



Court of Appeals of Georgia

October 15, 2015

TO: Mr. Demetrui Carter, GDC1202606, Valdosta State Prison, Post Office Box 310,
Valdosta, Georgia 31603

RE: **A14D0074. Demetrui Carter v. Georgia Public Defender Standard Council**

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 above referenced appeal is the only case in your name in this Court. The Discretionary Application was docketed in this Court on October 4, 2013. The case was dismissed on November 1, 2013. I have enclosed a copy of the dismissal order 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 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.

Court of Appeals of the State of Georgia

ATLANTA, November 01, 2013

The Court of Appeals hereby passes the following order:

**A14D0074. DEMETRIUS CARTER v. GEORGIA PUBLIC DEFENDER
STANDARDS COUNCIL, et al.**

Demetrius Carter attempted to file a civil action against the Georgia Public Defender Standards Council, his public defender, and that attorney's supervisor. On April 11, 2013, the trial court denied filing pursuant to OCGA § 9-15-2 (d), concluding that Carter's proposed complaint showed a complete absence of any justiciable law or fact. On October 4, 2013, Carter filed this application for discretionary appeal.¹

We lack jurisdiction because this application is untimely. An application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Carter filed his application 176 days after entry of the order he seeks to appeal. Therefore, his application is untimely, and it is hereby DISMISSED for lack of jurisdiction.

¹ Carter attempted to file his application on an earlier date, but it was not accepted for filing because it was missing a certificate of service.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 11/01/2013*

*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. Carlton, Clerk.

October 2, 2015

Georgia Court of Appeals
47 Trinity Ave. S.W.
Suite 501
Atlanta, Ga. 30334

RECEIVED IN OFFICE
2015 OCT 14 PM 1:42
CLERK OF APPELLATE COURT
GEORGIA

Dear Clerk of the Georgia Court of Appeals, :

I am writting you about some issues that I'm have,

1. I did file three (3) Notice of Appeals, But they all pertain to Enumeration of Error (2, and 3) of the Appellant's Brief, so Appeal # 2015 APO5002, 2015 APO 5005 and 2015 APO5010 are one Case not three.
2. I'm indigent Defendant and cannot pay the cost of to prepare a record on Appeal as set out in O.C.G. A. § 15-6-77 (e) (7), a proper In Forma Pauperis will follow this Notice and Appellent Brief.
3. The Appellant's Brief may be a day or 2 late, because the Defendant had just recieved th all three (3) Index to Record on September 29, 2015, so Defendd Appellant is asking a small time Extension to cover those days

Appellent would like to thank the Court for any Consideration the Court may give to my issues

Sincerely,
Demetruis Carter

Demetruis Carter, G.D.C.#1202606
Valdosta State Prison
P.O. Box 310
Valdosta, Ga. 31603

COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

RECEIVED IN OFFICE
2015 OCT 14 PM 1:42
CLERK/COURT REPORTER
COURT OF APPEALS OF GEORGIA

DEMETRUIS CARTER

Appellant (s)

vs.

STATE OF GEORGIA

Appellee (s)

2009 GR01690

2015 APO500Z

2015 APO500S

2015 APO5010

BRIEF OF APPELLANT

Part I. Proceedings Below

A Clayton County Gr Superior Court Grand Jury indicted Appellant 07/15/09, 15-18 for Armed Robbery (Count 1), Aggravated Assault (Count 2 and 3), Possession of a Firearm during commission of certain crimes (Count 4), Criminal use of an Article with an altered Identification Mark (Count 5), Carrying a concealed Weapon (Count 6), Violation of Georgia Controlled Substance Act (Count 7), Possession of Firearm by Convicted Felon (Count 8) on 07/15/09 [R. at 15-18]

On 10/08/09 in a Negotiated Plea, Appellant Plea Guilty to (Count 1.) Armed Robbery, (Count 3) Aggravated Assault, (Count 5) Criminal use of an Article with an altered Identification Mark, (Count 7) Violation of Georgia Controlled Substance Act and

(8 Count 8) Possession of Firearm by Felon. The Court Sentenced Appellant to Ten (10) years on (Count 1) Armed Robbery, Ten (10) years on (Count 3) Assault Aggravated, Twelve (12) Months on (Count 5) Criminal use of an Article with an Altered Identification Mark, Twelve (12) Months on (Count 7) Violation of Georgia Controll Substance Act. Twelve (12) Months on (Count 8) Possession of Firearm by Felon. The following Counts were NOLLE PROSSED, (Count 2) Assault Aggravated. (Count 4) Weapon - Possession of during a Crime. (Count 6) Weapon - Carrying Concealed. Guilty Plea / Sentence Transcript was not made apart of the Index to Record (Why).

Appellant filed a Motion for Out-of-Time Appeal and Withdrawal of Guilty Plea on 09/15/14 [R. at 113-116] the Court denied the Motion in an ORDER ON MOTION filed on 01/12/15 [R. at 119]

Appellant filed a Motion to Correct Void Sentence on 03/09/15 filing was not made apart of this Index to Record.

Appellant filed a Response to State's Response to Appellant's Motion to Correct Void Sentence on 07/31/15 [R. at 125-128]. The Court GRANTED in part and DENIED in part the Appellant's Motion to Correct Void Sentence on 08/06/15 [R. at 129].

PART II

ENUMERATION OF ERROR

The trial court erred in DENYING APPELLANT'S MOTION FOR OUT-OF-TIME APPEAL and WITHDRAWAL OF GUILTY ~~THE~~ PLEA.

II.

THE TRIAL COURT ERRED IN AMENDING APPELLANT'S SENTENCE AND DENYING IN PART APPELLANT'S MOTION TO CORRECT VOID SENTENCE.

III.

THE TRIAL COURT ERRED BY FAILING TO RETURN THE APPELLANT TO THE TRIAL COURT FOR RESENTENCING.

PART III

ARGUMENT AND CITATION OF AUTHORITIES

An Out-of-Time Appeal is occasionally appropriate where, due to ineffective assistance of counsel, no Appeal has been taken; however, an Appeal will lie from a judgment entered on a Guilty Plea only if the issue on Appeal can be resolved by facts appearing in the record. Brown v. State, 280 Ga. 658 (2006); Sanders v. State, 282 Ga. App. 834 (2006) The mere passage of time does not preclude a defendant from pursuing an Out-of-Time Appeal. Hudson v. State, 278 Ga. 409 (2004)

I.

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR OUT-OF-TIME APPEAL AND WITHDRAWAL OF GUILTY PLEA.

Appellant argues that he is entitled to an Out-of-Time Appeal and the Withdrawal of his Guilty Plea due to ineffective assistance of Counsel, By Public Defender Willie G. Daves Jr. coercing Appellant to Plead Guilty to a "void" conviction and Sentence due to a Merger issue a violation of O.C.G.A. § 16-1-7 (a) Curtis v. State, 275 Ga. 576 (2002) Nazario v. State, 293 Ga. 480 (2013) Drinkard v. Walker.

281 Ga. 211 (2006) and entitled by Right to Withdraw the Guilty Plea upon vacation of the Conviction and Sentence and before resentencing or new sentence is pronounced Kaiser v. State, 285 Ga. App. 63 (2007) and Clue v. State, 273 Ga. App. 672 (2005)

II.

Under D.C.G.A. § 17-10-1 (F) A sentencing court has the Jurisdiction, Power and Authority to Modify a Sentence within one year of the date upon which the sentence is imposed, or within 120 days after receipt by the sentencing court of the remittitur upon affirmance of the judgment after direct Appeal whichever is later Jones v. State, 278 Ga 669 (2004) Green v. State, 273 Ga. App. 654 (2005)

THE TRIAL COURT ERRED BY AMENDING APPELLANT'S SENTENCE AFTER THE TERM OF COURT HAS EXPIRED NUNC PRO TUNC

Appellant argues that the trial court had no Jurisdiction to Amend NUNC PRO TUNC the Appellant's sentence

on 07/13/15 after the term of Court had expired, where over 5 years has passed since the trial court pronounced the original sentence on 10/08/09.

The Court of Appeals of Georgia Ruled in Hall v. State, 291 Ga. App. 649 (2008) that the trial court in that case erred by denying the defendant's Motion to Vacate the defendant's Amended sentence as the trial court had no Jurisdiction to Amend the defendant's sentence, since at the time it was undertaken, over two years had passed since the sentence was originally pronounced, thus under O.C.G.A. § 17-10-1 (f) there was no Jurisdiction to Amend the sentence. See: Copeland v. State, 264 Ga. App. 905 (2003)

Furthermore, a void sentence is not a clerical error to whereas the trial court could have corrected to make the record speak the truth. The trial court could have Merged (Count 1 and 3) of the Indictment when it NOLLE PROSSE (Count 2, 4 and 6) of the Indictment, therefore the failure of the trial court to Merge the Counts was a Judicial error. See:

In the interest of H. L. W., 244 Ga. App. 498, 499 (2000)

The general rule is that NUNC PRO TUNC entries are proper to correct clerical errors but not Judicial errors.

It is stated in the case of Bosson v. Bosson, 223 Ga. 259 (1967) that. A void Judgment cannot be Amended, therefore in the present case the NUNC PRO TUNC. ~~at~~ ORDER of July 13, 2015 is Void and of no effect.

Pendergrass v. Duke, 147 Ga. 10 (1917), Wright v. Broo-
m, 43 Ga. App. 269 (1931)

III.

Georgia Constitution. Article. 1, Section. 1, Para-
graph 12, Right to the Courts. No person shall be
deprived of the right to prosecute or defend, either
in person or by an attorney, that person's own cause
in any of the Courts in this State.

THE TRIAL COURT ERRED BY NOT RETURNING APP-
ELLANT TO THE TRIAL COURT FOR RESENTENC-
ING

I.

Appellant argues that he was and is entitled to be present at any resentencing hearing and should have been present on July 13, 2015 when the trial court Amended Appellant sentence NUNC PRO TUNC and that Assistant Public Defender Willie G. Davis Jr. had been terminated off Appellant's case since April 05, 2011 and could not have represented Appellant on July 13, 2015.

In Williams v. Ricketts, 234 Ga. 716 (1975) it states: In a hearing for resentencing where the prisoner would have substantial Rights, the prisoner should be allowed to be present in the trial court for resentencing. also see; Kaiser v. State, 285 Ga. App. 63 (2007) state: A finding of a Void Sentence, following a Guilty Plea, does not automatically discharge the defendant from his plea. Rather, the proper procedure is to return the defendant to the trial court for the imposition of a legal sentence.

CONCLUSION

Appellant states this his Conviction and Sentences are still "VOID AB-INITIO" because the trial court had no

Jurisdiction to Amend the "prior Void judgment," and Prays that this Court of Appeals of Georgia Vacate's or either Remand Appellant's case back to the trial court Clayton County with instructions to Vacate it's prior Judgments, because the trial court imposed punishment that the law does not allow in the original proceedings.

Date: 10/2/15

Respectfully Submitted,

Demetrius Carter Pro-Se

Demetrius Carter

G.D.C.# 1202606

Valdosta State Prison

P.O. Box 310

Valdosta. Ga. 31603

Sworn to and subscribed before me this 2nd day of October
2015

Janja Wilkin

Notary Public or other person authorized to administer oaths

CERTIFICATE OF SERVICE

I hereby certify that I have submitted complete and correct copies of the foregoing document(s) upon the parties listed below by placing the same in the United States Mail with sufficient postage affixed thereon.

This 2nd day of October, 20 15.

Demetrius Carter

Pro Se

Demetrius Carter

PARTIES SERVED:

Court of Appeals of Georgia,
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