



Court of Appeals of Georgia

December 3, 2015

TO: Mr. Robert L. Clark, GDC1168912, Macon State Prison, 2728 Highway 49 South, Post Office Box 426, Oglethorpe, Georgia 31068

RE: **Out of Time Appeal**

MOTION FOR OUT-OF-TIME APPEAL - RETURN OF MOTION

- 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.**

I am returning your Request to Proceed Informa Pauperis form with the Out of Time Appeal motion.

the appellant has served the better part of 12 years on a 16 year illegal sentence. The appellant also pointed out that judge John Simpson knew about the void indictment from the beginning. The appellant also showed the trial court that the appellant's indictment does not contain the grand jury minutes either, and is void for that reason too. Without a valid indictment the trial court lacked jurisdiction to sentence the appellant to any sentence.

Standard of review

This court's own ruling in *Harrison v. State*, 192, Ga. app. 690, 691, (1), (385, S.E. 2d 774) (1989), reads as follows; It is apparent without depute from the evidence in the present case that the person identified as the victim in the indictment was not in fact the person against whom the crime was committed against, and the state has suggested no reason why this error could not have been corrected prior to trial. Being aware of no decision from any state or federal appellate court in the nation upholding a conviction of a crime of personal violence under such circumstances. This court also held that the variance was fatal and that the trial court consequently erred in denying the appellant's motion for new trial. See *Harrison v. State*, 192,

Ga. app. 690, 691, (1), (385, S.E. 2d. 774,) (1989). A defendant is injured when the rule of law, which requires an indictment to be presented in open court is violated. Such a violation is per se injurious to the defendant. See Zugar V. State, 194, Ga. 285, 21, S.E. 2d 647, (1942). In Whitfield V. State, 313, Ga. app. 297, 721, S.E. 2d. 211721, S.E. 2d. 211, (2011). This Court vacated the judgment because Whitfield was not timely notified. See Sea Tow/Sea Spill of Savannah V. Phillips, 247, Ga. app. 613, 614, (2), (545, S.E. 2d. 34) (2001) The appellant was not timely until Nov 3, 2015 that his motion was dismissed.

Conclusion

Because of the trial court the appellant was not timely informed and should be allowed to appeal from this ruling. The appellant is in fact serving a void sentence that the law does not allow. See Crumbley V. State, 261, Ga. 610, (1991).

Certificate of Service

I do certify that I have served the following request upon the following parties by:

First class mail

Hand delivery

Georgia Court of Appeals
47 Trinity Avenue
Atlanta, Ga. 30334

District Attorney's Office
Peter J Skandalakis
72 Greenville Street
P.O. Box 2564
Newnan, Ga. 30240

Mr. Robert L. Clark pro se

Mr. Robert L. Clark 1168912

Macon State Prison

2728 Hwy 49 South

P.O. Box 426

Oglethorpe, Ga 31068-0426

Dated 11-23-2015

In the Superior Court of Carroll County
State of Georgia

Robert L. Clark
defendant,

vs.

State of Georgia
Respondant,

2015 DEC -1 AM 11:58

CLERK OF COURT
COURT OF APPEALS

*

* Case no: 04-CR-00093

*

*

Request for out of time appeal

Comes now the defendant, in the above-styled case files this timely notice and states the following:

On Sept 17, 2015 the trial court made a ruling on the defendant's motion to vacate void judgment and recusal motion, directed at judge John Simpson. Judge Bill Hamrick dismissed said motion and refused to send the order until Nov of 2015. This notice serves as a request to the clerk of court to send the entire record to the Georgia Court of Appeals for appeal purposes the entire record omitting nothing from said record. This also serves as a request for a out of time appeal because of the late notice sent to the defendant by the Carroll County Superior Court, a violation of O.C.G.A. 15-6-21.

Certificate of Service

I do certify that the following parties have been served with a copy of this request by:

✓ First class mail

Hand delivery
Clerk of court
Alan J. Lee
P.O. Box 1620
Carrollton, Ga. 30112

Clerk of court
Georgia Court of Appeals
47 Trinity Avenue
Atlanta, Ga. 30334

In the Superior Court of Carroll County
State of Georgia

Robert L. Clark,
defendant,

VS.

State of Georgia,
Respondant,

*
*
* Case no: 04CR093
*
*

Motion to vacate void judgment and recusal motion

Comes now the defendant, in the above-style case files this timely motion and states the following:

1. On or about Jan 13, 2003 a "illegal" indictment was delivered in to Carroll County Superior Court, more then 8 months before the alleged crime happened on or about Oct 2, 2003. See the indictment.
2. The indictment also list the victim's name as being Jennifer Clark. Because the defendant has never been married, there exist no Jennifer Clark, nor was the alleged victim ever known as Mrs. Jennifer Clark by anyone.
3. Judge John Simpson knew this fact and has allowed the defendant to serve a void sentence for the better part of 11 + years.
4. Because the district attorney, Peter John Skandalakis committed perjury in front of the grand jurors by telling them that Jennifer Clark was kidnap, when in fact there has never been a Jennifer Clark, this illegal sentence received on or

about Augt 4, 2004 must be vacated and judge John Simpson must be recused from any matters concerning the defendant. I do swear that these statements are true and to the best of my knowledge.

Conclusion

Because the Carroll County Superior Court was without a valid indictment it lack jurisdiction, and had no authority to give the defendant any sentence, and the defendant must be released from this illegal sentence that's in violation of his 6th and 14th amendment rights. U.S.C.A. This motion will be used to enhance the damages in a civil suit against the Carroll County Sheriff's department for the failure to release the defendant from this illegal sentence.

Certificate of Service

I do certify that the following parties have been served with a copy of this motion to vacate and motion to recuse judge John Simpson by:

- First class mail
- Hand delivery

Clerk of court
Alan J. Lee
P.O. Box 1620
Carrollton, Ga. 30112

District Attorney's Office
Peter J Skandalakis
72 Greenville Street
R.O. Box 2564
Newnan, Ga. 30240

Adrian D. Nelson
Notary

8-11-15
Date



Mr Robert L Clark pro se
Mr Robert L Clark 1168912
Macon State Prison
2728 Hwy 49 South
P.O. Box 426
Oglethorpe, Ga 31068-0426

Dated 08-12-2015
08-12-2015

Affidavit

I Robert L Clark, do swear to the best of my knowledge that these statements that I'm making concerning the trial court in Carroll County Superior Court case no: 04-CR-00093 ruling on Sept 17, 2015 are true and correct and to the best of my knowledge. On or about Sept 17, 2015, the defendant's motion was ruled on by judge Bill Hamrick in Carroll County Superior Court. The notice by the trial court was sent untimely on or about Nov 3, 2015 received by the defendant on Nov 10, 2015 from the Macon State Prison mailroom.

This ends this affidavit and statement.

Arvie Byse
Notary



November 17, 2015
Date

Signed

Robert L Clark
Macon State Prison
2728 Hwy 49 S
Oglethorpe, Ga.
31068-0426

Dated 11-17-2015

RECEIVED
2015 NOV 30 PM 3:42
COURT OF APPEALS

IN THE [REDACTED] COURT OF Appeals
STATE OF GEORGIA

Robert h Clark
Petitioner
1168912
Inmate Number

Civil Action No. _____

vs.

Habeas Corpus

State of Georgia
Respondent
(Name of Institution where you are now located)

REQUEST TO PROCEED IN FORMA PAUPERIS

1. Robert h Clark, depose and say that I am the plaintiff in the above entitled case; that in support of my request to proceed without being required to prepay fees, costs, or give security therefor. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. List any and all aliases by which you are known: N/A

2. Are you presently employed? Yes No
If the answer is "Yes," state the amount of your salary or wages per month, and give the name and address of your employer: N/A

If the answer is "No," state the date of last employment and the amount of the salary and wages per month which you received: N/A

2. Have you received within the past twelve months any money from any of the following sources?
Business, profession, or form of self-employment? Yes No
Pensions, annuities, or life insurance payments? Yes No
Rent payments, interest or dividends? Yes No

Gifts or inheritances?

Yes

No

Any other sources?

Yes

No

If the answer to any of the above is "Yes," describe each source of money and state the amount received from each source during the past twelve months: N/A

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts): Yes No

If the answer is "Yes," state the total value of the items owned: N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes No

If the answer is "Yes," describe the property and state its approximate value: N/A

5. List the persons who are dependant upon you for financial support, state your relationship to those persons, and indicate how you contribute toward their support: N/A

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury and that state law provides as follows:

- a. A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue on point in question
- b. A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000 or by imprisonment for not less than one nor more than ten years, or both. O.G.C.A. § 16-10-70.

Robert L Clark
Signature of Petitioner

11-23-2015
Date

THIS FORM IS TO BE COMPLETED ONLY BY AN AUTHORIZED INDIVIDUAL AT THE INSTITUTION WHERE THE INMATE PLAINTIFF IS PRESENTLY INCARCERATED, OR HIS/HER DESIGNEE.

CERTIFICATION

I hereby certify that the Plaintiff herein, Clark Robert, has an average monthly balance for the last twelve (12) months of \$ 0 on account at the Macon State Prison

_____ institution where confined. (If not confined for a full twelve (12) months, specify the number of months confined. Then compute the average monthly balance on that number of months.)

I further certify that Plaintiff likewise has the following securities according to the records of said institution: _____

Lambert Green 11-19-15
Authorized Officer of Institution Date

NOTE: Please attach a copy of the prisoner's inmate account of the last 12 months, or the period of incarceration (whichever is less).

RECEIVED
NOV 19 2015
Bus Off.
Macon S.P.

Account Statement

CLARK, ROBERT

Printed By: GREEN, LAMIKIA

GDC ID: 1168912

Spendable Amount	Reserved Amount	Receipts On Hold	Funds Balance	Obligations/Court Charges
\$0.00	\$10.00	\$0.00	\$10.00	\$1,914.56

RECEIPTS

Receipt Date	Transaction ID	Receipt Type	Receipt Details	Receipt Amount
01/21/2010	7120034	WESTERN UNION QUICK COLLECT RECEIPT	WESTERN UNION ELECTRONIC TRANSFER - 1002079788483595	\$50.00
06/11/2009	6338128	BANK OF AMERICA RECEIPT	BOA-28557413 - 370967	\$19.25
01/08/2009	5767720	CONSOLIDATE BANKING CONVERSION	WARE STATE PRISON - 37180	\$10.00

WITHDRAWALS

Date	Request Date	Location Paid	Withdrawal Type	Payable To	Detail	Amount	Check No
01/21/2010		CENTRAL ACCT-OFFENDER TRUST	WITHDRAWAL FOR OBLIGATION	GEORGIA DEPARTMENT OF CORRECTIONS	MONTHLY PROCESSING FEE FOR 01/2010	\$1.00	30459
01/21/2010		CENTRAL ACCT-OFFENDER TRUST	WITHDRAWAL FOR OBLIGATION	FEDERAL COURT - NEWNAN DIVISION	RECORD ID = 7622275. 7/29/09 CIVIL ACTION #3:09CV-0064-JTC-RGV	\$5.00	38743
01/21/2010		CENTRAL ACCT-OFFENDER TRUST	WITHDRAWAL FOR OBLIGATION	WARE COUNTY	RECORD ID = 6251334. CASE #08V-0598	\$44.00	32906
06/11/2009		CENTRAL ACCT-OFFENDER TRUST	WITHDRAWAL FOR OBLIGATION	WARE COUNTY	RECORD ID = 6251334. CASE #08V-0598	\$18.25	20320
06/11/2009		CENTRAL ACCT-OFFENDER TRUST	WITHDRAWAL FOR OBLIGATION	GEORGIA DEPARTMENT OF CORRECTIONS	MONTHLY PROCESSING FEE FOR 06/2009	\$1.00	15872

OBLIGATIONS

Paid Status: P = Partially paid; Y = Paid in full; R = Reversed; W = Written off

Date	Location Incurred	Obligation Type	Payable To	Obligation Detail	Amount	Paid
11/18/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20217309. ILS 11/10/2015	\$1.34	
11/06/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20195297. ILS 09/22/2015	\$1.17	
11/06/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20195295. ILS 09/22/2015	\$1.17	
11/06/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20195172. ILS 09/15/2015	\$1.34	
11/06/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20193319. 1 L 11/5/15	\$0.49	
11/05/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20191261. ILS 11/05/2015	\$1.08	
11/05/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20191193. ILS 11/05/2015	\$1.17	
11/03/2015	CENTRAL ACCT-OFFENDER TRUST	INDIGENT LOAN	MACON STATE PRISON	RECORD ID = 20185527. ILS 09/01/2015	\$1.17	