COURT OF APPEALS OF GEORGIA

RETURN NOTICE

December 30, 2015

Mr. Chad Alan Blanton, GDC1000459888, Dooly State Prison, Post Office Box 750, Unadilla, Georgia 31091

Case Number: _____ Lower Court: County Superior Court

Court of Appeals Case Number and Style: _____

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BRIEF OF HABEUS CORPUS

In the Court of Appeals of Georgia,

Chad Alan Blanton,

Petitioner,

GDC ID #1000459888,

vs.

The State,

Respondent,

Civil action file number 15V-0195

Brief of Habeas Corpus

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STATEMENT OF FACTS

When the petitioner was arrested, he was twenty years old.(T-150;152) A. H., the main witness for the state was seven years younger than him but had posed on a social networking site as a sixteen year old.

For sexual contact with A.H., the petitioner was indicted on the following counts:

1. one count of aggravated child molestation,
2. one count of child molestation, and
3. one count of enticing a child for indecent purposes.

Upon deliberation by the jury, the petitioner was convicted of the following:

1. one count of aggravated child molestation,
2. one count of statutory rape, and
3. one count of enticing a child for indecent purposes.

The convictions led to petitioner being sentenced to serve the rest of his life in prison along with twenty years of concurrent time and ten years of concurrent time. Petitioner was also sentenced to serve a consecutive sentence of life on

probation

This case begin when the petitioner met her on the social networking site, Tagged.com (T-65). A.H. created an identity on Tagged using her iPod Touch(T-66). When A.H. set up her account, she claimed to be sixteen, when she was actually thirteen. A.H. said that lying about your age on Tagged "is...fairly common" (T-68). When they finally met in person, A.H. claimed that she was "expecting somebody seventeen" (T-77). As the trial progressed it came out that A.H. had already learned that the petitioner was in the Air Force, and that he was twenty years of age (T-104,105).

They began messaging on Tagged and then began exchanging text messages and phone calls (T-70). Eventually, they arranged for the petitioner to visit (T-72). Plans were made, but the petitioner did not show up. The two planned a second visit. She did not tell her parents that she gave the petitioner her home address, and she knew that he was coming from Florida to pick her up (T-71-73).

As the petitioner drove, she was on the phone with him and another friend of hers who presumably knew of the petitioner's journey (T-73). The petitioner arrived art A.H.'s home in the middle of the night (T-73). A.H. decided to go

forward with the meeting rather than, "to wait until everybody got up"(T-73). Rather than leave through the front door, A.H. left her house through a basement door (T-74).

A.H. took her cell phone with her to the petitioners vehicle. The two first went to a gas station (T-74). A.H. did not flee or call for help (T-74). She claimed that she tried to contact a friend to come and get her. Yet, the State did not call any friend to testify (T-76; entire trial transcript).

When the two reached the parking lot of the motel, the petitioner checked in while A.H. remained in the car (T-77). A.H. did not leave, did not call her parents, and did not call the police (T-77-78). When the petitioner returned, she accompanied him to their motel room (T-78). A.H. still had her iPod and her phone with her; she still did not call for help (T-78). When the petitioner got on top of her; she refused, and he complied (T-79). A.H. then went into the hallway alone but did not try to get away. In her account, she attempted to call friends; when they did not answer, she went back inside (T-79). None of her friends were called to testify to receiving any missed calls from A.H. (entire trial transcript).

As the petitioner took her home, A.H. claimed she told him "You're a stupid

jerk. Just take me home. I don't want to be with you either." (T-90).

When A.H. arrived home, she "had to go through the front door" (T-91) Once inside, she found her mom "standing there". When asked of her whereabouts, A.H. lied. She said that she had been with her friend from the neighborhood. When her mother began investigating this claim, A.H. told another lie (T-91). She claimed she had been with her ex-boyfriend Tyler. It required A.H.'s father traveling from his home in Florida, questioning A.H. himself, and putting three nails through the iPod Touch with a nail gun to get her to say the petitioners first name. (T-155). Her father began cutting the back of her hair to get her to give the petitioners phone number (T-92).

A.H.'s father spoke with the petitioner on the phone. During the call, the petitioner was "very apologetic" and said he "was going to be a man and take the punishment" (T-149). The conversation was approximately 45 minutes long (T-149). A.H.'s father reiterated that the petitioner was apologetic throughout the phone call and admitted to what he did.

When the State called the lead detective, it introduced a series of photographs recovered from the petitioners phone that were unrelated to the facts

and circumstances that gave rise to the State's indictment. They are found at the end of volume two of the trial transcripts.

The defense objected to "any pictures of other people except for the actual victim in the case" (T-214). The defense argued "in the pictures he's showing, we don't know how old that girl is. All we can do is speculate...we don't have her here" (T-218) The defense further objected that "this is a classic character attack on my client" (T-219). The trial court then concluded she was young, reasoning:

"Even looking at her teeth, you can tell she didn't have a mature mouth yet. So it would be very easy for anybody to observe the age of this girl. These are to be admitted. Objection overruled. (T-223-224)."

Afterward, the State elicited hearsay from the detective that the person depicted was fourteen years old (T-225). It is unclear how the detective determined the age of the female depicted. No birth certificate was tendered as evidence. (Entire trial transcript) The photographs were questioned by the jury during deliberations, asking: "is the girl in the photo, Lexus or not?" The trial court responded to the question:

"That's no. I believe the testimony the testimony was the girl's name

appears on some object in that picture." (T-363).

The jury also asked "Did he know she was 13 before they had intercourse?" (T-364) the trial court instructed the jury to look towards the evidence, and instructed them not to concern themselves with what the petitioner knew and when (T-365). The trial court instructed on the age of consent, arguing:

> "...under the law, a 16 year old is incapable to give consent. That is the protection of the law. We protect several segments of our society. Since elderly people can't give consent to things. We protect them because we recognize what can happen sometimes as we get older and lose our faculties. And the law recognizes that children under a certain age don't have the maturity to make certain decisions, and the burden is placed among adults then. So the adult has to understand that they're under 16, that's all" (T-366).

After eighteen minutes of deliberation the jury returned a verdict of guilty on all counts (T-368).

Petitioner has previously petitioned for a retrial with the Superior court which was subsequently denied.

Petitioners trial counsel did not raise the arguments that follow at the time of

the verdict nor sentencing.

Petitioner has also filed an appeal with the Appelate court which was also denied.

Petitioners appellate counsel did not raise the arguments that follow at the time of the hearing.

ENUMERATION OF ERRORS

DID THE TRIAL COURT VIOLATE THE PETITIONER'S FIFTH AMENDMENT CONSTITUTIONAL RIGHT?

ERROR 1

The petitioner was indicted on one count of aggravated child molestation, one count of child molestation, and one count of enticing a child for indecent purposes.

The petitioner was convicted by the court of one count of aggravated child molestation, one count of statutory rape, and one count of enticing a child for indecent purposes.

Under O.C.G.A 16-1-6, if the State uses up all the evidence that the defendant committed one crime in establishing another crime, the former crime is included in the latter as a matter of fact and the substantive bar of double jeopardy

prevents multiple convictions or punishments that may be imposed for crimes arising from same conduct. (*Stephens v. Hopper* (241 Ga. 596)(247 S.E. 2D 92) (1978)

According to *Wells v. State* (474, S.E. 2d 764) (Ga.Ct.App)(1996), enticing a child for indecent purposes and child molestation merge as a matter of fact when the indictment makes a specific allegation in regards to "enticing...for the purpose of child molestation". Therefore requiring the State to use the same or less than all the facts to establish the two crimes.

The petitioner's indictment makes a similar allegation:

"further charge and accuse Chad Alan Blanton with the offense of Enticing a Child for Indecent Purposes for that the said accused, in the State of Georgia and County of Douglas, on January 18, 2010 did take A.H., a child under the age of 16 years, to a place, the same being the Motel 6 on Bob Arnold Blvd in Lithia Springs, for the purpose of child molestation..." Therefore requiring the State to use all of the facts in establishing the aggravated child molestation for establishing the enticing a child, and resulting in an illegal sentence and a direct violation of the petitioner's Fifth Amendment constitutional right.

ERROR 2

Under O.C.G.A 16-1-7, a) When the same conduct of an accused may establish the commission of more than one crime, the accused may be prosecuted for each crime. He may not, however, be convicted of more than one crime if:

(1) One crime is included in the other; or

(2) The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

According to *Andrews v. State* (200 Ga. App. 47)(406 SE2d 801)(1991) "...The evidence, construed most favorably for the State and most strongly against appellant, authorized a finding that appellant engaged in a single act of sexual intercourse ... This evidence was sufficient to authorize a rational trior of fact to find proof of appellant's guilt of aggravated child molestation or statutory rape beyond a reasonable doubt. And, This evidence did not, however, authorize a conviction and sentence for both aggravated child molestation and statutory rape. The evidence is undisputed that only a single act of sexual intercourse occurred and where, as here, both convictions are in fact based upon the same, single act, only one conviction is authorized. *McCollum v. State*, 177 Ga. App. 40 (1) (338

SE2d 460) (1985)."

The petitioner's indictment makes a similar allegation:

That on a finding of guilty by the jury for aggravated child molestation, statutory rape, and enticing a child for indecent purposes. The evidence is undisputed that only a single event took place in that ... "the said accused, in the State of Georgia and County of Douglas, on January 18, 2010 did take A.H., a child under the age of 16 years, to a place, the same being the Motel 6 on Bob Arnold Blvd in Lithia Springs..." all three convictions are in fact based upon the same, single act, thus only one conviction is authorized.

Failure to raise the claims at trial and on direct appeal was the fault of the petitioner's trial and appellate lawyers respectively, Petitioner claims ineffective assistance of counsel as "cause" for the default.

CONCLUSION

The petitioner requests the Court for relief of this Constitutional violation by vacating petitioner's convictions on either the aggravated child molestation count, the enticement count, or the statutory rape count. And because the existence of three counts obviously influenced the trial court's exercise of its discretion in sentencing on each count, we request this Court vacate defendant's sentence with respect to all counts and remand to allow the trial court to re-sentence. See *United States v. Alvarez-Moreno,* 874 F.2d 1402, 1414 (11th Cir.1989)

TABLE OF AUTHORITIES

IN THE COURT OF APPEALS

STATE OF GEORGIA

Chad Alan Blanton,

Petitioner,

vs. Civil action file number 15V-0195

The State of Georgia

Respondent,

CERTIFICATE OF SERVICE

This certifies that on December 26, 2015 I sent copies of the following documents: Brief of Habeas Corpus

to the opposing party by first class mail They were addressed as follows:

Brian Fortner - District Attorney, Douglas Judicial District

8700 Hospital Drive - Main Floor, Douglas County Courthouse

Douglasville, Georgia 30134

Dated: December 26, 2015

Chad Alan Blanton, 1000459888

Petitioner, Pro Se

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