a vehicle without a current registration decal; (9) improper use of a turn lane; and (10) failure to maintain lane. Petitioner's convictions and sentences were affirmed on direct

¹ Citations to the September 27, 2023, hearing transcript are "HT." followed by the page number.

appeal. *Ray v. State*, 292 Ga. App. 575, 665 S.E.2d 345 (2008). He previously challenged the validity of these convictions in this Court in *Ray v. Head*, No. 12CV45989 (Baldwin Super. Ct. Mar. 20, 2019), *CPC denied* No. S19H1057 (Ga. Nov. 18, 2019). Relief was denied.

UNTIMELY PETITION

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

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 *Stubbs v. Hall*, 308 Ga. 354, 359, 840 S.E.2d 407 (2020), the Supreme Court of Georgia construed the term “final” in O.C.G.A. § 9-14-42(c)(1) as follows:

Accordingly, we hold as a general rule 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 being taken, i.e., “the expiration of the time for seeking such review.”

For convictions appealed to the Court of Appeals of Georgia, “final” is calculated by using the 20-day period of Rule 38 of the Supreme Court of Georgia in which a petition for certiorari must be filed in the Georgia Supreme Court. *Stubbs*, 308 Ga. at 362-63. When this time period for filing a certiorari petition expires without the appellant having filed one, that marks the date on the time for seeking further appellate review expires. *Id.* at 360.

Petitioner’s convictions and sentences were affirmed on June 12, 2008. *Ray v. State*, 292 Ga. App. 575. Pursuant to Georgia Supreme Court Rule 38 and Court of Appeals Rule 38, Petitioner had twenty days after the date of the Court of Appeals’ entry of judgement in which to file a notice of intent to seek certiorari review in the Georgia Supreme Court. Since Petitioner did not complete that step, Petitioner’s convictions were “final” within the meaning of O.C.G.A. § 9-14-42(c)(1) twenty days later, on July 2, 2008.

Thus, Petitioner had four years — or until July 2, 2012 — in which to file a timely petition. The petition shows it was filed by the Clerk of the Superior Court of Baldwin County on June 26, 2023, over ten years too late. Thus, the petition is untimely and is dismissed as such.

SUCCESSIVE PETITION

Additionally, this is Petitioner's second habeas corpus petition challenging the same Houston County convictions. (Resp. Exs. 1). He raises two grounds in his current petition: (1) he was denied his Fourteenth Amendment rights and prevented from utilizing his direct appeal rights due to the alleged loss of records from his 1994 and 1995 Bibb County convictions; and (2) that his Thirteenth Amendment right against involuntary servitude has been denied due to the trial court's failure to send records of said transcripts to Petitioner.

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 successive provision is to discontinue the practice of filing multiple petitions challenging a single judgment of conviction. *Hunter v. 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).

Petitioner raised claims related to his prior convictions in his first habeas petition, claiming that appellate counsel was ineffective for failing to raise claims of ineffective assistance of trial counsel for failing to object to the use of his prior convictions to enhance his sentence. Thus, these claims related to his prior convictions are not new and could reasonably have been raised in his prior petition. *See Bruce v. Smith*, 274 Ga. 432, 553 S.E.2d 808 (2001); *Smith v. Zant*, 250 Ga. 645, 647, 301 S.E.2d 32 (1983). Accordingly, this petition is dismissed is successive.

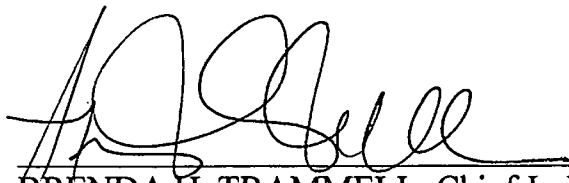
CONCLUSION

Wherefore, this petition is dismissed as untimely and successive.

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 of the Superior Court is hereby directed to mail a copy of this order to Petitioner, Respondents, and the office of the Georgia Attorney General.

SO ORDERED this 4 day of December, 2023.


BREND A H. TRAMMELL, Chief Judge
Ocmulgee Judicial Circuit

Prepared by:
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Assistant Attorney General
Georgia Department of Law
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Atlanta, Georgia 30334-1300
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CERTIFICATE OF SERVICE

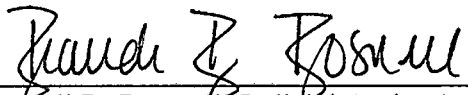
This is to certify that I, Brandi B. Boswell, Judicial Assistant to Judge Brenda H. Trammell that I have this day served all parties with the attached **Order** by hand-delivery, electronic transmission, facsimile and/or by depositing same in the United States Mail, with sufficient postage affixed thereto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

Cecil Ray
GDC# 622867
Riverbend Correctional Facility
196 Laying Farm Road
Milledgeville, GA 31061

M. Catherine Norman (via electronic transmission)
mnorman@law.ga.gov

Original Filed with Clerk's Office

This 6 day of December, 2023



Brandi B. Boswell, Judicial Assistant
Brenda H. Trammell, Chief Judge
Superior Courts - Ocmulgee Judicial Circuit

100 South Jefferson Avenue
Suite 335
Eatonton, Georgia 31024
706.485.7530



SUPREME COURT OF GEORGIA
Case No. S24H0562

July 16, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CECIL RAY v. ANGELA PHAMS, 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. 2023SUCV50928

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.

, Clerk

Appx A

COURT REPORTERS
Bibb County Courthouse - Suite 310
601 Mulberry Street
Macon, GA 31201

August 11, 2016

Mr. Cecil Ray #622867
Riverbend Correctional Facility
196 Laying Farm Road
Milledgeville, GA 31061

Dear Mr. Ray:

We have made a diligent search to locate the recordings of your pleas in Case Numbers 90-CR-34672, 94-CR-41610 and 95-CR-43454. Unfortunately we have been unable to locate them. We did locate a copy of the transcript that was filed in Case Numbers 92-CR-37633 and 92-CR-38086. These cases were handled together under Indictment 92-CR-37633. We also discovered that a copy of this transcript had been sent to you several years ago; however, we are enclosing another copy of this transcript for you.

Sincerely,

Court Reporters, Macon Judicial Circuit

WILLIAMS V STATE
251 GA 83

CURRENT CASE #
2004-C-32051-N



CHAMBERS OF THE SUPERIOR COURTS
MACON JUDICIAL CIRCUIT
601 MULBERRY STREET
SUITE 310
MACON, GEORGIA 31201

HOWARD Z. SIMMS
JUDGE

(478) 621-6535
FAX (478) 621-6581

April 17, 2017

Cecil Ray #622867 H-A
Riverbend Correctional Facility
196 Laying Farm Road
Milledgeville, GA 31061

Dear Mr. Ray:

I am in receipt of your letter dated April 4, 2017 regarding transcripts in case numbers 41610 and 43454. As the court reporters have repeatedly expressed, they have sent you everything they have. There are no available transcripts for those case numbers. Please discontinue asking the court reporters to produce documents that they do not possess. I am instructing them to disregard any communication from you regarding these particular transcripts as they have answered the question on multiple occasions. I see no reason for them to continue to repeat themselves.

Sincerely,

Howard Z. Simms
Judge, Superior Courts
Macon Judicial Circuit