

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

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

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JERRY SCOTT HEIDLER,

Petitioner,

-v-

CHRISTOPHER CARR, TYRONE OLIVER,  
JACOB BEASLEY, and TRIPP FITZNER,

Respondents.

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR  
A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF GEORGIA**

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July 2, 2026

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CAPITAL CASE

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

JERRY SCOTT HEIDLER,  
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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF  
GEORGIA**

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, applicant Jerry Scott Heidler respectfully requests an extension of time of 30 days, to and including August 14, 2026, within which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia. Mr. Heidler has not previously sought an extension of time from this Court. In support of this request, Mr. Heidler submits the following:

1. The Georgia Supreme Court denied Mr. Heidler's request for discretionary review on April 16, 2026, *see* Tab 1, following the DeKalb County, Georgia Superior Court's dismissal of Mr. Heidler's Complaint in an order entered on February 24, 2026. *See* Tab 2. Without an extension, the time to file a petition for a writ of certiorari in this Court would expire on July 15, 2026. *See* S. Ct. R. 13.1, 30.1. Consistent with Rule 13.5, counsel files this application more than 10 days before

that date. This Court will have jurisdiction over Mr. Heidler’s petition for certiorari pursuant to 28 U.S.C. § 1257(a).

2. Jerry Scott Heidler has lived with a severe psychotic disorder for nearly his entire life. Now, having exhausted his habeas appeals,<sup>1</sup> Mr. Heidler is imminently at risk of execution.<sup>2</sup> Due to chronic, unremitting psychosis, he has a substantial claim that he is incompetent to be executed, and is constitutionally entitled to the procedural protections necessary to develop and present his execution incompetency claim. *Panetti v. Quarterman*, 551 U.S. 930, 950 (2007) (citing *Ford v. Wainwright*, 477 U.S. 399, 426 (1986) (Powell, J., concurring)).

3. Once he was eligible for an execution warrant, Mr. Heidler brought a complaint seeking declaratory and injunctive relief in the DeKalb County, Georgia Superior Court challenging Georgia’s statutory procedure for determining whether a person is incompetent to be executed. Specifically, Mr. Heidler challenged Georgia’s 10- to 20-day deadline for determining incompetency to be executed claims—the only state in the country to impose such a compressed timeline—as an unconstitutional barrier to proving a condemned person’s incompetence to be executed. The Superior Court ultimately dismissed the complaint, adopting the

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<sup>1</sup> See *Heidler v. Warden*, No. 20-13752, 2023 U.S. App. LEXIS 19941, \*1 (11th Cir. Aug. 2, 2023), *cert. denied*, *Heidler v. Emmons*, 144 S. Ct. 2565 (2024).

<sup>2</sup> The Eleventh Circuit specifically concluded in a recent decision that Mr. Heidler faces an “imminent” risk that the State will seek to execute him. *Pace v. Comm’r, Ga. Dep’t of Corr.*, No. 24-13973, 2026 U.S. App. LEXIS 18618, \*16-\*19 (11th Cir. June 26, 2026).

State’s proposed order verbatim, and the Georgia Supreme Court denied review.

Mr. Heidler intends to prepare a petition for certiorari to the Supreme Court of Georgia, seeking this Court’s review of Georgia’s framework for enforcing *Ford* and the state courts’ failure to consider his constitutional claims.

4. The claims for which Mr. Heidler seeks review present important unresolved constitutional questions regarding, *inter alia*, the minimum protections that a state must provide to an incompetent prisoner in order to comply with due process and to guard against the unacceptable risk of wrongful execution.

5. This case also involves consideration of the time required to develop and present an execution incompetency claim, a complex psycho-legal inquiry that is “fraught with subtleties and nuances.” *Ford*, 477 U.S. at 426-27 (Powell, J., (citing *Addington v. Texas*, 441 U.S. 418, 430 (1979)); accord *Panetti v. Davis*, 863 F.3d 366, 378 (5th Cir. 2017) (explaining that execution incompetency claims necessarily involve an inquiry into the “subtle reaches” of a prisoner’s mental condition)).<sup>3</sup>

6. Following this Court’s decision in *Ford*, the Georgia legislature enacted a statutory framework to enforce the Eighth Amendment’s prohibition on the execution of incompetent prisoners. See O.C.G.A. §§ 17-10-60 through 17-10-71 (hereinafter, “Execution Competency Act” or “ECA”); see also *Perkins v. Hall*, 288 Ga. 810, 825 n.8 (2011). However, Georgia’s procedure fails to provide the “basic,”

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<sup>3</sup> See also Patricia A. Zapf, PhD., *Elucidating the Contours of Competency for Execution: The Implications of Ford and Panetti for the Assessment of CFE*, 37 J. Psych. & L. 269, 293-300 (2009).

“minimum” protections required by the Constitution. *Panetti*, 477 U.S. at 948-50 (citing *Ford*, 477 U.S. at 427) (Powell, J., concurring).

7. This is because the ECA imposes an impossible 10- to 20-day deadline on the development of *Ford* claims. See O.C.G.A. §§ 17-10-67 and 17-10-40(b). No other state in the nation restricts the development of execution incompetency claims in this manner.

8. The ECA’s unconstitutional time constraints are especially harmful to Mr. Heidler, given his lengthy mental health history<sup>4</sup> and the complexity of his delusional belief system.<sup>5</sup> Mr. Heidler developed psychotic symptoms as early as

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<sup>4</sup> See *Panetti v. Lumpkin*, No. A-04-CA-042-RP, 2023 U.S. Dist. LEXIS 173754, \*11 (W.D. Tex. Sept. 27, 2023) (citing *Panetti*, 551 U.S. at 960) (acknowledging the relevance of a review of a prisoner’s “lengthy history” of psychotic symptoms to the determination of his current mental state for the purposes of an execution incompetency claim).

<sup>5</sup> Mr. Heidler’s prison mental health records contain voluminous evidence of his complex delusional belief system. The following examples are illustrative, all excerpts from records attached to the Complaint filed in the DeKalb County Superior Court:

- “Disoriented. Believes his name is ‘2.5.’ States he is Korean. Delusional. Disorganized.” (progress note January 2023).
- “I’m an Assyrian from Babylon. I finished my cancer treatments.” (progress note August 2017).
- “I’m old/young Asian government. I had my last cancer treatment with radioactive dye. I’m amorphodite and need talk therapy with only female counselors.” (progress note June 2017).
- “I/M [inmate] reports that he is a fairy and that he was part of the special forces in the military.” (progress note December 2016).
- “[C]ontinues to have delusions of being in the military and having lights in his brain...then begins talking about a sexual cancer from the fairies” (progress note August 2016).
- “I/M talked about being an infant fairy today and that due to this he has sexual cancer. He reports getting treatment and that he is in the military special forces. I/M also reported that he is super intelligent and that he has had probes placed in his head that made him that way.” (progress note June 2016).
- “When I began talking with I/M he was delusional reporting having cancer which permedical notes he does not have and then again discussing being a fairy.” (progress note April 2016).
- “I’m a boy/girl with the CIA Special Olympics, and I take radioactive drugs for cranial/cortex cancer. I’m 90 years old.” (progress note June 2015).
- “I’m a military identifier. A neurosurgeon. I’ve carried out every mission. I work with rangers.” (progress note April 2015).

pre-adolescence and has been diagnosed with and treated for schizophrenia and related psychotic disorders by prison psychiatrists for over 25 years. Indeed, as the trial court acknowledged in proceedings below, documentation of Mr. Heidler’s serious mental illness is extensive, *see* Tab 2 at 22, *Heidler v. Carr*, DeKalb Cnty. Superior Court Civil Action No. 24CV8914 (February 24, 2026) (“the Court recognizes Heidler’s allegations and evidence regarding his long-standing mental health issues and lengthy records in support”), spanning over 11,000 pages of prison records.

9. Medical professionals, courts, and even the State have long recognized the severe, chronic nature of Mr. Heidler’s psychotic disorder. *See, e.g.*, D.19-6:79<sup>6</sup> (according to a jail nurse, Mr. Heidler was “one of the most seriously...mentally ill inmates he had ever seen”); D.19-4:48 (according to a prison psychiatrist, Mr. Heidler has a “very serious case” of mental illness, requiring “significant interventions”); Final Order at 11, No. 2001-V-844, *Heidler v. Hall* (Butts Cty. Sup.

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- “Chronically severely delusional. Tells me he is 92 years old, being treated for cancer with radar screens, is in a phase of fairy growth.” (progress note December 2014).
  - “I/M Heidler remains delusional. He states he is a military officer and has been an astronaut for 78 years. I/M states he is also a fairy and an old man.” (progress note October 2014).
  - “I/M reports being a fairy and having foreign DNA.” (progress note November 2010)
  - “He continued to talk about...a ‘machine’ that sends radio waves to his ‘halo’ then permitting him to hear what the radio waves are saying.” (progress note January 2009)
  - “He believes...’the aliens’ check on him by making ‘little scratches’ on various parts of his body...he...said that he has a little angel in his left eye...” (progress note August 2008)
  - “I/M was banging on the glass saying an alien was in his cell.” (progress note April 2007) progress note October 2016).

<sup>6</sup> Citations to “D.” refer to the federal habeas record in *Heidler v. Warden*, No. 6:11-CV-109 (S.D. Ga.).

Ct. Sept. 8, 2009) (state habeas court’s finding that “for the majority of Mr. Heidler’s life, Mr. Heidler has been significantly impaired by his mental illness and [] it is ‘highly unlikely’ he will ever be free of the substantial impairments.”); Preliminary Injunction Hr’g Tr. at 39, No. 24-CV-8914, *Heidler v. Carr* (DeKalb Cty. Sup. Ct. Nov. 18, 2024) (“[the State isn’t] denying that [Mr. Heidler] has serious mental health issues”); Def. Mtn. to Dismiss at 5, *Heidler v. Carr* (Mar. 12, 2025) (“Defendants do not dispute that Heidler has long-standing serious mental health issues”); Extraordinary Motion for New Trial (EMNT) Hr’g. Tr. at 14, No. 98-CR-48, *State v. Heidler* (Toombs Cty. Sup Ct. Aug. 18, 2025) (“the State has never contested that Mr. Heidler has serious mental health issues that were all throughout his life”).

10. In the proceedings below, Mr. Heidler challenged the constitutionality of the ECA in the Georgia state courts, specifically contending that the ECA’s impossible 10- to 20-day deadline violated his First, Eighth, and Fourteenth Amendment rights under the U.S. Constitution and analogous provisions of the Georgia constitution. Mr. Heidler sought a declaration regarding the ECA’s constitutional infirmity and an injunction to prevent the State from pursuing an execution warrant against him until the Act’s constitutional defects were remedied.

11. Adopting *verbatim* an order prepared by the State, the superior court declined to engage with Mr. Heidler’s claims of constitutional harm, dismissing Mr. Heidler’s Complaint for lack of standing and failure to state a claim. In support of both grounds for dismissal, the court cited the fact that no provision in the ECA

expressly precludes Mr. Heidler from requesting a stay of execution. Tab 2 at 13-16. The court reached this conclusion despite the fact that the ECA contains no standards addressing the circumstances under which a *Ford* stay must be granted, and despite the fact that in practice, stays of execution are rarely granted by Georgia courts. *See generally* Discretionary Appeal Application at 38-39, No. S26D1085, *Heidler v. Carr, et al.* (Ga. Mar. 26, 2026).

12. The trial court’s order reflects an impoverished understanding of the protections to which Mr. Heidler is entitled under the First, Eighth, and Fourteenth Amendments, and pursuant to this Court’s decisions in *Ford* and *Panetti*. Moreover, in refusing to consider Mr. Heidler’s claims, the courts below forfeited an opportunity to subject the ECA to judicial scrutiny. Due to the rarity with which execution incompetency claims are raised by Georgia prisoners, no state or federal court has interpreted the ECA or examined its constitutionality. Indeed, in the nearly four decades since the ECA’s enactment, counsel is aware of only one other case presented to the Georgia Supreme Court regarding incompetency to be executed—and in materially different circumstances than are present here.<sup>7</sup> Mr. Heidler’s challenge thus presents an important opportunity to ensure that Georgia’s statutory scheme provides the minimum protections required by the Constitution.

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<sup>7</sup> In that case, *Rhode v. Upton*, Case No. S11W0142 (Ga. 2010), counsel for Mr. Rhode sought a stay to pursue a *potential* claim of incompetency given that he had attempted to kill himself on the morning of his scheduled execution. Mr. Heidler’s claim, in contrast, is based on his decades-long, well-documented history of psychotic symptoms.

13. Counsel of record Anna Arceneaux has a variety of professional obligations in other matters this month, including a status conference in *Brookins v. Emmons*, 2024-SU-HC-003 (Butts Cty., Ga. Sup. Ct.) on July 16, 2026; Appellant's Brief currently due on July 20, 2026 in *Jones v. Warden*, No. 25-11214-P (11th Cir.) (extension request pending); an application for a Certificate of Probable Cause to Appeal due on July 27, 2026, in *Martin v. Emmons*, No. S26T1253 (Ga.); and is in active discovery, with numerous depositions to be scheduled this month, in *Miller v. Holt, et al.*, No. 5:25-cv-00356 (M.D. Ga.).

14. Ms. Arceneaux will also be leaving her current position in August as she moves to a new job at another nonprofit. As the Executive Director of the Georgia Appellate Practice and Educational Resource, Inc., Ms. Arceneaux has significant administrative and case-related obligations to fulfill related to the transition in leadership at this time.

15. Given the complex and important issues in this case, and counsel's competing professional obligations, to ensure adequate time to comprehensively and accurately present the petition for this Court's review, Mr. Heidler respectfully requests a 30-day extension of the filing deadline, up to and including August 14, 2026.

Respectfully submitted,



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July 2, 2026

## CERTIFICATE OF SERVICE

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I, Anna Arceneaux, hereby certify that I am a member of the Bar of this Court, and that I have this 2nd day of July 2026, caused a copy of the Application for an Extension of Time Within Which To File a Petition for a Writ of Certiorari to be transmitted via the Court's electronic filing system and by email to Respondents' counsel listed below; and that paper copies will be mailed to the Court within three business days.

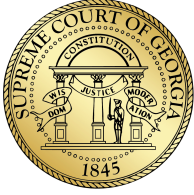
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Anna Arceneaux

# TAB 1



SUPREME COURT OF GEORGIA  
Case No. S26D1085

April 16, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**JERRY SCOTT HEIDLER v. CHRISTOPHER CARR et al.**

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby denied.

*All the Justices concur, except Pinson, J., not participating.*

Trial Court Case No. 24CV8914

**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 A. Barnes*, Clerk

# TAB 2

**SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

JERRY SCOTT HEIDLER,	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	24CV8914
CHRISTOPHER CARR, Attorney	)	
General for the State of Georgia, in	)	
his individual and official capacity;	)	
	)	
TRIPP FITZNER, District Attorney,	)	
Middle Judicial Circuit, in his	)	
individual and official capacity;	)	
	)	
SHAWN EMMONS, Warden,	)	
Georgia Diagnostic and Classification	)	
Prison, in his individual and	)	
official capacity; and	)	
	)	
TYRONE OLIVER, Commissioner	)	
Georgia Department of Corrections,	)	
in his individual and official capacity;	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Jerry Scott Heidler, through next friend Eleanor Hopkins, filed a Complaint for Declaratory and Injunctive Relief and a Motion for Temporary Restraining Order and Interlocutory Injunction challenging the constitutionality of OCGA § 17-10-60 et. seq., which sets forth the procedures for challenging competency to be executed. Specifically, Heidler argues that the timeframe given in OCGA § 17-10-67 for filing an application challenging competency to be executed, read

in conjunction with O.C.G.A. § 17-10-40 (b), is too short to accommodate his constitutional rights. Based upon the Court's review of the pleadings and the arguments of counsel, the Court finds it lacks subject matter jurisdiction and Heidler has failed to state a claim upon which relief can be granted, therefore, the Court DISMISSES the complaint and motion for interlocutory injunction.

## STATEMENT OF THE CASE

### A. Trial, Direct Appeal, and Collateral Proceedings

Heidler was convicted by a jury of four counts of malice murder, one count of kidnapping with bodily injury, one count of aggravated sodomy, one count of aggravated child molestation, one count of child molestation, one count of burglary, and two counts of kidnapping. *Heidler v. State*, 273 Ga. 54, 54 n.1 (2000). On September 3, 1999, Heidler was sentenced to death for each count of malice murder. *Id.* Heidler was also sentenced to life for kidnapping with bodily injury, life for aggravated sodomy, thirty years for aggravated child molestation, twenty years for child molestation, twenty years for burglary, and twenty years for kidnapping, all to be served consecutively. *Id.*

The Georgia Supreme Court generally affirmed Heidler's convictions and death sentences on October 2, 2000 (reversing only the child molestation count because it merged into the aggravated sodomy conviction). *Heidler*, 273 Ga. 54.

For the next twenty years, Heidler challenged his convictions and sentences through habeas proceedings in state and federal court, which

resulted in a denial of relief in all courts. *See Heidler v. Warden, GDCP*, No. 20-13752, 2023 U.S. App. LEXIS 19941 (11th Cir. Aug. 2, 2023), *cert. denied Heidler v. Emmons*, 144 S. Ct. 2565 (2024).

## **B. Current Proceedings**

On September 26, 2024, Heidler’s next friend Eleanor Hopkins filed a complaint and motion for a temporary restraining order and interlocutory injunction. Ms. Hopkins alleged that Heidler was incompetent, which allowed her to bring the action on Heidler’s behalf. There was no competency evaluation provided in support of Ms. Hopkins’s allegation of incompetence. *See Complaint*. Defendants filed a motion challenging standing on two grounds: 1) that next friend Eleanor Hopkins’s lacked standing to bring the action on Heidler’s behalf because he had not shown he was incompetent; and 2) that Heidler lacked standing to bring his challenge to OCGA § 17-10-60 et. seq., because his threat of injury was “conjectural or hypothetical.” Defendants’ Motion Challenging Standing, pp. 2–3. Defendants requested that Heidler be evaluated for competency for the next friend to bring the current action and competency for execution. *Id.* at 10–12.

On November 18, 2024, this Court held a hearing on Heidler’s motion for a temporary restraining order and interlocutory injunction and Defendants’ motion challenging standing. Regarding the challenge to standing, counsel for Heidler objected to Defendants’ request for evaluation stating it was too “intrusive,” and that the evaluation would give Defendants “multiple bites at the apple.” Motions Hearing

Transcript (11-18-24) at 63:6; 64:1; 70:12–13. Counsel for Heidler then chose to remove next friend Eleanor Hopkins and agreed for Heidler “to proceed sui juris.” *Id.* at 73:7–9; Plaintiff’s Response in Opposition to Defendants’ Motion Challenging Standing, p. 3, ¶ 3. Defendants agreed to the substitution, which nullified the issue for an evaluation of Heidler’s competency regarding Ms. Hopkins’s right to bring this action. *Id.* at 73:7–9. At the conclusion of the hearing, the Court requested proposed orders from the parties on the motions and subsequently requested that the parties address “whether a Declaratory Judgment action is the proper vehicle to bring [Heidler’s] claims forward.”

After the hearing, Heidler filed a Response in Opposition to Defendants’ Motion Challenging Plaintiff’s Standing and Request for Compelled Mental Evaluation. On the same day, Defendants filed their Answer and Defenses to Plaintiff’s Complaint. Three months later, Defendants filed a motion to dismiss Heidler’s complaint for declaratory and injunctive relief for lack of subject matter jurisdiction and for failure to state a claim under O.C.G.A. § 9-11-12(b)(1), (6). Additionally, Defendants withdrew their motion for Heidler to be evaluated for competency to be executed. *See* Defendants’ Motion to Dismiss, p. 8. Heidler filed a Brief in Opposition to Defendants’ Motion to Dismiss. The Court held a hearing on Defendants’ motion to dismiss on January 28, 2026, and GRANTED Defendants’ Motion to Dismiss for

lack of subject matter jurisdiction and Heidler's failure to state a claim upon which relief can be granted.

### **C. Heidler's Competency Claims**

In support of Heidler's claim of incompetency to bring the current action, Ms. Hopkins attached 11,000 pages of medical records to the complaint and a statement by a licensed clinical social worker stating that the paragraph in the complaint which alleged Heidler was incompetent was correct. *See* Complaint, Pl. Ex. A; Complaint, Pl. Ex. C, p. 3, ¶ 7. The complaint and motion for injunction references portions of Heidler's mental health records, in support of his allegations of long-standing severe mental health issues and incompetency, but there was no determination of incompetency referenced or attached to Heidler's complaint or motion for injunction from a mental health expert. *See* Complaint, pp. 9–17, ¶¶ 8–23; Motion for Injunction, pp. 3–6.

Although Defendants do not dispute that Heidler has long-standing serious mental health issues, Defendants pointed out that his mental health was evaluated prior to trial and all the experts found him to be competent, and the trial court ultimately found him to be competent to stand trial. *See* Defendants' Motion Challenging Standing, Def. Att. A; Def. Att. B at 4–6, 9, 11, 15, Def. Att. C. Heidler did not raise an issue regarding his competency on direct appeal. *See Heidler v. State*, 273 Ga. 54 (2000).

Thereafter, in Heidler’s second amended state habeas petition he raised a claim that he was “incompetent to be executed” and he was “incompetent to proceed in the instant case.” *See* Second Amendment to Petition for Writ of Habeas Corpus, *Heidler v. Terry*, No. 01-v-844 (Butts Cty., Jan. 6, 2006) at 60–63. However, in his post-hearing briefing, Heidler did not argue that he was incompetent but that the law had evolved to preclude the severely mentally ill from a death sentence under the Eighth Amendment. *See* Petitioner’s Post-Hearing Brief, *Heidler v. Terry*, No. 01-v-844 (Butts Cty., Jan. 25, 2007), pp. 283–308. The state habeas court found that while Heidler “ha[d] been significantly impaired by his mental illness” “for “the majority of [his] life,” Heidler’s Eighth Amendment claim that the severely mentally ill should be exempt from a death sentence, as presented in his state habeas post-hearing brief and presented in Claims I and II of his second amended state habeas petition, was without merit. *See* Final Order, *Heidler v. Terry*, No. 01-v-844 (Butts Cty., Jan. 25, 2007), pp. 9–2. The court found his claim that he was “currently incompetent to be executed” was not “ripe for review” and that his claim of incompetence “to proceed in his current state habeas action” was non-cognizable. *Id.* at 20.

In federal habeas, Heidler alleged that he was “incurably incompetent” to be executed and requested an evidentiary hearing to prove his incompetence; however, there was no competency mental health evaluation provided in support of this allegation. *See* Complaint,

Pl. Att. B. The federal habeas court found his claim was “not ripe” and denied the request for a hearing. *See Heidler v. Chatman*, Southern District of Georgia, No. 6:11-cv-00109, ECF Doc. 86 at 10.

**D. Relevant Statutes**

The statutes relevant to this Court’s determination are O.C.G.A. § 17-10-40(b) and O.C.G.A. §§ 17-10-60 thru 17-10-68. The most pertinent to Heidler’s claims are the following:

**O.C.G.A. § 17-10-40. Change of time period for execution when time period set for execution has passed; recordation on court minutes; length of and time limitation for new time period for execution; setting day and time for execution:**

(b) The new time period for the execution shall be seven days in duration and shall commence at noon on a specified date and shall end at noon on a specified date. The new time period for the execution fixed by the judge shall commence not less than ten nor more than 20 days from the date of the order.

**O.C.G.A. § 17-10-61. No execution upon determination of mental incompetency to be executed:**

A person under sentence of death shall not be executed when it is determined under the provisions of this article that the person is mentally incompetent to be executed as defined in Code Section 17-10-60.

**O.C.G.A. § 17-10-63. Filing of application; contents:**

(a) An application brought under this article must be filed in the superior court of the county in which the applicant is being detained. The named respondent shall be the person having actual custody of the applicant.

**O.C.G.A. § 17-10-65. Answer by respondent:**

As soon as possible after the filing and docketing of the application under this article, the respondent shall answer the application. *The court may schedule a case for a hearing prior to the filing of responsive pleadings but, in any event, shall schedule the case for a hearing as soon as possible so that the proceedings may move expeditiously.*

(Emphasis added).

**O.C.G.A. § 17-10-66. Examination of applicant:**

**(b)** Simultaneously with the filing of the application, the applicant, if he or she wishes the court to consider any request for appointment of an expert, shall file such a request and shall state specific facts in support of that request so that the court may determine if the applicant's mental competency to be executed is in fact a significant issue. The applicant shall further submit with the motion a specific statement as to the particular expert requested, the nature of the examination to be conducted, the time period within which an examination can be conducted, and an estimate of the expenses to be incurred.

**O.C.G.A. § 17-10-67. When application to be filed:**

An application under this article shall not be filed until completion of direct appeal and until an order has been signed by a judge of the trial court setting a time period for the execution.

**O.C.G.A. § 17-10-68. Proof; disposition:**

**(d)** After reviewing the pleadings and evidence offered at the hearing, the judge of the superior court hearing the case shall make written findings of fact and conclusions of law upon which the judgment is based. The findings of fact and conclusions of law shall be recorded as part of the record in the case.

**(e)** If the court finds in favor of the applicant by finding that the applicant has proven his or her mental incompetence to be executed by a preponderance of the evidence, the court shall

enter an appropriate order with respect to any scheduled execution time period and shall enter such supplementary orders as necessary and proper. If the court denies the application, the court shall direct that immediate telephonic notification be given to the parties *and any stay presently entered under this article shall be dissolved instante*.

(Emphasis added).

## CONCLUSIONS OF LAW

### I. **The Court lacks subject matter jurisdiction under O.C.G.A. § 9-11-12(b)(1).**

“Before reaching the merits of any case, a court must make a threshold determination as to whether the case at bar is properly before it—that is, whether one or several of the doctrines of jurisdiction and justiciability preclude judicial review.” *City of Atlanta v. Atlanta Indep. Sch. Sys.*, 307 Ga. 877, 879 (2020). “Under Georgia law, a trial court lacks subject matter jurisdiction to address the merits of a constitutional challenge to a statute brought by a party who does not have standing to bring that challenge.” *Black Voters Matter Fund, Inc. et al. v. Kemp et al.*, 313 Ga. 375, 380 (2022) (citing *Parker v. Leeuwenburg*, 300 Ga. 789, 790 (2017)). Subject matter jurisdiction “cannot be waived and may be raised at any time either in the trial court, in a collateral attack on a judgment, or in an appeal.” *Abushmais v. Erby*, 282 Ga. 619, 622 (2007) (citation and punctuation omitted.).

The Declaratory Judgment Act, OCGA § 9-4-1 et seq., which governs this proceeding, requires “an actual, justiciable controversy ... antecedent to relief.” *Willis v. Cheeley*, 363 Ga. App. 341, 342–43 (2022). This requirement is born by the plaintiff who must show: “(1) an

injury in fact, (2) a causal connection between the injury and the alleged wrong, and (3) the likelihood that the injury will be redressed with a favorable decision.” *Black Voters Matter Fund, Inc.*, 313 Ga. at 382. “An ‘injury in fact’ is one that is both ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Center for a Sustainable Coast, Inc. v. Turner*, 324 Ga. App. 762, 764 (2013). *See also Mullin v. Roy*, 287 Ga. 810, 812 (2010) (“A controversy is justiciable when it is definite and concrete, rather than being hypothetical, abstract, academic, or moot.”) (citation and punctuation omitted). Additionally, a “[d]eclaratory judgment will not be rendered based on a possible or probable [future] contingency.” *Baker v. City of Marietta*, 271 Ga. 210, 215 (1999) (alteration in original) (quoting *Atlanta Cas. Co. v. Fountain*, 262 Ga. 16, 18 (1992)). And the “Declaratory Judgment Act makes no provision for a judgment that would be ‘advisory.’” *Id.* at 214 (quoting *King v. Peagler*, 227 Ga. 29, 32 (1970)).

## **B. Heidler’s Claims**

Heidler presents three claims in his complaint: (1) “The Time Constraints Imposed by O.C.G.A. §§ 17-10-67 and 17-10-40 (b) Violate Mr. Heidler’s Right to Due Process Under the Fourteenth Amendment to the United States Constitution and Ga. Const. Art. I, § I, Para. I”; (2) “The Time Constraints Imposed by O.C.G.A. §§ 17-10-67 and 17-10-40 Violate Mr. Heidler’s Right to Be Free from Cruel and Unusual Punishment Under the Eighth and Fourteenth Amendments to the

United States Constitution and Ga. Const. Art. I, § I, Para. XVII”; and (3) “The Time Constraints Imposed by O.C.G.A. §§ 17-10-67 and 17-10-40 Deny Mr. Heidler Adequate, Effective, and Meaningful Access to the Courts Under the First and Fourteenth Amendments to the United States Constitution and Ga. Const. Art. I, § I, Para. I of the Georgia Constitution.” Complaint at 29, 46, 50. Specifically, Heidler argues that under O.C.G.A. §§ 17-10-67 and 17-10-40 (b), the applicant only has 10 to 20 days to litigate a claim of alleged incompetency because the start of an execution window cannot be “less than ten nor more than 20 days from the date of the order” *and* an application cannot be filed until “an order has been signed by a judge of the trial court setting a time period for the execution.” O.C.G.A. § 17-10-67; O.C.G.A. § 17-10-40 (b). This timeframe, according to Heidler, is in violation of his state and federal constitutional rights. Heidler argues that he only has to show “uncertainty as to his legal rights” in order to demonstrate a “justiciable controversy.” Motions Hearing Transcript (11-18-24) at 98:1–2; *see also* Plaintiff’s Brief in Opposition to Defendants’ Motion to Dismiss at 3. However, the Court finds that because Heidler’s “uncertainty” is based on conjecture and seeks an advisory opinion, he has not shown a “justiciable controversy.”

Reviewing the relevant statutes as a whole reveals several important points in support of the Court’s decision. First, the application must “give the date of the signing of the order and the dates of the designated time period for execution.” O.C.G.A. § 17-10-63(b).

Second, the application “shall clearly set forth alleged facts in support of the assertion that the applicant is presently mentally incompetent to be executed” and “shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached.” *Id.* Third, “[s]imultaneously with the filing of the application, the applicant, if he or she wishes the court to consider any request for appointment of an expert, shall file such a request and shall state specific facts in support of that request.” *Id.* Additionally, the applicant must “submit with the motion a specific statement as to the particular expert requested, the nature of the examination to be conducted, *the time period within which an examination can be conducted*, and an estimate of the expenses to be incurred.” *Id.* (emphasis added). Fourth, the trial court must hold a hearing, and “[a]fter reviewing the pleadings and evidence offered at the hearing, the judge ...shall make written findings of fact and conclusions of law upon which the judgment is based.” O.C.G.A. § 17-10-68(d).

Although, as pointed out by Heidler, the relevant statutes encourage the proceedings to move “expeditiously,” (*see* Complaint, p. 20 at ¶26) it does not mandate a specific timeframe for the entire course of the proceedings. *See, e.g.*, O.C.G.A. § 17-10-65 (“The court may schedule a case for a hearing prior to the filing of responsive pleadings but, in any event, *shall schedule the case for a hearing as soon as possible so that the proceedings may move expeditiously.*”) (emphasis added). Most importantly, the statute allows for a stay of execution

prior to the trial court ruling on the application. *See* O.C.G.A. § 17-10-68 (e) (“If the court denies the application, the court shall direct that immediate telephonic notification be given to the parties and *any stay presently entered under this article shall be dissolved instanter.*”) (emphasis added).

Heidler claims that “Georgia’s criteria for granting a stay of execution are less than clear” where there has not been a hearing and will be difficult to obtain if they have not had time to conduct discovery. Complaint, p. 32, n. 24; Plaintiff’s Brief in Opposition to Defendant’s Motion to Dismiss at 15. Continuing in this vein, Heidler argues that whether a stay of execution will be granted is merely “conjectural.” Plaintiff’s Brief in Opposition to Defendant’s Motion to Dismiss at 10. Whether the motion-for-stay-of-execution standard is clear or unclear, a motion for stay of execution, which the applicant could never be precluded from filing, would have to be considered by the trial court. Moreover, the statute clearly states that the trial court must hold a hearing, and there is nothing in the statute preventing the applicant from raising a stay of execution at the hearing. *See* O.C.G.A. § 17-10-68 (e) (the court “*shall* schedule the case for a hearing”) (emphasis added). And whether obtaining a stay is “conjectural” only proves that Heidler’s alleged injury is hypothetical. Thus, the Court can discern no legal impediment, at least not one created by the relevant statutes, to an applicant requesting a stay of execution based upon his claim of incompetency to be executed.

Currently, Heidler is not under an execution warrant, and based on the record before the Court, Heidler has not been found to be incompetent by a qualified mental health expert. However, Defendants do not dispute that an execution warrant will be sought, and Heidler has stated that he will challenge his competency to be executed. Still any decision by the Court at this juncture would be merely advisory as Heidler's rights have not been violated and a future violation would be based on conjecture that the trial court will not allow itself enough time to adequately consider Heidler's claim. As shown above, O.C.G.A. § 17-10-68 (e) acknowledges that a stay of execution may be entered prior to the trial court's competency decision. Additionally, O.C.G.A. § 17-10-63 (b) requires an applicant to inform the trial court, when requesting a mental examination, "the time period within which an examination can be conducted" and does not mandate a specific timeframe for the examination. In fact, nothing in the relevant statutes mandates that the trial court must conduct the proceedings within the 10 to 20 days of the filing of the application and the execution date. The statute simply encourages "expediency," which Heidler has not pled in and of itself is unconstitutional.

This leaves the Court with no justiciable controversy because, for there to be an injury in fact, the Court would have to hypothesize that the trial court would choose not to provide an applicant enough time to litigate a claim of incompetency to be executed or would not grant a necessary stay of execution or would not properly consider the claim

due to alleged unconstitutional time constraints. *See Baker*, 271 Ga. at 215 (1999) (“Declaratory judgment will not be rendered based on a possible or probable [future] contingency.”) (alteration in original) (quoting *Atlanta Cas. Co.*, 262 Ga. at 18); *see generally Parker v. Leeuwenburg*, 300 Ga. 789, 793 (2017) (determining that because the statute in question did “not regulate Appellants’ conduct” to obtain a peace bond and there was not an allegation that a “judicial officer” “would exercise such discretion” to allow initiation of the bond, Appellants had only shown a “hypothetical concern” regarding the statute and “lack[ed] lack standing to challenge it”). The mere existence of the statute, in this case, does not create a constitutional violation because O.C.G.A. § 17-10-67 only designates when the action is initiated, not when it must be completed. *See generally, Doe v. Broady*, 369 Ga. App. 493, 497 (2023) (overruled on other grounds by *Wasserman v. Franklin Cty.*, 320 Ga. 624, 649 n. 14 (2025) (holding that merely because “[a]t some undetermined point in the future the plaintiffs might become pregnant and want to obtain an abortion, and the LIFE Act might prevent them from doing so, [] those outcomes are a matter of speculation at this point”); *Marietta Props., LLC v. City of Marietta*, 319 Ga. App. 184, 187 (2012) (“Marietta Properties’ ‘constitutional rights are not being violated merely by the existence of a certain zoning classification. Those rights would only be violated if the [City] used the new zoning classification to deprive [Marietta Properties] of vested property rights.”) (alteration in original) (quoting

*Cooper v. Unified Gov't of Athens-Clarke Cty.*, 277 Ga. 360, 362 (2003)).

The Court simply “has no province to determine whether or not a statute, in the abstract, is valid.” *Fourth St. Baptist Church v. Bd. of Registrars*, 253 Ga. 368, 369 (1984).

Therefore, because the Court would be merely entering an advisory opinion at this time, the Court finds it does not have subject matter jurisdiction under O.C.G.A. § 9-11-12(b)(1) and DISMISSES the Complaint. *See Baker*, 271 Ga. at 214 (“Declaratory Judgment Act makes no provision for a judgment that would be ‘advisory.’”) ((quoting *King*, 227 Ga. at 32).

## **II. Heidler fails to state a claim upon which relief can be granted.**

For much the same reason this Court also lacks subject matter jurisdiction, because Heidler has failed to state a claim upon which relief may be granted because his arguments are based on unfounded conjecture. A motion to dismiss for failure to state a claim should be granted “if the allegations of the complaint, construed most favorably to the plaintiff, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts.” *Ewing v. City of Atlanta*, 281 Ga. 652, 653 (2007). Here, under binding statutory construction law, Heidler’s constitutional challenges could never garner relief in this action.

Heidler argues that he is challenging O.C.G.A. § 17-10-60 et seq. read in conjunction with O.C.G.A. § 17-10-40 (b) both facially and as-

applied.<sup>1</sup> the Heidler’s claims challenge the facial validity of Georgia statutes, “A facial challenge ‘is, of course, the most difficult challenge to mount successfully.’” *Women’s Surgical Ctr., LLC v. Berry*, 302 Ga. 349, 352-353 (2017) (quoting *Bello v. State*, 300 Ga. 682, 685-686 (2017) and *United States v. Salerno*, 481 U. S. 739, 745 (1987)). When addressing such challenges, Georgia courts recognize that

all presumptions are in favor of the constitutionality of an [A]ct of the legislature and that before an Act of the legislature can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable and th[e] [C]ourt must be clearly satisfied of its unconstitutionality. Moreover, because statutes are presumed to be constitutional until the contrary appears, . . . the burden is on the party alleging a statute to be unconstitutional to prove it.

*JIG Real Estate, LLC v. Countrywide Home Loans, Inc.*, 289 Ga. 488, 490 (2011) (quoting *Dev. Auth. of DeKalb County v. State of Ga.*, 286 Ga. 36, 38 (2009)). Furthermore,

outside the First Amendment overbreadth context, a plaintiff can succeed in a facial challenge only by establishing that no set of circumstances exists under which the statute would be valid, i.e., that the law is unconstitutional in all of its

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<sup>1</sup> In Heidler’s complaint he did not state whether he was asserting a facial or as-applied challenge. Defendants argued in their motion to dismiss that Heidler had only asserted a facial challenge to the statutes at issue. Motion to Dismiss, p. 15. In Heidler’s brief in opposition to Defendants’ motion to dismiss, in a footnote Heidler argued that whether his claims were “construed as a facial or an as-applied challenge to Georgia’s procedures, dismissal [was] inappropriate.” Plaintiff’s Brief in Opposition, p. 27, n. 19. Therefore, the Court has considered it under both constructions.

applications, or at least that the statute lacks a plainly legitimate sweep.

*Blevins v. Dade County Bd. of Tax Assessors*, 288 Ga. 113, 118 (2010).

**A. Due Process and Eighth Amendment Claims (Counts One and Two)**

Heidler argues that under O.C.G.A. § 17-10-67 et seq. and 17-10-40 (b), competency to be executed must be litigated at “breakneck speed,” which violates his rights to due process and to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendment to the United States Constitution and Ga. Const. Art. I, § I, Para. I & XVII. Complaint, p. 32, ¶ 38; *see also id.* at 47–48, ¶ 55. However, a reasonable construction of O.C.G.A. § 17-10-60 et seq. and O.C.G.A. § 17-10-40 (b) shows that no such mandate exists, and it is contrary to binding law to read the statutes in a manner that could create a constitutional violation where another more reasonable construction can be made.

Two seminal cases, *Ford v. Wainwright*, 477 U.S. 399, 409–10, 418 (1986) and *Panetti v. Quarterman*, 551 U.S. 930, 934-35 (2007), set the standard for reviewing whether a state’s competency to be executed procedures pass constitutional muster. The *Ford* Court held that “the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane” and that the “factfinding procedure” must be “‘adequate to afford a full and fair hearing’ on the critical issue” of competency. *Ford*, 477 U.S. at 409–10. The procedures for determining competency to be executed, which the *Ford* court

determined to be unconstitutional, involved a determination made solely by the Governor of Florida. *Id.* at 412. The inmate was examined by three court appointed psychiatrists “at the same time.” *Id.* A report from the psychiatrists was provided to the Governor who determined competency. *Id.* “The procedure [was] conducted wholly within the executive branch, *ex parte*, and provide[d] the exclusive means for determining sanity.” *Id.* The Court found these procedures to be unconstitutional. *Id.* at 416.

Years later, in *Panetti*, the Court reiterated that “[u]nder *Ford*, once a prisoner makes the requisite preliminary showing that his current mental state would bar his execution, the Eighth Amendment, applicable to the States under the Due Process Clause of the Fourteenth Amendment, entitles him to an adjudication to determine his condition.” *Panetti*, 551 U.S. at 934–35. And “[t]hese determinations are governed by the substantive federal baseline for competency set down in *Ford*.” *Id.* The procedures used in *Panetti* that were found lacking were created by errors made by the trial court tasked with determining the inmate’s competency to be executed. The trial court “appoint[ed] the mental health expert without input from the parties,” the experts found *Panetti* to be competent, and the trial court sent a letter to the parties stating this fact. *Id.* at 939–41. The trial court then “released a short order identifying the report submitted by the court-appointed experts and explaining that ‘[b]ased on the aforesaid doctors’ reports, the Court finds that [petitioner] has failed to show, by a

preponderance of the evidence, that he is incompetent to be executed.” *Id.* at 941 (alteration in original). The case was closed over many objections by Panetti, which included a request for an independent evaluation and a hearing. *Id.* at 940–41. The Court held the trial court had not meet the “basic requirements” of *Ford*, because Panetti had not been given the “opportunity to submit ‘evidence and argument from the prisoner’s counsel, including expert psychiatric evidence that may differ from the State’s own psychiatric examination.’”<sup>2</sup> *Id.* at 950 (quoting *Ford, supra*, at 427).

While Heidler discusses at length the due process and Eighth Amendment issues set out in *Ford* and *Panetti*, he only alleges constitutional violations in Georgia’s statutory framework regarding the timeframe for adjudicating a claim of incompetency.<sup>3</sup> *See* Complaint, pp. 29-49, ¶¶ 36–58. In evaluating Heidler’s claim, as stated above, the Court must consider any reasonable construction of the statute. *See Barnhill*, 315 Ga. at 311 (“every reasonable construction must be resorted to [ ] in order to save a statute from unconstitutionality.” (alteration in original) (quoting *In the Interest of*

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<sup>2</sup> The Court also held that “[t]here [was] also a strong argument the court violated state law by failing to provide a competency hearing.” *Id.* (citing Tex. Code Crim. Proc. Ann., Art. 46.05(k)).

<sup>3</sup> Heidler also compares Georgia’s timeframe between the entry of execution warrant and the commencement of the execution seven-day window with the timeframes from other states. *See, e.g.*, Complaint, p. 40, ¶ 47. However, Heidler does not argue, or cite to any precedent, that this timeframe by itself is a violation of his due process or Eighth Amendment rights.

*M. F.*, 298 Ga. at 146). As previously stated, while O.C.G.A. § 17-10-67 only authorizes an application to be filed after the entry of an execution order, it does not mandate that competency must be adjudicated within a specific timeframe nor does it prohibit the entry of a stay of execution. In fact, the next section, O.C.G.A. § 17-10-68 (e), acknowledges that a stay could have been entered prior to the competency determination. O.C.G.A. § 17-10-68 (e) (“If the court denies the application, the court shall direct that immediate telephonic notification be given to the parties and any stay presently entered under this article shall be dissolved *instanter*.”).

Nothing in *Ford* and *Panetti* suggests Georgia’s competency to be executed procedures are unconstitutional under the “reasonable construction” shown above. That other states may allow for filing a competency challenge prior to the entry of an order or provide for an automatic stay does not alter the Court’s analysis. The *Panetti* Court reiterated that *Ford* “did not set forth ‘the precise limits that due process imposes in this area.’” *Panetti*, 551 U.S. at 949–50 (quoting *Ford* 477 U.S. at 427). And that “a State ‘should have substantial leeway to determine what process best balances the various interests at stake’ once it has met the ‘basic requirements’ required by due process.” *Id.* (quoting *Ford, supra*). “These basic requirements include an opportunity to submit ‘evidence and argument from the prisoner’s counsel, including expert psychiatric evidence that may differ from the State’s own psychiatric examination.’” *Id.* (quoting *Ford, supra*). A

reasonable construction of the statutes shows they meet these “basic requirements.”

Because the Court cannot read the statutes in the unconstitutional manner Heidler advocates, the Court finds he has failed to state a claim upon which relief may be granted regarding his facial challenge to O.C.G.A. § 17-10-60 et seq. and O.C.G.A. § 17-10-40 (b) in Counts One and Two.

Turning to Heidler’s as-applied challenge, he has also failed to state a claim. Even with as-applied challenges, “a presumption that a statute is constitutional” applies. *Chatham Cty. v. Massey*, 299 Ga. 595, 597 (2016) (citing *Judicial Council of Ga. v. Brown & Gallo, LLC*, 288 Ga. 294, 297 (2010)). For largely the same reasons that his facial challenge fails to state a claim, so does Heidler’s as-applied challenge. While the Court recognizes Heidler’s allegations and evidence regarding his long-standing mental health issues and lengthy records in support, the statutes in question do not preclude a court from taking the necessary time to consider a claim of incompetency to be executed. Thus, Heidler fails to state a claim under his as-applied challenge.

Accordingly, the Court DISMISSES Claims One and Two for failure to state a claim.

### **B. Access to Courts (Count Three)**

Heidler also argues the “sever time constraints” allegedly created by the relevant statutes infringes on his right to access the courts in violation of his “First and Fourteenth Amendments to the United

States Constitution and Ga. Const. Art. I, § I, Paras. I and XII of the Georgia Constitution.” Complaint, p. 50, 52, ¶ 61. As with his other claims, Heidler’s argument is premised on an improperly cabined reading of O.C.G.A. § 17-10-60 et seq. and O.C.G.A. § 17-10-40 (b).

Starting with Heidler’s state constitutional right of access to court, as recently reiterated by the Georgia Supreme Court, neither “Article I, Section I, Paragraph XII of the Georgia Constitution” nor “any other provision of the Georgia Constitution ...afford[s] a right of access to the courts.” *Sumrall v. State*, 320 Ga. 617, 622 (2024); *see also Smith v. Baptiste*, 287 Ga. 23, 24-25 (2010) (holding that the Georgia Constitution lacks any express provision creating a right to access to the courts). Therefore, Heidler’s claim of a state constitutional right of access to the courts is precluded under the law and his argument fails to state a claim upon which relief may be granted

Heidler’s claim that O.C.G.A. § 17-10-60 et seq. violates his federal constitutional rights also fails to state a claim. “[I]n Georgia, [m]eaningful access [to the courts] is simply the right of an inmate to raise his claims and be heard.” *Sumrall, supra* (quoting *Gibson v. Turpin*, 270 Ga. 855, 858 (1999)). As previously stated, O.C.G.A. § 17-10-67 only mandates when an application for incompetency is to be filed, and nothing in that code section, or any of the other relevant code sections, requires that an application be adjudicated in a particular timeline. Moreover, the other code sections provide for the applicant to request their own expert, paid for by the state, discovery, a mandatory

hearing, “written findings of fact and conclusions of law,” and specifically acknowledges a possible stay of the execution warrant prior to the trial court’s decision. O.C.G.A. §§ 17-10-65, 17-10-66, 17-10-68.

Again, when reviewing the constitutionality of a statute the Court must look for “every reasonable construction ...in order to save a statute from unconstitutionality.”<sup>4</sup> *Barnhill*, 315 Ga. at 311 (2022) (quoting *In the Interest of M. F.*, 298 Ga. at 146). In doing so, the Court cannot create requirements that are not set forth in the statute, especially if those requirements could potentially create a constitutional violation. *See S&S Towing & Recovery, Ltd.*, 309 Ga. at 119 (“[i]f a statute is susceptible of more than one meaning, one of which is constitutional and the other not, we interpret the statute as being consistent with the Constitution.” (alteration in original) (quoting *Cobb County School Dist.*, 271 Ga. at 37). A reasonable construction of these code sections gives an applicant a fair opportunity

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<sup>4</sup> Heidler cites to several cases, state and federal, determining a prisoner’s rights of access to courts. *See* Complaint, pp. 51–52, ¶ 60. While those cases are instructive regarding the scope of a prisoner’s right to access the courts, none involve statutory construction, and all involve instances in which a prisoner was denied specific rights that are not indicated here. *See, e.g., Cousins v. Macedonia Baptist Church of Atlanta*, 283 Ga. 570, 572–73 (2008) (the parties were not allowed to call or examine witnesses, the trial court solicited information from unsworn members of the audience and conducted its own investigation of the case). The Court finds that nothing in those cases indicate that a reasonable construction of O.C.G.A. § 17-10-60 et seq. creates an unconstitutional violation of an inmate’s right of access to the courts.

“to raise his claims and be heard.” *Sumrall, supra* (quoting *Gibson*, 270 Ga. at 858).

In sum, Heidler has failed to plead any claim upon which relief may be granted, and the Court finds Heidler’s complaint must be DISMISSED under O.C.G.A. § 9-11-12 (b)(6).

### **III. Heidler’s request for an interlocutory injunction is moot.<sup>5</sup>**

Heidler also requests that this Court enter an interlocutory injunction “barring Defendants from obtaining an execution warrant against Mr. Heidler until the merits of his challenge to the Execution Competency Act have been determined by the Court.” Motion for Injunction, p. 34. However, “a claim for injunctive relief ‘is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights.’” *Sexual Offender Registration Review Bd. v. Berzett*, 301 Ga. 391, 396 (2017) (quoting *City of Comer v. Seymour*, 283 Ga. 536, 537 (2008)). As shown above, there are no existing facts or rights upon which this Court has subject matter jurisdiction, which means Heidler has failed to plead a justiciable claim. Therefore, Heidler’s request for injunctive relief must be dismissed. *See, e.g., City of Atlanta v. Atlanta Indep. Sch. Sys.*, 307

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<sup>5</sup> Heidler also requested a “temporary restraining order preventing the Defendants from setting an execution date” until the Court could hold a hearing on his motion for interlocutory injunction. *See* Motion for Injunction, p. 34. Because this hearing has already occurred, and no execution order has been entered, the Court finds this request to be MOOT.

Ga. 877, 881 (2020) (“APS’s claims for injunctive and mandamus relief, however, depend on a favorable resolution of its claim for declaratory judgment, which we have concluded must be dismissed as nonjusticiable. Therefore, ‘[w]ithout the declaratory judgment as its foundation, the request for injunctive [and mandamus] relief fails.’”) (quoting *Berzett*, 301 Ga. at 395).

Based on the foregoing, Plaintiff Jerry Scott Heidler has failed to prove he is entitled to the injunctive relief sought. It is hereby ORDERED that Heidler’s complaint for declaratory and injunctive relief and motion for an interlocutory injunction is DISMISSED.

SO ORDERED, this 24th day of February, 2026.



Honorable Stacey K. Hydrick  
Judge, DeKalb County Superior Court  
DeKalb Judicial Circuit

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