

# THE WRIT OF HABEAS CORPUS IN GEORGIA

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*[I]t not only now is, but ever has been, since Georgia became a sovereign State, her will and intention to preserve the writ [of habeas corpus] as beneficially and perfectly as it existed, or was known to her while in a state of colonial dependence, or as it existed in the mother country from which it is derived.<sup>1</sup>*

Lauded as “the Great Writ”<sup>2</sup> and “the Freedom Writ,”<sup>3</sup> hailed as “the most celebrated writ in our law,”<sup>4</sup> and praised as “one of the precious heritages of Anglo-American civilization,”<sup>5</sup> all because it marvelously triggers a judicial proceeding in which courts may release individuals from unlawful restraints on their liberty, there has never been a time when the writ of habeas corpus has not existed in Georgia. It became part of the law of Georgia on Feb. 12, 1733, at the exact moment Oglethorpe first set his feet on the soil of Georgia,<sup>6</sup> and there is indisputable evidence that the writ was in actual use in the colony as early as 1743.<sup>7</sup> Whether pursuant to constitutional provision, statute, or common law, the writ has been in effect in Georgia ever since.<sup>8</sup>

History shows not only that the writ of habeas corpus has been continuously available in Georgia, but also that Georgians have traditionally held the writ in the highest regard. The Georgia Constitution of 1777<sup>9</sup> was the first state constitution to make habeas corpus a constitutional right,<sup>10</sup> and every one of Georgia’s subsequent constitutions has guaranteed the writ.<sup>11</sup> At the 1787 Philadelphia Convention which framed the Federal Constitution, Georgia’s delegation voted unanimously against ever permitting habeas corpus to be suspended,<sup>12</sup> and

during the Civil War opposition to the Confederate Congress' habeas corpus suspension statutes was strongest and most vociferous in Georgia, with both the Governor and the General Assembly vehemently denouncing the suspension statutes,<sup>13</sup> while the Georgia Supreme Court positively refused to regard the writ as suspended.<sup>14</sup>

From colonial times until 1863, the writ of habeas corpus existed in Georgia by virtue of the common law<sup>15</sup> and the English Habeas Corpus Act of 1679.<sup>16</sup> From 1777 to 1863, apart from the statutes specifying which courts could issue writs of habeas corpus, the Georgia General Assembly enacted only four statutes, each of them of relatively minor importance, regulating the availability of state habeas relief.<sup>17</sup> On Jan. 1, 1863, the Georgia Code of 1863, which included 23 sections on the writ of habeas corpus,<sup>18</sup> went into effect. Since then common law habeas corpus and the 1679 English habeas statute have been abrogated in Georgia, and replaced in their entirety with a statutorily authorized writ of habeas corpus.<sup>19</sup>

Currently, the bulk of Georgia's codified habeas corpus statutes are located in Articles 1 and 2 of Chapter 14 ("Habeas Corpus") of Title 9 ("Civil Practice") of the *Code of Georgia Annotated*.<sup>20</sup> Article 1<sup>21</sup> ("General Provisions") is based on earlier codified habeas statutes dating back to the Georgia Code of 1863, and focuses on habeas corpus proceedings where the custody complained of is not pursuant to a criminal conviction. Article 2<sup>22</sup> ("Procedure for Persons Under Sentence of State Court of Record") governs postconviction habeas corpus proceedings, and derives principally from six statutes enacted since 1967.<sup>23</sup> Georgia postconviction habeas corpus proceedings are further governed by various statutory provisions codified outside Article 2.<sup>24</sup> There are miscellaneous other habeas corpus statutory provisions codified outside Articles 1 and 2.<sup>25</sup>

Application for the writ of habeas corpus in Georgia is made by a written petition, signed under oath by the petitioner or some other person in his behalf.<sup>26</sup> A habeas corpus petition in behalf of an inmate of a state or local penal or correctional institution must be completed on the model form promulgated by the Georgia Administrative Office of Courts.<sup>27</sup> In the case of a postconviction habeas corpus petition, all grounds for relief must be raised in the original or amended petition.<sup>28</sup> There is no statute of limitations on habeas petitions filed by death row inmates, but, subject to certain exceptions, postconviction habeas petitions in noncapital felony cases must be filed within 4 years of the date the conviction became final by the conclusion of direct review or the expiration of the time for seeking direct review.<sup>29</sup>

A petition for a writ of habeas corpus may be filed either in the superior court or the probate court, except that it must be filed in superior court in capital cases, in extradition cases, and in postconviction cases.<sup>30</sup> If presented to a probate court, the petition must be filed in the county where the detention exists.<sup>31</sup> If presented to superior court in a postconviction case, the petition must, subject to a few limited exceptions, be filed in the county where the petitioner is being detained;<sup>32</sup> if presented to superior court in any other case, it must be filed in the circuit where the detention exists.<sup>33</sup> In postconviction cases, the habeas petition must be served upon the person having custody of the convicted person.<sup>34</sup> If the convicted person is in the custody of the Department of Corrections, a copy of the petition must be served by mail upon the state attorney general;<sup>35</sup> if the convicted person is not in the custody of the Department of Corrections, a copy of the petition must be served by mail upon the district attorney of the county in which the petition is filed.<sup>36</sup>

There is a statutory form of writ of habeas corpus for use by the court when, after finding a habeas petition to be legally sufficient, it issues the writ, which commands that the person restrained of his liberty be produced in court and that the cause of his detention be adduced.<sup>37</sup> Disobedience of the writ is punishable by attachment for contempt of court.<sup>38</sup>

Once the habeas petition has been filed, the procedural requirements which the court and the parties must follow will vary, depending on whether the petition challenges for first time state court proceedings resulting in a death sentence,<sup>39</sup> seeks postconviction relief but does not involve a first time challenge to proceedings resulting in a death sentence,<sup>40</sup> or does not seek postconviction relief at all.<sup>41</sup> In postconviction habeas corpus proceedings, the court may receive proof by depositions, oral testimony, sworn affidavits, or other evidence,<sup>42</sup> and, absent a showing of cause and prejudice or of a miscarriage of justice, may deny relief on a claim that could have been but was not raised in a procedurally correct manner at the original trial or on the direct appeal.<sup>43</sup> Subject to certain exceptions, relief may also be denied if the habeas claim was previously rejected either on the habeas petitioner's direct appeal<sup>44</sup> or in a habeas proceeding instituted by the same petitioner.<sup>45</sup>

A habeas corpus proceeding is a civil action,<sup>46</sup> and the burden of persuasion is on the petitioner to prove his case by a preponderance of the evidence.<sup>47</sup> Indigent habeas petitioners do not have a right to appointed counsel, even if under a death sentence.<sup>48</sup> All postconviction habeas corpus trials shall be transcribed,<sup>49</sup> and in all postconviction habeas cases the judge shall make written findings of fact and conclusions of law.<sup>50</sup> Although Georgia postconviction habeas relief was once limited to cases where the conviction or sentence was void for lack of jurisdiction,<sup>51</sup> it is

now available if “in the proceedings which resulted in [the] conviction there was a substantial denial of [petitioner’s] rights under the Constitution of the United States or of this state ...”<sup>52</sup>

If in a postconviction habeas proceeding the court rules in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence and appropriate supplementary orders as to rearraignment, retrial, custody, or discharge.<sup>53</sup> In habeas proceedings not involving a request for postconviction relief, the court shall, as the principles of law and justice require, discharge, remand, or admit to bail the person restrained of his liberty, or shall deliver that person to the custody of an individual entitled thereto.<sup>54</sup>

The final judgment granting or denying habeas relief may be appealed of right to the Georgia Supreme Court, except that in a postconviction case a denial of relief may not be appealed unless the habeas petitioner first obtains from the Georgia Supreme Court a certificate of probable cause to appeal.<sup>55</sup> The issuance of such a certificate is discretionary.<sup>56</sup> The Georgia Court of Appeals has no appellate jurisdiction whatsoever in habeas corpus cases. Until a 1916 state constitutional amendment,<sup>57</sup> however, it exercised appellate jurisdiction over habeas corpus decisions of courts inferior to the superior court.<sup>58</sup>

Although historically habeas corpus has been an appropriate vehicle for resolving child custody disputes in this state<sup>59</sup> and a current Georgia habeas corpus statutory provision<sup>60</sup> dating back to a habeas section in the Georgia Code of 1863 authorizes the use of habeas corpus to determine to whom the custody of a child shall be given, since 1978 Georgia statutory law<sup>61</sup> has prohibited a person from using habeas corpus to seek a change in the custody of a child who previously has been placed in another person’s permanent custody by court order.<sup>62</sup> Nowadays Georgia habeas corpus proceedings commonly involve pretrial confinement on criminal charges,<sup>63</sup>

detention in a mental health facility,<sup>64</sup> or extradition cases.<sup>65</sup> The large majority of Georgia habeas cases these days, however, are postconviction cases,<sup>66</sup> some of which are human rights landmarks.<sup>67</sup>

Today, as in times past, the Great Writ of Habeas Corpus “continue[s] to play an important role in preserving and protecting liberty in Georgia.”<sup>68</sup>

1. State v. Philpot, 1 Ga. Ann. (Dud. 46) 375, 377 (Super. Ct. Richmond County 1831).
2. See, e.g., Fullwood v. Sivley, 271 Ga. 248, 251, 517 S.E.2d 511 (1999).
3. See, e.g., Note, *The Freedom Writ*, 61 Harv. L. Rev. 657 (1948).
4. Miller v. Hambrick, 905 F.2d 259, 261 (9th Cir. 1990).
5. Fay v. Noia, 372 U.S. 391, 441 (1963).
6. Donald E. Wilkes, Jr., *A New Role for an Ancient Writ: Postconviction Habeas Corpus Relief in Georgia (Part I)*, 8 GA. L. REV. 313, 314 (1974).
7. *Id.* at 314, 334. For the history of the writ of habeas corpus in England prior to its importation into Georgia, see DONALD E. WILKES, JR., FEDERAL POSTCONVICTION REMEDIES AND RELIEF 59-89 (1996).
8. See 1 DONALD E. WILKES, JR., STATE POSTCONVICTION REMEDIES AND RELIEF 948-49 (2005).
9. GA. CONST. of 1777, art. LX.
10. Wilkes, *supra* note 6, at 314.
11. GA. CONST. art. 1, § 1 ¶ 15; GA. CONST. of 1976, art. 1, § 1 ¶ 12; GA. CONST. of 1945, § 2-111; GA. CONST. of 1877, § 2-111; GA. CONST. of 1868, art. 1, § 13; GA. CONST. of 1865, art. 1, § 3; GA. CONST. of 1861, art. 1, § 5; GA. CONST. of 1798, art. 4, § 9; GA. CONST. of 1789, art. IV, § 4.
12. Wilkes, *supra* note 6, at 313-14.
13. *Id.* at 314-15; see also Frank Lawrence Owsley, STATE RIGHTS IN THE CONFEDERACY 162-65, 183-90 (1925); John B. Robbins, *The Confederacy and the Writ of Habeas Corpus*, 55 GA. HIST. Q. 83, 91-97 (1971).
14. In *Andrews v. Strong*, 33 Ga. Supp. 164 (1864), for example, at a time when under legislation enacted by the Confederate Congress the writ of habeas corpus was supposed to be suspended, the Georgia Supreme Court affirmed a lower court's judgment granting habeas relief to a citizen conscripted into the Confederate Army who claimed that as a justice of the peace he was exempt from military service; see also *Hooks v. Harris*, 33 Ga. Supp. 81 (1864); *Gates v. McManus*, 33 Ga. Supp. 67 (1864).
15. Wilkes, *supra* note 6, at 326-34, 335.
16. 31 Car. 2, ch. 2 (1679). See Wilkes, *supra* note 6, at 334-35; see also *Simmons v. Georgia Iron & Coal Co.*, 117 Ga. 305, 43 S.E. 780 (1903) (1679 English Habeas Corpus

Act became part of law of Georgia in 1784); *State v. Marco*, 1 Ga. Ann. (T. Charlton 24) 66 (Super Ct. Chatham County 1805) (1679 English habeas statute is adopted by our state constitution and laws).

17. Act of Dec. 22, 1808, 1808 Ga. Laws 22; Act of Jan. 22, 1852, 1851-1852 Ga. Laws 236; Act of Dec. 29, 1847, § 2, 1847 Ga. Laws 196-97; Act of Dec. 27, 1845, § 2, 1845 Ga. Laws 43.
18. Ga. Code §§ 3909-31 (1863).
19. With various modifications, the habeas corpus provisions of the Georgia Code of 1863 have been recodified seven times. Ga. Code Ann. §§ 9-14-1 to -23 (1982); Ga. Code §§ 50-101 *et seq.* (1933); Ga. Pen. Code §§ 1291 *et seq.* (1910); Ga. Pen. Code § 1210 *et seq.* (1895); Ga. Code §§ 4009 *et seq.* (1882); Ga. Code §§ 4009 *et seq.* (1873); Ga. Code §§ 3933 *et seq.* (1868).
20. Ga. Code Ann. §§ 9-14-1 *et seq.* (2003 & Supp. 2005).
21. Ga. Code Ann. §§ 9-14-1 to -23 (2003).
22. Ga. Code Ann. §§ 9-14-40 to -53 (2003 & Supp. 2005).
23. Act of May 17, 2004, 2004 Ga. Laws 917; Act of Apr. 13, 1982, 1982 Ga. Laws 786; Act of Apr. 24, 1975, 1975 Ga. Laws 1143; Act of Apr. 19, 1973, 1973 Ga. Laws 1315; Act of Apr. 18, 1967, 1967 Ga. Laws 835.
24. Ga. Code Ann. § 9-10-14 (2003) (model forms (including model form of habeas corpus petition) required to be used by certain inmates); Ga. Code Ann. § 15-1-9.1(b)(3), (4) (2003) (requests for assistance to Council of Superior Court Judges when habeas petitions are filed by death row inmates); Ga. Code Ann. § 15-6-17(a) (2003) (postconviction habeas corpus proceedings may be conducted in suitable room in certain detention facilities); Ga. Code Ann. § 17-10-36 (2003) (habeas corpus unaffected by Georgia Supreme Court's unified review procedure in cases where death sentence imposed); Ga. Code Ann. § 38-3-62(7) (Supp. 2005) (extension of time to file habeas petition when judicial emergency is declared); Ga. Code Ann. § 40-13-133 (2003) (special regulations for certain challenges (including habeas challenges) to misdemeanor traffic offense convictions); Ga. Code Ann. § 42-12-7.1 (2003) (procedures for payment of court fees and costs from indigent inmate's prison account when inmate files petition for habeas corpus).
25. Ga. Code Ann. § 15-6-9(1) (2003) (superior court judges may grant writs of habeas corpus within their respective circuits); Ga. Code Ann. § 15-6-77.1(b)(8) (2003) (additional fees in certain habeas corpus proceedings); Ga. Code Ann. § 15-9-60(k) (Supp. 2005) (costs for habeas proceedings instituted in probate court); Ga. Code Ann. § 15-16-21(c) (1), (2) (2003) (fees charged by sheriff in certain habeas corpus cases); Ga.



Code Ann. § 17-7-34 (2003) (no defendant shall be discharged in habeas corpus because of informality in commitment proceedings); Ga. Code Ann. § 19-9-23(c), (d) (2003) (restricting use of habeas corpus in child custody cases); Ga. Code Ann. §§ 17-13-30(a), 17-13-31 (2003) (habeas corpus for arrested persons subject to extradition to another state); Ga. Code Ann. § 31-14-9(b) (2003) (habeas corpus for persons detained in tuberculosis hospitals); Ga. Code Ann. §§ 37-3-148(a), 37-4-108(a) (2003) (habeas corpus for persons detained in mental health facilities).

26. Ga. Code Ann. §§ 9-14-3 to -4, 9-14-44.
27. Ga. Code Ann. § 9-10-14. See, e.g., *Heaton v. Lemacks*, 266 Ga. 189, 466 S.E.2d 7 (1996).
28. Ga. Code Ann. § 9-14-51.
29. Ga. Code Ann. § 9-14-42(c). In misdemeanor traffic offense conviction cases, the statute of limitations period is 180 days, Ga. Code Ann. § 40-13-33(a), and in all other misdemeanor conviction cases it is 1 year, Ga. Code Ann. § 9-14-42(c).
30. Ga. Code Ann. §§ 9-14-4, 9-14-40(b), 9-14-43.
31. Ga. Code Ann. § 9-14-4.
32. *Id.*
33. Ga. Code Ann. §§ 9-14-4, 9-14-43, 40-13-33(c).
34. Ga. Code Ann. § 9-14-45.
35. *Id.*
36. *Id.*
37. Ga. Code Ann. § 9-14-6.
38. Ga. Code Ann. § 9-14-23.
39. Ga. Code Ann. § 9-14-47.1(a)-(c); Rule 44, Ga. Super. Ct. R.
40. Ga. Code Ann. §§ 9-14-45 to -47, 9-14-47.1(d).
41. Ga. Code Ann. §§ 9-14-5, 9-14-7 to -15.
42. Ga. Code Ann. § 9-14-48(a).
43. Ga. Code Ann. § 9-14-48(d); *see also* Ga. Code Ann. § 9-14-42(b). See, e.g., *Chatman v. Mancill*, 280 Ga. 253, 626 S.E.2d 102 (2006); *Schofield v. Palmer*, 279 Ga. 848, 621

- S.E.2d 726 (2005); *Chatman v. Mancill*, 278 Ga. 488, 604 S.E.2d 154 (2004); *Head v. Stripling*, 277 Ga. 403, 590 S.E.2d 122 (2003); *Head v. Ferrell*, 274 Ga. 399, 554 S.E.2d 155 (2001); *Turpin v. Christenson*, 269 Ga. 226, 497 S.E.2d 216 (1998); *Black v. Hardin*, 255 Ga. 239, 336 S.E.2d 854 (1986); *Valenzuela v. Newsome*, 253 Ga. 793, 325 S.E.2d 370 (1985); *Godfrey v. Francis*, 251 Ga. 652, 308 S.E.2d 806 (1983).
44. *See, e.g., Hall v. Vargas*, 278 Ga. 868, 608 S.E.2d 200 (2005); *Head v. Thomason*, 276 Ga. 434, 578 S.E.2d 426 (2003); *Luke v. Battle*, 275 Ga. 370, 565 S.E.2d 816 (2002); *Walker v. Penn*, 271 Ga. 609, 523 S.E.2d 808 (2001); *Gaither v. Gibby*, 267 Ga. 96, 475 S.E.2d 603 (1996); *Dungee v. Hopper*, 241 Ga. 236, 244 S.E.2d 949 (1978).
45. *See, e.g., Stevens v. Kemp*, 254 Ga. 228, 327 S.E.2d 185 (1985); *Samuels v. Hopper*, 234 Ga. 246, 215 S.E.2d 250 (1975).
46. *See, e.g., Fullwood v. Sivley*, 271 Ga. 248, 251, 517 S.E.2d 511 (1999); *Gibson v. Turpin*, 270 Ga. 855, 513 S.E.2d 186 (1999).
47. *See, e.g., Bruce v. Smith*, 274 Ga. 432, 553 S.E.2d 808 (2001); *Gaither v. Gibby*, 267 Ga. 96, 475 S.E.2d 603 (1996).
48. *See, e.g., Fortson v. State*, 272 Ga. 457, 532 S.E.2d 102 (2000); *Gibson v. Turpin*, 270 Ga. 855, 513 S.E.2d 186 (1999). *See Note, Has Habeas Corpus Been Suspended in Georgia? Representing Indigent Prisoners on Georgia's Death Row*, 17 GA. ST. U. L. REV. 605 (2000).
49. Ga. Code Ann. § 9-14-50.
50. Ga. Code Ann. § 9-14-49.
51. *See, e.g., Balkcom v. Parris*, 215 Ga. 122, 109 S.E.2d 48 (1959).
52. Ga. Code Ann. § 9-14-42(a). *See, e.g., Britt v. Smith*, 274 Ga. 611, 556 S.E.2d 435 (2001) (state postconviction habeas corpus relief is not available unless petitioner suffered a substantial denial of his federal or state constitutional rights).
53. Ga. Code Ann. § 9-14-48(d).
54. Ga. Code Ann. § 9-14-19.
55. Ga. Code Ann. §§ 9-14-22, 9-14-52. *See, e.g., Massaline v. Williams*, 274 Ga. 552, 554 S.E.2d 720 (2001); *Hughes v. Sikes*, 273 Ga. 804, 546 S.E.2d 518 (2001); *Hicks v. Scott*, 273 Ga. 358, 541 S.E.2d 27 (2001); *Smith v. Nichols*, 270 Ga. 550, 512 S.E.2d 279 (1999); *Patterson v. Earp*, 257 Ga. 729, 363 S.E.2d 248 (1988); *Austin v. Carter*, 248 Ga. 775, 285 S.E.2d 542 (1982); *Reed v. Hopper*, 235 Ga. 298, 219 S.E.2d 409 (1975).
56. *See Rule 36, Ga. Sup. Ct. R.*

57. 1916 Ga. Laws 19.
58. *See, e.g.*, Cross v. Foote, 17 Ga. App. 802, 88 S.E. 594 (1916); Walden v. Morris, 16 Ga. App. 408, 85 S.E. 452 (1915); McBride v. Graeber, 16 Ga. App. 240, 85 S.E. 86 (1915); Mathews v. Swatts, 16 Ga. App. 208, 84 S.E. 980 (1915); Howard v. Tucker, 12 Ga. App. 353, 77 S.E. 191 (1913); Crawford v. Manning, 12 Ga. App. 54, 76 S.E. 771 (1912); Weaver v. Thompson, 11 Ga. App. 132, 74 S.E. 901 (1912); Crapps v. Smith, 9 Ga. App. 400, 71 S.E. 501 (1911); Manning v. Crawford, 8 Ga. App. 835, 70 S.E. 959 (1911); Evans v. Lane, 8 Ga. App. 826, 70 S.E. 603 (1911); Davis v. Smith, 7 Ga. App. 192, 66 S.E. 401 (1909); Jordan v. Smith, 5 Ga. App. 559, 63 S.E. 595 (1909); Yeates v. Roberson, 4 Ga. App. 573, 62 S.E. 104 (1908); Fincher v. Collum, 2 Ga. App. 740, 59 S.E. 22 (1907); Walker v. Jones, 1 Ga. App. 70, 57 S.E. 903 (1907).
59. *See, e.g.*, Yancey v. Watson, 217 Ga. 215, 121 S.E.2d 772 (1961); Boge v. McCollum, 212 Ga. 214, 91 S.E.2d 619 (1956); Crawford v. Jones, 205 Ga. 764, 55 S.E.2d 215 (1949); Crowell v. Crowell, 191 Ga. 36, 11 S.E.2d 190 (1940); Bentley v. Terry, 59 Ga. 555 (1877); Massee v. Snead, 29 Ga. 51 (1859).
60. Ga. Code Ann. § 9-14-2.
61. Ga. Code Ann. § 19-9-23(c), (d).
62. *See, e.g.*, Alvarez v. Sills, 258 Ga. 18, 365 S.E.2d 107 (1988); Columbus v. Gaines, 253 Ga. 518, 322 S.E.2d 259 (1984); Hutto v. Hutto, 250 Ga. 116, 296 S.E.2d 549 (1982); Munday v. Munday, 243 Ga. 863, 257 S.E.2d 282 (1979).
63. *See, e.g.*, Rainwater v. Langley, 277 Ga. 127, 587 S.E.2d 18 (2003); Dunn v. Edwards, 275 Ga. 458, 569 S.E.2d 525 (2002); Watts v. Pitts, 253 Ga. 501, 322 S. E. 2d 252 (1984).
64. *See, e.g.*, Hogan v. Nagel, 276 Ga. 197, 576 S.E.2d 873 (2003); Hogan v. Nagel, 273 Ga. 577, 543 S.E.2d 705 (2001).
65. *See, e.g.*, Bradford v. Brown, 277 Ga. 92, 586 S.E.2d 631 (2003); O'Bryant v. Brown, 274 Ga. 534, 558 S.E.2d 2 (2001).
66. *See, e.g.*, Johnson v. Smith, 280 Ga. 235, 626 S.E.2d 470 (2006) (involuntary guilty plea violated due process; relief granted); Harvey v. Meadows, 280 Ga. 166, 626 S.E.2d 92 (2006) (confinement under a sentence that is longer than that permitted by state law constitutes a denial of liberty without due process of law); Schofield v. Palmer, 279 Ga. 848, 621 S.E.2d 726 (2005) (in violation of due process, state suppressed exculpatory evidence at murder trial; relief granted); Petty v. Smith, 279 Ga. 273, 612 S.E.2d 276 (2005) (denial of right to the effective assistance of counsel when pleading guilty; relief granted); Adamson v. Sanders, 279 Ga. 187, 611 S.E.2d 44 (2005) (denial of right to the effective assistance of trial counsel; relief granted); Shorter v. Waters, 278 Ga. 558, 604

S.E.2d 472 (2004) (denial of right to the effective assistance of counsel on direct appeal; relief granted); *Foskey v. Battle*, 277 Ga. 480, 591 S.E.2d 802 (2004) (involuntary guilty plea violated due process; relief granted); *Head v. Stripling*, 277 Ga. 403, 590 S.E.2d 122 (2003) (in violation of due process, prosecution failed to disclose evidence supporting mental retardation claim at penalty phase of capital trial; relief granted); *Head v. Thomason*, 276 Ga. 434, 578 S.E.2d 426 (2003) (denial of right to the effective assistance of counsel at penalty phase of capital trial; relief granted); *Clowers v. Sikes*, 272 Ga. 463, 532 S.E.2d 98 (2000) (violation of right to counsel when entering guilty plea; relief granted); *Sloan v. Sanders*, 271 Ga. 299, 519 S.E.2d 219 (1999) (denial of right to the effective assistance of counsel on direct appeal; relief granted); *Lillard v. Head*, 267 Ga. 291, 476 S.E.2d 736 (1996) (habeas relief is available on due process grounds where a prisoner is confined under a sentence that is longer than that permitted by state statute or is confined beyond the term of a lawful sentence).

67. *See, e.g., Nelson v. Zant*, 261 Ga. 358, 405 S.E.2d 250 (1991) (relief granted on due process grounds to innocent death row inmate who had been imprisoned 14 years); *Fleming v. Zant*, 259 Ga. 687, 386 S.E.2d 339 (1989) (invalidating, under state constitution, the death penalty for mentally retarded).
68. Donald E. Wilkes, Jr., *A New Role for an Ancient Writ: Postconviction Habeas Corpus Relief in Georgia (Part II)*, 9 GA. L. REV. 13, 78 (1974).