

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

July 2, 2015

SCANNED

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

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.
2. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. **A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)**
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.
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
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: I have enclosed a copy of the Court's Rules for your review. Please see Rule 6. Service should be made by United States mail.**

For Additional information, please go to the Court's website at: www.gaappeals.us

IN THE COURT OF APPEALS FOR THE
STATE OF GEORGIA

DOCKET NO. _____

DUANE E. BLOCKER SR.,

Applicant,

v.

STATE OF GEORGIA

Respondent

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.
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FILED IN OFFICE

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APPEALS OF GEORGIA

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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

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.

