

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

May 18, 2015

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

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Court of Appeals Case Number and Style: \_\_\_\_\_

Your document(s) is (are) being returned for the following reason(s).

- There is no case pending in the Court of Appeals of Georgia under your name.**
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_.** The Court of Appeals \_\_\_\_\_  
\_\_\_\_\_ The remittitur issued on \_\_\_\_\_  
divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the \_\_\_\_\_ is:
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- 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.

Date: 5-11-2015

To Whom this may concern:

my name is Eric Barney, I was indicted on two separated indictment of Burglary. (first)<sup>1st</sup> Indictment Case No: 10-CR-138 Burglary (1) Count; True Bill No. 15, 2010. (Second)<sup>2nd</sup> Indictment Case No: 10-CR-139 Burglary (2) counts; True Bill Nov. 15, 2010. And were hence to two separated trials. I went to trial on indictment case No: 10-CR-138 in April 11-12, 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 Travoski 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

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 months after the first trial of April 11-12 of 2011.

C.G.A. 17-1b-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 NOVO trial." Hewell v. State, 238 Ga. 578, ~~580~~<sup>580</sup> (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-<sup>(A)(10)</sup>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.

1) 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 10-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 +