

IN THE SUPERIOR COURT OF WHEELER COUNTY, GEORGIA

-----X
TIMOTHY STEPHENS,

Plaintiff-Petitioner,

-against-

SAMUEL OLENS, Attorney General of the
State of Georgia, and
JASON MEDLIN, Warden,
Wheeler Correctional Facility,

Defendants/Respondents
-----X

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO O.C.G.A § 9-14-1, et seq., FOR TIMOTHY STEPHENS, A PERSON IN STATE CUSTODY

COMES NOW the Petitioner, Timothy Stephens, by and through undersigned counsel, and hereby submits his petition for writ of habeas corpus pursuant to O.C.G.A § 9-14-1, et seq., because he is confined under a prison sentence in violation of his rights to effective assistance of counsel under the Georgia Constitution and the Sixth Amendment to the United States Constitution.

JURISDICTION AND VENUE

1. Petitioner seeks relief from a Judgment entered against him in Long County Superior Court on February 2, 2012 in case number 2011R-114CR, pursuant to a negotiated agreement, convicting him of violation of O.C.G.A. §16-12-100(b). He was sentenced on each count to a term of imprisonment of fifteen (15) years; five (5) years to serve directly followed by a term of ten (10) years' probation, with each count served concurrent to each other.
2. Petitioner is currently in the custody of the Wheeler Correctional Facility, 195 North Broad Street, Alamo, Georgia, in the county of Wheeler, pursuant to the aforementioned

Judgment of Conviction. Venue lies in this Court because Petitioner is being detained under the authority and jurisdiction of the State of Georgia in the above-named correctional facility in and for Wheeler County.

3. Petitioner was originally represented by John E. Pirkle, Esq., 120 S. Commerce Street, Hinesville, Georgia 31313.

4. This action arises under the laws and Constitution of the United States. This Court has jurisdiction to grant writs of habeas corpus pursuant to O.C.G.A § 9-14-1, et seq.; and the Sixth and Fourteenth Amendments of the United States Constitution. Mr. Sanchez is in custody under color of the authority of the State of Georgia, in violation of the Constitution and laws of the United States and the State of Georgia.

STATEMENT OF THE FACTS¹

5. Petitioner was in the military and while stationed at Fort Benning, he found a discarded laptop computer in a dumpster. Petitioner recovered the laptop, refurbished it, and began using it. Petitioner, however, did not know the computer contained offensive material, presumably downloaded by the prior owner, and did not know the computer also had operating in it file-sharing software that continued to share the offensive material on the computer.

6. Shortly after recovering the laptop and beginning to utilize it for his own purposes, Petitioner was served with a search warrant by Liberty County Sheriff's Detective Chuck Woodall. He arrived at Petitioner's home with a second deputy and proceeded into Petitioner's bedroom where the computer was located. Detective Woodall and his partner were in the room with the door closed for approximately one (1) hour during which time there was no

¹ Only the facts relevant to this Petition are included herein, and are gleaned directly from the record in the Case as well as information provided by the Petitioner, which upon information and belief, counsel believes to be accurate.

communication with Petitioner or further explanation from deputies. Woodall emerged with several items that had been placed in brown evidence collection bags.

7. Petitioner was contacted by the police and requested to give a statement at the police station. When Petitioner arrived, he was escorted into an interrogation room by Detective Woodall where the door was closed. Petitioner was not advised of his rights pursuant to *Miranda*. Petitioner spoke to Detective Woodall and gave arguably incriminating statements that prosecutors later used against him. The interrogation was clearly custodial and despite being told he was never given his Miranda warnings prior to speaking to Detective Woodall, Petitioner's trial counsel never moved to suppress the incriminating statements.

8. On March 11, 2011, Petitioner was charged by indictment in Long County Superior Court, case number 2011R-114CR, with seventeen (17) counts of sexual exploitation of children, in violation of O.C.G.A. §16-12-100(b).

9. Petitioner advised his trial counsel that the offending material in the computer did not belong to him and that he had found the computer and refurbished it for his own use. Trial counsel, armed with this information, failed to retain his own forensic expert review the computer to determine whether Petitioner's assertions could be supported and never reviewed the computer himself. Given the circumstances of Petitioner's initial discovery of the laptop, Petitioner provided trial counsel with the name of a service member in Petitioner's unit, Ryan Unger, who had been court-martialed and sentenced to jail for soliciting a minor in the State of Florida.

10. Further, trial counsel's only pre-trial challenge was to the search warrant itself, arguing the Magistrate Judge did not actually see the evidence upon which the warrant was based. During the hearing on the motion, trial counsel never challenged Detective Woodall

concerning his affidavit in support of his application for the warrant and in fact, only asked four or five questions. Further, in open court, trial counsel opined that there was no need for the case to go to trial. Unknown to Petitioner at the time, trial counsel was close personal friends with Detective Woodall and had known him for twenty (20) years. This information was never provided to the Court.

11. Further, trial counsel did not review with Petitioner the discovery received from the State. Petitioner was simply provided a copy. Trial counsel never reviewed the strengths or weaknesses of the State's case with Petitioner and never discussed potential defenses that could be raised. Trial counsel consistently and constantly pushed Petitioner to take a plea deal, insisting that Petitioner would never win at trial.

12. Petitioner accepted a guilty plea. Petitioner submits he was denied the effective assistance of counsel guaranteed to him under the Georgia and U.S. Constitutions and that the resulting plea was the result of this defective representation. Petitioner seeks this writ of habeas corpus alleging the following grounds:

GROUND FOR PETITIONER'S REQUEST

13. Counsel's failure to have a forensic expert review the computer or review the computer himself for evidence that could support Petitioner's claims deprived Petitioner of effective assistance of counsel. Petitioner urged counsel to believe he was not the initial owner of the computer and came into possession of the computer after someone else had used it. Petitioner insisted he was innocent of the charges. Trial counsel was armed with information that would call into question the ownership of the computer prior to its coming into the possession of Petitioner and that he was obligated to conduct at least some investigation including a forensic analysis to collect information that would tend to support Petitioner's claim.

14. Counsel's failure to challenge Detective Woodall's affidavit in support of the search warrant application was unreasonable under the circumstances and deprived Petitioner of the effective assistance of counsel. Trial counsel had a twenty-year (20) relationship with Woodall but never disclosed this friendship to Petitioner until much later in his representation or the Court at all. Had Petitioner known of this close personal friendship, Petitioner would then have been in a position to question whether trial counsel's close personal friendship impacted trial counsel's ability to zealously represent Petitioner during the hearing.

15. Trial counsel failed to move to suppress statements Petitioner made while in police custody (sitting in the detective's office with the doors closed), in violation of Miranda, and this stunning omission was not reasonable or the result of any strategic decision and therefore denied Petitioner effective assistance of counsel.

CONCLUSION

16. Petitioner received ineffective assistance counsel where trial counsel failed to have a forensic expert review the computer to determine whether Petitioner's claims could be supported, failed to challenge the affidavit in support of the search warrant completed by trial counsel's close personal friend Detective Woodall, and failed to move to suppress statements made by Petitioner in violation of Miranda. None of these failures can be said to have been the result of any reasonable strategic decision and thus deprived Petitioner of his right to effective assistance of counsel.

REQUEST FOR RELIEF

WHEREFORE, Petitioner, respectfully requests that this Court:

- A. Grant this writ and order Petitioner's release;
- B. Declare Petitioner's Judgment of Conviction and Sentence to be in violation of the Georgia and United States constitutions;

- C. Enjoin Respondent from executing Petitioner's remaining sentence, or in the alternative;
- D. Grant an evidentiary hearing in this matter; and
- E. Grant any such other and further relief that this Court may deem necessary and proper.

DATED this 31st day of January, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2014, I delivered the foregoing Petition for Writ of Habeas Corpus by U.S. First Class Mail to the following:

Atim Nsunwara, Esq.

Jason Medlin, Warden
Wheeler Correctional Facility
195 North Broad Street
Alamo, Georgia 30411

The Hon. Samuel Scott Olens
Attorney General of the State of Georgia
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30034



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