



Court of Appeals of Georgia

TO: Mr. William Acree, GDC1304165, Washington State Prison, Post Office Box 206, 13262 Highway 24 East, Davisboro, Georgia 31018

RE: **Motion for Out-of-Time Appeal**

MOTION FOR OUT-OF-TIME APPEAL - RETURN OF MOTION

- A request for an out-of-time appeal should be made to the trial court from which you are appealing. If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.**

AJ 6.26.14

HB09-002
ATTACHMENT 1
12/15/07
(1 of 2)

PETITION FOR ADJUDICATION OF GUILT AND IMPOSITION
OF SENTENCE IN FIRST OFFENDER CASE

THE STATE
vs
William A. Acree

DOCKET No. 08R408
SUPERIOR COURT
OF Dougherty COUNTY
Dougherty CIRCUIT

88363643395

SID: 2486595T GDC: 1304165

Now comes Robert Howard, Jr., in the name and behalf of the State of Georgia, and shows to this Honorable Court the following facts:

That the above named Defendant entered a plea of guilty to (nolo contendere', or was convicted of), the offense(s) of Simple Battery, Stalking, Terroristic Threats, Aggravated Stalking. That this Court, on the 2nd day of March, 2009, did sentence the Defendant under the provisions of the First Offender Act (O.C.G.A. 42-8-60 et. seq.) without an adjudication of guilt to serve a period of time on probation as follows: 10 years probation.

the terms and conditions of which are set forth in the copy of said sentence hereto attached, marked Exhibit "A", and made a part hereof.

That the Defendant has violated the following terms and conditions of his probation in the following particulars: Probationer shall not violate the criminal laws of any governmental unit...On or about June 22, 2014, the probationer did commit the offense of kidnapping in Albany, Dougherty County Georgia.

WHEREFORE, the State of Georgia prays that the citation for adjudication of guilt and imposition of sentence be served on the Defendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at that time to show cause why adjudication of guilt and imposition of sentence should not be ordered.

This _____ day of _____, 20____.

Dougherty Judicial
Circuit

Probation Officer

ORDER

Having read and considered the foregoing petition, it is hereby ordered that the Defendant be served with a copy of same and that the Defendant show cause before me on the 27th day of October, 2014, at Dougherty County Jail in Albany in Georgia, at 1:30 PM AM/PM why he/she should not be adjudicated guilty and sentence imposed.

This _____, 20____.

Judge, Superior Court

7-1-14

FILED

NOV 14 2014
EVONNE S. JILL
DOUGHERTY COUNTY
CLERK OF COURTS

NO Signature
by Probation
officer

Motion for
out of time
appeal.

Motion for
out of time
appeal.

William Anthony Acree.
Defendant

Docket: 08R-408

ORDER OF ADJUDICATION OF GUILT AND IMPOSITION
OF SENTENCE

WHEREAS, pursuant to notice given to the Defendant, a full hearing having been conducted by this Court on the date aforesaid and the Court having determined that the terms of probation had been violated as set forth in the following particulars: As set forth in petition in that defendant admits to the said violation.

→ never took stand
how could I admit,
nor did I sign any waiver

NOW, THEREFORE, it is ordered and adjudged that the Defendant be adjudged guilty of said offense for which he received First Offender probation, and it is further ordered and directed that the Defendant be sentenced in accordance with law to serve 4 yrs., 8 months and 10 days (Balance Revoked through 03/01/2019) in the County Jail, Correctional Institution, State Penal System, or such other place as the Commissioner of Corrections may direct, subject, however time served in prison is over and above all time previously served on probation. Defendant was adjudicated guilty and resentence to same sentence. Balance is revoked through 03/01/2019 with credit from 06/22/2014 and is to obey all rules/regulations of the Dougherty County jail.

IT IS FURTHER ORDERED AND DIRECTED that the Clerk of Court file this Order in said case and make proper entry in the records of a guilty conviction and imposition of sentence, and that the Georgia Crime Information Center be notified of the adjudication of guilt and imposition of sentence so as to proceed as provided by law.

ORDERED this the 27th day of October, 2014.


W. E. Lockette
Judge, Superior Court

RETENTION SCHEDULE: This form will be placed in probationer's file.

RECEIVED IN OFFICE

1-21-15

2015 OCT 27 AM 11:52

Brief

CLERK OF SUPERIOR COURT OF APPEALS OF GA

A Probation hearing was held on my behalf on 10-27-14 in Dougherty County. There are several errors that will be covered at the appeal. My Due Process rights was violated, Evidence was withheld from me to build defense, There was prosecutorial misconduct and Statements of Counsel, Prosecutor commented on absence of rebuttal testimony which was improper, April Wynne (prosecutor) made a deal with ^{Public Defender} ~~me~~ to violate Probation with lack of evidence, Conviction was secured from ^(Loretta) ^(Wynne) perjured testimony, knowingly by Judge and D.A., I wasn't in courtroom for full hearing, improper court proceedings, Bribery, inconsistency of witnesses under oath, Detective forged lied statements that I said, No pictures, videos, or tapes, No proof, ineffective assistance of counsel, etc.

Sincerely,

William Acree

William 

P.S.

Trial court refuse to send me one free copy of transcript and I am a indigent person. That violates constitutional rights.

10-2-15

Brief cont.

- 1) Probationer was not entitled to notice of petition that probationer violated probation by committing kidnapping. Evidence inadmissible when untimely notice to defendant. Violates due process
- 2) The revocation petition did not specify which code section the defendant was alleged to have violated. (3) Trial court abused its discretion in revoking the defendant's probation based upon incompetent and insufficient evidence; Smith v. State, 283 Ga. App. 317, 641 S.E. 2d 296 (2007) Evidence did not support the revocation of the defendant's probation pursuant to O.C.G.A. § 42-8-34.1(b) since, after objections to hearsay evidence were sustained, the evidence did not support a finding that the defendant kidnapped. (4) Two-year limitation on violation of probation conditions were not special under O.C.G.A. 42-8-34.1. Jordan vs state, 279 Ga. App. 399, 635 S.E. 2d 113 (2006); Chester vs state, 287 Ga. App. 70, 651 S.E. 2d 360 (2007)
- (5) Probation was improperly revoked due to lack of substantial compliance with O.C.G.A. 42-8-34.1
- (6) Trial Court erred in revoking probated sentence remainder balance because the evidence was not sufficient to convict the probationer of kidnapping pursuant to O.C.G.A. 16-5-40.
- (7) The trial court abuse the court's discretion in revoking the entire balance of defendant's probation because defendant never admitted to anything. (8) At the revocation hearing, trial court expressly found that the defendant violated probation because evidence support false imprisonment Trial court erred in revoking defendant's probation because this was not a ground alleged in petition. The transcript is sufficient written record for appellate court to determine the ground.
- (9) Defendant's probation was improperly revoked because the defendant's alleged kidnapping charge had not been established by a preponderance of evidence as required in O.C.G.A. § 42-8-34.1 Brown vs state, 294 Ga. App. 1, 668 S.E. 2d 490 (2008). (10) Trial court manifestly abused the court's discretion by granting the state's petition to revoke probation because the evidence was insufficient to support kidnapping. The state showed only evidence for false imprisonment per se Chief Judge Lockett. (Gray vs State, 313 Ga. App. 470, 722 S.E. 2d 98 (2011))
- (11) Trial court erred in revoking the defendant's probation because the evidence was insufficient to support the court's finding that the defendant committed the new offense of kidnapping. Smith v. State, 306 Ga. App. 54, 701 S.E. 2d 490 (2010).

IN THE SUPERIOR COURT OF Dougherty COUNTY

STATE OF GEORGIA

State of Georgia

VS.

CASE NO. Warrant #101812 APD

William Acree

RULENISI

The above and foregoing having duly been read and considered, the same is ordered filed.

Let the _____ show cause before this Court at the courthouse in _____, Georgia, at _____ o'clock _____ M on the _____ day of _____, 20____, why the prayers of _____ should not be granted.

Let a copy of the same and this order be served upon _____

This _____ day of _____, 20____.

JUDGE, SUPERIOR COURT

CIRCUIT

The Superior Court of Dougherty County
State of Georgia

Motion For Out Of Time Appeal

State of Georgia

v.

William Acree
Defendant

Comes now William Acree, Defendant, and respectfully ask the Court for an out of time appeal from the judgement entered in the court on October 27, 2014. On that date, Defendant was convicted of Probation Revocation. Defendant was sentenced to 4 yrs, 8 months and 10 days.

Defendant was denied his statutory right to appeal his conviction because of denial of receiving final disposition. A criminal defendant who has lost his right to appellate review of his conviction due to due process of law (14th Amend) is entitled to an out of time appeal. Rowland v. State, 264 Ga. 872, 452 S.E.2d 756 (1995).

Respectfully submitted this 27 day of October ^{WA} ~~January~~ 2015.

William Acree

Defendant

Certificate of Service

This is to certify that I have this day a served a true and correct copy of the within and foregoing document(s) upon the party(s) listed below by depositing a copy of the same in the United States mail in a properly addressed enveloped with adequate postage thereon or submitted same to the institutional legal mail system, to bellow addressee(s)

Clerk, Court of Appeals
State of Georgia
47 Trinity Ave., Ste 501
Atlanta, Ga. 30334
(404) 656-3450

- Document(s) Included:
- 1) Motion for out of time Appeal
 - 2) Rule WIST
 - 3) Copy of petition for adjudication of guilt and imposition of sentence
 - 4) Copy of order of judgment for adjudication of guilt & imposition of sentence
 - 5) Brief.

This 2 Day of October, 2015

Respectfully submitted,
William Acree
Pro Se
Signature William Acree
Print: William Acree
GDC#: 1304165
Address: Washington State Prison
P.O. Box 206
13262 State Highway 24
Davisboro, Georgia 31018-0206