

to hang January 22, 1915. December 21 United States District Judge, W. T. Newman of Georgia, refused a writ of *habeas corpus*. December 28, 1914, Mr. Justice Lamar granted an appeal and certificate of reasonable doubt to the United States Supreme Court. April 19, 1915, the Supreme Court of the United States, with Mr. Justices Holmes and Hughes dissenting, dismissed the appeal.<sup>2</sup> May 31, Frank's plea for commutation of sentence to life imprisonment was heard before the State Prison Commission. June 9, 1915, the State Prison Commission submitted a divided report to Governor Slaton, Commissioners Davison and Rainey voting against, and Commissioner Paterson for commutation. June 21, Governor Slaton commuted Frank's sentence to life imprisonment and the prisoner was taken to Milledgeville to begin his sentence.

On July 17, 1915, Frank was attacked by a fellow convict who cut his throat with a butcher knife. He lingered between life and death for several weeks, but finally recovered.

Constitution of the State of Georgia, which provides that the right of trial by jury except where it is otherwise provided in this Constitution, shall remain inviolate. That the reception of the verdict in the absence of the defendant was contrary to and in violation of the provisions of the fourteenth amendment to the Constitution of the United States, to wit: 'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' That the reception of the verdict in the absence of the defendant was in violation of Article 1, Sec. 1, par. 5, of the Constitution of the State of Georgia, to wit: 'Every person charged with an offense against the laws of this State shall have the privilege and benefit of counsel.' "

The Supreme Court ruled that because Frank was in court with his attorneys when he was sentenced and because later, within the time allowed by law, made a motion for a new trial, which recited, among other things his absence at the reception of the verdict, and that his presence had been waived by his counsel and his motion for new trial was refused by the trial court and its judgement affirmed by the Supreme Court, the defendant must be considered as having acquiesced in the waiver made by his counsel of his presence at the reception of the verdict, and he cannot at a subsequent date set up such absence as a ground to set aside the verdict.

<sup>2</sup> Frank v. Magnum, 237 U. S. 309.