



Court of Appeals of Georgia

November 20, 2015

TO: Mr. James Edward Boyd, GDC505064, Autry State Prison, Post Office Box 648, Pelham, Georgia 31779

RE: **A16A0207. James Edward Boyd 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 dismissed on November 16, 2015. I am returning your Reply Brief to you.**

CASE STATUS - PENDING

- The above referenced appeal is pending in your name before this Court. The appeal was docketed in the _____ Term and a decision must be rendered by the Court by the end of the _____ Term which ends on or around _____.

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.

IN THE COURT OF APPEALS
STATE OF GEORGIA

FILED IN OFFICE

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CLERK COURT OF APPEALS OF GA

JAMES EDWARD BOYD

APPELLANT,

CASE NUMBER A16A0207

v.

STATE OF GEORGIA

APPELLEE.

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APPELLANT'S REPLY BRIEF

*This case was
dismissed 11.6.15*

JAMES EDWARD BOYD

505064

IRY STATE PRISON

P.O. BOX 648

PELHAM, GA 3179

IN THE COURT OF APPEALS

STATE OF GEORGIA

JAMES EDWARD BOYD

APPELLANT,

CASE NUMBER A16A0207

v.

STATE OF GEORGIA

APPELLEE,

APPELLANT'S REPLY BRIEF

I. PROCEDURAL HISTORY

See Initial Brief

II. STATEMENT OF FACTS

The records clearly reflects, that as of January 11, 2005 Appellant was indicted by a Peach County Grand Jury.

The records also clearly reflects that on

FEBRUARY 1, 2005 A CRIMINAL MOTION INDEX WAS FILED, WHICH CONTAINED STANDARD CRIMINAL MOTIONS. AND A GENERAL DEMURRER TO THE INDICTMENT WAS FILED BY THE TRIAL ATTORNEY [WILLIAM PETERSON].

FEBRUARY 2, 2005 APPELLANT WAIVED BEING FORMALLY ARRAIGNED AND PLED NOT GUILTY. AND THAT THE INDICTMENT WAS SIGNED BY APPELLANT, HIS ATTORNEY, AND STATE PROSECUTOR.

A TRIAL WAS CONDUCTED UPON THAT INFORMATION AND THE APPELLANT WAS ULTIMATELY FOUND GUILTY.

APPELLANT APPEALED AND THIS COURT AFFIRMED. SEE

Boyd v. State, 289 Ga. App. 342, 656 S.E. 2d 864 (2005)

REGARDING COUNT TWO OF CASE INDICTMENT THIS

COURT found that EVIDENCE WAS SUFFICIENT FOR
A RATIONAL TRIER OF FACT TO FIND HIM GUILTY OF
that count beyond A REASONABLE DOUBT UNDER THE
STANDARD OF JACKSON V. VIRGINIA. (443 U.S. 307
(99 SC 2781, 61 L.E. 2d 560) (1979). NOT ADDRESSING
THE FACTS STATED IN THE INDICTMENT ITSELF, AND
THIS STANDARD IS INAPPLICABLE IN THIS PROCEEDING.

APPELLANT FILES MOTION TO VACATE VOID SENTENCE
CLAIMING THAT COUNT TWO OF CASE INDICTMENT IS
DEFECTIVE AND VOID AND THE SENTENCE THEREON IS
VOID AND MUST BE VACATED.

THE TRIAL COURT DENIED THE MOTION, PROMPTING
THIS APPEAL.

III. LEGAL ARGUMENT AND CITATION OF AUTHORITY

A.) WHETHER THE TRIAL COURT ERRED IN
FAILING TO GRANT APPELLANT'S MOTION TO
VACATE VOID SENTENCE.

First and foremost, let the record be clear on
that Appellant is not challenging the conviction nor
the sufficiency of evidence as did in his first
appeal. Boyd v. State, supra

Appellee response brief is clearly based on the
conviction and sufficiency of evidence and most of
all by facts in trial not the indictment itself, and
their argument is no avail in this proceeding be-
cause this is a challenge to a void sentence.

Under the law in Georgia, it's clearly esta-

blished that whose conviction had been affirmed on direct appeal could appeal directly a trial court's post appeal order denying a motion to correct allegedly void sentences. William v. State, 271 Ga. 686, 523 S.E. 2d 857 (1999).

BECAUSE trial court retains jurisdiction to correct illegal sentence and impose legal sentence outside the term of court, a convicted defendant may challenge a void sentence by motion in the trial court and direct appeal will lie. Shields v. State, 276 Ga. 669, 581 S.E. 2d 536 (2003).

Appellant filed a motion to vacate void sentence, and there is no language whatsoever

indicates other than this is a challenge to a void sentence. (SEE Appellant's Motion To Vacate Void Sentence)

A void sentence in law amounts to no sentence at all, it follows that if there is error, it is none waivable. A sentence or portion thereof that is unauthorized by law is a nullity and void.

SEE SUMNER V. STATE, 284 Ga. App. 308, 643 S.E. 2d 831 (2007)

BECAUSE A void sentence may be challenged at anytime, the motion is not untimely, moreover, a defendant has a right of direct appeal from an order denying motion to correct a void

SENTENCE. Benjamin v. State, 269 Ga. App. 232,
603 S.E. 2d 733 (2004).

Count two of case indictment only charged
that Appellant Assault [victim] by striking her and
slapping her across the face with his hands and
fists, contrary to the laws of said State... (see
Indictment # DS CRO04)

Count two failed to set forth the elements be-
cause it did not charge that the use of Appellant's
hands was used in an attempt to use them as
deadly weapons, nor did it state that his hands
was used in an attempt to murder, rape, or

Rob. Smith v. Hardrick, 266 Ga. 54, 55 (2)

Unlike as Appellee tried to amend by stating that the indictment alleges an attempt to rape victim, then again tried to amend it by saying that the indictment alleges he repeatedly tried to penetrate her, and count two has no such language whatsoever. (See Pg. 10 of Appellee's Brief and compare count two of case indictment)

And this Court should not consider other than what count two alleges.

There are no standing authority to support Appellee's claim that count two of the indictment is not void. So therefore, due that count two is void then Appellant has affirmatively demon-

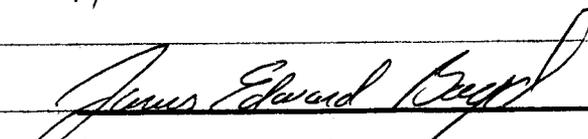
STATED THAT THE SENTENCE IMPOSES PUNISHMENT

NOT ALLOWED BY LAW. NAZARIO V. STATE, 293 Ga.

480, 488 (746 S.E.2d 109) (2013).

THEREFORE, THIS COURT SHOULD CONSIDER THIS
APPEAL AND VACATE COUNT TWO SENTENCE AND REMAND
BACK TO TRIAL COURT WITH DIRECTIONS.

This 9th day of Nov, 2015.


James Edward Boyd

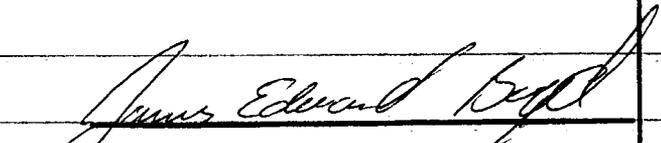
505064

CERTIFICATE OF SERVICE

I hereby certify that I have this day forwarded a copy of enclosed document by placing it in the U.S. Mail with sufficient postage to ensure delivery to the below listed party:

Dorothy V. Hull
Assistant District Attorney
666 Mulberry St.
3rd Floor Grand Building
Macon, Ga 31201

This 9th day of Nov, 2015.


James Edward Boyd
COC # 505064

Autey State Prison
P.O. Box 649
Pelham, Ga 31779

c.c. file
Appellant
Appellee
Court of Appeals

