

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

January 13, 2015

To: Mr. Stevie Eusery, GDC612125, Macon State Prison, Post Office Box 426, Oglethorpe, Georgia 31068

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

Court of Appeals Case Number and Style: A15A0426. Stevie Eusery v. The State

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.**
- 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 order on December 22, 2014. The Court of Appeals dismissed the appeal. The remittitur issued on January 6, 2015, 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.

COURT OF APPEALS  
STATE OF GEORGIA

FILED IN OFFICE

JAN -9 2015

COURT CLERK  
CLERK COURT OF APPEALS OF GA

RECEIVED IN OFFICE  
2015 JAN -9 PM 1:28  
COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

STEVE EUSERY,

v.

STATE OF GEORGIA,

CASE NO. A15A0426

NOTICE OF RECONSIDERATION OF COURT'S  
RULING ON ISSUE OF DISMISSAL

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SUMMARY DISMISSAL OF PETITION WAS ERROR:  
AFTER A STATE PRISONER, "AS STEVE EUSERY" HAS  
FILED "AN APPEAL", THE "COURT" MUST EXAMINE  
THE PETITION, ANY ATTACHED EXHIBITS; SEE "EUSERY'S  
"NEW" RULE OF SUBSTANTIVE LAW"; IT IS PLAINLY APP-  
EARS FROM THE FACE OF THE PETITION THAT THE PET-  
ITIONER "EUSERY" IS NOT ENTITLED TO RELIEF, THE  
JUDGE "SHALL" SUMMARILY DISMISS THE PETITION. SEE  
STATE'S RETURN AND ANSWER; DOLLARD-Y-ESTELLE 708 F.2d  
1020, 1022-23 (5<sup>th</sup> CIR. 1983), "WHICH IN THIS INSTANCE,  
EUSERY DID NOT AGREE TO THE SUMMARY DISMISSAL, BECAUSE  
THE SUBSEQUENT CHANGE IN STATE CASE LAW HAD ALREADY  
BEEN PRESENTED, PRIOR TO THIS APPEAL AND SUMMARY DIS-  
MISSAL." IF THE COURT DOES NOT DISMISS THE PETITION,  
SEE CASE NO. A15A0426, STEVE EUSERY-V-STATE, RETURN

AN ANSWER", HE MUST ORDER THE STATE TO FILE AN ANSWER OR OTHER PLEADING WITHIN A SPECIFIED TIME PERIOD. SECTION 2254", WHICH THE STATE IS REQUIRED TO STATE WHETHER "EVERY" HAS EXHAUSTED HIS STATE REMEDIES, INCLUDING ANY POST CONVICTION REMEDIES AVAILABLE TO HIM UNDER THE STATUTES OR PROCEDURAL RULES OF STATE AND INCLUDING, ALSO, HIS RIGHT OF APPEAL BOTH FROM THE JUDGMENT OF CONVICTION AND FROM ANY ADVERSE... JUDGMENT OR ORDER" SEE COURT OF APPEALS DISMISSAL", IN THE POST CONVICTION PROCEEDING, CASE NO. A15A0426.

### STATEMENT OF THE PROCEEDING'S

DURING EVERY'S 2001, GUILTY PLEA, WHERE HE PLED GUILTY TO TWO COUNTS OF ARMED ROBBERY, DURING ONE PROCEEDING", THE COURT SENTENCED EVERY TO TWO - 15 YEAR SENTENCES TOTALING 30 YEARS TO BE SERVED CONSECUTIVE TO EACH OTHER, IN VIOLATION OF EVERY'S SUBSTANTIVE CONSTITUTIONAL RIGHTS.

### ILLEGAL SENTENCES

WHEN EVERY ASKED THE COURT TO MODIFY, AND RESENTENCE HIM WHERE THE ILLEGAL SENTENCE WAS IMPOSED, THE COURT HAD THE REMEDY TO RE-SENTENCE EVERY WILLIAMS V. STATE, 221 GA. APP. 291, 292 (2), 470 S.E.2D 922 (1996), RE WITHDRAWAL OF THE GUILTY PLEA.

### STANDARD FOR REVIEW

AT THE TIME OF EVERY'S ILLEGAL SENTENCES, OF A VIOLATION OF A SUBSTANTIVE RIGHTS ISSUE, GEORGIA COURT'S

TAKEN FROM GEORGIA CRIMINAL PROCEDURE: 1-2 SCOPE AND PURPOSE, did not ESTABLISH SUBSTANTIVE CRIMINAL LAW. GEORGIA CRIMINAL LAW, FIFTH EDITION (THE HARRISON CO. 1996) AND THE E.G.L. CRIMINAL LAW (1990), ALSO, PARTICULAR ATTENTION SHOULD BE GIVEN TO THE ADMIRABLE KURTZ: CRIMINAL OFFENSES AND DEFENSES IN GEORGIA, THIRD EDITION (THE HARRISON CO. 1991).

THE STATE did, VIOLATE EUSERY'S SUBSTANTIAL RIGHTS, WHEN THE COURT VIOLATED, GEORGIA'S LAW ON CONCURRENT AND CONSECUTIVE SENTENCES 'IS SUMMARIZED' IN O.C.G.A. SEC. 17-10-10 (G.C.A. 27-2510), WHICH PROVIDES AS FOLLOWS:

"(A) WHEREAS, "AS WAS EUSERY'S" ONE TERM OF COURT A PERSON, "EUSERY" IS CONVICTED ON MORE THAN ONE INDICTMENT OR ACCUSATION, "SEE EUSERY'S CRIMINAL INDICTMENTS", OR ON ONE OR MORE COUNTS THEREOF, AND SENTENCED TO IMPRISONMENT, THE SENTENCES "SHALL" BE SERVED "CONCURRENTLY".

THE RATIONALE IS THAT "EUSERY" WAS, AND "HIS" CONVICTIONS "IMPOSED BY THE COURT" UNDER AN UNCONSTITUTIONAL STATUTE IS VOID, BUNN-Y-BURDEN, 237 GA. 439, 228 S.E. 2d 830 (1976); A RULING WHICH CONFERS NO SUBJECT MATTER JURISDICTION ON A COURT TO SENTENCE UNDER IT'S PROVISIONS. RILEY-Y-GARRETT, 219 GA. 345, 133 S.E. 367 (1963), IT IS CLEAR, THAT, "STEVE EUSERY'S" CONSTITUTIONAL CHALLENGE HAS NOT ALREADY BEEN RULED ON AT THE "GUILTY PLEA"

OR ON APPEAL, "SEE EUBANK'S COURT OF APPEALS CASE NO. A15A0426.", AND IS THUS NOT BARRED BY RES JUDICATA. THEREFORE, "EUBANK" HAS NOT WAIVED HIS RIGHT TO RAISE THIS ISSUE ON HABEAS CORPUS. WHITE-V-HORNBY, 191 GA. 462, 463, 12 S.E. 2d 875, 876 (1947).

A RULE OF CRIMINAL LAW IS CONSIDERED "NEW" IF IT, "BREAKS NEW GROUNDS OR IMPOSES A NEW OBLIGATION ON THE STATES OR THE FEDERAL GOVERNMENT, OR IF THE RULE WAS NOT DICTATED BY THE PRECEDENT EXISTING AT THE TIME "EUBANK'S" CONVICTION BECAME FINAL. LEAGUE-V-LANE, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989).

#### CONCLUSION ON UNAVAILABLE CLAIM'S

EUBANK COULD AVOID DISMISSAL, BY READING INTO HIS AND THE BRIEF, SUBSEQUENT COPY, "EUBANK'S" ANNOUNCEMENT OF A "NEW RULE" AND RETROACTIVE INTERPRETATION OF THE CONSTITUTION. MARKS-V-ETHEL, 691 F.2d 730, 738 (5th Cir. 1982), 462 U.S. 1121 (1983) ESTABLISHED THE UNLAWFULNESS OF "EUBANK'S" CONVICTION OR SENTENCES, AND DISMISSAL WAS INAPPROPRIATE.

WHERE THE NEW RULE SHOULD BE APPLIED RETROACTIVELY. "IN STEUBS EUBANK'S" CASE, IT IS REQUIRED THE OBTAINANCE OF WHAT, OR THOSE PROCEDURES THAT ARE IMPLICIT IN THE CONCEPT OF ORDERED LIBERTY. LEAGUE-V-LANE, 489 U.S. 288, 307, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989). QUOTING WILLIAMS-V-UNITED STATES, 401 U.S. 667, 692, 91 S.Ct. 1171, 28 L.Ed. 2d 404 (1971); EUBANK ASKS THE COURT TO REVERSE THE RULING AND GRANT RELIEF.

CERTIFICATE OF SERVICE

I CERTIFY, THAT I HAVE PLACED IN THE UNITED STATES MAIL, WITH ADEQUATE POSTAGE AFFIXED THERE TO, THE CLERK OF THE COURT OF APPEALS OF GEORGIA, THE ORIGINAL OF THE ABOVE TITLED MOTION TO WHICH, PETITIONER APPEARED THE DISMISSAL MOTION, AND A COPY WITH RESPONDENTS:

DISTRICT ATTORNEY  
P.O. BOX 111  
FORSYTH, GEORGIA 31029

RESPECTFULLY SUBMITTED THIS \_\_\_\_\_ DAY OF JANUARY 2015.

Steve Eusey  
GDC # 612128

NOTARY Marcus Wright

DATED 1-5-15

