

**COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS**

July 21, 2015

To: Mr. Duane E. Blocker, Sr., 763 Cascade Avenue #31, Atlanta, Georgia 30310

SCANNED

Docket Number: Style: Duane E. Blocker, Sr. v. The State

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

1. **Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 Please be advised that your pauper's affidavit should be notarized by a notary public.**
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4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. No Certificate of Service accompanied your document(s). Rule 6 You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
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9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. Margins were too small or paper size was incorrect. Rules 1(c), 24(c), 30(e), 31(c) and 41(b).
15. Your document was submitted for filing more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration. Rules 30(j) and 31(j).
16. **Other:**

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FILED IN DROP BOX

**IN THE COURT OF APPEALS FOR THE
STATE OF GEORGIA**

DOCKET NO. _____

DUANE E. BLOCKER SR.,

Applicant,

v.

STATE OF GEORGIA

Respondent

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COURT OF APPEALS OF GA

DISCRETIONARY APPLICATION IN THE
COURT OF APPEALS FOR THE STATE OF GEORGIA FROM
DEKALB COUNTY STATE COURT STATE FILE CASE NO. 14C71467-07

APPLICANT'S BRIEF ON THE MERITS

DUANE E. BLOCKER SR.
PRO SE LITIGANT
763 CASCADE AVE #31
ATLANTA, GA 30310
678-964-9278
deblocker33@gmail.com

FILED IN OFFICE
JUN 29 2015
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COURT OF APPEALS OF GA

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**IN THE APPEALS COURT FOR THE
STATE OF GEORGIA**

<u>DUANE E. BLOCKER SR.</u>)	
Applicant)	
)	
v.)	STATE FILE CASE
)	No. <u>14C71467-07</u>
)	
)	
<u>STATE OF GEORGIA</u>)	COURT OF APPEALS
Respondent)	DOCKET NO. _____

APPLICATION FOR APPELLATE REVIEW

DUANE E. BLOCKER SR., Applicant, applies to this Court for a discretionary appeal as follows:

- (1.) To issue an order granting the Applicant an appeal from the Order of the State Court of DeKalb County, Judge Janis C. Gordon, in the case styled State of Georgia, Plaintiff, v. Duane E. Blocker Sr., Defendant, Case No. 14C71467-07 this order having held on May 29, 2015.

- (2.) Applicant shows that the jurisdiction is properly held in this Court because the issue involved is of criminal conviction and appeals of such cases are not reserved to the Supreme Court of Georgia pursuant to Article VI, Section VI, Paragraphs II and III of the Constitution of the State of Georgia.

(3.) This application of appeal is filed pursuant to O.C.G.A. §§ 5-6-35(a)(8), 9-11-60(a), (d)(1)(2)(3) from the entry of the order, decision or judgment complained of in enumeration (1.).

STATEMENT OF MATERIAL FACTS

Applicant filed several motions with the Court regarding his intent to file an appeal from his conviction for Simple Battery and Disorderly Conduct obtained in a jury trial held on December 2-3, 2014. Applicant's first attempt to seek a remedy for relief from the tainted conviction came by way of a Motion for New Trial filed on January 5, 2015, which was denied on February 10, 2015. Applicant acknowledged the court that he intended to appeal this decision and that a copy of the transcript of the trial would be pertinent to his appeal in order to correct the error of the court and expose the perjured testimony of alleged victim Tearrika Wyche, and state witnesses Bryce Harper and Alyssa Gillespie, a conviction for which under O.C.G.A. § 17-1-4 cannot stand.

Applicant filed a pauper's affidavit on February 23, 2015 attesting to his indigent status, which he had disclosed to the Court during his pre-trial incarceration appearance before the Court and on several occasions at succeeding court appearances thereafter. Applicant, being unsatisfied with the representation

given by public defender Bethany Lindstrom for not complying with his directives to obtain a copy of the video surveillance recording and obtaining an investigator to interview witnesses he was barred from identifying before he was arrested by officer J. Pitts of the DeKalb County Police Dept., and unable to obtain an attorney due to his indigent status, proceeded with his case Pro Se. Judge Gordon, having been availed of this information prior to the trial and conviction chose to hold a hearing regarding Applicant's indigent status only as a result of his request for a copy of the transcript so that he could file his appeal. Applicant was unable to attend the hearing due to a scheduled court appearance in Fulton County State Court regarding a separate prosecution in that jurisdiction. Applicant's motion to obtain a copy of the transcript due his indigent status was denied on April 8, 2015.

Applicant recognizing that his affidavit was void because it was not sworn to then proceeded to file a valid pauper's affidavit and requested that the Order of the Court be Vacated. Applicant's Motion was Denied on May 29, 2015 and this appeal is his remedy to correct the error of the Court.

Argument and Citations of Authorities

Applicant seeks remedy from the decision of the trial court regarding his indigent status due to the improper filing of his pauper's affidavit which was not

taken under oath as prescribed by O.C.G.A. § 9-15-2(a)(1). Furthermore, because Applicant filed his affidavit erroneously the court did not acquire subject person jurisdiction because his affidavit was void and did not comply with due process. As adjudicated in precedent cases in Georgia, in order for the affidavit to be valid it must be sworn to by the affiant. See Anderson v. Hardoman, 286 Ga. App. 499, 649 S.E.2d 611(2007), quoting D'Zesati v. Poole, 174 Ga. App. 142, 143, 329 S.E.2d 280 (1985) “A signed statement of facts, purporting to be the statement of the signer, followed by the certificate of an officer, authorized to administer oaths that it was sworn to and subscribed before him, is a lawful affidavit. Further, in the absence of a valid jurat, a writing in the form of an affidavit has no force, no validity, amounts to nothing, when standing alone, or when construed in connection with other evidence. To make a valid affidavit the affiant must swear to it, and the fact of his swearing must be certified by a proper officer. In order to make an affidavit there must be present the officer, the affiant, and the paper, and there must be something done which amounts to the administration of an oath.”

Mitchell v. Cancer CarePoint, Inc., 299 Ga. App. 881, 683 S.E.2d 923(2009) “As an initial matter, we note that Mitchell’s affidavit is not notarized

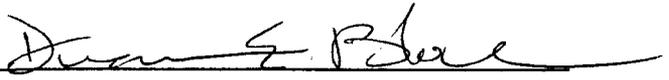
and, thus, is not valid.”, citing *Anderson*; *D’Sesati v. Poole* “[t]he hearing requirement of that Code[OCGA § 9-15-2(b)] section presupposes that a proper affidavit was filed by the party claiming indigency under OCGA § 9-15-2(a). The purported affidavit of the appellant actually was invalid, as it did not contain a jurat.”, “To make a valid affidavit affiant must swear to it, and fact of his swearing must be certified by a proper officer.” Applicant notes that where the affidavit was void the Court did not have subject person jurisdiction to require Applicant to appear before the Court to discuss his income and financial obligations which prevented him from paying for the cost of the trial transcript. See *Foster v. Foster*, 1951, 207 Ga. 519, 63 S.E.2d 318 “A judgment in proceeding wherein court acquired no jurisdiction of defendant's person in manner prescribed by law is void, though court had jurisdiction of subject-matter.”

Moreover, Appellant informed and reiterated to the Court on the day of the trial that he was indigent and therefore could not pay for the court reporter to transcribe the trial proceedings, and at that time no inquiry was entered by the Court regarding Appellant’s financial status. This information was provided to Judge Gordon after being informed that the transcribing of the trial would be

Appellant's only remedy to file an appeal should the outcome result in a conviction. Appellant informed Judge Gordon before the jury was summoned and impaneled that he wished to file an appeal should the trial result in a conviction and therefore requested that the trial be transcribed. Appellant believes that the Court abused its discretion under O.C.G.A. § 9-15-2(b) in that at no time from his pre-trial incarceration to the date of the trial did the Court see fit to challenge his indigency status before proceeding with the trial.

Applicant shows that the Order of the Court was entered in error and in violation of due process as it lacked first the proper filing of the pauper's affidavit, and subject person jurisdiction to compel Applicant's appearance before the court to provide financial documentation from Applicant. Applicant attempted to correct this error by filing a legal pauper's affidavit which if at that time the Court wished to challenge it had the discretion to do so. This application for appeal is pertinent to future Defendant's in that where the Court found no reason to challenge the indigent status of a defendant after being acknowledged of the same and proceeds to trial, then it is improper to challenge the status as a means of tactfully delaying their ability to seek a redress of their grievances thereafter.

WHEREFORE: Applicant respectfully requests that the Court grants Applicant's discretionary application to correct the error of the Court.


Signature

Duane E. Blocker Sr.
Appellant

763 Cascade Ave. #31
Atlanta, GA 30310
Mailing Address

678-964-9278
Contact Info.

Certificate of Service

I certify that I have served a copy of the foregoing pleading upon The Solicitor General, by hand delivering the same to the DeKalb County Solicitor General's Office, 556 N. McDonough St. Decatur, GA 30030, on June 29, 2015.

 (Signature)

IN THE STATE COURT OF DEKALB COUNTY, GEORGIA

STATE OF GEORGIA

V.

CASE NO. 14C71467-7

DUANE E. BLOCKER, SR.

ORDER

This case is before the Court on the State's Motion to Dismiss Appeal and Defendant's Motion to Vacate Judgment. Neither party requested a hearing on the motions.

In October 2014, Defendant Blocker signed a Waiver of Right to Assistance of Counsel during Trial, indicating that he intended to hire a private attorney to represent him at trial. At a jury trial in December 2014, Blocker was convicted of simple battery and disorderly conduct. Although a public defender was present, Blocker represented himself at trial. He moved for a new trial in January 2015, and the Court held a hearing in February. The Court denied the motion for new trial, primarily because the State proved guilt.

Blocker timely appealed and listed five court transcripts to be included in the record. Blocker also filed a document titled "Affidavit of Poverty," requesting a copy of the trial transcript. The Court ordered Blocker to appear on April 6, to submit proof of indigence. Blocker did not appear and did not explain his failure to appear. The Court found that Blocker waived his claim for an Affidavit of Poverty and his motion for a free transcript.

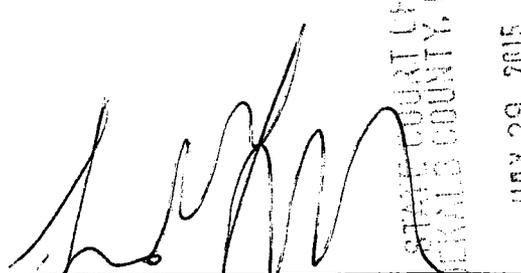
On April 8, the State moved to dismiss Blocker's appeal, arguing that Blocker had done nothing to pay costs, procure a transcript, or otherwise litigate his appeal. On

April 16, Blocker moved to vacate the April judgment denying his pauper's affidavit. Blocker argued that the hearing violated his constitutional rights, because he filed an improper affidavit. Blocker also filed an Affidavit of Poverty stating that he was financially unable to pay for a copy of the trial transcript. Nothing else has been filed.

The Court finds that Blocker's delay in appealing and his failure to obtain and file transcripts is unreasonable and inexcusable, under O.C.G.A. § 5-6-48(c). Blocker has not paid the court reporter for the complete take-down of the trial or for a transcript. Blocker gave no valid reason for the delay in filing a sworn affidavit or for not appearing at the hearing. The Court cannot find that Blocker is indigent, since he failed to provide evidence when requested. Blocker did not ask for a lawyer due to indigence. Even if Blocker were indigent, he may not necessarily be entitled to a free transcript, which is within a court's discretion. *Bagley v. State*, 298 Ga. App. 513 (2009). Blocker has not presented any information as to possible grounds for an appeal, so the Court cannot determine what, if any, value a transcript might provide. See *Stanley v. State*, 267 Ga. App. 379 (2004). Blocker did not request an extension of time to file transcripts. See *Watson v. State*, 257 Ga. App. 684 (2002). Any delay in the appeal is Blocker's fault.

The Court GRANTS the State's Motion to Dismiss and DENIES Defendant's Motion to Vacate Judgment.

SO ORDERED May 28, 2015.


STATE COURT OF DEKALB COUNTY, GA.
MAY 29 2015
FILED


JUDGE JANIS C. GORDON
State Court of DeKalb County

cc: Wystan Getz
Duane Blocker