

In the Supreme Court of Georgia

Decided: March 29, 2010

S10A0059. HUTCHISON v. JARRIEL, WARDEN.

NAHMIAS, Justice.

Neil Hutchison was convicted of rape on May 6, 1998, and his conviction was affirmed on direct appeal in 1999. Hutchison v. State, 239 Ga. App. 664 (522 SE2d 56) (1999). Under OCGA § 9-14-42 (c), because Hutchison's conviction became final before July 1, 2004, he was required to file a habeas petition challenging the conviction by July 1, 2008. Hutchison's habeas petition was stamped "received" by the habeas court clerk's office on June 20, 2008, but it was not formally filed until July 18, 2008, because the clerk erroneously believed the petition had to be reviewed by the judge before filing. Contending that the habeas petition was not filed until July 18, 2008, the warden moved to dismiss the petition as untimely under § 9-14-42 (c). The habeas court granted the State's motion to dismiss, and we granted Hutchison's application for a certificate of probable cause to appeal.

The warden now rightly concedes that Hutchison's habeas petition was timely filed based on the date it was stamped "received" by the clerk's office. See Hood v. State, 282 Ga. 462, 464 (651 SE2d 88) (2007) (pleading is deemed filed on the date it is delivered to the proper officer in a clerk's office, "even though that officer fails to make the proper entry of filing thereon" (citation omitted)). Accordingly, we reverse the habeas court's dismissal of Hutchison's petition and remand the case to that court for further proceedings.

Judgment reversed and case remanded. All the Justices concur.