

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

January 9, 2015

To: Mr. Reginald K. Carson, GDC94782, Macon State Prison, Post Office Box 426,
Oglethorpe, Georgia 31068

Case Number: _____ Lower Court: _____ County Superior Court _____

Court of Appeals Case Number and Style: _____

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

- There is no case pending in the Court of Appeals of Georgia under your name.
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37. Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service. A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained. An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate. An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on _____. The Court of Appeals _____ . The remittitur issued on _____ divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the _____ is:
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court. As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing. If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

COURT OF APPEALS OF GEORGIA
47 TRINITY AVENUE, S.W. SUITE 501
ATLANTA, GEORGIA 30334

REGINALD K. CARSON,
PETITIONER,
VS.
STATE OF GEORGIA,

CASE NO. 9-28

CRIMINAL INDICTMENT

01 28 46

RECEIVED IN OFFICE
2015 JAN -9 PM 1:32
CLERK OF COURT ADMINISTRATOR
COURT OF APPEALS OF GA

NOTICE OF APPEAL

O.C.G.A. 5-6-37 ; 5-6-51 ;

APPELLATE REVIEW

THE UNITED STATES SUPREME COURT HAS HELD THE "ANY EVIDENCE RULE" UNCONSTITUTIONAL IN DETERMINING THE QUESTION OF THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT A CONVICTION. THE DEFENDANT IS ENTITLED TO A REVERSAL "IF IT IS FOUND UPON THE RECORD EVIDENCE THAT NO RATIONAL TRIER OF FACT COULD HAVE FOUND PROOF OF GUILT BEYOND A REASONABLE DOUBT." JACKSON-VIRGINIA, 443 U.S. 307, 99 S. CT. 2781, 61 L. ED. 2D 560 (1979).

PREVIOUSLY UNAVAILABLE CLAIMS

IF THE GOVERNMENT ESTABLISHED DELAY, "BUT, WHICH DO NOT

EXIST ON PETITIONER'S FAULT, AND PREJUDICE, CARSON COULD AVOID DISMISSAL, OR SUBSEQUENTLY UNTIMELY", BY MEANS (IN THE REPLY OR IN A TIMELY MOTION FOR A HEARING, THAT (1) THE CONDITIONS AND JUDGEMENTS UNDER WHICH "CARSON" HAS BEEN DETAINED AND SENTENCED; (2) THE STATE COURT PROCEEDINGS IN WHICH THE PETITIONER'S CLAIMS WERE EXHAUSTED (OR, THE REASONS WHY SUCH PROCEEDINGS WERE NOT NECESSARY TO EXHAUSTION, WHERE UNDER THE "TOTAL EXHAUSTION" RULE OF ROSE-Y-LUNDY, 455 U.S. 509 (1982), FEDERAL DISTRICT COURTS NOT ONLY MUST EXHAUST, DISMISS UNEXHAUSTED HABEAS CORPUS PETITIONS AND INDIVIDUAL UNEXHAUSTED CLAIMS BUT ALSO, GENERALLY, MUST DISMISS "MIXED" HABEAS CORPUS PETITIONS, I.E., PETITIONS CONTAINING BOTH EXHAUSTED CLAIMS AND EVEN A SINGLE UNEXHAUSTED CLAIM OR PORTION OF A CLAIM PENDING EXHAUSTION OF THE UNEXHAUSTED CLAIMS. (3) THE TITLE, CHARGES, AND DISPOSITIONS OF OTHER FEDERAL HABEAS CORPUS PETITION FILED BY THE PETITIONER CHALLENGING THE CONVICTION AND/OR SENTENCE NOT MADE EARLIER. IF, FOR EXAMPLE, THE PETITIONER SHOWED THAT THE ANNOUNCEMENT OF A NEW AND RETROACTIVE INTERPRETATION OF THE CONSTITUTION, MARSHALL -Y- ESTELLE, 691 F.2D 730, 735 (5th CIR. 1982), 462 U.S. 141 (1983). ESTABLISHED THE UNLAWFULNESS OF HIS CONVICTION OR SENTENCE, DISMISSAL WAS INAPPROPRIATE.

STANDARD FOR REVIEW

STATEMENT OF THE CASE

CARSON, INITIALLY FILED AN EXTRAORDINARY MOTION FOR A NEW TRIAL BACK TO THE TRIAL COURT WHERE HE WAS CONVICTED AND SENTENCED, TO WHICH EVIDENCE OF THE SUBSTANTIVE RIGHTS ISSUES SURROUNDING THOSE AREAS IN THE GOVERNMENT CASE HAD NOT BEEN, AND STILL THE COURT REFUSE TO RULE ON, WHERE HE "CARSON" APPLIED THE "NEW RULE", HOWEVER, THERE ARE TWO NOTED EXCEPTIONS TO THIS PROPOSITION. FIRST, A NEW RULE SHOULD BE APPLIED RETROACTIVELY, IF IT MAKES CERTAIN KINDS OF PRIMARY, PRIVATE INDIVIDUAL CONDUCT BEYOND THE POWER OF THE CRIMINAL-LAW MAKING AUTHORITY TO PROSCRIBE. SECOND, A NEW RULE SHOULD BE APPLIED RETROACTIVELY, IF IT REQUIRES THE OBSERVANCE OF THOSE PROCEDURES THAT ARE IMPLICIT IN THE CONCEPT OF ORDERED LIBERTY, TRAVELER-Y-LAW, 489 U.S. 288, 307, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), FOOTING, WILLIAMS-Y-UNITED STATES, 407 U.S. 667, 692, 91 S.Ct. 1171, 28 L.Ed.2d 404 (1971). CARSON APPLIED, IN HIS BRIEF TO THE TRIAL COURT THAT, THE RATIONALE IS THAT THE CONVICTION UNDER AN UNCONSTITUTIONAL STATUTE IS VOID, BROWN-Y-BURDEN, 237 GA. 439, 228 S.E.2d 830 (1976), A NOTION, WHICH

- CONFERS NO SUBJECT MATTER JURISDICTION ON A COURT -
TO CONFER NO SUBJECT MATTER JURISDICTION ON A COURT
TO CONVICT AND SENTENCE UNDER ITS PROVISIONS. RILEY v. GAR-
RETT, 219 GA. 345, 133 S.E. 367 (1963). "IT IS CLEAR THAT,
"CARSON'S" CONSTITUTIONAL CHALLENGE, HAS NOT ALREADY BEEN
RULED ON AT THE TRIAL OR ON APPEAL AND IS THUS
NOT BARRED BY RES JUDICATA. THEREFORE, "CARSON", HAS
NOT WAIVED HIS RIGHTS TO RAISE THE ISSUE ON "DIRECT",
OR HABEAS CORPUS. WHITE v. HOLMES, 191 GA. 462, 463,
12 S.E. 2d 875, 876 (1941); HOPPER v. HAMPTON, 244
GA. 361, 260 S.E. 2d 73 (1979); LUKE v. BATTLE, 275
GA. 370, 565 S.E. 2d 816 (2002)

CARSON'S CENTRAL ISSUE, WHICH WAS PRESERVED BY
CARSON HIMSELF, FROM THE FACE OF THE RECORD'S ES-
TABLISHED A VIOLATION WITH THE JUDGMENT, AND ITS
COMPONENTS, AS WELL AS THE SUBJECT MATTER JURISDICTION
OF THE COURT TO IMPOSE AN ILLEGAL SENTENCE, WHICH
IS THE SUBSTANCE FROM, AND DERIVED FROM THE JURY'S
VERDICT, AND THE STATE'S INABILITY TO PROVE VENUE.
JEREMIAH v. STATE, 250 GA. APP. 397 (2001),

WHERE THE COURT IMPOSED AN ILLEGAL SENTENCE TO
WHICH WAS DERIVED FROM THE JURY'S VERDICT, OF AN
EX-POST FACTO VIOLATION. MEDLEY, PETITIONER, 134 U.S. 160,
174 (1890); WHERE CARSON APPLIED STATE v. INGRAM,

17-10-7 (b) (2), ANY PERSON WHO HAS BEEN CONVICTED OF A SERIOUS VIOLENT FELONY IN THIS STATE OR WHO HAS BEEN CONVICTED UNDER THE LAWS OF ANY OTHER STATE OR OF THE UNITED STATES OF A CRIME WHICH IF COMMITTED IN THIS STATE WOULD BE A SERIOUS VIOLENT FELONY AND WHO AFTER SUCH CONVICTIONS SUBSEQUENTLY COMMITS AND IS CONVICTED OF A SERIOUS VIOLENT FELONY" FOR WHICH SUCH PERSON IS NOT SENTENCED TO DEATH SHALL BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT PAROLE. ; O.C.G.A. 17-10-32 (O.C.A. 27-2-528) PROVIDES IN PART THAT WHEN THE "DISTRICT ATTORNEY, PURSUANT TO THE UNIFORM RULES OF THE SUPERIOR COURTS, HAS GIVEN NOTICE THAT THE STATE INTENDS TO SEEK THE DEATH SENTENCE", PENALTY. "THE TRIAL JUDGE MAY SENTENCE THE DEFENDANT TO DEATH OR LIFE WITHOUT PAROLE. ; AND THE COURT WAS WITHOUT AUTHORITY OR JURISDICTION TO SENTENCE CARSON TO LIFE WITHOUT PAROLE, UNLESS THE STATE WAS SEEKING THE DEATH PENALTY. . THE TRIAL COURT VIOLATED THE RULE REQUIRING THE COURT TO RULE WITHIN THE STATUTORY TIME, WHICH WAS 90-DAYS, BY PASSING THE SUBSTANTIVE RIGHTS ISSUES, SET OUT IN THOSE DOCUMENTS WHICH WAS FILED AND STAMPED BEFORE THE COURT, WHICH IS THE DELIBERATE IMPOSITION BY THE COURT OF THE PREJUDICIAL OF THE TIMELINE FOR FILING AN APPEAL, WHERE THE ISSUE WAS NEVER ABANDONED BY CARSON. . A "NEW" RULE OF CRIMINAL LAW IS CONSIDERED "NEW" IF IT,

"BREAK'S NEW GROUND OR IMPOSES A NEW OBLIGATION ON THE STATES OR THE FEDERAL GOVERNMENT OR, IF THE RESULT WAS NOT DICTATED BY THE PRECEDENT EXISTING AT THE TIME "CARSON'S" CONVICTION BECAME FINAL." TEAGUE-V-LANE, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989).

CONCLUSION

PETITIONER PRAY THAT THIS COURT DOCKET HIS CASE, 15-3-3 PURSUANT TO ARTICLE VI, SEC. V, PARAGRAPH III OF THE CONSTITUTION OF THE STATE OF GEORGIA, WHERE THIS COURT HAS JURISDICTION OF THE TRIAL AND CORRECTION OF ERRORS OF LAW.

LINDSEY V. STATE, 201 GA. APP. 563 (1), 472 S.E. 2d 312 (1995).

CERTIFICATE OF SERVICE

I CERTIFY THAT I HAVE MAILED IN THE UNITED STATES MAIL WITH PROPER POSTAGE ATTACHED, AN ORIGINAL, due to being a PRISONER, AND INDIGENT, TO THE CLERK OF THE COURT OF APPEALS WITH A NOTICE OF APPEAL.

DISTRICT ATTORNEY OFFICE
D. VICTOR REYNOLD'S
COBB JUDICIAL CIRCUIT
MARIETTA, GA. 30090-70 HAYNES ST.

This 5 day OF JANUARY 2015:

Reginald H. Carson

GDC # 94782

NOTARY Marcus Wright

