

Court of Appeals of the State of Georgia

ATLANTA, NOVEMBER 27, 2000

The Court of Appeals hereby passes the following order:

A01A0310. RICKY CHARLES JOHNSON v. THE STATE

The above appeal was docketed on October 2, 2000. On October 11, 2000, appellant filed a motion to remand the case stating the transcript of the first trial had not been completed. Upon consideration of the appellant's motion to remand, the Court granted the motion and the clerk of this Court was directed to return the record to the clerk of the Superior Court of Spalding County who was ordered, that upon the filing of the transcript of the first trial, to retransmit the record and transcript to this Court for re-docketing.

Appellant filed a motion on November 16, 2000, seeking a waiver of the filing fee contending the remand of the case was not due to any act or failure to act on the part of the appellant, notwithstanding appellant filed the motion to remand the appeal.

This Court issued its remittitur on November 15, 2000, divesting this Court of jurisdiction over the matter. Therefore, the Court is constrained to DISMISS appellant's motion to waive filing fee.

The Court notes that the \$80.00 filing fee is a statutory fee set by the Legislature. OCGA §5-6-4 states that the filing fee is \$80.00 and the clerk is prohibited from receiving appellant's application or brief without the \$80.00 filing fee or sufficient

pauper's affidavit. The Court of Appeals Rule 5 states the \$80.00 filing fee shall be paid upon the filing, in direct appeals, upon filing of briefs and that cost are incurred and appellant and appellant's counsel are liable for cost when the case is docketed.

A remand is a disposition from this Court. The case may or may not come back to the Court of Appeals. That action is controlled by the parties. The Constitution and the statutes of this state require the Court of Appeals to make every reasonable effort to collect monies owed to the State of Georgia. The \$80.00 filing fee is an administrative fee set by the Legislature to defray the cost of docketing the case, assigning the case to a judge, assigning the case to a Division, and shepherding the case through the Court of Appeals until disposition.

While the Court is sympathetic with the position set out in appellant's motion to waive filing fee, there is nothing the Court can do to address the matter at this juncture.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 27 2000

*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.

W. Z. Martin, III