

No. \_\_\_\_\_

October term, 2024

IN THE  
**SUPREME COURT OF THE UNITED STATES**

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PHILLIP WHITE,

Petitioner,

-v-

AIMEE SMITH, WARDEN,  
Dooly State Prison

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF GEORGIA**

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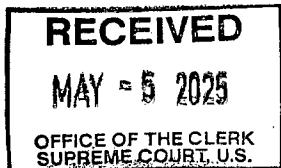
**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

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Phillip Aber White, Pro Se  
GDC #1002235618  
Dooly State Prison  
1412 Plunkett Road  
P.O. Box 750  
Unadilla, Ga 31091

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## **APPENDIX A**

### **Appendix A: Georgia Supreme Court Orders**

#### **Contents:**

1. The Georgia Supreme Court's March 4, 2025, order summarily denying the Petitioner's application for a certificate of probable cause to appeal the denial of habeas corpus relief in *White v. Smith, Warden*, Case No. S24H1242.
2. The March 31, 2025, order denying the Petitioner's motion for reconsideration and motion to stay remittitur.

#### **Significance:**

These orders demonstrate the Georgia Supreme Court's failure to address the Petitioner's exhausted federal constitutional claims and actual innocence arguments. The silence on structural reversible errors appearing on the face of the record underscores the systemic judicial failures that perpetuated the Petitioner's wrongful incarceration.



SUPREME COURT OF  
GEORGIA

Case No. S24H1242

March 04, 2025

The Honorable Supreme Court met pursuant to  
adjournment.

The following order was passed:

PHILLIP WHITE v. AIMEE SMITH, WARDEN.

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. 23DV0046

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 N. Barnes*, Clerk



SUPREME COURT OF  
GEORGIA Case No. S24H1242

March 31, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

PHILLIP WHITE v. AIMEE SMITH, WARDEN.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

*All the Justices concur.*

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.

A handwritten signature in black ink, appearing to read "Thrice A. Banne".

, Clerk



SUPREME COURT OF GEORGIA  
Case No. S24H1242

March 31, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**PHILLIP WHITE v. AIMEE SMITH, WARDEN.**

Upon consideration of the Motion to Stay Remittitur filed in this case, it is ordered that it be hereby denied.

*All the Justices concur.*

**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 S. Brame*, Clerk

## **APPENDIX B**

### Appendix B: Dooly County Superior Court (Habeas Corpus Court) Final Judgment

#### Contents:

1. Evidentiary Hearing Transcripts
2. Amended Petition
3. Motion to Set Aside Void Judgment
4. March 5, 2025 Order Denying Equitable Habeas Corpus Relief

Final judgment entered on March 5, 2024, in White v. Smith, Warden, Case No. 23DV-0046, denying equitable habeas corpus relief.

#### Significance:

This judgment reflects the habeas court's deficient fact-finding inquiry, failure to adjudicate exhausted federal constitutional claims on their merits, and arbitrary enforcement of procedural bar rules. It highlights the need for Supreme Court review under the Suspension Clause to correct fundamental miscarriages of justice.

EFILED IN OFFICE  
CLERK OF SUPERIOR COURT  
DOOLY COUNTY, GEORGIA  
**23DV-0046**

APR 30, 2024 02:53 PM

*Leon Chaffee*  
DOOLY COUNTY CLERK

**IN THE SUPERIOR COURT OF DOOLY COUNTY  
STATE OF GEORGIA**

PHILLIP WHITE,  
GDC #1002235618,

Petitioner.

\* CIVIL ACTION NO. 23DV-0046

v.

AIMEE SMITH, Warden,  
DOOLY STATE PRISON,

Respondent.

\* HABEAS CORPUS

**ORDER DISMISSING AMENDMENT TO WRIT OF HABEAS CORPUS**

**AND MOTION TO SET ASIDE**

Petitioner Phillip White ("Petitioner"), has filed "Amendment to Writ of Habeas Corpus" and "Motion to Set Aside" in the above case. A Final Order was entered in this case on March 5, 2024, and the Petitioner filed his Notice of Appeal on March 15, 2024. The appeal was received by the Georgia Supreme Court on March 27, 2024. The filing of the Notice of Appeal deprives this court of further jurisdiction over the case, and therefore these filings are dismissed. Further relief in this case must be sought in the Supreme Court.

SO ORDERED, this 26<sup>th</sup> day of April, 2024.

*Chris Hughes*  
T. CHRISTOPHER HUGHES  
JUDGE OF SUPERIOR COURTS  
CORDELE JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

I have this day served the following with a copy of the foregoing Order Dismissing Amendment to Writ of Habeas Corpus and Motion to Set Aside by transmitting same by electronic service or by placing same in the U.S. Mail, with sufficient postage affixed thereon, as follows:

Phillip White  
GDC # 1002235618  
Dooly State Prison  
P.O. Box 750  
Unadilla, GA 31091

Clint Malcolm  
SENIOR ASSISTANT ATTORNEY GENERAL  
GEORGIA DEPARTMENT OF LAW  
[cmalcolm@law.ga.gov](mailto:cmalcolm@law.ga.gov)

Gregory Sampson, Warden  
DOOLY STATE PRISON  
P.O. Box 750  
Unadilla, GA 31091

This 30<sup>th</sup> day of April 2024.

  
BRENDA LOUTHAN, ASSISTANT TO  
T. CHRISTOPHER HUGHES  
JUDGE, SUPERIOR COURTS  
CORDELE JUDICIAL CIRCUIT

FILED IN CLERK'S OFFICE  
DOOLY COUNTY, GEORGIA  
23DV-0046

MAR 05, 2024 03:25 PM

John White  
CLERK

IN THE SUPERIOR COURT OF DOOLY COUNTY  
STATE OF GEORGIA

PHILLIP WHITE,  
GDC #1002235618,

Petitioner,

v.

AIMEE SMITH, Warden,  
DOOLY STATE PRISON,

Respondent

CIVIL ACTION NO. 23DV-0046

HABEAS CORPUS

**FINAL ORDER DENYING HABEAS CORPUS RELIEF**

Petitioner Phillip White ("Petitioner"), currently an inmate at Dooly State Prison, filed an Application for Writ of *Habeas Corpus* (the "Petition") in the Dooly County Superior Court on May 3, 2023. Respondent Aimee Smith ("Respondent") filed a Return and Answer on July 24, 2023. The first evidentiary hearing was held at the Dooly County Justice Center on September 19, 2023, and the second evidentiary hearing was held at the Dooly County Justice Center on November 28, 2023. Petitioner appeared at each hearing *pro se*. Respondent was represented at the first evidentiary hearing by Ms. Elizabeth Brock, Assistant Attorney General; and at the second evidentiary hearing by Ms. Meghan Hill, Assistant Attorney General. Based upon the arguments made and evidence established at the evidentiary hearing, the Court hereby DENIES the Petition.

**ALLEGED GROUNDS FOR RELIEF**

Petitioner alleges in Ground One of the Petition that "[t]he evidence in light of the verdict as materially established by the Georgia Court of Appeals was factually insufficient to prove guilt beyond a reasonable doubt." See Application for Writ of Habeas Corpus p. 9. In support of this allegation, Petitioner asserts that, in its ruling on Petitioner's direct appeal, the Court "established the undisputed material fact that the evidence... only showed 'an unsuccessful attempted act of

sodomy,' which is a separate and distinct offense" that Petitioner was not charged with nor found guilty of. *Id.* According to Petitioner, this "misapplication of law" constituted a violation "of his constitutional right to procedurally [sic] and substantive due process through the color of law." *Id.*

Petitioner alleges in Ground Two of the Petition that "[t]he trial court manifestly erred in denying a motion for direct[ed] verdict of acquittal when the evidence adduced at trial... establish[ed] the undisputed material fact that the indictment's only specified *actus reus* and descriptive essential element... did not factually occurred [sic] as materially set forth in count 2." *Id.* at 12. More specifically, Petitioner asserts that the trial evidence was "legally insufficient" to satisfy an essential element of count 2, i.e., that Petitioner committed "'an act of sodomy by putting his penis in the anus'" of another. *Id.* Petitioner again references the ruling by the Court of Appeals that the evidence at trial "only showed an unsuccessful attempted act of sodomy." *Id.*

Petitioner alleges in Ground Three of the Petition that "[t]here exist[s] a material factual variance between the allegation in the indictment and proof offer[ed] at trial regarding count 2's only specified *actus reus* and descriptive essential element." *Id.* at 13. In support of this allegation, Petitioner asserts that "the State misrepresented a material fact that erroneously portrayed that Petitioner actually 'performed... an act of sodomy by putting his penis in the anus' of another when 'the alleged victim['s] trial testimony specifically indicated the indictments only specified *actus reus* and descriptive essential element did not occurred [sic] as materially set forth in the indictment.'" *Id.* Petitioner contends that, by rejecting his motion for directed verdict of acquittal, "[t]he trial court constructively amended the indictment that charged Petitioner with only one specified material manner of allegedly committing... an act of sodomy" such that his constitutional right "to be tried solely on the material element set forth in the indictment" was violated. *Id.* at 15.

Petitioner alleges in Ground Four of the Petition that "the trial court's jury charge deprived him of federal constitutional due process because it was constitutionally incomplete as to aggravated sodomy" in that it "did not fully define the only act of sodomy by putting his penis in the anus that was descriptively set forth in the indictment as the... only specified *actus reus*/descriptive essential element." *Id.* at 16. In support of this allegation, Petitioner asserts that count 2 of the indictment was titled "aggravated sodomy, O.C.G.A. 16-6-2," but "the evidence adduced at trial in substance only showed that Petitioner intended to commit that crime and took a 'substantial step' towards doing so." *Id.* at 17. Petitioner contends that the trial court therefore needed to "tailor [its] jury charges" to this evidence. *Id.* at 16.

Petitioner alleges in Ground Five of the Petition that "[t]he trial court deprived Petitioner of his Federal Due Process of Law by erroneously sentencing him to a[n] unconstitutional void sentence not statutorily permitted by law." *Id.* at 19. The sentence that Petitioner contends is unconstitutional is "life... with the first 35 years to serve in confinement and the remainder of the balance probated." *Id.* In support of his allegation that this sentence was unlawful, Petitioner asserts that "[t]he material fact... necessary to justify the maximum sentence [for aggravated sodomy] was not factually or legally proven beyond a reasonable doubt." *Id.*

Petitioner alleges in Ground Six of the Petition that "[t]he trial court deprived Petitioner of his Federal Due Process of Law by erroneously sentencing him to a void count... of the indictment which failed to statutorily charge every essential element of the offense of aggravated assault." *Id.* at 22. In support of this allegation, Petitioner asserts that "[t]he aggravated assault count of the indictment failed to materially alleged [sic] whether Petitioner actually performed an attempt to commit a violent injury to the person of another" per O.C.G.A. § 16-5-20(a)(1), or that he "committed an act which places another in reasonable apprehension of immediately receiving a

violent injury" per O.C.G.A. § 16-5-20(a)(2). *Id.* Petitioner contends that this deficiency rendered his conviction and subsequent sentence for aggravated assault unconstitutional. *Id.* at 23.

Petitioner alleges in Ground Seven of the Petition that his "unlawful incarceration violates his constitutional right to substantive and procedural due process guaranteed by the United States Constitution." *Id.* at 25. More specifically, Petitioner claims that "[t]he judgement rendered by the trial court is void because the trial court acted in a manner inconsistent with due process," and "[t]he judgement rendered by the Georgia Court of Appeals is void [regarding the] sentence unconstitutionally entered on count 2 of the indictment." *Id.* In support of these allegations, Petitioner asserts that "[i]t was constitutional error for the trial court to denied [sic] Petitioner['s] motion for direct[ed] verdict of acquittal as to count 2;" that he "was denied his constitutional right to a fair trial and federal due process when he was unlawfully found guilty on count 2;" that "[t]he verdict was contrary to evidence and the principles of justice and equity;" that "[c]ount 5 (aggravated assault) of the indictment is... defective upon its face;" that the "[t]rial court acted in a manner that deprived Petitioner of due process of law by constructively amend[ing] the indictment;" that the "[t]rial court abused [its] discretion when it failed to hold an adequate competency hearing during the fundamentally unfair trial;" that "[t]he trial court abused its discretion by entering judgement on Count 5 (aggravated assault) because the indictment failed to properly allege the offense;" that the "[t]rial court abused its discretion when it elected to charge the jury with an improper coercive 'Allen charge' following several notes from the jury in which they specifically indicated they could not decide on any of the five counts charged in the indictment;" and that "[t]he trial court acted in a manner inconsistent with due process by erroneously sentencing [him] to life... with 35 years to serve and the remainder balance on probation." *Id.* at 25-26. Petitioner also asserts that the Court of Appeals "lacked jurisdiction of

the subject matter due to [the] void sentence unconstitutionally entered on count 2 of the indictment" and issued a ruling that "was contrary to clearly established federal law as determined by the Supreme Court of the United States." *Id.* at 27.

Petitioner alleges in Ground Eight of the Petition that he suffered "multiple instances of prosecutorial misconduct." *Id.* at 28. In support of this allegation, Petitioner asserts that the district attorney "fraudulently charg[ed] a crime that did not occur;" engaged in "misrepresentation of material facts not found in the evidence;" "fail[ed] to state every essential element and material fact necessary... [to] the aggravated assault count of the indictment;" "knowingly present[ed] false evidence to the court and grand jury;" "fail[ed] to correct false witness testimony on a material issue;" "us[ed] improper arguments;" "failed to disclose exculpatory evidence material to Petitioner's guilt and punishment;" and "misstat[ed] and misrepresent[ed] evidence." *Id.*

#### FINDINGS OF FACT

On June 17, 2016, Petitioner was indicted by a Douglas County grand jury for two counts of Aggravated Sodomy, two counts of Aggravated Sexual Battery, and one count of Aggravated Assault with Intent to Rape. See Second Hearing on Petition for Writ of *Habeas Corpus* p. 993. Following a jury trial, Petitioner was found guilty of one count of Aggravated Sodomy as well as Aggravated Assault with the Intent to Rape, with the jury returning a verdict of not guilty on the remaining counts. *Id.* The Douglas County Superior Court denied Petitioner's Motion for New Trial on January 25, 2021 and imposed a sentence of thirty-five years in prison to be followed by life on probation. *Id.* at 993, 1036.

Petitioner, through counsel, thereafter appealed to the Georgia Court of Appeals and raised five enumerations of error. *Id.* at 1862, 1871-1873. Petitioner argued: (1) that "he was incompetent to stand trial;" (2) that he "received ineffective assistance of counsel" due to trial counsel's failure

to investigate Petitioner's "mental health history" and "competency to stand for trial" as well as trial counsel's failure "to present evidence of an evaluation conducted on [Petitioner] by Dr. James Stark;" (3) that "[t]he trial court erred in admitting other act evidence under O.C.G.A. § 24-4-413;" (4) that "[t]he Court erred in imposing the sanction of excluding Mr. White's witness for violation of O.C.G.A. §§ 17-16-4 and 17-16-18;" and (5) that "[t]here was insufficient evidence to support [Petitioner's] convictions beyond a reasonable doubt." *Id.* at 1871-1873. The Court of Appeals issued an unpublished opinion on March 10, 2022 rejecting each of these enumerations of error and upholding Petitioner's conviction. *Id.* at 1931-1950.

#### CONCLUSIONS OF LAW

##### Grounds Procedurally Defaulted (Grounds One through Eight)

Under O.C.G.A. § 9-14-42, "a failure to make timely objection to any alleged error or deficiency or to pursue the same on appeal ordinarily will preclude review by writ of *habeas corpus*." Black v. Hardin, 255 Ga. 239 (1985). The only way that this procedural bar can be overcome is by "a showing of adequate cause for failure to object or to pursue on appeal and a showing of actual prejudice to the accused." *Id.* Otherwise, the newly raised grounds which could just have easily been raised in the petitioner's direct appeal are defaulted and not considered on their merits. *Id.* It is important to note that the procedural bar of § 9-14-42 may sometimes be overcome when a ground was not raised on appeal due to "constitutionally ineffective assistance of counsel." Todd v. Turpin, 268 Ga. 820, 824 (1997). However, it must also be remembered that "the law recognizes a 'strong presumption' that counsel performed reasonably," and the petitioner must satisfy "the burden of overcoming this presumption" by showing "that no reasonable lawyer would have done what his lawyers did, or would have failed to do what his lawyers did not." Humphrey v. Walker, 294 Ga. 855, 859 (2014).

Petitioner appealed his convictions and sentence to the Georgia Court of Appeals, but the end result was that his enumerations of error were rejected, and his convictions and sentence were upheld. Second Hearing p. 1871-1873, 1931-1950. A number of arguments contained in Grounds One through Eight of the Petition—specifically those arguments concerning the sufficiency of trial evidence, effectiveness of trial counsel, and Petitioner's competency to stand for trial—were decided adversely to Petitioner by the Court of Appeals. *Id.* at 1899-1914, 1924-1928. These arguments, insofar as they are raised in the Petition, are barred as *res judicata*. See *Bruce v. Smith*, 274 Ga. 432, 434 (2001), (holding that “[w]ithout a change in the facts or the law, a habeas court will not review an issue decided on direct appeal”). However, a close examination of the rejected enumerations of error and their accompanying arguments convinces this court that they differ substantially from the Grounds now raised by Petitioner in the instant case. Additionally, a careful reading of the Petition reveals that Petitioner seems to have no satisfactory explanation as to why the Grounds raised in the Petition were not raised before the Court of Appeals; at no point does Petitioner assert that appellate counsel rendered ineffective assistance, nor does he argue that these issues were raised at such a late stage because of newly discovered evidence or a significant change in controlling law.

The records from the evidentiary hearings on September 19, 2023 and November 28, 2023 similarly lack any factual assertions or legal arguments that would allow Petitioner to avoid the procedural effects of § 9-14-42. Petitioner examined five different witnesses at the hearing on September 19, 2023, but all of these witnesses were friends or relatives of Petitioner who were there to offer “testimony regarding a medical condition” which Petitioner believed was crucial to the success of his Petition. See First Hearing on Petition for Writ of *Habeas Corpus* p. 4, 11, 20, 50, 57, 60-61. As for the hearing on November 28, 2023, no new witnesses were called to testify,

and—though he rendered a large volume of affidavits, medical records, and other documents—Petitioner made no arguments about the effectiveness of appellate counsel and offered no helpful evidence or controlling legal authorities that would have been unavailable at the time of Petitioner's direct appeal. Second Hearing p. 2. In fact, the closest that Petitioner ever came to making any of these necessary showings was when he stated that he "was able to set the foundation of... newly discovered evidence that showed... [he] was, in fact, experiencing a manic episode, which made him incompetent to stand trial;" and that "[d]ue to the structural error by the deficient representation from my trial attorney and my appointed appeal attorney, there was a violation of the United States constitutional timely rights." *Id.* at 5-6. These bare assertions do not satisfy the burden placed upon Petitioner by the rulings in Black and Humphrey. Moreover, Petitioner's struggles with mental illness and his supposed incompetence were well-known and presented to the Court of Appeals, not "newly discovered" as Petitioner contends. Second Hearing p. 1875-1876, 1899-1906.

The only thing Petitioner consistently appears to argue that would save Grounds One through Eight from procedural default is his claim that the ruling issued by the Court of Appeals on March 10, 2022 was "void" due to that Court lacking subject matter jurisdiction over the sentence and convictions which were themselves "void" and "unconstitutional." Application for Writ p. 27; First Hearing p. 5; Second Hearing p. 5-6. This contention is erroneous on its face because, as Petitioner's Brief of Appellant notes:

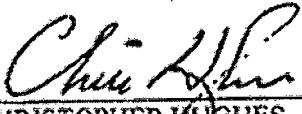
This Court rather than the Supreme Court of Georgia, has jurisdiction of this case on appeal for the reason that jurisdiction is not specifically conferred upon the Supreme Court by Article 6, Section 6 Paragraphs II and III of the Georgia Constitution of 1983, and jurisdiction is therefore in the Court of Appeals pursuant to Article 6, Section 6, Paragraph III of the Georgia Constitution of 1983.

Second Hearing p. 1870. Accordingly, this court rejects Petitioner's contention that the ruling by the Court of Appeals on March 10, 2022 is void for lack of subject matter jurisdiction and finds that Grounds One through Eight of the Petitioner are procedurally defaulted under § 9-14-42.

**CONCLUSION**

For the reasons stated above, this Petition for Habeas Corpus Relief is DENIED. If the Petitioner desires to appeal this Order, the Petitioner must file a written application for a certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within 30 days from the date of the filing of this Order and also file a notice of appeal with the Clerk of the Superior Court of Dooly County within the same 30-day period.

SO ORDERED, this 2nd day of March, 2024.

  
\_\_\_\_\_  
T. CHRISTOPHER HUGHES  
JUDGE OF SUPERIOR COURTS  
CORDELE JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

I have this day served the following with a copy of the foregoing Final Order Denying Habeas Corpus Relief by transmitting same by electronic service or by placing same in the U.S. Mail, with sufficient postage affixed thereon, as follows:

Phillip White  
GDC # 1002235618  
Dooly State Prison  
P.O. Box 750  
Unadilla, GA 31091

Clini Malcolm  
SENIOR ASSISTANT ATTORNEY GENERAL  
GEORGIA DEPARTMENT OF LAW  
[cmalcolm@law.ga.gov](mailto:cmalcolm@law.ga.gov)

Gregory Sampson, Warden  
DOOLY STATE PRISON  
P.O. Box 750  
Unadilla, GA 31091

This 5 day of March 2024.

*Brenda Louthan*  
BRENDA LOUTHAN, ASSISTANT TO  
J. CHRISTOPHER HUGHES  
JUDGE, SUPERIOR COURTS  
CORDELE JUDICIAL CIRCUIT

**Additional material  
from this filing is  
available in the  
Clerk's Office.**