



## Court of Appeals of Georgia

September 21, 2015

TO: Mr. James Craig, GDC292240 L2 212-B, Wilcox State Prison, Post Office Box 397,  
Abbeville, Georgia 31001

RE: **A15A1306. James Anthony Craig v. The State**

### 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~~

- The referenced appeal was vacated and the case remanded for re-sentencing on September 3, 2015. I have enclosed a copy of the Court's opinion for your review. Your documents are being returned to you.**

### 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 \_\_\_\_\_.

### 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.

**FOURTH DIVISION  
BARNES, P. J.,  
RAY and MCMILLIAN, JJ.**

**NOTICE:** Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.  
<http://www.gaappeals.us/rules>

**September 3, 2015**

**NOT TO BE OFFICIALLY  
REPORTED**

**In the Court of Appeals of Georgia**

A15A1306. CRAIG v. THE STATE.

RAY, Judge.

On January 5, 2004, James Anthony Craig pled guilty to one count of aggravated child molestation and four counts of child molestation, and he was sentenced in the aggregate to serve 25 years, with the first 20 years to be served in confinement and the remaining 5 years to be served on probation, provided, however, the trial court allowed the final 5 years of the prison sentence to be suspended upon successful completion of sex offender evaluation and treatment. The sentence was subject to both general and special conditions. He appeals, pro se, from the trial court's denial of his motion to vacate a void sentence, contending that the trial court erred in incorporating a sentencing addendum that purports to impose special

conditions of parole. For the reasons that follow, we vacate the sentence and remand the case for resentencing.

The record shows that the sentencing order entered by the trial court incorporated an addendum entitled “SPECIAL CONDITIONS OF PROBATION/ PAROLE[:] ADDENDUM TO SENTENCE[,]” which provided that Craig was prohibited from engaging in the following activities: having any contact with the victim; having any unsupervised contact with minors under the age of 16; residing with any minor, including his own children, without prior approval by the trial court; and engaging in volunteer work or seeking employment requiring regular contact with children absent prior approval from the probation department. The order also provided that Craig was required to register as a sex offender; undergo sex offender evaluation and treatment; notify the probation department of a dating, sexual, or marital relationship when the relationship involved contact with children or the possibility of contact with the other party’s children, and notify persons in such relationships of his sex offender status; and submit to DNA testing at his expense.

In his sole enumeration or error, Craig contends that the court lacked authority to impose any conditions upon his parole. We agree.

Although the heading of the sentence addendum contains the words “SPECIAL CONDITIONS OF PROBATION/PAROLE[,]” there is no other reference to parole in the sentencing document.<sup>1</sup> Nonetheless,

any attempt by a court to impose its will over the Executive Department by attempting to impose as a part of a criminal sentence conditions operating as a prerequisite of or becoming automatically effective in the event of a subsequent parole of defendant by the State Board of Pardons & Paroles would be a nullity and constitute an exercise of power granted exclusively to the Executive.

(Punctuation and footnote omitted) *Stephens v. State*, 305 Ga. App. 339, 346 (5) (a) (699 SE2d 558) (2010) (vacating sentence and remanding case for resentencing where heading of sentencing addendum contained the words “SPECIAL CONDITIONS OF PROBATION AND PAROLE”).

As the sentencing addendum in this case purports to impose restrictions upon Craig’s future parole (if granted), the sentence is a nullity. See *id.* Accord *Terry v. Hamrick*, 284 Ga. 24, 25 (2) (663 SE2d 256) (2008) (in habeas corpus action challenging the validity of a criminal sentence, portion of sentence which imposed

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<sup>1</sup> Certainly, there is a strong possibility that the sentence addendum’s indication that it applied to parole was merely a scrivener’s error.

special condition upon parole was vacated because it violated constitutional provision regarding the separation of powers). Accordingly, “we therefore vacate the sentence and remand the case for resentencing consistent with this opinion.” (Footnote omitted.) *Stephens*, supra at 346-347 (5) (a). We point out that our holding here in no way restricts the trial court from imposing the same special conditions solely as to Clark’s probation.

*Sentence vacated and case remanded for resentencing. Barnes, P. J., and McMillian, J., concur.*

# ADENDYM

ANY ADMISSION outside the Limits of Prosecution is Not Pertinant to ANY CHARGE, for outside the limits of Prosecution there is NONE. The charges are both contaminated and they are flawed

THE INDICTMENT must be Plain, Concise AND definite of the Essential Facts AND Proofs. If ANY.

REF: KNOWLES Vs. STATE 166 GA. 182 142 SE2d 676 (1928)

Lock Vs. STATE 3 GA. 534 (1847) also see

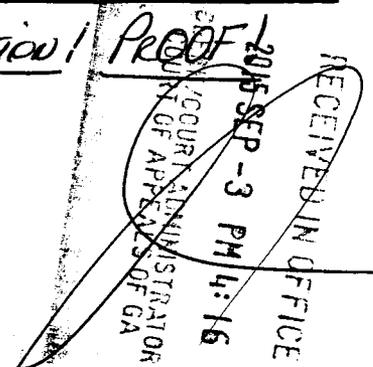
O'BRIEN Vs. STATE 109 GA. 51, 52, 38 SE 112 (1899)

Rule 7(C)(1) FED Rules of Criminal ~~Procedure~~ Procedure.

THE ACCUSED must be APPRISED of what is contained IN the indictment with reasonable certainty of the ACCUSATIONS AND PROOFS AGAINST him/her. To the END THAT he MAY PREPARE his defense and Plead the Judgment AS A BAR TO ANY Subsequent Prosecution for the SAME offense. MARTIN Vs. STATE 100 SE2d 645 (1957) ALSO

Thompson Vs. STATE 542 SE2d 1286, 1291 (AIA. <sup>1988</sup> Crf of App)

THUS: GA. law bars conviction and Punishment of ALL CRIMES which did arise from the same CRIMINAL conduct and/or as a matter of fact included in the MAJOR CRIME of accusation Tiller Vs. STATE 267 GA. 888 485 SE2d 720 1997. There must be more than accusation! PROOF!



THE UNDERSTANDING OF ALL ISSUES TO BE RECEIVED IN THE ADVERSARIAL PROCESS IS A BASIC, FUNDAMENTAL CHARACTERISTIC OF A FAIR PROCEDURE SEE. LANEY V. IDAHO 500 U.S. 110, 111 111 Sct 1723 (1991)

THE INDICTMENT IN THIS CASE IS VOID OF ANY LEGAL OR FACTUAL SPECIFICITY. THEREFORE IMPOSSIBLE FOR THIS DEFENDANT TO HAVE PREPARED A REASONABLE AND/OR ADEQUATE DEFENSE. SO IN ORDER TO BE VALID AN INDICTMENT MUST DO THE FOLLOWING.

- (1) SHOW THE ACCUSED WHAT TO PREPARE AGAINST.
- (2) IDENTIFY THE DEFENSE, SO THAT THE DEFENDANT IS TRIED FOR THE SAME CHARGES BROUGHT BEFORE THE GRAND JURY.
- (3) TO PROTECT SOMEWHAT AGAINST DOUBLE JEOPARDY.
- (4) TO GIVE THE COURT MEANS TO ACCEPT OR REJECT THE ALLEGAND OR PASS JUDGEMENT.

THOMPSON VS. STATE 542 SE2D 1286, 1291 (ALA 1978)

FACTUAL BASIS WAS NOT PROPERLY AND/OR ADEQUATELY ESTABLISHED. PURSUANT TO UNIFORM SUPERIOR COURT RULE 33.9 AND THE DECISION BY THE GEORGIA SUPREME COURT IN THE CASE OF STATE VS. EVANS 265 GA. 332, 334 (1,2) 454 SE2D 468 (1995) AND WHARTON VS. STATE 266 GA. 557, 558 469 SE2D 27 (1996)

INADEQUACY IN NOT OBJECTING TO THE BASIC FACTUAL NATURE OR CHALLENGING IN ANY WAY THE "GUILTY PLEA" AMOUNTS TO THE DENIAL OF THE BENEFIT OF EFFECTIVE COUNSEL.

ANY CHARGE LEVIED WITHOUT EVIDENCE BUT STATUTORY AND SEEKING GUILT BY ACCUSATION IS FRACTURED WITHOUT REAL SUBSTANTIVE EVIDENCE.

CONVICTIONS for charges of a sexual nature even against an underage victim(s) has been covered by a New Rule of substantive law This covering ANY AND ALL cases of a sexual nature on collateral review. See O.G.G.A. §16-6-2 (A). There must be Proof of Force, even to AND ON UNDERAGE victims. See. Bousley vs. United States 523 U.S. 614 118 Sct. 1604 140 LEd 2d 828 (1998)

This New distinction between substance AND ALSO Procedure is AN important ONE IN ALL subsequent procedures

Habeas and also in other context. While under this framework it may be contrary to dissent within the "PIPELINE" Rule it has been constituted AS A NEW Rule of LAW. See "LUKE vs. BATTLE" 565

SE2d 816 and also in BREWER vs. STATE 523 SE2d 18. This distinction must be APPLIED "RETROACTIVELY"

Thus; the meaning of a "STATUTORY ELEMENT" has been modified for example there must be: medical reports, bloodstains, fecal samples, SEMEN, bruises

must be shown for PROOF EVEN IN THE CASES OF under 16yrs of AGE IN ADDITION TO THOSE OVER 16.

"FORCE must be Proven SEPERATELY" Thus:

EVEN outside the term of COURT Subject MATTER Jurisdiction and obligation to VACATE A SENTENCE when voided by LAW is "EVIDENT"

Counsel must fully inform defendant of ALL his RIGHTS relinquished by Pleading GUILTY. This was NOT done. Defendant did NOT fully understand the factual basis for the Guilty Plea, OR the Consequences thereof. He only understood that any thing and OR ANY PLACE was better, that he wanted out of the JAIL system and he did not want the embarrassment of the court trial. Defendant was and still is PRESUMPTIVELY incapable of an intelligent choice in response to Prosecutor's PERSUASION. Did anyone truly Question the family and was the indictment demurred? The only way many of these crimes can be solved and resolved is: for someone ELSE to do the hard and tedious work of investigation. The statute of limitations was exceeded, this case is a "SHAM."

This case was notably affected by incompetent counsel and INSIDIOUS PROSECUTION. The defendant could NOT ask for mercy in a criminal case he WAS NOT GUILTY of doing. Common incompetence and waiver finds A NEEDY citizen in NEED of Common Law. FEAR of LENGTHY incarceration. MADE this defendant

THE Indictment must be PLAIN, Concise and definite of the ESSENTIAL FACTS (If there are ANY?) AND PROOF.

Rule 7(c)(1) FEDERAL Rules of Criminal Procedure.

Lock vs. STATE 3 GA. 534 (1847) " PROOF? "

There must be more THAN Accusation

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED INDIVIDUAL, HEREBY ATTEST AND CERTIFY UNDER THE PENALTY OF PERJURY, THAT ON THIS DAY I HAVE SERVED A TRUE COPY OF THE FOREGOING AND ATTACHED NEWLY CLAIM TO THE APPELLANT'S BRIEF UPON THE BELOW-GIVEN PARTY WHEN I DEPOSITED SAID DOCUMENT INTO THE CUSTODY OF THE U.S. POSTAL SERVICE IN A PROPERLY PREPARED ENVELOPE, WITH SUFFICIENT POSTAGE FOR 1ST-CLASS DELIVERY SERVICE AFFIXED THEREON, AND ADDRESSED AS FOLLOWS

TO THE COURTS OF APPEALS OF  
Georgia,  
Suite 501  
47 TRINITY Avenue  
Atlanta, Georgia 30334

NEWLY CLAIM ADENDYM

SERVED THIS 28<sup>TH</sup> DAY OF AUG'S. 2015

By James A. Craig  
James Craig  
GDC #292240  
Wilcox State Prison  
P.O. BOX 397  
2015