COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

October 26, 2015

To: Mr. Anthony -VincentCartman, 65507054, Fort Dix Federal Correctional Institution, Post Office Box 2000, Joint Base MDL, New Jersey 08640

Docket Number: A16A0206 **Style**: Anthony -VincentCartman v. The State

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

1. ☐ Your Appellant's Brief, was not accompanied by the statutory filing fee ($300.00 civil; $80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**

2. ☐ A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)

3. ☐ Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)

4. ☑ **An improper Certificate of Service accompanied your document(s). Rule 6**

5. ☑ **The Certificate of Service must include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.**

6. ☐ There were an insufficient number of copies of your document. Rule 6.

7. ☐ Your document exceeds page limits. Rules 24 (f) and 27 (a)

8. ☐ Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)

9. ☐ Letter briefs and letter cites are not permitted. Rule 27 (b)

10. ☐ Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.

11. ☐ Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)

12. ☐ Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).

13. ☐ The pages were not sequentially numbered with arabic numerals. Rule 24 (e)

14. ☐ Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)

15. ☐ Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)

16. ☐ Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)

17. ☐ The Motion to Supplement has not been granted.

18. ☐ Other: _____

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: Anthony-Vincent Cartman
Docket Number: A16A0206 Style: Anthony-Vincent Cartman v. The State

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

1. ☐ Your Appellant's Brief, was not accompanied by the statutory filing fee ($300.00 civil; $80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**

2. ☐ A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)

3. ☐ Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)

4. ☑ No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6

5. ☐ Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.

6. ☐ There were an insufficient number of copies of your document. Rule 6.

7. ☐ Your document exceeds page limits. Rules 24 (f) and 27 (a)

8. ☐ Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)

9. ☐ Letter briefs and letter cites are not permitted. Rule 27 (b)

10. ☐ Your request for court action must be submitted in motion form. Rule 41 (a)

11. ☐ Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)

12. ☐ Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).

13. ☐ The pages were not sequentially numbered with arabic numerals. Rule 24 (e)

14. ☐ Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)

15. ☐ Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)

16. ☐ Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)

17. ☐ The Motion to Supplement has not been granted.

18. ☐ Other: _____

For Additional information, please go to the Court's website at: www.gaappeals.us

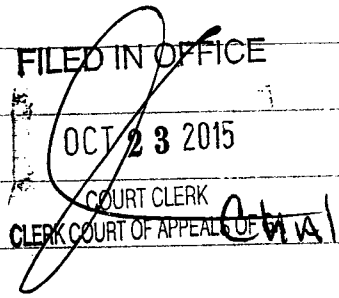
In the Georgia Court of Appeals

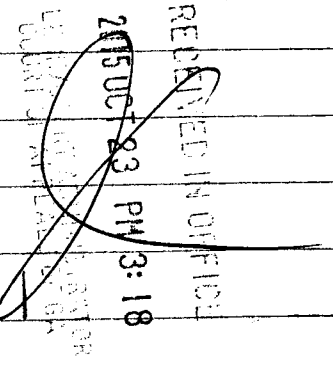
Anthony-Vincent Cretman / Pro Se

v.

The State

Appeal case num
A16A0206





Direct Appeal brief
Filed
Nunc Pro Tunc
Challenging Unconstitutional
Prior Convictions

Here comes Anthony-Vincent Cretman with a Direct Appeal brief, Filed, Nunc Pro Tunc challenging Unconstitutional prior convictions.

The reasoning behind the, Nunc Pro Tunc, Filing status is because on or about, 10-15-2015, the Appellant received a, Notice of Docketing - Direct Appeal. The Appellant was given a, 20 day, window, in which to file his direct Appeal brief, from the time of said Docketing, which was done on Sept. 25, 2015, which made the Appellates brief out of time as soon as it was received.

Reason given for the delay, that was given, was that the original notice had been sent to another person, but no new date to submit brief was given.

The instant, Direct Appeal Brief, being submitted is in Reference to unconstitutionally obtained prior convictions, which did result in a Federal Indictment, conviction and subsequent sentence enhancement.

The original Habeas Corpus, for which is now being Appealed, was directed to Cherokee County, which was the Appellants, 2nd, felony conviction which was for the offense of possessing a Firearm while being a convicted felon. The Appellants Convicted felon status was a, direct collateral effect, of the Appellants "first" conviction, in Clayton County which was achieved in violation of; Gideon v Wainwright, and Lackawanna where the Appellant was denied counsel at his probation revocation hearing, and at the subsequent, probation revocation resentencing.

Procedurally, the Appellant has no claim against, Cherokee County, in their conviction, other than the fact that the Defense counsel was ineffective for not arguing that the factual basis, for most essential element of, Possession of a weapon by a convicted felon, which is being a felon, was based on an unlawfully obtained prior conviction. #07-CR-0016 case #

The Appellant stated this action with a §2241 in the Federal District Court. After it had gone all the way to the Circuit Court of Appeals, it was decided that the Appellant had not exhausted his state remedies, and that he would have to wait until after the Appeal process {Federal} to utilize §2255's post Conviction Remedies.

Appellant pursued remedies in the form of §2241, also, stating on, Clayton county, where the unconstitutional violation originally occurred. Clayton county would not deliberate on the merits, denied the Petitioner terms/cepts claiming that the Appellant had not followed the Georgia rules of Habeas Corpus, this or that.

The Appellant also appealed it to the District Court, where it was denied. Then it was then Appealed to the 11th Circuit Court of Appeals It was denied in the District Court by the same judge that refused this claim at trial and Federal sentencing, violating., Clemmons v Wolfe, 377 F3d 322 75 CR1 526 3d Cir 2004, and 28 USC 455(a), inter Alia.

This court then certified the Appellants Appeal to the Appellant Court as in Bad Faith which compelled the Appellant to pay the $505.00 filing fee, in which he did not have.

Facts of the matter which the record will reflect, are as follows;

In the year 1992, in Clayton County Superior Court, before Judge William Ison, case #'s, 92-CR-00516-2, and 92-CR-082-2, the Appellant was coersed by the District Attorney, in to pleading guilty and accepting 5 years first offender pro-bation, After being denied requests for counsel. The Petitioner was granted bond (with the aid of an Attorney) which was revoked appeal. six months prior his plea bargain for being unable to retain counsel; further counsel.

While in Jail following his bond revocation the Petitioner filled out two Jail supplied "writs". One; requesting the 6th Amen. right to effective representation, and the second for a quick and speedy trial. Almost exactly 180 days after the request, via writ, was made the Appellant was in court. It was his own belief that this appearance was to satisfy his request for a speedy trial. It was not.

The Appellant, at Clayton County Superior Ct, Sui sponte, requested counsel yet again. The Judge told the Appellant, "Your family has money, you should have them retain one for you." The Appellant replied, "I am 22 years old and do not wish to have my family take on any extra costs". The Judges final reply in the matter was; "You will not be Appointed Counsel". There should be record of the Petitioners many attempts to obtain the transcripts, even as of late; there should also be record of the courts refusal.

On that date there was also a denial of the Appellants right to a speedy trial on that day.

After being denied counsel, the Appellant was moved to the holding cells below the court. The Appellant was then visited by the District Attorney. In that visit the D.A. told the Appellant in so many words "You will not be appointed counsel; you will not be going to trial for at least another year or so; conspiracy is one of the hardest charges to beat, and without an attorney you will definitely lose. And when you lose this Judge will give you at least 10 years..." He continued "... OR you could go home today by pleading guilty and accepting 'first offenders' probation, and if you have no problems in the first two years, your probation will be terminated early."
{These quotes are not direct quotes, but from memory.} Transcripts were denied and there is no record of the conversation in the holding cell.

The Appellant Pled guilty that day, without an attorney present on his behalf. Was never informed of his rights, and went home that day.

Appellants federal sentencing court did provide the plea agreement from his first prior convict-

ion. On that plea agreement form, there was no Attorney signature in the place allotted for an Attorney signature. There was in the upper right corner, a super imposed signature of the Attorney with another date. Super imposed also with the signature and date was a plea of not guilty... which was given at the first appearance arraignment. Obviously Appellant could not receive probation while pleading not guilty. (See exhibits) Different dates; 11-19-91, 3-25-92, 4-29-92, 11-13-92.

After the Appellant had accepted the probation, maybe a year or so later, the Appellant made police contact over child custody, and domestic dispute, where all charges were dismissed in another county; DeKalb. Petitioner then had an obligation to appear before his probation court judge in Clayton County for a probation violation hearing; before Judge Ison again, to answer to probation violation charges. Appellant again requested Counsel Appointment and again was denied. Maybe 5 minutes later the Judge had made his decision. "I do believe that you did violate your first offender probation, and I now resentence you to five...

years to serve in the state penitentiary. Those sentencing documents, also, had no signature where an Attorneys signature is to be. There was an Attorneys name typed in.

This charge and sentence was the pre-requisite element for the Appellants second Felony Charge in Cherokee County, which was possession of a weapon by a convicted felon. If it were not for the unlawful conviction in Clayton County, the Cherokee County charges would have been moot.

On the way to the holding cell while on the chain, the Appellant became in a physical altercation with another prisoner on the chain. The Appellant had gotten the better of his attacker; so was charged with assault and battery. A few months later after the release of the other prisoner, the Appellant was required to appear before Judge Benfield to answer for those charges. No notice of the court date was given to the Appellant, for he had been housed in solitary confinement since the incident.

Upon the Appellants arrival in to the court room, he asked for three things; An Attorney, A jury trial and to face his accuser. He was then told by the Judge," You Knew you had court today, you should have gotten an Attorney; You are getting a bench trial; and these officers are your accusers, they saw the whole thing."

Again within 5 minutes or less the Appellant was found guilty and sentenced to 2 years running consecutive with his already running 5 year sentence. The Assault and Battery charges were not intentional to the enhancement of the Appellants Federal sentence as was the two former. We only note the pattern of that courts systematic and wrongful conduct. All transcripts have been refused.

Ultimately the Appellant ended up serving 68 mos. on his 60 month sentence in the state of Georgia because he was not given his credits for Jail time spent pre-plea. Correctly he was not given credit for any Jail credit prior to being transferred to state person. In neither incident was he informed of his right to a jury trial; his right to An Appeal, nor warned of the fact, that, if he were to ever face Federal criminal charges he would

have his federal sentence enhanced due to the charges for which he was coersed in to pleading guilty to in Clayton County.

The imminent collateral effect of the Clayton County, denial of counsel was the indictment and conviction in Cherokee county, approximately, 7 years later. The Appellant was stopped for speeding in a company (courier) van. When the vehicle was seached, there was a firearm found in one of the storage containers.

The juey pool was devoid of African American, and a racial remark was made by a potential juror, followed by muffled laughter of other jurors. If the Appellant were to lose this trial he would be given a mandatory 5 years no parol. With this thought, the racial remark, the lack of African Americans, and the laughter, the Appellant immediatly cancelled the juey selection and accepted the 4 year probation offered by the prosecutor. The prosecutor was fair and saw the delimma, and gave the Appellant 90 days to withdraw his plea and he gave him his word.

Being as though the Clayton county court violated the Appellants eight to counsel, and the attorney (public defender) of the Appellant in Cherokee county was constitutionally ineffective for failing to argue the former, the Appellants 5th amen. due process eight was violated and his 6th amen. eight to effective assistance of counsel, and his 6th amen eight to counsel have been violated.

According to, Johnston v Zerbst, any verdict found in violation of the 5th or 6th amen is null and void. Which means that the Petitioner was actually never a felon, to be charged in Cherokee County or to be charged federally as such, or to have his federal sentence for a null and void criminal history.

"The sixth Amendment guarantees, no mere formality of appointment but the effective assistance of counsel... And whether the violation is of Gideon or Strickland, the Defendant has been denied that constitutional eight." cf, Strickland, supra, at 685 686, 80 Led, 2d 674, 104 S. Ct 2052.

The Habeas Corpus', that the Appellant did File with the covet of his First Felony, Clayton County, were dismissed without prejudice because the Appellant did not Follow certain Georgia State rules on Habeas corpus procedures. The Appellant wrote the Clayton County covet clerk And requested the Habeas Corpus rules and proper procedures. Those instructions never received.

And the attempts made After his initial release from prison were denied, stating that the person filing a habeas Corpus must be in custody. The covet cited (10th cir) Broomes v. Ashcroft (2004)

In a timely Fashion, prior to his Federal sentencing hearing the Appellant did file a subpoena Ad testificandum with the 11th circuit District Covet on 12/13/12, docket entry #222, which was never Addressed, nor is there any record of an in camera hearing which is a process due the Appellant.

The Ad testificandum subpoena was/is for an officer of that covet, Attorney at law Dwight L Thomas, who was the Appellants bond and Arraignment Attorney many years prior in the Clayton county covet.

Hrs signature was also the signature that was superimposed onto a plea agreement and also the name typed onto the line next to where a Defense counsel signature is required on the sentencing documents. (See exhibits). Esquire, Dwight L Thomas, would have truthfully testified that he had not been retained, nor had he been present at the Appellants plea hearing or at his subsequent probation revocation resentencing.

When the Appellant was sentenced at his 2nd successive felony conviction in, Cherokee County (#07-CR-0016). The ineffective Defense counsel never mentioned the unlawful and aggravating prior conviction, though he knew of it. If he would have argued this fact the Appellant would probably not have been found guilty or allowed to plead guilty, for...

"It is firmly held Supreme Court practice that the burden at sentencing shifts to the Government After the accused undermines validity of priors. In this case where the Petitioner was denied counsel is a unique constitutional defect and noting

that, it has singled out the right to counsel for "Relatively special protection in the recidivist sentencing context". The court said it makes sense to assign to the government in these types of cases the ultimate burden of persuasion once the defendant has made a threshold showing undermining the prior conviction."

The subpoena Ad testificandum would have set the record straight, yet it was denied without process due.

In; Lackawanna County District Attorney v Coss, 532 U.S. 394 64 CRL 113 (2001). the Supreme Court established that federal courts have habeas jurisdiction to review aggravating prior convictions ... only when the individual is "in custody" pursuant to a state conviction. Custody does not require incarceration; it includes probation, parole and other significant restraints on liberty. Also in Lackawanna, the Supreme court ruled that Federal courts have jurisdiction over all aggravating prior convictions because the individual is in custody pursuant to a sentence that has been enhanced pursuant to those convictions.

Conclusion

In Cherokee County District Attorneys Responce to the Appellants prior filing with that covet, the District Attorney seemed to be under the impression that the Appellant was claiming not to have been represented by counsel in Cherokee County covet in action # 07-CR-0016, the Appellants 2nd successive Felony conviction. When in all actuality the Appellant was claiming that his first felony conviction in Clayton County he was denied counsel, but Cherokee county public defender was ineffective for not requing it and that since the denial of counsel voids a conviction, Cherokee County never should have used that conviction as a factual basis of their own accusations. The Appellant is collaterally attacking the Cherokee county conviction due to its factual basis being voided by its constitutional violations, and the ineffectiveness of the Defense Counsel.

Relief Requested

Appellant requests that his claims be reviewed and that he is granted all relief made by Stare Decisis and the U.S. Constitution, make available

Appellant has served over 11 years in persons Federal and state, lost hundreds of thousands of dollars worth of property, maybe a million. Appellant has been disconnected with all three now four of his children, potential earnings have been snuffed out and several other tragedies have befelled the Appellant due to the unconstitutional convictions domino effect.

This current Federal sentence the Appellant is serving is a direct result of; mostly the conviction in Clayton County, but also combined with the conviction in Cherokee County, added the fuel needed by the feds to put the final nail in the virtual coffin of the Appellant.

Proof of Service

Here comes Anthony-Vincent Cretman with a Nunc Pro Tunc/Direct Appeal on this 17th day of October 2015, to be placed before the court Clerk for the Georgia Court of Appeals. Postage paid and placed into the inmate mail service prior to 5pm. Respectfully submitted by Anthony-Vincent Cretman.