

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

August 13, 2015

To: Mr. Moussa Diarra, GDC1000010759, Hays State Prison, Post Office Box 668, Trion, Georgia 30753

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 current case pending in the Court of Appeals of Georgia under your name. Case number: A14D0200. Moussa Diarra v. The State, was dismissed on February 3, 2014. The case was regarding a probation revocation.**
- 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.
- Your document did not contain 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. You can contact the Supreme Court of Georgia at the following address: Supreme Court of Georgia, 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.**
- 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 _____ The remittitur issued on _____ 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.
- Per your request, a copy of the Rules of the Court of Appeals of Georgia has been enclosed.**

Clem,

I would respectfully request for an Georgia
Court of Appeal Handbook.

-MOUSSA Diawra
WDC 100020759

RECEIVED IN OFFICE
2015 AUG 12 PM 4:03
COURT OF APPEALS OF GA

IM SEEKING A PETITION FOR CERTIORARI IN LIGHT OF A DISMISSAL ACTION REGARDING A TRANSFER ORDER ON HABEAS PETITION 14CV4017 IN DEKALB COUNTY SUPERIOR COURT AS FOLLOWS:

ON DEC-8-2014, DURING A HEARING I REMOVED ATTORNEY M. AWOTONA FROM MY CASE AND REQUESTED TO BE TRANSFERRED BACK TO THE STATE SYSTEM AND MY HABEAS PETITION WAS REQUESTED TO BE TRANSFERRED AS WELL.

I STAYED IN DEKALB CO. AND AWAITED TRANSFER UP UNTIL APRIL 20 2015 (OVER FOUR MONTHS LATER). FEW WEEKS LATER I WAS INFORMED BY ATTORNEY JOHN STEAKLEY THAT MY HABEAS WAS DISMISSED DUE TO FAILURE OF PAYING A TRANSFER FEE.

I WOULD LIKE TO BRING TO THIS COURT ATTENTION THAT I WAS NEVER "PROPERLY INFORMED" BY THE COURT OF ANY TRANSFER FEE OR ORDER. THE CLERK WAS STILL SENDING ALL DOCUMENTS SUCH AS COST BILL, ORDER TO ATTORNEY M. AWOTONA WHO WAS NOT MY COUNSEL AND IT IS SUPPORTED BY RECORD AT THE DEC-8-2014 HEARING.

• DUE TO NOT BEING AWARE OR NOTIFIED I WAS UNABLE TO FILE A TIMELY CERT OF PETITION TO THIS COURT.

THE TRANSFER ORDER DID NOT STATE ANYWHERE THAT THE ~~CASE~~ CASE WILL BE DISMISSED IF COSTS ARE NOT PAID. (SEE) TRANSFER ORDER.

• MERE REFERENCE TO RULE DOES NOT COMPLY (19.1) SUBSECTION (F). — WHERE AN ORDER TRANSFERRED A CASE TO ANOTHER JURISDICTION MERE REFERENCE TO THIS RULE WAS INSUFFICIENT TO MEET THE REQUIREMENTS OF ~~SUBSECTION~~ SUBSECTION (F) THAT THE ORDER "SHALL STATE" THAT THE CASE "WILL BE AUTOMATICALLY DISMISSED IF COSTS ARE NOT PAID WITHIN A CERTAIN TIME, AND THE TRIAL COURT ERRED IN DISMISSING THE ACTION FOR FAILURE TO PAY COSTS WITHIN 20 DAYS. Young v. Martin Drilling & Blasting, Inc., 145 Ga App 133, 392 SE 2D 714 (1990); Williams v. Williams, 716 Ga App 771, 555 SE 2D 418

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

MOUSSA DIARRA,

Petitioner,

vs.

SHERIFF JEFFREY MANN,

Respondent.

Case No. 14CV4017-7

TRANSFER ORDER

Petitioner Moussa Diarra was temporarily located in DeKalb County jail to attend a post-plea hearing on his various motions in criminal cases 09CR1412-7, 09CR1890-7, 09CR1397-7, 09CR2634-7, 10CR3362-7, and 10CR4293-7. His stay in DeKalb County jail was extended when the Court lost jurisdiction to hold the scheduled hearing due to Diarra's application for discretionary appeal. While in DeKalb County jail, Diarra also filed a petition for habeas corpus. At a hearing on the habeas petition on December 8, 2014, Petitioner's attorney asked for a continuance for Diarra to retain new counsel and for Diarra, at his request, to be returned to the State system.

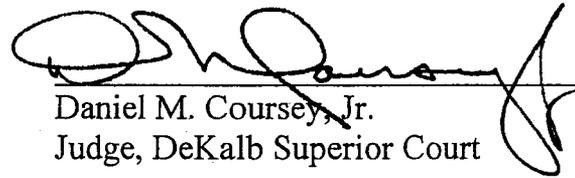
Therefore, having disposed of all of the motions in the criminal cases, Diarra is being returned to the custody of the Department of Corrections, specifically Hays State Prison, 777 Underwood Drive, Trion (Chattooga County) Georgia 30753. While venue was proper in DeKalb County at the time the habeas petition was filed, OCGA § 9-14-4, the Court finds that transfer of the habeas petition to the county of Diarra's detention is appropriate. Diarra is being transferred for the legitimate and routine reason that all

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pending motions are resolved. The transfer does not award forum-shopping or otherwise frustrate habeas relief. *Preer v. Johnson*, 279 Ga. 90, 92 (2005).

Accordingly, the Clerk of the Superior Court of DeKalb County is directed to transfer this case to the Superior Court of Chattooga County in accordance with USCR 19.1 and the Uniform Transfer Rules.

SO ORDERED, this 10th day of Dec. 2014.


Daniel M. Coursey, Jr.
Judge, DeKalb Superior Court

cc: Motunrayo O. Awotona, Esq.
Jerry Mason, Asst. District Atty

FILED
2014 DEC 10 PM 3:26
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA



In the Superior Court of DeKalb County
State of Georgia

State of Georgia

vs.

Moussa Diarra

Indictment Number

09CR1397-7, 09CR1412-7
09CR1890-7, 09CR2634-7

Motion for Out-of-Time Appeal

Comes now the above named Defendant and moves this Court to grant him an Out-of-Time Appeal on the following grounds:

1. "A criminal defendant who has lost his right to appellate review of his conviction due to error of counsel is entitled to an out-of-time appeal." Rowland v. State, 264 GA. 872, 452 S.E. 2d 756 (1995) see Walsh v. State, 302 GA. App. 461, 691 S.E. 2d 320 (2010).
2. On May 29, 2011, Defendant pled guilty to 09CR1397, 09CR1412, 09CR1890, 09CR2634 (or was convicted of) and was sentenced to remainder balance of four probation cases (above) in its entirety/
3. Defendant has never affirmatively waived his right to appeal nor has he performed any act which can be construed as a waiver.
4. The issues that Defendant would raise on appeal would be clear and can be found in the record of appeal.
5. A hearing would be proper to determine Defendant's claim of Ineffective Assistance of Counsel, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000) ("Counsel's failure to file of notice of appeal without the defendant's consent, constitutes deficient performance.")

Wherefore, Defendant prays this Honorable Court set this matter down for hearing and grant his motion for Out-of-Time Appeal. This he will ever pray.

Respectfully submitted this 1st day of October

2013 OCT - 7
PH 2:44
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA

FILED

CERTIFICATE OF SERVICE

This is to Certify that D.A. # 7
Judge Coursey has received a
Copy of this Document from
Superior Court. This the 5th
day of Oct 20 12

SIGNED: _____

SCANNED

Moussa Diarra

GDC 1000010759

Moussa Diarra

Flays state Person

DRBWX 1068

I would like to appeal the judgement by Judge Coursey DeKalb Co. Superior Court in the denial of "MOTION FOR OUT-OF-TIME Appeal" ON JUNE 10 2014 TO MY BEST OF KNOWLEDGE AS FOLLOWS:

- ON MAY 2 2011, a probation revocation was held on four cases 09CR2634, 09CR1412, 09CR1397, and 09CR1890. I was arrested in May 8 2010 for two new charges (1) Poss. Intent to Distribute (10CR3362) (2) Aggravated Assault (10CR4293)

During pretrial on May 2 2011, motion was granted to suppress evidence on the Poss. Intent to Distribute... Trial court then decided to hold a revocation hearing and amended my probation petition in open court to include the aggravated assault.

A revocation hearing was conducted based solely on commission of Aggravated Assault... Trial court Judge Coursey revoked my probation in its entirety 10 years based on commission of Aggravated Assault. After the revocation hearing the same case 10CR4293 was placed on the dead docket. There is a serious miscarriage of justice involving errors associated with judge, constitution, double jeopardy, and illegal sentence.

During the proceeding on above date trial court never explain or mention anything about my right to file an application to this court for probable cause within the time period prescribed in 5-6-35 (b) and I specifically recall asking my public defender to appeal to the higher court and she said I could not do so and that she can only file a motion to reconsider.

- A criminal defendant who has lost his right to appellate review of his conviction due to error of counsel is entitled to an out-of-time appeal. Rowland v. State, 264 Ga. 872. 452 S.E.2D 756 (1995) (see) Walsh v. State, 202 Ga. App. 461, 691 S.E.2D 320 (2010).

- The issue that would be raised on appeal would be clear and can be found on the record of appeal.

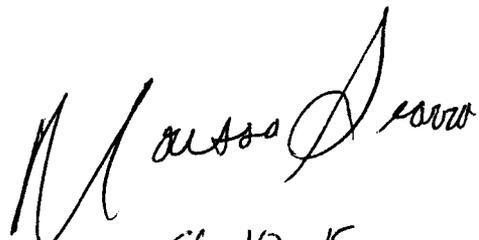
- Counsel failure to file notice of appeal without the defendant's consent, constitutes deficient performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984);

during an hearing on June 10 2014 Trial Court Judge Counsel erred IN
not granting defendant out-of-time Appeal based on the grounds
stated during hearing and herein, which holds merit:

Trial Judge was biased due to him being the same Judge who revoke
probation for ten years without a conviction or A violation of special
condition and I been incarcerated for over five years based on
false pretext... Therefore, he being the same Judge that presided
in my hearing was unfair and my counsel failed to file a motion
for Disqualification. Defendant has never affirmatively waived his
right to an appeal nor has he performed any act which can be construed
as a waiver.

The issues stated herein would be found on records my probation was
revoked for ten years based solely on commission of AGV Assault DCB
4293 and this same case is still on the dead-docket list, and
I've been incarcerated for over five years now.

I respectfully request this court to reverse the judgement of
Trial court in the Denial for out of time Appeal.


8-10-15

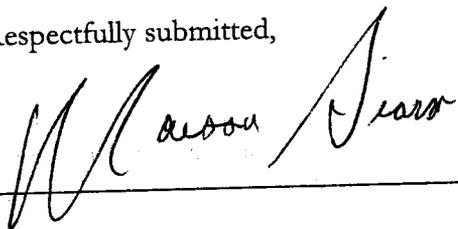
CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and forgoing document(s) upon the person(s) listed below by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure that it reaches its destination.

This August day of 18, 2015.

MOUSSA DIARRA CIDC1000010759
HAW'S STATE PRISON
PO BOX 668
TALON GA 30753

Respectfully submitted,



Person(s) served:

COURT OF APPEALS OF GEORGIA
334 STATE JUDICIAL BLDG.
ATLANTA, GEORGIA 30034

Moussa Diama GDC 1000010759
Flows State Prison
PO BOX 668
Trion, GA 30753

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COURT OF APPEALS OF GA

Court of Appeal of GA
334 State Judicial Bldg
Atlanta, Georgia 30034

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Clerk,

I wanna respectfully request for an Georgia
Court of Appeal Handbooks.

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2015 AUG 12 PM 4:03
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COURT OF APPEALS OF GA

-MOUSSA DIAMA
GDC 1000010759