

**Court of Appeals
of the State of Georgia**

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A96A. v. .

It appearing that appellant, did not file an enumeration of error or brief within 20 days of the docketing of the appeal as directed;

It further appearing that appellant was ordered to file an enumeration of errors and brief in this case no later than , 1996, or face dismissal of the appeal;

It also further appearing that as of the date of this order appellant has not filed an enumeration of error and brief as ordered by this court.

Therefore, this appeal is dismissed. Court of Appeals Rule 26.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

COURT OF APPEALS NO. A9 A .

_____ v. THE STATE.

It appearing that appellant, pro se, did not file an enumeration of error and brief as required by the Rules of the Court of Appeals;

It also further appearing that appellant was directed by order of this Court dated _____, 199 , to file an enumeration of error and brief no later than _____, 199 , or the appeal would be subject to dismissal unless good and sufficient cause for the failure to file was timely communicated to this Court;

It also further appearing that appellant did not comply with this order;

Therefore, it is hereby ordered that this appeal is dismissed. Whittle v. State, 210 Ga. App. 841, 842 (437 SE2d 842).

JURISDICTIONAL REVIEW FOR 93 BY KM
CENTRAL STAFF

GEORGIA COURT OF APPEALS

STYLE: A09A0815. HART v. THE STATE.

APPEAL TYPE: final order denying petition for the return of seized property

FATAL DEFECT(S): None found—appeal passed initial jurisdictional review

COMMENTS: This is a close case. Hart is currently incarcerated in North Carolina. Thus, he arguably should comply with OCGA 42-12-8, which requires an application for discretionary appeal in all appeals filed by prisoners. However, OCGA 42-12-1 et seq. applies only to civil actions filed by inmates. Here, Hart filed his motion using the citation number for his original arrest, seeking return of \$4,600 allegedly seized by police, and the trial court used the same number in its order. Accordingly, it seems the appeal is quasi-criminal in nature. At the same time, there was no pending criminal case as the charges against Hart were dismissed. If it is determined that the motion seeking return of seized property was in fact civil in nature, then Hart's appeal should be dismissed for failure to file an application for discretionary appeal. If, on the other hand, the motion is related to the prior criminal matter, then the denial of the order is directly appealable. The one time a similar issue was presented, this Court treated the matter as a post judgment motion in a criminal proceeding and permitted the prisoner to file a direct appeal. (See A04A0059.) But the case was unpublished.

EXPEDITE STATUS: n/a

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