

APPENDIX A

1a – Order Denying the Certificate of Probable Cause

2a-10a – Final Order Granting Habeas Corpus Relief in part
And Denying in Part

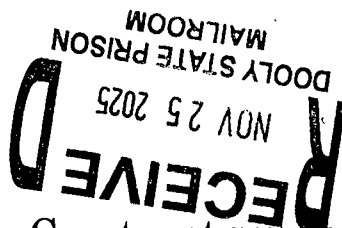
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SUPREME COURT OF GEORGIA

Case No. S25H0790

November 18, 2025



The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DAVID SCOTT BATCHELOR v. GREGORY SAMPSON, 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. 23DV0070

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

FEB 10, 2025 11:45 AM


 Rosa Childs, Clerk
 Dooly County, Georgia

IN THE SUPERIOR COURT OF DOOLY COUNTY
STATE OF GEORGIA

DAVID SCOTT BATCHELOR
 GDC #1002257182

*

*

CIVIL ACTION NO. 23DV-0070

Petitioner,

*

v.

*

GREGORY SAMPSON, Warden,
 DOOLY STATE PRISON,

*

HABEAS CORPUS

Respondent.

*

FINAL ORDER GRANTING HABEAS CORPUS RELIEF IN PART
AND DENYING IN PART

While incarcerated at Coffee Correctional Facility, Petitioner David Scott Batchelor ("Petitioner") filed an Application for Writ of Habeas Corpus (the "Petition") in the Coffee County Superior Court on June 30, 2022. William Danforth, acting as Intervenor Ward, filed a Return and Answer on July 28, 2022. This action was given the Civil Action Number SUV2022000343. Petitioner was then transferred to Dooly State Prison, under the jurisdiction of the Superior Court of Dooly County, Georgia. As such, the Petition was thereby transferred to the Superior Court of Dooly County by way of an Order Transferring Case filed on July 21, 2023. A new Civil Action Number, 23DV-0070, was assigned once the Petition was properly transferred to Dooly County.

An evidentiary hearing ("Hearing") was held at the Dooly County Justice Center on March 26, 2024. Petitioner was *pro se*. Respondent Gregory Sampson ("Respondent") was represented by Catherine Norman, Assistant Attorney General. Based upon the arguments made and evidence established at the Hearing, the court GRANTS Ground One. This case is hereby REMANDED to the Upson County Superior Court for the narrow purpose of determining which counts should merge and resentencing Petitioner on the remaining count or counts. The court DENIES Ground Two of the Petition.

ALLEGED GROUNDS FOR RELIEF

Petitioner alleges in Ground One of the Petition that “29 of the counts should have merged into one of the counts.” See Application for Writ of Habeas Corpus, p. 4. In support of this allegation Petitioner asserts that under *Edvalson v. State*, 310 Ga. 7 (2020), he could have “only been convicted and sentenced with one count or it violated the US and GA Constitution concerning double jeopardy.” *Id.*

Petitioner alleges in Ground Two of the Petition that he received ineffective assistance of counsel from his appellate attorneys for failing to assert that his trial counsel was ineffective. *Id.* In support of this allegation, Petitioner asserts that he “was repeatedly told by [his] trial attorney that [he] was facing 600 years and [he] had better plead guilty or [he] would likely spend [his] entire life in prison. In fact [he] was only facing 20 years in prison. Had [he] known the truth [he] would have gone to trial.” *Id.*

FINDINGS OF FACT

Petitioner was indicted in Upson County on November 29, 2017 for thirty counts of sexual exploitation of children in violation of O.C.G.A. § 16-12-100(b)(8). Petitioner was indicted for one count correlating to each separate image of child pornography. Hearing on Petition, p. 138-143. The counts of child pornography in this matter are associated with two separate dates and two separate laptops in different locations. *Id.* at p. 25, 138-143.

On March 18, 2018, Petitioner entered a guilty plea to resolve these charges and was convicted of all counts. Petitioner was represented by Attorney Paul Kish during his guilty plea proceeding. Following the plea of guilty, Petitioner was sentenced to a total of 60 years with the first 18 years to be served in confinement and the remaining years on probation. Petitioner was sentenced on count one through twenty-eight to 20 years to serve 18 in confinement to run

concurrent with each other. *Id.* at 3-4, 398. Petitioner was sentenced on both counts twenty-nine and thirty to 20 years on probation to run consecutive to each other and the earlier sentences. *Id.* Petitioner was represented by Attorney Charles Harbin Jr. during two post-conviction motions. *Id.* at 33. Mr. Harbin filed a Motion to Withdraw Guilty Plea and a Motion to Modify Sentence on Petitioner's behalf. *Id.* Petitioner filed an appeal to the Georgia Court of Appeals which affirmed the conviction on September 9, 2019. On appeal, Petitioner proceeded *pro se.* *Id.* at 36.

On September 29, 2020, the Supreme Court of Georgia decided *Edvalson v. State*, 310 Ga. 7 (2020). There, the Court "held that possession of child pornography statute permitted only one prosecution conviction for the simultaneous possession of multiple items of 'visual media.'" *Edvalson*, 310 Ga. at 7. Petitioner filed this Petition in 2022 wherein he cited to *Edvlason* in support of Ground One. See Petitioner's Memorandum of Facts and Law.

CONCLUSIONS OF LAW
Improper Merger of Counts
(Ground One)

The United States Constitution protects defendants in criminal cases from double jeopardy by providing "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..." See U.S. Const. Amend. V. Additionally, the Georgia Constitution provides the same protection stating "[n]o person shall be put in jeopardy of life or liberty more than once for the same offense except when a new trial has been granted after conviction or in case of mistrial." Ga. Const., Art. I, Sec. I, Par. XVIII. These constitutional protections "encompass both 'procedural' and 'substantive' aspects, the former barring multiple *prosecutions* for crimes arising from the same conduct, and the latter barring multiple *punishments* for such crimes." *McElrath v. State*, 315 Ga. 126, 128-129 (2022) (vacated in part on other unrelated grounds) (quoting *Williams v. State*, 307, Ga. 778, 779 (2020)). The Supreme Court of Georgia explained that the doctrine of substantive double jeopardy is implicated when "presented with the question of whether a single

course of conduct can result in multiple convictions and sentences under the same statute.” *Edvalson*, 310 Ga. at 8. The Court explains that when double jeopardy is implicated, “the ‘unit of prosecution,’ or the precise act criminalized by the statute, must be identified.” *Id.*

O.C.G.A. § 16-12-100(b)(8) makes it “unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” O.C.G.A. § 16-12-100(b)(8) (2017) (amended 2022).¹ Criminal statutes, including those which are ambiguous, are to be strictly construed against the State and interpreted in favor of the defendant, in accordance with the rule of lenity. *Edvalson*, 310 Ga. at 9.

Following the rule of lenity and other canons of statutory interpretation, the Georgia Supreme Court held that O.C.G.A. § 16-12-100(b)(5) “permits only one prosecution and conviction for a single act of possession of child pornography, regardless of the number of images depicted therein.” *Id.* at 8. The Court explained that “‘any,’ in the phrase ‘any visual medium,’ must be interpreted as a quantitative term, implying no specific quantity and having no limit.” *Id.* at 10.

Applying the same analysis to Subsection (b)(8) as the Georgia Supreme Court did to Subsection (b)(5), the same result must also be true. Reading “any” in the statute as quantitative and having no limit, it is clear that Petitioner was improperly sentenced to thirty counts for a single act of possession. Although Petitioner was in possession of multiple images, the images were contained within two laptops; each laptop being “any material.” Petitioner should not have been convicted on each count as, pursuant to *Edvalson*, prosecution of child pornography is limited to

¹ Subsection (b)(8) was amended in 2022. The amendment changed “any material” to “a material.” O.C.G.A. § 16-12-100(b)(8) (2022). At the time of Petitioner’s indictment and conviction, the statute read “any material.”

each act, not each image possessed therein. Instead, Petitioner's counts should have merged based on each simultaneous act and sentenced for his possession of "any material" rather than each image. In addition, Respondent conceded that Petitioner was entitled to relief on this Ground. Hearing on Petition, p. 25.

As such, Petitioner is entitled to relief and his Petition is **GRANTED** as to Ground One. This case is **REMANDED** to the Upson County Superior Court where the court shall determine which counts should merge as simultaneous acts. Petitioner shall then be resentenced on that count or counts of sexual exploitation of children, rather than all thirty.

**Ineffective Assistance of Counsel
(Ground Two)**

The governing standard for ineffective assistance of counsel was established by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail on claim of ineffective assistance of counsel, the Defendant has the burden of showing that: (1) counsel's performance was deficient due to errors by counsel that were so serious that he was not functioning as counsel guaranteed by the Sixth Amendment; and (2) that the deficient performance prejudiced the defense. *Id.* A court reviewing a claim of ineffective assistance may therefore reject such a claim on the basis of either prong without going to the merits of the other. *Id.*

To prove deficient performance, a defendant must show that his attorneys "performed at trial in an objectively unreasonable way considering all the circumstances and in light of prevailing professional norms." *Woods v. State*, 862 S.E.2d 526, 531 (2021). There is a "strong presumption that counsel's performance fell within the wide range of reasonable professional conduct." *Id.* (citing *Marshall v. State*, 297 Ga. 445, 448 (2015)). Generally, "[t]rial tactics or strategy are almost never adequate grounds for finding trial counsel ineffective unless they are so patently unreasonable that no competent attorney would have chosen them." *Watts v. State*, 308 Ga. 455,

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460 (2020). This requires a defendant to “overcome that presumption, that under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). “Reasonable decisions as to whether to raise a specific objection are ordinarily matters of trial strategy and provide no ground for reversal.” *Loflon v. State*, 309 Ga. 349, 360 (2020). “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.” *Strickland*, 466 U.S. at 689.

Simply showing deficiency is not enough to prevail under *Strickland*. Even professionally unreasonable conduct will not justify “setting aside the judgement of a criminal proceeding if the error had no effect on the judgement.” *Strickland*, 466 U.S. at 691. A defendant must also prove that the deficiency actually prejudiced the defense, such that “counsel’s errors were so serious as to deprive the defendant of a fair trial.” *Id.* at 687. Defendant must demonstrate that there is a reasonable probability that the outcome would have been more favorable to him if the errors had not been made. *Id.* “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694.

“It is well settled that the standard for effectiveness of counsel does not require a lawyer to anticipate changes in the law or pursue novel theories of defense.” *Rijal v. State*, 367 Ga. App. 703, 711 (2023) (quoting *Vivian v. State*, 312 Ga. 268, 374 (2021)). Further, “a criminal defense attorney ‘does not perform deficiently when he fails to advance a legal theory that would require an extension of existing precedents and the adoption of an unproven theory of law.’” *Id.* (quoting *Esprit v. State*, 305 Ga. 429, 438 (2019)).

Petitioner alleges that his appellate counsel was ineffective for failing to assert that his trial counsel was ineffective for improperly advising Petitioner regarding the potential maximum

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sentence. In support of his argument, Petitioner claims that trial counsel advised him that he was facing 600 years if convicted on all 30 counts. He contends that, based on *Edvalson v. State*, this advice was inaccurate. However, *Edvalson* was decided almost two years after Petitioner's conviction and a year after Petitioner's appeal. The legal framework explained in *Edvalson* was not the state of the law at the time trial counsel was advising Petitioner. At the time Petitioner was facing these charges, he was facing 600 years if convicted on each count. Petitioner himself even acknowledges that fact in his appeal to the Court of Appeals of Georgia when he states, "[m]erger was never raised because it was not prevailing law at the time." Petitioner's Memorandum of Facts and Law, p. 3.

The court is unpersuaded by Petitioner's allegation and finds no error from trial counsel or appellate counsel. In essence, despite recognizing that *Edvalson* was not the prevailing law at the time of his conviction, Petitioner is claiming trial counsel was ineffective for failing to predict the *Edvalson* decision and the change in law that would occur in 2020. This is not the standard to be applied for ineffective assistance of counsel. Further, appellate counsel was not ineffective and did not commit error by failing to raise a meritless ineffective assistance claim against the trial counsel. Therefore, because no error occurred, Ground Two is **DENIED**.

CONCLUSION

For the reasons stated above, the Petition for habeas corpus relief is **GRANTED IN PART AND DENIED IN PART**. This case is **REMANDED** to the Upson County Superior Court. The court should determine which counts merge and resentence Petitioner accordingly. If Petitioner wishes to appeal any part of this Order, 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

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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 7th day of February, 2025.

A handwritten signature in black ink, appearing to read "Chris Hughes", written over a horizontal line.

T. CHRISTOPHER HUGHES
CHIEF JUDGE, SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

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

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This 10th day of February 2025.


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