

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

October 1, 2015

To: Ms. Tiffany Cooper, GDC974307 E-1, Lee Arrendale State Prison, Post Office Box 709, Alto, Georgia 30510

Docket Number: A15A2277 **Style:** Tiffany Cooper 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) 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: *Jiffany Cooper*
Docket Number: *A15A2277*

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I
IN THE COURT OF APPEALS
OF GEORGIA

Tiffany Cooper

APPELLANT

v.

Case No. A15A2277

THE STATE

APPELLEE

BRIEF OF APPELLANT

2015 SEP 23 PM 3:40
CLERK OF SUPERIOR COURT
DEKALB COUNTY, GEORGIA

COMES NOW APPELLANT Tiffany Cooper
below, and Files this brief on appeal.

Part One

FACTS

Defendant Tiffany Cooper entered
an Alford Plea of guilty on August 23, 2006,
and was sentenced by the Court of
DeKalb County to a total of forty
years, to serve thirty years in custody,
on the charges of Voluntary Manslaughter,
Aggravated assault, Armed robbery, and
possession of a firearm by convicted
Felon.

On August 8, 2014 defendant filed
an Motion For out-of-time Appeal,
raising several errors that centered on
her guilty plea on August 23, 2006.

PRESERVATION OF ERROR

In Smith v. State, 253 Ga. 169 (316 SE 2d 757) (1984) that a timely filed direct appeal from a judgment entered on a guilty plea is a prescribed means by which a defendant may challenge a guilty plea "where the question on appeal is one which may be resolved by facts appearing in the record as in Fuller v. State, 159 Ga. App. 512 (284 SE 2d 29) (1981).

In the instant case, the defendant Tiffany Cooper filed a motion for out-of-time appeal, N/A on August 8, 2014, and on April 13, 2015 this motion was dismissed and filed with the clerk of court, without an evidentiary hearing. Now defendant has filed for an direct Appeal, because her case can be resolved only by facts appearing in the record. Citing: Smith v. State, 253 Ga. 169 (316 SE 2d 757) (1984); and Fuller v. State, 159 Ga. App. 512 (284 SE 2d 29) (1981).

The defendant was not personally given a description of the "critical elements" of the charge offense by the court, in particular the lesser included offense Voluntary Manslaughter charge, in the instant case (Referring to Sentencing transcript Page 15 Lines 13-15), of Ground Two.

In Ground Three, The court failed to establish factual basis of charges before accepting the defendant's guilty plea (Referring to Sentencing transcript Page 17 Lines 3-25). There is insufficient evidence to support a factual basis for the defendant's guilty plea. The court nor the state recited what facts it would have proven at trial nor did the state identify the evidence it had, to prove those facts.

In Ground Four, The trial court, and the defense counsel failed to advise the defendant that she might be subject to certain Statutorily require minimum

Sentence of (10) TEN years For the Armed Robbery Charge, and such error misled the defendant as to the Statutory minimum term of imprisonment to which she subjected herself by pleading guilty. The defendant did not fully understand the consequences of her plea. Also Defense counsel's affirmatively represented to defendant that she would be eligible for Parole after serving 10 years for Armed Robbery Charge, but the defendant was later given 20 years for the Armed Robbery conviction. This induced the defendant's guilty plea. If it wasn't for counsel's error, the defendant would have opted for trial. (Referring to memo on June 11, 2006, of counsel Mabe sent counsel Saari, saying "She had spoke with the Parole board and they also said that the defendant would be eligible for parole after serving (10) TEN years For Armed Robbery, in which is not correct. The defendant was not adequately informed.

In Ground Five, Trial counsels failed to investigate and share results of the investigation results provided by the prosecution regarding the G.B.I.'s official report on 10-26-2005, "Sealed Package(s) containing .38 special revolver serial #068485 and two .38 special cartridges" were under Curtis Ladell Mitchell's name, and not the defendant's Cooper's name. Also the seal package placed in evidence that was sent to the G.B.I. Crime Lab was not initialed and that the evidence was not sealed but had to be sealed and initialed by the laboratory personnel to meet accreditation standard. "If it wasn't for counsels error in failing to recognize this, this could have showed the court and jury that it was a possibility that the evidence could have been tampered with. Thus, could have excluded the alleged evidence. If the defense counsels had correctly informed the defendant of these discrepancies, or given her her discovery

Package, the defendant would have pleaded not guilty and insisted on going to trial. This was a critical factor in her decision to enter a guilty plea. The defendant was not adequately informed. The defendant's plea of guilty was coerced by her own counsel acting in collusion with the prosecuting attorney.

In Ground Six, Trial counsel failed to recognize that the State had misrepresented evidence to the Court and Grand Jury, about having the defendant's fingerprints, and then finding out that that was not the truth. (Referring to Pretrial transcript page 6 lines 20-25, and page 7 line 1 - match; then Pretrial transcript page 16 lines 3-8 not a match). Also counsel made misinformed defendant that her fingerprints was on the alleged weapon. This is not correct. The defendant found this out in "2012" when her counsel finally sent her her discovery package in "2012"; (Referring to Pretrial transcript page

35 Lines 5,6]. This misrepresented evidence to the Grand Jury had a significant influence on the Grand Jury's Decision to indict the defendant. If it wasn't for this misrepresented evidence, there would have been a reasonable probability that the Grand Jury would not have indicted the defendant. Also if the defendant knew of this discrepancy, she would have plead not guilty and insisted on going to trial. It was a critical factor in her decision to enter a guilty plea. The defendant was not adequately informed.

In Ground Seven, The defendant Cooper was incompetent to take a plea. The defendant was on suicide watch in the jail on 10-30-05, and 11-16-05, for trying to hang herself with a sheet, before being sentenced on this instant case. The defendant could not assist the defense counsels with her defense. The trial court erroneously failed to hold an competent hearing prior

to accepting the defendant's guilty plea, when the court had information that the defendant was incompetent. The defendant is entitled to not be tried while legally incompetent. The court, Hon. Darrel Coursey Jr. ordered the defendant to undergo mental health evaluation in case No. 05-CR-1483 on 4-5-2005 (Referring to final disposition in case No. 05-CR-1483). This also is the same Judge for this instant case also.

In ground Eight, The trial court erred in entering judgment of conviction and sentence for aggravated assault, because that conviction should have been merged into the voluntary manslaughter conviction (Referring to Sentencing transcript page 17 lines 3-25). Aggravated assault would be authorized only if the indictment averred, and the state proved, that defendant "commit[ted] an aggravated assault independent of the act which caused

the victim's death". The State never proved Factual Basis for defendant's Plea under Alford versus North Carolina (Referring to Sentencing transcript Page 17 Lines 3-25). So the defendant's aggravated assault should merge as a matter of fact or a matter of Law.

PART TWO ENUMERATION OF ERRORS

A. The error occurred when the Plea was entered unconstitutionally, ~~and~~ and Contrary to Rule 11.

1. The trial court erroneously failed to follow the established procedure, before accepting a guilty Plea of the defendant. This is not harmless error, and requires that the defendant be granted her out-of-time appeal. The defendant was not adequately informed of her appeal rights.

a. In the instant case, the defendant

was not personally given a description of the "critical elements" of the charge offense by the court, in particular the lesser included offense Voluntary Manslaughter Charge (Referring to Sentencing transcript page 15 Lines 13-15).

b. The defendant's understanding of the crime to which he is admitting guilt is one of the "core considerations" of Rule 11.

B. The error occurred when the Plea was entered unconstitutionally, and contrary to Rule 11.

1. The Court failed to establish factual basis of charges before accepting the defendant's Plea (Referring to Sentencing transcript page 17 Lines 3-25). There is insufficient evidence to support a factual basis for her Plea.

C. The error occurred when the Plea was entered unconstitutionally, and contrary to Rule 11.

1. The trial court, and the defense counsels failed to advise the defendant that she might be subject to certain statutorily require minimum sentence of (10) TEN years for the Armed Robbery charge, and such error misled the defendant as to the statutory minimum term of imprisonment to which she subjected herself by pleading guilty. The defendant did not fully understand the consequences of her plea. Also Defense Counsel Mabe affirmatively represented to defendant that she would be eligible for parole after serving 10 years for Armed Robbery charge, but the defendant was later given 20 years for the Armed Robbery conviction. This induced the defendant's guilty plea. If it wasn't for counsels error, the defendant would have opted for trial (Referring to memo on June 11, 2006, of Counsel Mabe sent Counsel Saari, saying "She had spoke with the Parole board and they also said that the defendant would be eligible for

Parole after serving (10) TEN years for Armed Robbery). In which is not correct. The defendant was not adequately informed, In the instant case.

D. The error occurred when the counsels for the defense was ineffective.

1. Trial counsels failed to investigate and share results of the investigation results provided by the prosecution regarding the G.B.I.'s official report on 10-26-2005, "Sealed Package(s) containing: 38 special revolver ~~Serial~~ Serial #068485 and two .38 special cartridges," were under Curtis Ladell Mitchell's name, and not the defendant's Cooper's name. Also this evidence was not sealed ~~sealed~~ nor was it initialed, but had to be sealed and initialed by the Laboratory Personnel to "meet accreditation standard." If it wasn't for counsels error, this could have showed the court and jury that it was a possibility that the evidence could

have been tampered with. Thus, could have excluded the alleged evidence. If the defendant were aware of this discrepancy she would have pleaded not guilty and insisted on going to trial. The defendant was not adequately informed.

E, The error occurred when trial counsel was ineffective, for the defense.

1. Trial Counsel failed to recognize that the state had misrepresented evidence to the court and Grand Jury, about having the defendant's fingerprints, and then finding out that that was not the truth.

(Referring to Pretrial transcript page 6 lines 20-25, and page 7 line 1 (match); then Pretrial transcript page 16 lines 3-8 (not a match). Also the defense counsel made misinformed defendant that her fingerprints was on the alleged weapon. This is not correct. The defendant found this out in "2012" when her counsel finally sent her her

discovery package in "2012," (Referring to Pretrial transcript Page 35 Lines 5,6). IF it wasn't for this misrepresented evidence, There would have been a reasonable probability that the Grand Jury would not have indicted the defendant. IF defendant knew of this discrepancy, she would have opted for trial. It was a critical factor in her decision to enter a guilty Plea. The defendant was not adequately informed.

F. The error occurred when the Plea was entered unconstitutionally.

1. The defendant Cooper was incompetent to take a plea. The defendant was on suicide watch in the jail on 10-30-05, and 11-16-05, for trying to hang herself with a sheet, before being sentenced on this instant case. The defendant could not assist the defense counsel with her defense. The trial court erroneously failed

to hold an competent hearing prior to accepting the defendant's guilty Plea, when the Court had information that the defendant was incompetent. The defendant is entitled to not be tried while legally incompetent.

The Hon. Daniel Cowsey Jr. ordered the defendant to undergo Mental health evaluation in Case No. 05-CR-1483 on 4-5-2005 (Referring to final disposition in Case No. 05-CR-1483).

This also is the same Judge for this instant case also.

G. The error occurred when the plea was entered unconstitutionally.

1. The trial court erred in entering judgment of conviction and sentence for aggravated assault, because that conviction should have been merged into the Voluntary Manslaughter conviction (Referring to Sentencing transcript page 17 lines 3-25).

Aggravated assault would be authorized only if the indictment averred, and

the State proved, that defendant "commit[ted] an aggravated assault independent of the act which caused the victim's death." The State never proved factual basis for defendant's plea under Alford versus North Carolina (referring to ~~State~~ Sentencing transcript page 17 lines 3-25). So the defendant's aggravated assault should merge as a matter of fact or a matter of law.

PART THREE STANDARD OF REVIEW

1. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (A)(1)(a)(b) of the appellant's enumeration of errors).

2. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (B)(1) of the appellant's enumeration of errors).

3. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (C)(1) of the appellant's enumeration of errors).

4. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (D)(1) of the appellant's

enumeration of errors).

5. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (E)(1) of the appellant's enumeration of errors.)

6. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied his motion for an out-of-time appeal;" (in regards to (F)(1) of the appellant's enumeration of errors).

7. Brown v. State, 2013 Ga. App. LEXIS 8 (Jan. 16, 2013) "Defendant did not consent to forgoing an appeal of his conviction, and the trial court thus abused its discretion when it denied

his motion for an out-of-time appeal"; (in regards to (G)(1) of the appellant's enumeration of errors).

ARGUMENT AND CITATION OF AUTHORITIES

A. Error occurred during the plea.

1. The error occurred when the plea was entered unconstitutionally. ~~and~~

a. The defendant Tiffany Cooper was not personally given a description of the "critical elements" of the charge offense by the court, in particular the lesser included offense Voluntary Manslaughter Charge (referring to sentencing transcript page 15 lines 13-15).

In EVANS v. State, 198 Ga. App. 537, 538, 402 S.E.2d 131 (1991): "The motion for an out-of-time appeal is available in criminal cases to an appellant who was "denied his right of appeal through counsel's neglect or ignorance, or if the appellant was not adequately

informed of his appeal rights."

In the instant case, defendant was not adequately informed of her right to know the nature of her charges, See McCarthy, 394 U.S. 459.

B. The error occurred during the plea.

1. The error occurred when the plea was entered unconstitutionally.

a. ~~The State~~ The court failed to establish factual basis of charges before accepting the defendant's plea (referring to sentencing transcript page 17 lines 3-25). There is insufficient evidence to support a factual basis for her plea. The court nor the state recited what facts it would have proven at trial nor did the state identify the evidence it had, to prove those facts. See United States v. Turning, 69 F.3d 107 (1995).

In Evans v. State, 198 Ga. App. 537, 538, 402 S.E.2d 131 (1991). "The motion for an out-of-time appeal is available in criminal

Cases to an appellant who was "denied his right of appeal through counsel's neglect or ignorance, or if the appellant was not adequately informed of his rights."

In the instant case, defendant was not adequately informed of her right to an factual basis to be established first, before accepting her plea.

C. Error occurred during the plea.

1. The error occurred when the plea was entered unconstitutionally.

a. The trial court, and defense counsel failed to advise the defendant that she might be subjected to certain statutorily require minimum sentence of (10) TEN years for the Armed Robbery charge, and such error misled the defendant as to the statutory minimum term of imprisonment to which she subjected herself by pleading guilty. (Referring to Sentencing transcript pages 15-17). Also Defense Counsel affirmatively

represented to defendant that she would be eligible for parole after serving 10 years for Armed Robbery charge, but defendant was given 20 years for the Armed Robbery conviction at sentencing. If it wasn't for counsel's error, the defendant would have opted for trial. (Referring to memo on June 11, 2006, of counsel Mabe sent counsel Saari, saying "she had spoke with the Parole board and they also said that the defendant would be eligible for Parole after serving (10) TEN years For Armed Robbery, in which is not correct. The defendant was not adequately informed, citing: EVANS v. State, 198 Ga. App. 537, 538, 402 S.E.2d 131 (1991).

D. The error occurred when trial counsel was ineffective.

1. Trial counsel was ineffective in the defendant's case.

a. Trial counsel's failed to investigate

and share results of the investigation results provided by the state regarding the G.B.I.'s official report on 10-26-2005, "Sealed Package(s) containing .38 special revolver Serial # 068485 and two. ~~two~~ 38 special cartridges," were under Curtis Ladell's Mitchell's name, and not the defendant's cooler's name. Also this evidence was not sealed nor was it initialed, but had to be sealed and initialed by the laboratory personnel to "meet accreditation standard." If it wasn't for counsel's error, this could have showed the court and jury that it was a possibility that the evidence could have been tampered with. Thus, could have excluded the alleged evidence. If the defendant were aware of this discrepancy she would have pleaded not guilty and opted to trial. The defendant was not adequately informed. Citing: Evans v. State, 198 Ga. App. 537, 538, 402 SE2d 131 (1991).

E. The error occurred when trial counsel was ineffective.

1. Trial counsel was ineffective in the defendant's case.

a. Trial counsel failed to recognize that the state had misrepresented evidence to the court and Grand Jury, about having the defendant's fingerprints, and then finding out that that was not the truth. (Referring to Pretrial transcript Page 6 Lines 20-25, and Page 7 Line 1 (match), and Pretrial transcript Page 16 Lines 3-8 (not match).

Also the defense counsel MISINFORMED defendant that her fingerprints was on the alleged weapon. This is not correct. The defendant found this out in "2012", when her counsel's finally sent her her discovery package in "2012", (Referring to Pretrial transcript Page 35 Lines 5, 6). IF it wasn't for this misrepresented evidence, there would have been a reasonable probability that the Grand Jury would not have indicted

the defendant. If the defendant knew of this discrepancy, she would have opted for trial. The defendant was not adequately informed.

CITING: EVANS V. STATE, 198 Ga. App. 537, 538, 402 SE2d 131 (1991).

F. The error occurred when the Plea was entered unconstitutionally.

1. Error occurred during the Plea.

a. The defendant was incompetent to take a plea. The defendant was on suicide watch in the jail on 10-30-05, and 11-16-05, for trying to hang herself with a sheet, before being sentenced on this instant case. The defendant could not assist the defense counsel with her defense. The trial court erroneously failed to hold an competent hearing prior to accepting the defendant's guilty plea, when the court had information that the defendant was incompetent. The defendant is entitled to not be tried

while legally incompetent. The Hon. Daniel Coursey Jr. ordered the defendant to undergo mental health evaluation in case no. 05-CR-1483 on 4-5-2005 (Referring to final disposition in case no. 05-CR-1483). This is also the same Judge for this instant case. Citing: Pate v. Robinson, 15 LED2d 815; and Drope v. Missouri, 43 LED2d 103. ~~on~~

In the instant case, the defendant was not adequately informed. Citing: EVANS v. State, 198 Ga. App. 537, 538, 402 SE.2d 131 (1991).

G. The error occurred when the plea was entered unconstitutionally.

↳ The defendant's plea was unconstitutionally entered.

a. The trial court erred in entering judgment of conviction and sentence for aggravated assault, because that conviction should have been merged into the voluntary Manslaughter

Conviction (Referring to Sentencing transcript Page 17 Lines 3-25).

Aggravated assault would be authorized only if the indictment averred, and the State proved, that defendant "committed an aggravated assault independent of the act which caused the victim's death". The State never proved factual basis for defendant's plea under *Alford versus North Carolina* (Referring to Sentencing transcript Page 17 Lines 3-25). So the defendant's aggravated assault should merge as a matter of fact or a matter of law. This is a void sentence.

CONCLUSION

For the above referenced reasons, Ms. Cooper respectfully prays that this court reverse the lower court's denial of her motion for out-of-time appeal.

Respectfully submitted this 23^d day
of September, 2015.

Tiffany Cooper
Pro se
Tiffany Cooper

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