

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

ERIC BERNARD SCOTT — PETITIONER
(Your Name)

vs.

STATE OF GEORGIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF GEORGIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC BERNARD SCOTT
(Your Name)

WILCOX STATE PRISON
(Address) P.O. BOX 397

ABBEVILLE, GEORGIA 31001
(City, State, Zip Code)

(229) 467-3122
(Phone Number)

1) WHETHER THE STATE SUPREME COURT CORRECTLY DETERMINED THAT PETITIONER'S APPLICATION FOR DISCRETIONARY APPEAL WAS UNTIMELY.

2) WHETHER THE STATE COURT CLERK'S ACTION IN RETURNING THE APPEAL UNFILED CAUSED THE UNTIMELINESS OF THE APPEAL.

3) WHETHER THE STATE SUPREME COURT ERRED BY DISMISSING THE APPEAL UNDER D.C.G.A. § 5-6-38(d) RATHER THAN D.C.G.A. § 5-6-35(d), WHICH IS THE DISCRETIONARY APPEAL PROCEDURE.

4) WHETHER THE STATE SUPREME COURT ABUSED ITS DISCRETION WHEN IT DENIED THE FILING OF PETITIONER'S SECOND MOTION FOR RECONSIDERATION.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A	DECISION OF SUPREME COURT OF GEORGIA
APPENDIX B	DECISION OF SUPERIOR COURT OF CHATHAM COUNTY (GEORGIA)
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- 1.) SAPP V. GEM LINE, 267 GA. 438, 479 S.E.2d 712 (1997)
- 2.) ALEXANDER V. GIBSON, 300 GA. 394; 794 SE2d 597 (2016);
FORSYTH V. HALE, 166 GA. APP. 340; 342 (304 S.E.2d 81) (1983)
- 3.) DAVIS V. STATE, 330 GA. APP. 711, 769 S.E.2d 133 (2015)
- 4.) EVANS V. BELTH 193 GA. APP. 757; 388 S.E.2d 914 (1989)

STATUTES AND RULES

- 1.) O.C.G.A. § 5-6-35(d); SUPREME COURT OF GEORGIA
RULE 13(2).
- 2.) O.C.G.A. § 9-10-133 OR GA. CODE ANN. 81-1205; GEORGIA
SUPREME COURT RULE 8.
- 3.) ~~O.C.G.A. § 5-6-34(A)(1)~~ AND O.C.G.A. §
5-6-35(d); GEORGIA SUPREME COURT RULE IV
DISCRETIONARY APPEALS.
- 4.) O.C.G.A. § 15-2-8(1); GEORGIA SUPREME COURT RULE 27.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☒ reported at O.C.G.A. § 5-6-38(d); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Superior Court court appears at Appendix B to the petition and is

- ☒ reported at O.C.G.A. § 17-9-61(b); MYERS v. STATE (2011); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was SEPT. 13, 2017
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) 1983 GA. CONST., ART. VI, SEC. V, PARA. III,
AND O.C.G.A. § 5-6-35 (d).
- 2.) DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION.
- 3.) DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION.
- 4.) GA. CONST. ART. VI, § 1, PARA IV (1983); GA CODE ANN. §
15-2-8 (7).

STATEMENT OF THE CASE

ON OCTOBER 4, 1991, PETITIONER WAS CONVICTED BY A CHATHAM COUNTY JURY FOR THE OFFENSE OF MALICE MURDER, POSSESSION OF A FIREARM BY A CONVICTED FELON AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY. PETITIONER'S SOLE DEFENSE AT TRIAL WAS SELF DEFENSE.

HOWEVER, AFTER HIS APPEAL WAS SUCCESSFULLY DENIED BY GEORGIA SUPREME COURT, SEE SCOTT V. STATE, 263 GA. 300 (432 S.E.2d 107) (1993), PETITIONER FILED A PRO SE APPLICATION FOR A MOTION IN ARREST OF JUDGEMENT ON JULY 27, 2016, CHALLENGING THE LEGALITY OF THE INDICTMENT AND ALLEGES ERROR IN THE JURY INSTRUCTIONS. ON MARCH 9, 2017, THE TRIAL COURT DENIED THE MOTION AS UNTIMELY AND PETITIONER'S REQUEST FOR APPOINTMENT OF COUNSEL.

ON MARCH 24, 2017 PETITIONER FILED A MOTION FOR EXTENSION OF TIME WHICH TO APPEAL FROM THE TRIAL COURT'S ORDER DENYING A MOTION IN ARREST OF JUDGEMENT. ON APRIL 5, 2017, GEORGIA SUPREME COURT GRANTED THE EXTENSION FOR FILING UNTIL MAY 9, 2017.

STATEMENT OF THE CASE

(Court's)

On May 7, 2017, Petitioner delivered his appeal and notice of appeal to prison authorities for forwarding to the clerks of the state supreme court and the superior court pursuant to Georgia Supreme Court Rule 13.2. On June 22, 2017, the state supreme court dismissed the appeal as untimely under O.G.A. § 5-6-38(d). On June 27, 2017 Petitioner filed a timely motion for reconsideration which was denied July 12, 2017. On August 12, 2017 Petitioner filed a second or subsequent motion for reconsideration which was denied for filing on September 1, 2017. Petitioner now seek relief from this Court by filing a petition for writ of certiorari.

(44)

REASONS FOR GRANTING THE PETITION

THE REASON THIS COURT SHOULD GRANT CERTIORARI BECAUSE GEORGIA SUPREME COURT HAS ENTERED A DECISION IN CONFLICT WITH A DECISION OF ANOTHER APPELLATE COURT ON THE SAME IMPORTANT MATTER.

IN CONTRAST, GEORGIA SUPREME HAS ENTERED A DECISION IN CONFLICT WITH BRINSON V. GEORGIA RAILROAD BANK AND TRUST COMPANY, 45 GA. APP. 459, 165 S.E. 321; (1932).

IN BRINSON, GEORGIA COURT OF APPEALS HELD THAT THE ACTUAL DATE OF FILING IS THE DATE UPON WHICH THE PAPER IS HANDED TO THE CLERK, IT WILL BE DEEMED FILED EVEN THOUGH THAT OFFICER FAILS TO MAKE THAT PROPER ENTRY OF FILING THEREON.

IN THE INSTANT CASE, PETITIONER DELIVERED HIS APPEAL TO PRISON AUTHORITIES FOR MAILING TO THE STATE SUPREME COURT CLERK ON MAY 7, 2017, TWO DAYS BEFORE THE MAY 9 DEADLINE. HOWEVER, THE APPEAL WAS DEEMED FILED THE DATE HE HANDED IT TO PRISON AUTHORITIES FOR MAILING. GEORGIA SUPREME COURT RULE 13.2. SO, WHERE PETITIONER'S APPEAL WAS DELIVERED TO THE CLERK FOR FILING, IT WAS DEEMED FILED EVEN THOUGH THE CLERK FAILED TO MAKE THAT PROPER ENTRY OF FILING THEREON.

REASONS FOR GRANTING THE PETITION (CONT'D)

BECAUSE OF THIS, PETITIONER APPEAL WAS TIMELY FILED AND THE CLERK'S ACTION IN RETURNING THE APPEAL UNFILED IS MINISTERIAL IN NATURE, AND IT WAS BEYOND THE CLERK'S DUTY OR POWER TO BE CONCERNED WITH THE LEGAL VIABILITY OF THE FILING OF THE APPEAL.

IT IS OF IMPORTANCE FOR THIS COURT TO GRANT CERTIORARI BECAUSE OF OTHERS WHO ARE SIMILARLY SITUATED; AND TO PROMOTE JUSTICE RATHER THAN AN INJUSTICE.

MAILING ADDRESS:
ERIC BERNARD SCOTT
GDC #419533
WILCOX STATE PRISON
P.O. BOX 397
ABBEVILLE, GA. 31001

RESPECTFULLY SUBMITTED,
ERIC BERNARD SCOTT
PRO SE LITIGANT
GDC #419533
WILCOX STATE PRISON

(SA)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ERIC B. SCOTT

Date: 12-9-17