



Court of Appeals of Georgia

May 5, 2015

TO: Mr. David Earl Britt, 91060191, Gwinnett County Jail, 2900 University Parkway,
Lawrenceville, Georgia 30043

RE: **A15D0149. David Earl Britt 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 - APPLICATION DISMISSED

- Discretionary Application, A15D0149, was dismissed by this Court on December 10, 2014.**

Your correspondence is being returned to you.

COURT RULES

- A copy of the Rules of the Court of Appeals of Georgia has been enclosed for your review.

CASE STATUS - PENDING

- The above referenced appeal is 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 _____.

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.

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DAVID EARL BRITT

CRIMINAL CASE

Appellant

14-CR-995-2

vs

Barrow County Superior

The State

Court 42-1-12

Brief and Err

Argument

Direct Appeal Speed Trial Viol. etc

This Case of Violation of Sex Offender Reg-
istration Code O.C.G.A. 42-1-12 WAS ONCE
before this Court, A15D0149 Transferred from
the Supreme Court of Georgia S15D0187 in which
DISMISSAL ON December 10th 2014 was presented
back to this Court and the Supreme Court in
a Petition for CERT. which was returned to
Appellant David (herein), by this Court's Clerk,
and no response has been received by David
from the Supreme Court but a Correspondence;
(2 page letter), from that Clerk that stated
the Docketed S15D0187 was returned to
the Trial Court on 11/14/2014 Remittur, Jurisdiction
Conflict. Dated January 6th, 2015.

After this Court Dismissed A15D0149 and
Petition for CERT. was sent to this Court
AND the Supreme Court, Rule 40 of the
Supreme Court Rules (Exhaustion), David
procedurally followed (Ho) by notifying the

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United States District Court, (Copy of CERT.)
however that Case 1:14-cv-2922 Britt vs.
Conway had been Appealed to the United
States Court of Appeals for the 11th Circuit
Case NO. # 15-10015-D Request for C.O.A.
AND 2244 form filing for Successive.

The Successive Action 14-15757-B was dis-
missed but several issues resulted therefrom
and Motion for Fed. R. Civ. P. Was requested
by Leave for permission to file on the 15-10015-
D Case C.O.A. Therein see 11th Circuit Court
of Appeals, Mr. SCOTT O'neal.

However the Case at hand 14-CR-995-x
Barrow County Superior Court, and A15D0149 in
This Court was Submitted to that Case 15-10015-
D. NO Response^s to Late, to Motion^s, Appeal,
etc.

The issue by David was ALSO re-Submitted
to the Trial Court 14-CR-995-x December 17th
2014 by request to have Case disposed by A
Detainer / Production Order etc. (Speedy issue)

The issue to that Charge is while the Charge
to require S.O.R. in Barrow County, from the
Originating Charge 2-CT^s O.C.G.A 16-6-4 and
1-CT. O.C.G.A. 16-6-5 07-B-4802-2 in The

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Superior Court of Gwinnett County is Under Review by the Supreme Court S14H1622 DAVID BRITT vs BUTCH CONWAY Habeas Corpus, Application for Certificate of Probable Cause to Appeal and notice of Appeal in that Superior Court 14-A-02909-2, that the consequence^s from that sentence and conviction ~~10~~ years^s, - 5 served (in prison and Jail from August 1st 2007 until release July 30th 2012), 10 years of Probation with "Special Condition" to report or register as a "Sex Offender" while you are on probation; (See Sentencing Transcript), when available, Judge Turnea, December 11th 2009 etc.

Judge Turnea deviated from the Original Plea without notice, consent, or waiver from DAVID.

The 10 years^s stated by A.D.A. William Aiken^s and agreed on by Attorney at sentencing Stacy Levy as to a 10 year Punishment Range on Ct. 3 O.C.G.A. 16-6-5 has been argued in this Court, The Supreme Court, and U.S. District Court being appealed to the 11th Circuit (Pending), as Exceeding the Max. Penalty.

However the 2- A.D.A.^s in Barrow County corrected this Err by DAVID on the Penalty Range 10 to 30 years is the Range on

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O.C.G.A. 16-6-5 NOT 10 years as stated upon sentencing December 11th, 2009 by Attorney in that Court AKINS, and Levy.

Upon reviewing this Error by David, COO's INSIGHT AGAIN has revealed O.C.G.A. 17-10-6.2 (C) for sentencing deviating on O.C.G.A. 16-6-5. Judges can deviate from min. requirement if the D.A. and defendant agree upon it. (See sentencing transcript when available). (10 year penalty on 16-6-5 Cr. 3)

This is only one alleged error in the sentencing of David. The Trial Court, The D.A., or Stacy Levy, David's Attorney never informed David of the consequences of the Probated Term (10 years) of this sentence (see Final Disposition Form enclosed).

The special condition for 10 years, has turned into a lifetime registration requirement under O.C.G.A. 42-1-12 never gone over before during, or after sentencing by Cowdin County Official's until release from prison August 2012. Since David was required by Probation Officer's and S.O.R. Sheriff's Deputies to initial and sign OR return to jail and await a hearing before the Judge; (The same avenue being pursued to date 14 months awaiting decision's), the time for post-conviction; (Guilty Plea under Alford vs Carolina), relief had expired except by Habeas Corpus. (4)

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NOW Pending Since April 2nd, 2014 in The Superior Court 14-A-02909-2 Gwinnett County and Application for Probable Cause to Appeal S14H1622 in The Supreme Court of Georgia, (Pending). Collateral Consequences, Nix v. State 233 Ga. 73; 209 S.E. 2^d 597; 1974 Ga. Lexis 680 NO. 28873 OCT. 1st, 1974 O.G.A. 9-14-cc seq. See Sheppard vs. the State, This Court 319 Ga. App. 813, 738 S.E.2^d 662; 2013 Ga. App. Lexis 78 A12A 2084, February 20th, 2013. The Trial Court in David's Case warned nothing, nor did The A.D.A. or David's Attorney of record AT Sentencing, Stacy Levy. Ineffective Assistance 1st Ground in Habeas Corpus 14-A-02909-2 Superior Court of Gwinnett County from Sentence 07-B-4802-2 Same Judge, Turner who voluntarily recused from 3-Cases, the 2 here above and a 2005 Theft by Taking Charge in which she sentenced David to a 5 year, Completed in 2010. Judge Turner also held Probation hearing on April 10th, 2014 and July 18th 2014 on these Charges for this violation, moving without notifying S.O.R. Deputy SGT. Dawson from Barrow County O.C.G.A. 42-1-12 December 28th, 2012 Warrant, Alleged October 9th 2012 10 A.M. and October 9th 2012 1700 A.M. - (no such time) that David moved without Authority. (5)

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Herein 14-CR-995-X Indictment August 19th 2014 During Habeas Corpus Appeal in The Supreme Court docketed July 2nd 2014. (Sentence Suspended, by Appeal / Many Arguments). Sheppard Cited Berger vs. State, This Sentence Form does NOT Comply to Requirement^s of O.C.G.A. 42-8-34.(A) et c Sentencing Transcript^s From Probation hearing and Submission to this Trial Court Barrow County reveal Sentence Superseded by Appeal, To no Alibi herein, Citing Harvey, The General Assembly, The Supreme Court and this Court are in Agreement to Special Condition^s of Probation Consequence^s being Orally and put in writing. Taylor v. The State, This Court 304 Ga. App. 878; 698 S.E. 2d 384; 2010 Ga. App. Lexis 673 A1040026 July 8th 2010 Trial Counsel failed to Advise him of the Sex Offender^s Requirement^s, In Contrast to a Collateral Consequence, A Direct Consequence of a Guilty Plea is one that lengthen^s or Alter^s the pronounced Sentence, 15 year^s Compared to a Life Sentence for S.O.R. Requirement^s, The S.O.R. Deputy^s and Probation^s Office^s require defendant^s to Initial and Sign All Blank^s regardless if it refer^s to them or not. No Plea Agreed to herein. Judge Turner Stated Orally when

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Sentencing David "While you are on Probation you are to register as a Sex Offender Blank. Nothing explained about lifetime registration requirement until 2 years & 8 months after sentencing by Gwinnett Probation Officer M^s Lendon, which the A.D.A. Mr. Aikens stated regular probation and that a Probation Officer would go over sentence after plea. Not 2 years and 8 months after plea when chance of withdrawing plea or filing appeal had expired. The Trial Court's duty to ensure that guilty pleas are knowingly and voluntarily entered as a matter of 5th Amendment to due process. Not Counsel, not A.D.A., but the Trial Judge Debra K. Turner's Duty.

Many Constitutional Violations were committed up to this sentencing from arrest August 1st 2007, Speedy Demand ignored, Mistrial granted to State, State Levy appointed 2-Times, (See *CIAK vs U.S.*) etc. A.B.A., Defense Counsel should advise their clients before they enter a Guilty Plea; of any civil disabilities etc. The failure to advise --- Constitutionally deficient performance. Jury Selection, D.A. of Victim-Tampered Evidence, no Suppression

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hearing, no Motion for Discharge and Acquittal under 6th Amendment Demand and Automatic reversal without aid according to O.C.G.A. 17-7-170; (Case Citings for this Argument herein;) etc. etc. The negotiation of a Plea Bargain is a Critical Phase, no rights were waived up to Plea Day December 11th 2009. Attorney to be appointed, effective and Conflict free was denied by Judge Turner and in this case Judge Moté and Judge Adams both choose KATIE ANDERSON for appointment if DAVID desired an Attorney, Mrs. Anderson tried to have David waive Indictment September 11th 2014 in the "Holding Cell" prior to Indictment being read by Judge Moté. Before this date there was no fingerprint taken, no Commital hearing, no waiver, no Miranda, no notice of any sort, no Preliminary, NO Attorney 14-CR-995-α Indictment August 19th 2014 while suspended sentence, (Appeal proceeding S14 H1622), ignored by the Trial Court Judge T. David Moté, see J.Q.C. Complaint filed by David, not ruled on to date or no service on David of ruling, since filing December 2014. See A.B.P. Standards for Criminal Justice, Pleas of Guilty 14-3.2(f) Not Available or (Not researched by David) (8)

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The Terms of S.O.R. were "succinct, clear, and explicit", not like sentence given as O7-B-4802-2 in which S.O.R. requirements originated from herein 14-CR-995-α, were not told.

Sentences are to be strictly construed, 15 years' expectation for David exceeded by a lifetime registration, (in which they are no blanks to initial and sign), regardless if the blanks referred to David or not on his sentence. Defendant's facing these serious consequences of S.O.R. Form's, rule's, Law's, Punishment 1 to 30 years; (NOT Mechanism), should and must be properly informed. NO information for said given David; (David also was heavily medicated on mental health Anti-depressant's and Bipolar disorder med's from 2005 thru 2013.)

This "Special Condition" exceeded the MAX punishment of 15 years Plea Agreed to by Judge Debra Turner. Brantley v State, 290 Ga. App. 764, 766 (660 S.E.2d 846) (2008) The distinction between direct and collateral consequences of a Plea ... immediate and largely automatic effect on the range of the defendant's punishment. The Trial Court's Duty. Current Law as to S.O.R. NOT Constituting Punishment, need's