

In the Supreme Court of Georgia

Decided: November 22, 2010

S11A0448. EDWARDS v. THE STATE.

PER CURIAM.

Oliver W. Edwards seeks a certificate of probable cause to appeal from the denial of his petition for a writ of habeas corpus in which he challenges his June 1994 conviction for violation of the Georgia Controlled Substances Act, which conviction was affirmed on direct appeal, see Edwards v. State, 224 Ga. App. 332 (480 SE2d 246) (1997). This is the second appearance of this habeas corpus case before this Court. In February 2009, we granted a certificate of probable cause to appeal and by order remanded the case with the direction that the habeas court “hold a hearing that is transcribed, see OCGA § 9-14-50 [and] address all the grounds raised in the petition,” which had been incorrectly dismissed as untimely pursuant to OCGA § 9-14-42 (c). Edwards v. State, S08H2146 (February 23, 2009). Following remand, the habeas court scheduled a hearing but it is unclear from the record whether the hearing actually took place. What is clear is that the habeas court thereafter entered a written order

denying the petition. Edwards timely and properly filed a notice of appeal in the habeas court and an application for a certificate of probable cause to appeal in this Court. We again grant the certificate of probable cause, and this time explain the rationale for our ruling in the form of an opinion.

Notwithstanding this Court’s admonition on remand, there is no transcript of a hearing in the record on appeal.¹ In a habeas corpus proceeding brought by persons “whose liberty is being restrained by virtue of a sentence imposed against them by a state court of record,” OCGA § 9-14-41, it is statutorily mandated that “[a]ll trials . . . shall be transcribed by a court reporter designated by the superior court hearing the case.” OCGA § 9-14-50. This provision is mandatory rather than directory. Without such a transcript, the merits of the habeas court’s final order cannot be reached by an appellate court. In accordance with the foregoing legislative mandate, we hold that a habeas corpus petitioner is entitled to have the hearing of his case transcribed by a court reporter and that an indigent petitioner is entitled to have the transcript prepared at the expense of the State. We therefore grant the certificate of probable cause

¹Upon inquiry by our Clerk of Court to the Clerk of the Fulton County Superior Court, we were advised that no hearing had been held.

and again remand this case to the habeas court for a hearing which shall be transcribed by a court reporter in accordance with OCGA § 9-14-50. To the extent that York v. Jarvis, 248 Ga. 774 (286 SE2d 296) (1982) and Shaw v. Jones, 226 Ga. 291 (1) (174 SE2d 444) (1970) suggest otherwise, they are overruled.

Case remanded with direction. All the Justices concur.