

KNOW YOUR RIGHTS: GEORGIA STATE HABEAS PROCEDURE

Negotiating Georgia’s criminal justice system after your conviction can be a confusing and challenging experience. While we cannot represent you or provide legal advice or referrals to other lawyers, we hope this document will provide you with some general information that may be helpful. The law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.

What is a habeas corpus proceeding?

A habeas corpus proceeding is a procedure for challenging the legality of a person’s restraint or detention. A “writ” is a formal order of a court commanding someone to do something or refrain from doing something. A writ of habeas corpus orders the person who is responsible for the detention or incarceration – in criminal cases, the warden or jailer – to produce the detained person in court, so that a judge may decide whether the person is in lawful custody.

The writ of habeas corpus has deep roots in American history and has been called “the most important human right in the Constitution.”¹ Today, habeas corpus procedures are generally set out in state and federal statutes.² Georgia’s state habeas procedures are contained in sections 9-14-1 through 9-14-53 of the Georgia Code. Sections 9-14-41 to 9-14-53 specifically apply to prisoners who are seeking to challenge a criminal conviction or sentence.³

Most habeas corpus petitions challenge the constitutionality of a criminal conviction or sentence. However, the writ of habeas corpus is also available when a prisoner is unlawfully confined beyond the term of his sentence⁴ or when a prisoner is confined under a sentence longer than that permitted by state statute.⁵ Habeas corpus is also available for cases involving exorbitantly high bail.⁶ It is not available, however, as a vehicle for challenging conditions of confinement.⁷

¹ *Ex parte Yerger*, 75 U.S. 85, 95 (1868) (“the best and only sufficient defense of personal freedom”).

² O.C.G.A. § 9-14-1 through 9-14-53.

³ See O.C.G.A. § 9-14-41 (procedures that follow apply to “persons whose liberty is being restrained by virtue of a sentence imposed against them by a state court of record”).

⁴ *Lillard v. Head*, 267 Ga. 291, 476 S.E.2d 736, 737 (1996) (claim of confinement beyond term of lawful sentence was cognizable in habeas corpus proceeding because it constitutes a denial of liberty without due process of law).

⁵ *Manville v. Hampton*, 266 Ga. 857, 858, 471 S.E.2d 872, 874 (1996) (claim of confinement under a sentence longer than permitted by state statute would constitute a denial of liberty without due process of law).

⁶ *Jones v. Grimes*, 219 Ga. 585, 587, 134 S.E.2d 790, 792 (1964) (excessive bail is the equivalent of a refusal to grant bail, and in such cases habeas corpus is an available and appropriate remedy).

⁷ *Brown v. Caldwell*, 231 Ga. 795, 204 S.E.2d 137 (1974) (habeas corpus is not the proper procedure for attacking the treatment, discipline, or conditions of confinement imposed upon an inmate).

Who can petition for a writ of habeas corpus?

Any person who has been convicted of a crime and has been incarcerated or restrained in some other way by the sentence of a Georgia court may petition for a writ of habeas corpus.⁸ It is not necessary that the habeas petitioner is still incarcerated at the time that she or he seeks habeas corpus relief, as long as the petitioner can show that he or she continues to experience “adverse collateral consequences” from the criminal conviction or sentence.⁹

How is a habeas proceeding different than a criminal appeal?

A habeas corpus proceeding is not considered part of the criminal appellate process.¹⁰ Instead, it is considered an independent *civil* proceeding initiated by the petitioner who, like the plaintiff in a civil case, has the ultimate burden of proof.

Because habeas corpus proceedings are not a part of the criminal appellate process yet are often used to challenge the lawfulness of a criminal judgment, habeas corpus is sometimes referred to as a “collateral attack” on the criminal judgment. For the same reason, it is also often said that habeas corpus proceedings may not be used as a means of obtaining a “second appeal.”¹¹ Because habeas corpus proceedings do not provide a “substitute for appeal,” issues that *were raised* during the criminal appellate process – and issues that *were not raised but could have been* – are generally not available for review in habeas corpus proceedings.¹² However, constitutional issues related to the proceedings at trial that *could not have been raised* on appeal – for example, issues based on facts that are “outside” the appellate record, such as a claim based on evidence that was suppressed at trial or a claim of ineffective assistance of counsel – are generally appropriately raised in habeas corpus proceedings.

What kind of issues can be raised in a habeas corpus petition?

Under the Georgia habeas statute, a prisoner can bring a habeas corpus action to challenge a criminal conviction and sentence on the ground that “there was a substantial denial of his [or her] rights under the Constitution of the United States or of this state” in the “proceedings which resulted in his [or her] conviction.”¹³ Habeas corpus relief is not available to review allegations

⁸ O.C.G.A. § 9-14-42(a), (c).

⁹ *Tharpe v. Head*, 272 Ga. 596, 597, 533 S.E.2d 368 (2000) (fact that state sentence has been completely served is not a bar to attacking it through habeas corpus if petitioner can show he or she is suffering adverse collateral consequences flowing from conviction); *Ritchie v. State*, 257 Ga. App. 149, 150, 570 S.E.2d 435 (2002) (“adverse collateral consequences” are shown when “a substantial stake in the judgment of conviction . . . survives the satisfaction of the sentence imposed”). The petitioner must show “adverse collateral consequences” on the record. *Turner v. State*, 284 Ga. 494, 668 S.E.2d 692, 693 (2008); *In re I.S.*, 278 Ga. 859, 607 S.E.2d 546 (2005).

¹⁰ *Nolley v. Caldwell*, 229 Ga. 441, 192 S.E.2d 151 (1972).

¹¹ *Archer v. Grimes*, 222 Ga. 8, 148 S.E.2d 395, 396 (1966) (“A writ of habeas corpus cannot be used as a substitute for appeal, motion for new trial, writ of error, or other remedial procedures for the correction of errors or irregularities alleged to have been committed by a trial court.”).

¹² *Head v. Carr*, 273 Ga. 613, 614, 544 S.E.2d 409, 412 (2001), *cert. denied*, 122 S. Ct. 238 (2001) (claims that were previously raised and decided on direct appeal are barred from habeas corpus review; claims that could have been raised on direct appeal but were not are defaulted unless the petitioner can meet the cause and prejudice test).

¹³ O.C.G.A. § 9-14-42(a).

that a prison was denied a non-constitutional right established by Georgia law, or that a state rule or statute that does not implicate a state or federal constitutional right was violated.¹⁴

Examples of the kinds of constitutional claims that are appropriately raised in a habeas corpus petition include the following:

- (1) claims challenging the validity of the indictment or the constitutionality of the underlying charge;¹⁵
- (2) claims attacking a search or seizure, interrogation, identification procedure, or other investigative practice employed by a law enforcement official or other state agent;¹⁶
- (3) claims attacking prosecutorial or police suppression of evidence;¹⁷
- (4) claims related to the denial of expert assistance at trial;¹⁸
- (5) claims relating to the defendant's incapacity to stand trial;¹⁹
- (6) claims challenging denial of a change of venue;²⁰
- (7) claims challenging the composition of the grand or trial jury venire;²¹

¹⁴ *Green v. Dunn*, 257 Ga. 66, 355 S.E.2d 61 (1987) (question whether there was substantial denial of right under state law was not cognizable in habeas action).

¹⁵ See, e.g., *Hammock v. Zant*, 243 Ga. 259, 259-60, 253 S.E.2d 727, 728 (1979) (constitutional challenge to indictment properly raised in habeas corpus because a conviction obtained under an unconstitutional statute is void).

¹⁶ See, e.g., *Withrow v. Williams*, 597 U.S. 680 (1993) (police trickery in securing confession from petitioner); *Miller v. Fenton*, 474 U.S. 104 (1985) (court must consider habeas claim that confession was involuntary); *United States v. Henry*, 447 U.S. 264 (1980) (use of paid informant in defendant's cell block violated right to counsel); *Brewer v. Williams*, 430 U.S. 387 (1977) (officer's statements designed to elicit information from defendant violated right to counsel); *Davis v. North Carolina*, 384 U.S. 737 (1966) (16-day interrogation resulted in involuntary confession); *Jackson v. Denno*, 378 U.S. 368 (1964) (defendant's rights violated where jury heard confession without court first determining voluntariness); *Fay v. Noia*, 372 U.S. 391 (1963) (defendant entitled to relief based on coerced confession even when he failed to appeal conviction in state court). See also *Wilson v. Hopper*, 234 Ga. 859, 863, 218 S.E.2d 573, 576-577 (1975) (search and seizure).

¹⁷ See, e.g., *Banks v. Dretke*, 540 U.S. 668 (2004) (suppression of exculpatory and impeaching evidence, failure to correct misleading representations by witness); *Kyles v. Whitley*, 514 U.S. 491 (1995) (suppression of exculpatory evidence); *Giglio v. United States*, 405 U.S. 150 (1972) (suppression of impeachment evidence); *Brady v. Maryland*, 373 U.S. 87 (1963) (suppression of favorable evidence).

¹⁸ *Ake v. Oklahoma*, 470 U.S. 68 (1985) (denial of right to independent mental health expert).

¹⁹ *Drope v. Missouri*, 420 U.S. 162 (1975) (denial of right to present evidence of incompetence); *Pate v. Robinson*, 383 U.S. 375 (1966) (court failed to determine incompetence); *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam) (record insufficient to support finding of competence).

²⁰ *Sheppard v. Maxwell*, 384 U.S. 333 (1966) (right to fair trial violated by prejudicial pretrial publicity); *Irvin v. Dowd*, 366 U.S. 717 (1961) (right fair trial denied by showing of "pattern of deep and bitter prejudice" in community).

²¹ *Vasquez v. Hillery*, 474 U.S. 254 (1986) (grand jury selection process systematically excluded blacks); *Castaneda v. Partida*, 430 U.S. 482 (1977) (intentional discrimination in grand jury selection process);

- (8) claims challenging jury selection procedures;²²
- (9) claims alleging that the prosecution knowingly presented false testimony;²³
- (10) claims relating to the validity of a guilty plea;²⁴
- (11) claims relating to the jury instructions, deliberations, or verdict;²⁵
- (12) claims alleging that the defendant's right to be present at all stages of the proceedings was violated;²⁶
- (13) claims alleging ineffective assistance of defense counsel;²⁷ and
- (14) claims alleging an illegal sentence.²⁸

Can a person who pled guilty file a habeas petition to challenge the validity of the guilty plea?

Yes. While the entry of a guilty plea generally waives claims of constitutional violations that occurred prior to entry of the plea,²⁹ a person who pled guilty may challenge the validity of the plea itself in a petition for habeas corpus.³⁰ A guilty plea is not valid if it was not knowingly, intelligently, and voluntarily made.³¹

Hogan v. State, 261 Ga. App. 261, 582 S.E.2d 210 (2003) (validity of indictment may be challenged in habeas corpus proceedings).

²² *Batson v. Kentucky*, 476 U.S. 79 (1986) (equal protection clause bars discrimination on basis of race in the exercise of peremptory strikes); *J.E.B. v. Alabama*, 511 U.S. 127 (1994) (equal protection clause bars discrimination on basis of gender in the exercise of peremptory challenges).

²³ *Napue v. Illinois*, 360 U.S. 264 (1959) (knowing presentation of false testimony violates due process); *Phillips v. Hopper*, 237 Ga. 68, 70-71, 227 S.E.2d 1, 3 (1976) (court failed to order defendant's witnesses to appear without determining whether witnesses were required).

²⁴ *Hill v. Lockhart*, 474 U.S. 52 (1985) (guilty plea based on misinformation from counsel); *Brady v. United States*, 397 U.S. 742 (1970) (state may not induce guilty plea by threatening defendant with physical harm or mental coercion overbearing defendant's will); *Boykin v. Alabama*, 395 U.S. 238 (1969) (guilty plea must be knowing and voluntary).

²⁵ *Stephens v. Hopper*, 241 Ga. 596, 602, 247 S.E.2d 92, 96 (1978) (court will review capital sentencing instructions even absent objection).

²⁶ *Anthony v. Hopper*, 235 Ga. 336, 339, 219 S.E.2d 413, 416 (1975) (presence at resentencing).

²⁷ *Strickland v. Washington*, 466 U.S. 668 (1984) (defendant must show counsel's performance was deficient and prejudicial); *Hicks v. Scott*, 273 Ga. 358, 541 S.E.2d 27 (2001) (properly raised allegations of ineffective assistance of counsel present cognizable claim for habeas relief).

²⁸ *Harvey v. Meadows*, 280 Ga. 166, 626 S.E.2d 92 (2006) (confinement under sentence that was longer than that permitted by state law constituted denial of due process of law).

²⁹ *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (entry of valid guilty plea waives right to "raise independent claims relating to the deprivation of constitutional rights that occurred prior to entry of the plea").

³⁰ *Gibson v. State*, 269 Ga. 26, 494 S.E.2d 669 (1998) (validity of guilty plea may be challenged by a petition for habeas corpus).

³¹ *Henderson v. Morgan*, 426 U.S. 637, 645-46 n.13 (1976) (plea invalid if defendant did not have "adequate notice of the nature of the charge against him, or [did not] in fact underst[and] the charge);

If I am unable to afford an attorney, do I have a right to appointment of counsel in state habeas proceedings?

No. Because the Sixth Amendment of the Constitution only guarantees the right to counsel in criminal proceedings,³² and because habeas corpus proceedings are considered civil in nature, there is no recognized constitutional right to appointment of counsel for indigent petitioners in habeas corpus proceedings.³³

What information must be included in a state habeas petition in Georgia?

The Georgia Code requires that if the petitioner is imprisoned in a state or local penal or correctional institution at the time that she or he intends to file a habeas petition, the petitioner must complete and file a form Application for Writ of Habeas Corpus that has been developed by the Administrative Office of the Courts. By fully completing this form, the petitioner will provide all of the information that must be included in a state habeas petition in Georgia. A copy of the form is included with this material.³⁴

Section 9-14-44 of the Georgia Code requires that the petition include the following information:

- the case number of the proceeding in which the petitioner was convicted;
- the date of the court judgment which the petitioner is challenging;
- the manner in which the petitioner’s rights were violated; and
- a specific statement of which claims were raised at trial or on direct appeal, with appropriate citations to the trial or appellate record.

If any affidavits, records, or other documentary evidence supporting the petition are available, they should be attached to the petition. The petition must also identify any previous proceedings that the petitioner has brought to obtain relief from the conviction. If the petitioner has filed previous habeas petitions, the claims that were raised in the prior petitions must be identified. The petition itself cannot contain argument and citations of authority, but those may be set forth in a brief in support of the petition. Finally, the petitioner or some other person acting on the petitioner’s behalf must “verify” the petition by stating under oath that the allegations in the

Godinez v. Moran, 509 U.S. 389, 401 n.12 (1993) (defendant did not “understand the significance and consequences” of the plea). *See also Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969) (“What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence.”).

³² *Gideon v. Wainwright*, 372 U.S. 335 (1963) (Sixth Amendment requires appointment of counsel for indigent defendants charged with serious offenses in state criminal trials); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (extending *Gideon* to misdemeanors where defendant may be sentenced to imprisonment); *Evitts v. Lucey*, 469 U.S. 387 (1985) (right to counsel on direct appeal).

³³ *Gibson v. Turpin*, 270 Ga. 855, 513 S.E.2d 186 (1999) (no federal or state constitutional right to counsel in Georgia state habeas proceedings); *see also Giarratano v. Murray*, 492 U.S. 1 (1989); *Pennsylvania v. Finley*, 481 U.S. 551 (1987).

³⁴ The form may also be found on the internet at this address:

<http://www.georgiacourts.org/files/Inmate+Application+for+Writ+of+Habeas+Corpus+Form+2010.pdf>

petition are true to the petitioner's knowledge and then signing the verification statement in the petition in the presence of a notary public.³⁵

How much information is necessary to explain how the petitioner's rights were violated?

A habeas petition cannot be granted unless it contains allegations that, if determined to be true by the court, would establish a violation of the petitioner's constitutional rights.³⁶ For each individual constitutional claim that is alleged in the petition, the petitioner must set forth (1) the specific facts that support the allegation that the petitioner's constitutional rights were violated and (2) the specific legal basis for the claim, such as the constitutional amendment (for example, the Sixth Amendment), the nature of the constitutional right (for example, the right to effective assistance of counsel), and any caselaw that supports the claim (for example, *Strickland v. Washington*, 466 U.S. 668 (1984)). The petition must contain specific facts – and not simply make general, conclusory allegations – upon which the claims for relief are based.³⁷

Where should the habeas corpus petition be filed?

If the petitioner is in prison or jail, the habeas corpus petition should be filed with the superior court in the county in which the petitioner is being held.³⁸ However, if the petitioner is not currently being detained, the petitioner must file the habeas corpus petition in the superior court in the county in which the challenged sentence was imposed.³⁹

Is there a deadline for filing a habeas petition in Georgia?

Yes. The general rule in Georgia is that a habeas petition must be filed within *one year* in the case of a *misdemeanor* (other than a traffic offense⁴⁰) or within *four years* in the case of a *felony* (other than a case involving a death sentence) of when the petitioner's conviction became for that offense "final."⁴¹

Where the petitioner's claim is based on facts that the petitioner could not have been discovered earlier – for example, where the prosecution suppressed evidence, making it impossible to raise the claim until the evidence came to light – the deadline for filing the petition raising that claim is calculated from the date when those facts could have been discovered through "due diligence," or reasonable effort.⁴² Similarly, where the legal basis of the petitioner's constitutional claim was not previously recognized but has since been recognized by the United States Supreme

³⁵ O.C.G.A. § 9-14-44.

³⁶ *Simmons v. Georgia Iron & Coal Co.*, 117 Ga. 305, 43 S.E.2d 780 (1903); O.C.G.A. § 9-14-5 (specifying that writ is to be granted "[w]hen upon examination of the petition ... it appears to the judge that the restraint of liberty is illegal").

³⁷ O.C.G.A. § 9-14-44; *Murrell v. Young*, 285 Ga. 182, 674 S.E.2d 890, 892 (2009) (trial court erred when it granted defendant habeas corpus relief on the basis that defendant had been denied counsel in his appeal of the denial of his motion to withdraw his guilty pleas, where neither defendant's initial pro se habeas petition nor the restated petition filed by habeas counsel asserted the denial of defendant's right to counsel on appeal as a basis for relief); *Salisbury v. Grimes*, 223 Ga. 776, 777, 158 S.E.2d 412, 414 (1967).

³⁸ O.C.G.A. § 9-14-43.

³⁹ O.C.G.A. § 9-14-43; *Nix v. Watts*, 284 Ga. 100, 664 S.E.2d 194 (2008).

⁴⁰ A habeas corpus challenge to a misdemeanor traffic offense must be brought within 180 days of the conviction becoming "final." O.C.G.A. § 40-13-33.

⁴¹ A conviction becomes "final" either after the conclusion of appellate review of the conviction or, if an appeal from the conviction was not taken, upon the expiration of the time for seeking appellate review. O.C.G.A. § 9-14-42(c)(1).

⁴² O.C.G.A. § 9-14-42(c)(4).

Court or the Supreme Court of Georgia, the deadline for filing the petition raising that claim is calculated from the date that the court recognizing the basis of the claim announced that decision.⁴³

What is the doctrine of “procedural default”?

As indicated earlier, claims that could have been raised at trial or on direct appeal, but instead are raised for the first time in habeas corpus proceedings, are generally barred from review by the doctrine of “procedural default.” However, Georgia law recognizes two exceptions to the doctrine of procedural default.

First, if a petitioner can show “cause” for the failure to raise the claim earlier and “prejudice” from the default, a claim that would otherwise be procedurally defaulted is not barred from habeas review.⁴⁴ If the failure to raise the claim at trial or on direct appeal was the fault of the petitioner’s trial or appellate lawyer, ineffective assistance of counsel may be “cause” for the default, allowing the claim to be heard in habeas corpus proceedings.⁴⁵ Under this exception to the procedural default doctrine, the habeas petitioner must also show “prejudice” from the default – essentially, that the constitutional violation at issue significantly affected the outcome of the petitioner’s trial.

Second, a claim for habeas relief will not be procedurally barred or defaulted if a “miscarriage of justice” would result from the court’s refusal to review the claim.⁴⁶

What happens after the petition is filed?

In all non-capital habeas, the respondent has 20 days from the filing and docketing of a petition to answer or move to dismiss, though the court may allow more time.⁴⁷

After the respondent files its answer, the court should set the case within a “reasonable time” for a hearing on the issues raised in the petition.⁴⁸ A petition should be dismissed without a hearing only if the court can determine from its face that it lacks merit.⁴⁹ A court confronted by a motion to dismiss is supposed to construe the petition liberally and avoid dismissing it for failure to comply with the technical requirements.

What happens at the hearing?

⁴³ O.C.G.A. § 9-14-42(c)(3).

⁴⁴ *Head v. Ferrell*, 274 Ga. 399, 554 S.E.2d 155 (2001); *White v. Kelso*, 261 Ga. 32, 401 S.E.2d 733 (1991); *Cox v. Ballard*, 259 Ga. 176, 377 S.E.2d 842 (1989).

⁴⁵ *Whatley v. Terry*, 284 Ga. 555, 668 S.E.2d 369, 372 (2006).

⁴⁶ *Schofield v. Meders*, 280 Ga. 865, 632 S.E.2d 369, 372 (2006), *cert. denied*, 549 U.S. 1126 (2007); *Head v. Hill*, 277 Ga. 255, 587 S.E.2d 613 (2003); *Turpin v. Todd*, 268 Ga. 820, 493 S.E.2d 900 (1997).

⁴⁷ O.C.G.A. § 9-14-47.

⁴⁸ O.C.G.A. § 9-14-47.

⁴⁹ *Britt v. Conway*, 283 Ga. 474, 660 S.E.2d 526 (2008) (where the application for a pretrial writ of habeas corpus on its face discloses that it is without merit, a hearing in the matter is not warranted); *Mungin v. St. Lawrence*, 281 Ga. 671, 641 S.E.2d 541 (2007) (when the habeas court is able to determine from the face of the petition that it is without merit, it is appropriate to dismiss the petition without a hearing); *Mitchell v. Forrester*, 247 Ga. 622, 278 S.E.2d 368 (1981).

A hearing must be transcribed by a court reporter. The court may receive evidence by depositions, oral testimony, sworn affidavits, or other evidence. After reviewing the pleadings and evidence, the judge must enter written findings of fact and conclusions of law.⁵⁰

How does the judge decide whether to grant habeas corpus relief?

The burden is on the petitioner to prove that a violation of his constitutional rights occurred.⁵¹ The judge must weigh the evidence and the credibility of the witnesses called to testify. In order to resolve disputed issues of fact, the judge may credit the evidence presented at trial over the evidence presented at the habeas corpus hearing.⁵²

Can the trial court's decision denying habeas corpus relief be appealed?

Yes. The denial of a habeas petition can be appealed to the Georgia Supreme Court.⁵³ A petitioner who wishes to appeal the denial of a habeas petition must file: (1) a written application for certificate of probable cause to appeal with the Clerk of the Georgia Supreme Court; and (2) a notice of appeal with the clerk of the superior court. Both of these documents must be filed within 30 days from the date that the trial court entered its order denying the habeas petition.⁵⁴ The clerk of the superior court is then required to forward to the clerk of the Supreme Court those portions of the applicable record and hearing transcripts which have been designated by the parties as essential to the adjudication of the anticipated appeal.⁵⁵

The Supreme Court must issue a certificate of probable cause authorizing the appeal if it determines that there appears to be arguable merit to some portion of the petitioner's case.⁵⁶

A trial court's findings of fact are accepted on appeal unless they are shown to be clearly erroneous.⁵⁷ The trial court's decision with regard to conflicting evidence and witness credibility will not be reversed absent an abuse of discretion.⁵⁸ However, the appellate court will independently review the trial court's legal conclusions and applications of those principles to the facts.⁵⁹

⁵⁰ O.C.G.A. § 9-14-49; *see Thomas v. State*, 284 Ga. 327, 667 S.E.2d 375, 376-77 (2008) (order denying defendant's petition for habeas relief was devoid of findings of fact or conclusions of law, as required under statute governing procedures for habeas proceedings, thus necessitating vacatur of order and remand for issuance of order compliant with statute).

⁵¹ *Wilson v. Hopper*, 234 Ga. 859, 863, 218 S.E.2d 573, 577 (1975).

⁵² *Anglin v. Caldwell*, 227 Ga. 584, 182 S.E.2d 120 (1971).

⁵³ Ga. Const. 1983, Art. VI, § VI, ¶ III(4); O.C.G.A. § 9-14-52.

⁵⁴ O.C.G.A. § 9-14-52(b). *See also Fullwood v. Sivley*, 271 Ga. 248, 250, 517 S.E.2d 511 (1999) (appellate court lacked jurisdiction to consider petitioner's habeas appeal due to petitioner's failure to file timely application for certificate of probable cause, requiring dismissal of appeal).

⁵⁵ O.C.G.A. § 9-14-52(b).

⁵⁶ Supreme Court Rule 36.

⁵⁷ *Hall v. Terrell*, 285 Ga. 448, 679 S.E.2d 17, 20 (2009).

⁵⁸ *Duncan v. Harden*, 234 Ga. 204, 207, 214 S.E.2d 890, 892 (1975) ("The decision of the the trial judge in a habeas corpus case on conflicting evidence will not be reversed unless there is a clear abuse of discretion"); *Walker v. Hopper*, 234 Ga. 123, 125, 214 S.E.2d 553, 555 (1975) ("[a]ny question of the credibility of the witnesses was for the superior court to determine").

⁵⁹ *Head v. Carr*, 273 Ga. 613, 616, 544 S.E.2d 409 (2001).

INMATE FORM FOR WRIT OF HABEAS CORPUS INSTRUCTIONS – READ CAREFULLY

(NOTE: O.C.G.A. §9-10-14(a) requires the proper use of this form, and failure to use this form as required will result in the clerk of any court refusing to accept the action for filing.)

1. Any action filed by an inmate of a state or local penal or correctional institution against the state or a local government or against any agency or officer of a state or local government must be filed on the appropriate form or forms promulgated by the Administrative Office of the Courts of Georgia.
2. This application must be legibly handwritten or typewritten, and signed by the petitioner. Any false statement of a material fact may serve as the basis for prosecution for perjury. All questions must be answered concisely in the proper space on the form.
3. Any inmate may submit with the complaint or other initial pleading any additional matter in any form if the pleading includes the form or forms attached hereto. Material attached to the forms should be legibly handwritten, typewritten, or copied.
4. Upon receipt of the appropriate filing fee or if permission to proceed in forma pauperis has been granted, your petition will be filed if it is in proper order.
5. If the inmate wishes to file an affidavit of indigency, it must be accompanied by a certification from the institution wherein the inmate is incarcerated that the financial statement correctly states the amount of funds in any and all custodial accounts held with the institution.
6. O.C.G.A. §42-12-1 et seq. provides that an inmate's institutional account shall be frozen, and funds seized for court costs and fees. Additionally, the filing of frivolous litigation shall result in a deduction from the account.
7. Any action brought pursuant to this article shall be filed within one year in the case of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of death. O.C.G.A. §9-14-42(c).
8. Any Inmate Form for Writ of Habeas Corpus which does not conform to these instructions will be returned with a notation as to the deficiency.
9. These forms may be obtained at the Administrative Office of the Courts' website (<http://www.georgiacourts.gov/index.php/court-forms/101>) or from the Administrative Office of the Courts through the head of the institution in which the inmate is incarcerated.

IN THE SUPERIOR COURT OF _____
STATE OF GEORGIA

_____,
Petitioner
_____,
Inmate Number

Civil Action No. _____

vs.

_____,
Warden
_____,
Respondent
(Name of Institution where you are now located)

Habeas Corpus

APPLICATION FOR WRIT OF HABEAS CORPUS

PART I: BACKGROUND INFORMATION ON YOUR CONVICTION

1. Name, county, and court which entered the judgment of conviction under attack:

2. Date of conviction: _____

(Please Note: O.G.C.A. § 9-14-42(c) mandates that applications for writ of habeas corpus must be filed within a certain time. Please see Instructions (7) for more information.)

3. Length of sentence(s): _____

4. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

5. Name of offense(s). List all counts: _____

6. What was your plea? Please check one:

- Guilty
- Guilty but mentally ill
- Nolo contendere
- Not guilty

If you entered a guilty plea to one count or indictment, and a not guilty or nolo contendere plea to another count or indictment, give details: _____

7. Kind of trial. Please check one:

- Jury
- Judge only

8. Did you testify at the trial? Yes No

9. Did you appeal from the conviction? Yes No

10. If you did appeal, answer the following:

Name of appellate court to which you appealed: _____

Result of appeal: _____

Date of result: _____

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this conviction in any state or federal court?

Yes No

12. If your answer to 11 was "Yes," give the following information: (**Note:** If more than three petitions, please use a separate sheet of paper and use the same format to list them.)

A. Name of court and case number:

What kind of case or action was this? _____

All grounds raised (attach extra sheet of paper if necessary) : _____

Did a judge hear the case? Yes No Did witnesses testify? Yes No

Name of Judge: _____

Result: _____

Date of Result: _____

B. As to any second petition, application or motion, give the same information.

Name of court and case number:

What kind of case or action was this? _____

All grounds raised (attach extra sheet of paper if necessary) : _____

Did a judge hear the case? Yes No Did witnesses testify? Yes No

Name of Judge: _____

Result: _____

Date of Result: _____

C. As to any third petition, application or motion, give the same information.

Name of court and case number:

What kind of case or action was this? _____

All grounds raised (attach extra sheet of paper if necessary) : _____

Did a judge hear the case? Yes No Did witnesses testify? Yes No

Name of Judge: _____

Result: _____

Date of Result: _____

D. Did you appeal to the Georgia Supreme Court or the Georgia Court of Appeals from the result taken on any petition, application, or motion listed above?

First petition, application or motion: Yes No

Second petition, application or motion: Yes No

Third petition, application or motion: Yes No

E. If you did not appeal from the denial of relief on any petition, application or motion, explain briefly why you did not: _____

F. If you appealed to the highest state court having jurisdiction, did you file a petition for certiorari in the United States Supreme Court to review the denial of your petition by the Georgia Supreme Court or the Georgia Court of Appeals? Yes No

13. Do you have any petition or appeal now pending in any court, either state or federal, as to the conviction under attack? Yes No

14. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

At preliminary hearing: _____

At arraignment and plea: _____

At trial: _____

At sentencing: _____

On appeal: _____

In any post-conviction proceeding: _____

On appeal from any adverse ruling in a post-conviction proceeding: _____

15. Do you have any other sentence, either state or federal, to serve after you complete the sentence imposed by the conviction under attack? Yes No

If so, give the name and location of the court(s) which impose any other sentence:

State the date and length of any other sentence to be served: _____

Have you filed, or do you contemplate filing, any petition attacking the judgment(s) which imposed any other sentence? Yes No

PART II: STATEMENT OF YOUR CLAIMS

State concisely every ground on which you now claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the same.

1.

GROUND ONE: _____

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law): _____

2.

GROUND TWO: _____

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law): _____

3.

GROUND THREE: _____

SUPPORTING FACTS. (Tell your story *briefly* without citing cases or law): _____

4.

GROUND FOUR: _____

PART III: OTHER CLAIMS NOT PRESENTED TO A COURT BEFORE THIS

If any of the grounds listed in PART II were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

Wherefore, petitioner prays that the Court grant relief to which the petitioner may be entitled in this proceeding.

Date

Signature and Address of Petitioner's
Attorney (if any attorney)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing statements made in this Application for Writ of Habeas Corpus are true and correct.

Executed on _____
Date

Signature of Petitioner

Sworn to and subscribed before me this
_____ day of _____, 20____.

Notary Public or Other Person Authorized to Administer Oaths

Please note that under O.C.G.A. §9-14-45 service of a petition of habeas corpus shall be made upon the person having custody of the petitioner. If you are being detained under the custody of the Georgia Department of Corrections, an additional copy of the petition must be served on the Attorney General of Georgia. If you are being detained under the custody of some authority other than the Georgia Department of Corrections, an additional copy of the petition must be served upon the district attorney of the county in which the petition is filed. Service upon the Attorney General or the district attorney may be had by mailing a copy of the petition and a proper certificate of service.