

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

June 18, 2015

To: Mr. Devon Bernard Curry, GDC1000092070 H-1-202T, Washington State Prison,  
Post Office Box 206, Davisboro, Georgia 31018

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Court of Appeals Case Number and Style: \_\_\_\_\_

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

- There is no case pending in the Court of Appeals of Georgia under your name. I am returning your documents to you.**
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_.** The Court of Appeals \_\_\_\_\_  
divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the \_\_\_\_\_ is: \_\_\_\_\_
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- 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.

RECEIVED IN ~~OFFICE~~ WHOM THIS MAY CONCERN<sup>6</sup>

JUNE 8, 2015

2015 JUN 17 AM 2:59

CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

GREETINGS, MY NAME IS DEWAN CURRY<sup>GDC#</sup> 1000092070, AND I'M WRITTING TO YOU INQUIRING WHETHER OR NOT THEIR HAS BEEN A DOCKET NUMBER IN YOUR APPELLATE COURT FILES FOR MY "2011 MOTION FOR OUT OF TIME APPEAL TO WITHDRAW GUILTY Plea." SAID MOTION WAS FILED IN THE SUPERIOR COURT OF ROCKDALE COUNTY APRIL 29, 2011 CASE NUMBER "2009-CR-1118." ON MAY 26, 2011 SAID MOTION WAS DENIED, + IN A TIMELY MANNER DEFENDANT FILED A NOTICE OF APPEAL FROM THE MAY 26, 2011 ORDER. NOW THE SOLE REASON FOR THIS FRUSTRATED & UNLAWFUL DELAY WAS DUE TO THE ROCKDALE COUNTY'S SUPERIOR COURT'S ERROR IN NOT "TRANSMITTING" THE TIMELY NOTICE OF APPEAL, SHOWN ON RECORD IN THIS RECENT 2015' ORDER ATTACHED HEREIN. FOUR YEARS IS EXTREMELY OUT OF TERM FOR STATE ON FILING MOTIONS. (DELANCY V. FLORIDA D.O.C. 246 F. 3d 1323 (11th Cir 2008)) + OR TRANSMITTING APPEALS. JUST AS THE DEFENDANT HAS THE OBLIGATION OF FILING IN A TIMELY MANNER SO DOES THE COURTS, + AS WE SEE THIS PROCESS OF APPEAL HAS BEEN VIOLATED WITHOUT PROBABLE CAUSE ADMITTED BY JUDGE DAVID B. TWIN IN THE SECOND PAGE OF THIS ATTACHED ORDER RECEIVED BY DEFENDANT MAY 19, 2015 (4 YRS. LATER). I AM NOW IMPLORING THE GEORGIA COURT OF APPEALS TO RECTIFY THIS MATTER & REMAND THIS CASE; 2009-CR-1118 BACK TO STATE LEVEL. ALSO IF YOUR COURT HAS ANY CASE NUMBERS, DOCUMENTS TO INCLUDE A COPY OF SAID MOTION ON APPEAL PLEASE SEND TO DEFENDANT AT CURRENT ADDRESS INSCRIBED ON ENVELOPE. PLEASE & THANK YOU & MAY GOD BLESS YOUR FAIR DECISION!

Sincerely,

Dewan Curry  
GDC#  
1000092070

IN THE SUPERIOR COURT OF ROCKDALE COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

v.

DEVON BERNARD CURRY

Defendant

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CASE NUMBER: 2009-CR-1118-I

2011 MAY -5 PM 3:46  
ROCKDALE COUNTY, GA  
Clerk

ORDER

The above and foregoing matter came to the attention of the Court on Defendant's pro se Motion for Out-of-Time Appeal filed April 23, 2015. This is not the first Motion for Out-of-Time Appeal filed by the Defendant. The record shows the following:

On September 11, 2009, the Defendant entered a guilty plea to Armed Robbery (Count I) and Possession of a Firearm During the Commission of a Crime (Count V) and was sentenced to an aggregate sentence of 25 years to serve 12 years in the prison system with the balance on probation.<sup>1</sup> On November 24, 2009, the Defendant filed a pro se "Motion to Withdraw Guilty Plea." The Court appointed counsel to represent the Defendant on such motion, and after a hearing on the motion, dismissed the Motion to Withdraw Guilty Plea finding that the Court was without jurisdiction to entertain the motion because it was filed outside the Term of Court in which the judgment of conviction was entered.

On April 29, 2011, the Defendant filed a "Motion for Out-of-Time Appeal to Withdraw Guilty Plea." In his motion, the Defendant raised allegations of ineffective assistance of counsel and attacked the validity of his guilty plea. The Court entered an Order on May 26, 2011, denying such motion and found that the issues of ineffectiveness of counsel could not be determined from the record. The Court further found that based on the record, Defendant's guilty plea was freely, voluntarily and intelligently made. Thus, because the allegations concerning the validity of the Defendant's guilty plea had to be resolved against him, even if the Defendant were able to show that his trial counsel failed to file a direct appeal

<sup>1</sup> A Nolle Prosequi Order was entered as to Count II (Armed Robbery), Count III (Aggravated Assault), Count IV (Aggravated Assault); County VI (Fleeing and Attempting to Elude); Count VII (Armed Robbery) and Count VIII (Armed Robbery).

on his behalf attacking the validity of his guilty plea and that such failure was solely attributable to counsel, such failure would not amount to ineffective assistance of counsel.

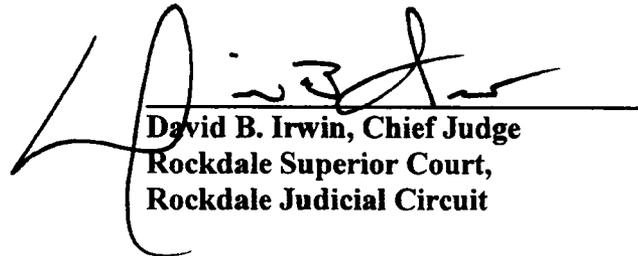
On June 21, 2011, the Defendant filed a Notice of Appeal from the Court's May 26, 2011 Order. A review of the record shows that the Clerk of the Superior Court failed to transmit the Notice of Appeal to the Court of Appeals. Therefore, it is hereby

**ORDERED** that the Rockdale County Clerk of the Superior Court transmit the Defendant's June 21, 2011 Notice of Appeal to the Court of Appeals instanter.

In the current Motion for Out-of-Time Appeal, the Defendant raises issues regarding the validity of this guilty plea. This issue has already been decided adversely to the Defendant in this Court's May 26, 2011 Order, and the Court has directed that Defendant's Notice of Appeal from such Order be transmitted to the Court of Appeals to allow for appropriate review.

**FURTHER ORDERED** that the Defendant's Motion for Appointment of Appellate Counsel is **DENIED**. A Defendant is not entitled to appointed counsel to assist with an out-of-time appeal. *Thompson v. State*, 275, Ga. App. 566 (2005).

SO ORDERED this 5 day of May, 2015, at Conyers, Georgia.



David B. Irwin, Chief Judge  
Rockdale Superior Court,  
Rockdale Judicial Circuit

Copy: Rockdale County District Attorney

Devon Curry  
GDC #1000092070  
Washington State Prison  
P.O. Box 206, H-1-202T  
Davisboro, GA 31018-0206