

SUPREME COURT OF GEORGIA

Hicks v. Scott, 273 Ga. 358

541 S.E.2d 27 (2001) · No. No. S00A1790 · Decided January 22, 2001

SUMMARY

The Supreme Court of Georgia held that a superior court improperly denied filing of a habeas corpus petition under OCGA § 9-15-2(d) before addressing the petition on its merits. The court also concluded that the superior court had jurisdiction over the petition and that allegations of ineffective assistance of counsel and an involuntary guilty plea presented colorable grounds for habeas relief. The judgment was reversed and remanded, over dissents arguing that the appeal was untimely and that the court lacked jurisdiction.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Justice; All other Justices of the Supreme Court of Georgia
JURISDICTION	Georgia
DECIDED	January 22, 2001
DOCKET	No. S00A1790
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hicks sought a certificate of probable cause to appeal the Fulton County Superior Court's order denying the filing of his state habeas corpus petition. The Supreme Court of Georgia granted the application and reversed the habeas court's order.
STANDARD OF REVIEW	De novo review of the legal questions concerning the habeas court's jurisdiction, the applicability of OCGA § 9-15-2(d), and the cognizability of the pleaded habeas grounds.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	William Shane Hicks v. Scott, State of Georgia

TOPICS

- state post-conviction relief
- habeas corpus
- appellate jurisdiction
- pleadings
- ineffective assistance

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether OCGA § 9-15-2(d), which permits denial of filing of a pro se complaint facially lacking a justiciable issue, applies to a petition for habeas corpus relief.
2. Whether a Georgia superior court has jurisdiction and proper venue to consider a habeas petition filed by an inmate incarcerated in a federal prison located in Georgia against federal prison authorities and the State.
3. Whether allegations that a conviction used to enhance a sentence resulted from ineffective assistance of counsel and an involuntary plea state potentially cognizable grounds for state habeas relief.
4. Whether the Supreme Court of Georgia had appellate jurisdiction despite the allegedly untimely certificate-of-probable-cause application.

HOLDINGS

1. OCGA § 9-15-2(d) does not apply to petitions for habeas corpus relief, and a court may not address the merits of a habeas petition before the petition has been filed.
2. When an inmate is incarcerated in a federal prison located in Georgia, venue for a habeas action against the State lies in the superior court of the county where federal authorities hold the inmate; the Fulton County Superior Court therefore erred in concluding that it lacked jurisdiction.
3. Properly raised allegations of ineffective assistance of counsel present a colorable claim for Georgia habeas corpus relief, and the habeas court could not reject the petition as noncognizable at the filing stage.
4. The majority treated the absence of proper appellate-procedure instructions in the habeas court's order as distinguishing the case from *Fullwood v. Sivley* and proceeded to decide the appeal.

KEY QUOTATIONS

“Moreover, the merits of a habeas corpus petition may only be addressed by a court after the petition has been filed.” (359)

“Properly raised allegations of ineffective assistance of counsel are routinely addressed by habeas courts in this State, and present a colorable claim for habeas corpus relief.” (359)

FACTUAL BACKGROUND

Hicks was serving a 63-month federal bank-robbery sentence imposed in May 1996, and his 1992 Catoosa County robbery conviction had been used to enhance that federal sentence. He alleged that the 1992 conviction resulted from ineffective assistance of counsel and an involuntary guilty plea based on erroneous legal advice. He filed a state habeas petition in Fulton County against the federal prison warden and the State, but the superior court refused to file it.

PROCEDURAL HISTORY

While incarcerated in a federal penitentiary in Atlanta, Hicks attempted to file a habeas corpus petition in the Superior Court of Fulton County. The habeas court denied filing under OCGA § 9-15-2(d), concluding that the petition presented no justiciable issue and that the court lacked jurisdiction because Hicks was a federal prisoner seeking relief against federal prison authorities. The Supreme Court of Georgia held that the statute did not apply to habeas petitions, that the superior court had venue and jurisdiction to consider the petition, and that the petition alleged potentially cognizable ineffective-assistance and involuntary-plea grounds.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the habeas court for further proceedings consistent with the opinion. Any remand proceedings and subsequent appeal remain subject to the applicable procedural requirements of *Fullwood v. Sivley*.

CASES CITED

- *Fullwood v. Sivley*, 271 Ga. 248, 249-254, 517 S.E.2d 511 (1999)
- *Giles v. Ford*, 258 Ga. 245, 368 S.E.2d 318 (1988)
- *Smith v. State*, 234 Ga. 390, 392, 216 S.E.2d 111 (1975)
- *Ryan v. Thomas*, 261 Ga. 661, 409 S.E.2d 507 (1991)
- *Murphy v. Balkcom*, 245 Ga. 13, 262 S.E.2d 784 (1980)
- *Waldrip v. Head*, 272 Ga. 572, 580-583, 532 S.E.2d 380 (2000)
- *Redfearn v. Huntcliff Homes Assn.*, 271 Ga. 745, 746(1), 524 S.E.2d 464 (1999)