

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

August 27, 2015

To: Mr. James Allen Cobb, GDC1160608, Georgia State Prison, 2164 Georgia Highway 147, Reidsville, Georgia 30499

Docket Number: A15A2284 **Style:** James Cobb 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 accompanied your document(s). Rule 6**
5. A 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)
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: The referenced appeal was dismissed on August 10, 2015.**

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

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

To: *James A. Cobb*
Docket Number: *A16 A2284*

Style: *James Cobb 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.
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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: *Case dismissed 8. 10. 15*

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

COURT OF APPEALS OF GEORGIA

JAMES ALLEN COBB

APPELLANT

V.

STATE OF GEORGIA

CASE NO. A15A 2284

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STATE OF GEORGIA

BRIEF

The trial Court denied Appellant's MOTION TO CORRECT SENTENCE stating yet another error on order that a sentence was imposed on Appellant March 11, 2009. There was no sentence imposed on Appellant March 11, 2009. Appellant was in the custody of the Georgia Department of Corrections and was being housed at Scott State Prison. Appellant never left the Prison grounds for any court appearances. Appellant has been confined since July 22, 2006. Secondly, trial Court states Appellant was imposed a 15 year sentence on April 7, 2010 with the first 10 years to be served without Parole. Appellant was never sentenced to a 15 year sentence, but to a sentence of ten years, and five years "Probation" consecutive to the ten years. The Judge wasn't aware or notified of Appellant being sentenced as a recidivist nor was the District Attorney, neither Appellant's Attorney and Appellant himself wasn't notified or aware until the Judge "asked" was Appellant being sentenced as a recidivist, see Plea Transcript Pg. 8. # 10. Judge shortened D.A.'s words while he was in mid-sentence of stating what he was saying then the Judge asked that question. Judge unlawfully "made" the recidivist part of Appellant's sentence out of sarcasm and mere unprofessionalism, see Plea Transcript Pg. 8. # 13-14. The recidivist was "not" part of Appellant's negotiated plea established between the D.A. and Appellant. Appellant didn't sign any documentation agreeing to the recommendation of being sentenced as a "recidivist" nor was the Appellant "notified" of that recommendation. The recommendation Appellant signed and agreed to was "10 years to serve with sentence presently serving, that's for count one, Burglary. For count two, Theft by Taking (motor theft), 5 years Probation consecutive to count one. see Plea sheet titled "Sworn statement of defendant", it states no such recommendation as to Appellant being sentenced as a recidivist or 10 years "without" Parole under 17-10-7 (c).

The "States" recommendation for Count one, Burglary, "ten years in Prison"; See Plea Transcript Pg. 7. # 23-24. Judge Confirms that the sentence is to be "10 years in Prison"; See Plea Transcript Pg. 8. # 23-24, and the form he is referring to is the Sworn Statement of defendant (Plea sheet) "which is the only document I signed", Appellant signed that document "Prior" to sentencing, and it clearly states nothing about the recidivist, or being sentenced 10 years without Parole under 17-10-7(c). And if being sentenced as a recidivist "was" the case to result in the Court imposing that Punishment on the Appellant, then that means the court "rejected" Appellant's Plea and there-fore Appellant at that moment was to be returned to his Same legal Position that was held before entering guilty Plea, for that is stipulated, and Part of the terms and conditions of the established documentation titled Sworn Statement of defendant, this stipulation is listed under "13" on the Sworn Statement of defendant. Court stated that it "accepts" Appellant guilty Plea and that it "accepts" the states recommendation that was made, See Plea Transcript Pg. 11. # 6-8. Right after that, it was then suddenly than an unlawful sentence was imposed, Court stated that for Count one the Appellant will serve 10 years without Parole in the Penitentiary (which is "not" on the Plea sheet Appellant signed). Indeed, the Appellant was asked would he like to withdraw his "Plea", Appellant stated "No," because Appellant "fully understood" the "document" he "signed," and what "it" stated, in which it stated nothing whatsoever about 10 years without Parole under 17-10-7(c). So therefore, it is "impossible" to withdraw a Plea that's "not" even Part of the Plea sheet titled Sworn Statement of defendant. Appellant was sentenced under a defective Case number. The crime Appellant was accused of was not committed in "09", it was committed as documented on file July 20th, 2006, so therefore the case number was to be cited beginning with "06" and not "09", which is error that causes sentence to be void, and unlawful. Appellant's "Final Disposition" states (Count 1: Ten years without Parole under 17-10-7(c), Count 2: Five years Probation consecutive to count 1. Sentence is to run concurrent with any other sentence now serving with credit for time served). Court has informed Appellant that credit for time served is not on the Plea sheet (Sworn Statement of defendant) and that it's an "error" made by the scrivener. Be that as it may, being sentenced as a

recidivist to ten years without Parole under 11-10-7(c), 1212 on the Plea Sheet (sworn statement of defendant) either. But it is Part of Appellant's sentence unlawfully, and that's an error made by the "court". The degree of burglary that Appellant was accused of was not at all "specified", unlike the Theft by taking that "was" specified. But the burglary Appellant was accused of is "second degree", according to Burglary. 16-7-1 (c), (A Person who commits the offense of burglary in the second degree shall be guilty of a felony and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than "five" years, upon the "second" and all subsequent conviction for burglary in the second degree, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than "Eight" years). Appellant was sentenced "ten" years for burglary in the second degree. Even by that being so, Appellant's Final Disposition and Plea sheet states two different sentence, in which, only "one" can be correct and true, and that would be Appellant's Plea sheet. It is obvious that Appellant's sentence is void, was breached in the event when it was suddenly stated by the court that Appellant would serve 10 years without Parole under 17-10-7 (c), which is contrary to Appellant's Plea Sheet, therefore, trial court did "not" uphold it's side of the Plea bargain, even though the Appellant was sentenced a sentence the law does not allow. It is also seemly that Appellant's guilty Plea was not knowingly, freely and voluntarily entered, because if Appellant would have withdrawn the "Plea", then he would have been withdrawing what's on the Plea "Sheet", not what was be stated "during" sentencing. Appellant only agreed to the sentence on the "Plea sheet", nothing more, anything more is unlawful. Appellant signed Plea sheet "Prior" to sentencing, so anything added "during" sentencing, is an error made by the trial court, And in doing so, it imposed a void sentence.

WHEREFOR THE APPELLANT PRAYS THIS COURT
WILL GRANT HIS APPEAL, AND REMAND
HIS CASE BACK TO THE TRIAL COURT
WITH DIRECTION, TO BE GIVEN TIME
SERVED AND RELEASED.

RESPECTFULLY SUBMITTED,

This 19th day of August 20

JAMES ALLEN COBB
PRO SE

COURT OF APPEALS OF GEORGIA

JAMES ALLEN COBB
APPELLANT

V.

STATE OF GEORGIA

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CASE NO. A15A2284

ENUMERATIONS OF ERRORS

The APPELLANT only has five Enumeration of ERRORS and
Contents that,

- 1) That the trial Court imposed a void sentence, when the State breached APPELLANT'S Sworn Statement of defendant (Plea Sheet).
- 2) The trial Court erred by not upholding it's side of the Plea bargain.
- 3) Trial Court violated by not Providing the Correct year on Case number.
- 4) Trial Court failed by not specifying the "degree" of the burglary APPELLANT was accused of.
- 5) Trial Court erred by not Correcting APPELLANTS Sentence even after a MOTION TO CORRECT SENTENCE was filed.

JAMES ALLEN COBB
PRO SE