



SUPREME COURT OF GEORGIA

Atlanta March 18, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

It appearing that the enclosed opinion decides a second-term appeal, which must be concluded by the end of the April term on April 14, 2011, it is ordered that a motion for reconsideration, if any, must be **filed and received in the Clerk's office** by 4:30 p.m. on Monday, March 28, 2011.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby 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.

Sui C. Fulton, Chief Deputy Clerk

In the Supreme Court of Georgia

Decided: March 18, 2011

S10A1541. DAKER v. WARREN, SHERIFF.

HINES, Justice.

Pro se appellant Waseem Daker appeals the dismissal of his pre-trial petition for the writ of habeas corpus. For the reasons that follow, we reverse and remand.

It appears that Daker was arrested on January 15, 2010 on a warrant for malice murder, felony murder, burglary, aggravated stalking, and two counts of aggravated assault, based on events that occurred on October 23, 1995. He was denied a pre-trial bond,¹ and filed a petition for a writ of habeas corpus, alleging constitutional violations in the decision to deny him pre-trial bond, including that the trial court's denial of bail was arbitrary and a violation of the standards set forth in *Ayala v. State*, 262 Ga. 704 (425 SE2d 282) (1993). The habeas court dismissed the petition, without a hearing.

Doing so was error. Regarding a pre-trial petition for a writ of habeas corpus, the State notes that when “the petition and exhibits attached thereto

¹ The transcript of the bond hearing is in the habeas record, and during the hearing, the court states that Daker is a flight risk.

disclose without contradiction that the petition is without merit, it is not error to dismiss the same without a hearing. [Cit.]” *Britt v. Conway*, 281 Ga. 189, 190 (637 SE2d 43) (2006). The habeas court had the authority to review Daker’s petition asserting that he was illegally denied bail. See *Constantino v. Warren*, 285 Ga. 851 (684 SE2d 601) (2009); *Banks v. Waldrop*, 272 Ga. 475 (531 SE2d 708) (2000); *Mullinax v. State*, 271 Ga. 112 (1, 2) (515 SE2d 839) (1999). And, the petition and exhibits do not reveal without contradiction that Daker’s claim that the trial court abused its discretion under *Ayala*, supra, is meritless. *Britt*, supra. Accordingly, we must reverse the dismissal of Daker’s habeas petition and remand the matter to the habeas court for a determination on the merits. *Banks*, supra.

Judgment reversed and case remanded. All the Justices concur, except Carley, P.J., who dissents.