



Court of Appeals of Georgia

August 6, 2015

TO: Mr. Danny Troy Carroll, GDC735166, Ware State Prison, 3620 Harris Road, Waycross, Georgia 31503

RE: **A15A2094. Danny T. Carroll 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~~

- The referenced appeal was dismissed on July 23, 2015. I have enclosed a copy of the Court's order in your appeal for your review.**

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 _____.

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.

Court of Appeals of the State of Georgia

ATLANTA, July 23, 2015

The Court of Appeals hereby passes the following order:

A15A2094. DANNY T. CARROLL v. THE STATE.

Danny Carroll appeals the trial court's denial of his motion to vacate void sentence. We dismiss Carroll's appeal for lack of jurisdiction.

In April 2014, Carroll entered an *Alford*¹ plea to theft by shoplifting. The trial court sentenced him as a recidivist, under OCGA § 17-10-7 (c), to three years' imprisonment, to be followed by seven years' probation. In February 2015, Carroll filed a motion to vacate void sentence, in which he argued that his sentence is void because (i) the trial court required a period of uninterrupted incarceration as a condition of probation and (ii) he was not represented by counsel during one of the convictions that served as a predicate conviction for his recidivist sentence. The trial court denied his motion, and this appeal followed.

"Motions to vacate a void sentence generally are limited to claims that—even assuming the existence and validity of the conviction for which the sentence was imposed—the law does not authorize that sentence, most typically because it exceeds the most severe punishment for which the applicable penal statute provides." *von Thomas v. State*, 293 Ga. 569, 572 (2) (748 SE2d 446) (2013); see also *Brown v. State*, 295 Ga. App. 66, 66 (670 SE2d 867) (2008) ("[S]ince Brown's sentence fell within the range of allowable sentences for the charged crimes, his claim that the sentence was void is without merit."). Thus, when a sentence is within the statutory range of punishment, it is not void. *Jones v. State*, 278 Ga. 669, 670 (604 SE2d 483) (2004). A direct appeal may lie from an order denying a motion to vacate or correct

¹ *North Carolina v. Alford*, 400 U. S. 25 (91 SCt 160, 27 LEd2d 162) (1970).

a void sentence, but only if the defendant raises a colorable claim that the sentence is, in fact, void. See *Harper v. State*, 286 Ga. 216, 217 n.1 (686 SE2d 786) (2009); *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009). Carroll's first argument does not present a colorable void-sentence claim, as he merely challenges the logistics of his transfer from prison to a residential treatment center. See *Harper*, supra at 217 n.1; *Burg*, supra at 119; *Jones*, supra at 670.

In Carroll's second argument, he asserts that he was not represented by counsel during one of his predicate convictions. The existence and validity of three prior felony convictions are necessary predicates to the imposition of a recidivist sentence under OCGA § 17-10-7 (c). *von Thomas*, supra at 572 (2). A claim that such a prior conviction is invalid because the defendant was denied the assistance of counsel in connection with the conviction can be waived and therefore does not present a colorable claim that the later enhanced sentence is void. *Id.* at 573 (2), 575 (3).

Because Carroll has not raised a colorable claim that his sentence is void, this appeal is DISMISSED for lack of jurisdiction.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 07/23/2015

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Castle

, Clerk.

RECEIVED IN OFFICE

7-26-2015

2015 JUL 31 PM 00
Dear Clerk of the Court of Appeals

My name is Danny Troy Carroll
GDC# 735166 D.O.B. 9-22-64, My S.S.# is 415-33-7651
My mothers name is Judy Hull her number
is 423-242-3326 the reason I am telling
you all this is because someone threatened
to act like they was me and Cancel
my appeal case # A15A2094 which I sent
to you on June 23rd 2015, I sent you 3
Copies.

Anyone this inmate here named Darren
Riggs said he cancelled it because he
thinks I told on him for doing
drugs, he is the same guy that helped
me with my appeal so he would
know my basic information but he
don't know my SS# or my Mom name
and phone number. Please don't let
an imposter Cancel my appeal I don't
want it Cancel and I wish you
would help me press charges against
anyone trying to do that. Could you
please inform Catoosa County of this
possible scandal in case he is trying
this stuff. Sincerely, respectfully
Danny T. Carroll #735166-SS.#415-33-7651

Danny Carroll
GDC 735166
WARE STATE PRISON
3620 NORTH HARRIS ROAD
WAYCROSS, GA 31503

A15A2094
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A15A2094.

Appeal of Dismittel

RECEIVED IN OFFICE
COURT OF APPEALS

2015 AUG - 4 AM 11:34

Dear Clerk of Court of Appeals,

Something is not right you sent me a Dismittel for my appeal to Vacate a void sentence dated July 23rd 2015 and you had not yet received my appeal because it was not mailed to your court until July 23rd 2015 so there is a discrepancy in this how can it be dismissed before you receive it? how can my due process be stopped before my due process runs its course? I sent 3 copies one for each judge and they have not even looked at it yet.

What is going on, Now a prior conviction was used against me that was without counsel, Not for purpose of recidivist but just in aggravation and that is error. Also the Court sentenced me to some uninterrupted incarceration while on probation and this is error. My Claims are legitimate. So why would this be denied before the Day Case Judge gets my Appeal? Sincerely #785166

ALSA2094.

p.s. I sent you a letter yesterday
the 27th telling you I had received
a threat by Darren Kiger the guy
that helped me put my Brief together
he said he was going to Cancel my
brief, but that would be fraud
cause I have not requested no
Cancellation of any kind. I received
a Notice of Docketing-Direct Appeal
with the process and time for me to
turn in my brief within 20 days so
I had till the 26th of July to get my
brief to you and I mailed it from
this institution of July 23rd 2015 and
I have record of that, because
the librarian mailed it special Mail
because I am indigent I have the
Stamped receipt from the Mailroom
showing My brief was mailed from
here 7-23-15 and I have mailed
nothing else or any kind of request or
Reply else from July 6th 2015 up till
the 27th and today the 28th. My Appeal and
Brief is being sabotaged by Darren Kiger please
help me with this scandal.

Sincerely, with respect,

D. T. Cull
#35106
over →

Please send me a Docket Summary so
I can see what he (Darren Kizip) has
done.

With respect,

J. J. Connell
#735166
AISA2094