



SCANNED

Court of Appeals of Georgia

May 29, 2015

TO: Mr. Eric Barney, GDC987731, Riverbend Correctional Facility, 198 Laying Farm Road, Milledgeville, Georgia 31061

RE: **A15A1528. Eric Barney v. The State**

CHECK RETURN

- Your check number _____ in the amount of _____ written on the account of your firm for the filing fee in _____ is enclosed. Please be advised that this Court is returning your check since the filing fee was already paid by _____.

CASE STATUS - DISPOSED

- The referenced appeal was _____ on _____. The remittitur issued on _____, divesting this Court of any further jurisdiction of your case. The case is therefore, final.

CASE STATUS - PENDING

- The above referenced appeal is pending in your name before this Court. The appeal was docketed in the April 2015 Term and a decision must be rendered by the Court by the end of the September 2015 Term which ends on or about December 16, 2015.**

APPLICATION FOR PERMISSION TO APPEAL A PROBATION REVOCATION

- To appeal a probation revocation, you will need to file a Discretionary Application with this Court. Rule 31 of the Rules of the Court of Appeals of Georgia describes a Discretionary Application and the items you would need to include with your application.

A Discretionary Application must be filed within 30 days of the stamped filed date on the order that you are appealing and the application must be accompanied by a proper Certificate of Service and a pauper's affidavit or the \$80.00 filing fee. You must also comply with all the other applicable rules of Court regarding filing with the Court of Appeals of Georgia.

Enclosed, please find a copy of the Rules of the Court of Appeals for your review.

Date: 5-25-2015

Appeal Case No: A15A1528

ERIC BARNEY V. THE STATE

To Whom this may concern:

my name is Eric Barney, I was indicted on two separated indictment of Burglary. (first)^{1st} Indictment Case No: 10-CR-138 Burglary (1) Count; True B.11 Nov. 15, 2010. (Second)^{2nd} Indictment Case No: 10-CR-139 Burglary (2) counts; True B.11 Nov. 15, 2010. And were henced to two separated trials. I went to trial on indictment Case No: 10-CR-138 in April 11-12, of 2011, And it had a notice of intent to use prior convictions for recidivism, which the notice was filed on February 14, 2011. On the second Burglary Indictment Case No: 10-CR-139 (2) counts. The District Attorney used for a similar transaction to indictment Case No: 10-CR-138 which was (1) Count of burglary. And case No: 10-CR-139 had two co-defendants names, Jonathan Smith, and Travosk. Harris. During the trial of 10-CR-138 the 10-CR-139 Burglary case was used as a similar transaction to 10-CR-138. Mr. Smith and Mr. Harris was used, Mr. Smith and Mr. Harris was indicted in the indictment Case No: 10-CR-139 co-defendants to Mr. Barney. Also during the trial of 10-CR-138 Mr. Smith and Mr. Harris was asked questions during the similar transaction. That was dilling with Indictment Case No: 10-CR-139. Mr. Smith and Mr. Harris, questions was not related to case No: 10-CR-138. But was related to case No: 10-CR-139 and what was Mr. Barney, participation to the burglaries. The state used all evidence from case No: 10-CR-138 and case No: 10-CR-139. Indictment Case No: 10-CR-138 went to a direct verdict with all evidence from both cases.

Indictment No: 10-CR-138 and Indictment No: 10-CR-139

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The same notice of intent to use prior conviction for recidivism from indictment No: 10-CR-138 which Mr. Barney, went to trial on in April 11-12 of 2011, is the same notice that the courts used at Mr. Barney, second trial Case No: 10-CR-139, which was on October 15, 2012. That would make 18 months after the first trial of April 11-12 of 2011.

D.C.G.A. 17-16-4(a)(5) provides: the state shall Disclosure of evidence ten days prior to trial, The prosecuting Attorney shall, no later than ten days prior to trial, or at such time as the court orders but in no event later than the beginning of the trial.

See: Beecher v. State, 240 Ga. App. 457, 523 S.E. 2d 54 (1999).

"A notice that previous convictions will be introduced at trial given prior to a former trial would not be clear notice that the sentence would be introduced at a subsequent de novo trial." Hewell v. State, 238 Ga. 578, ~~580~~⁵⁸⁰ (2), 234 S.E. 2d 497 (1977). See also Cline v. State, 178 Ga. App. 470, 473-474 (3), 343 S.E. 2d 506 (1986). Consequently, the judgment as to sentence must be vacated and this case remanded for resentencing. Beecher v. State, 240 Ga. App. 457, 523 S.E. 2d 54 (1999).

On Barney, notice of intent to use prior convictions for recidivism and aggravation of punishment which was filed on, filed Feb. 14, 2011, had three priors.

A) theft by taking (motor vehicle theft) (2) counts indictment No: 99-CR-65, April 1999 term; sentenced June 7, 1999.

B) enter an automobile and escape; indictment No: 03-CR-45, January 2003 term; sentenced August 1, 2003.

C) entering an automobile; accusation No: 03-CR-108, July 2003 term; sentenced August 1, 2003.

O.C.G.A. 17-10-^{(A)(10)} applies. That statute provides in part as follows:

(A) Where at one term of court a person is convicted on more than one indictment or accusation, or on more than one count thereof, and sentenced to imprisonment, the sentence shall be served concurrently unless otherwise expressly provided therein.

(D) This code section shall govern and shall be followed by the Department of Corrections in the computation of time that sentences shall run.

On. Barney, notice of intent to use Prior convictions for recidivism and aggravation of punishment which was filed on, Feb. 14, 2011. (B) enter an automobile and escape indictment No: 03-CR-45, And (C) enter an automobile indictment No: 03-CR-108, was sentenced on the same day by same Judge, so that makes it one conviction under, D.C.G.A. 17-10-10.

See: Notice of intent to use Prior conviction For Recidivism and Aggravation of punishment which was filed on, Feb. 14, 2011.

also see Trial Transcript Page 95 ID# 6-25; and pg. 96 ID# 1-14. Very important.

your assistance is very much appreciated.

Thank you + God Bless your footsteps in life....

Sincerely, Eric Barney

p.s The District Attorney start ask Question from Burglary indictment (2) Count D-CR-138 to the trial of burglary charge (1) Count Indictment 10-CR-138 trial on April 11-12 of 2011.

see Transcript Trial Case No: 10-CR-139 Oct. 15-16-2012. see pages 85-90 +