

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

June 29, 2015

To: Mr. Gregory Fitch, LCSD, 1910 Pioneer Avenue, Cheyenne, Wyoming 82001

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.**
- 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.

George Courts of Appeals
IN THE COURTS OF APPEALS

STATE OF GEORGIA

State of Georgia
VS.
GREGORY Ficht Jr.

CRIMINAL FILE NO.
14-9-4121

RECEIVED IN CHIEF CLERK
COURT OF APPEALS OF GEORGIA
2015 JUN 26 PM 3:06

MOTION TO APPEAL TO DISMISS

Comes now Defendant, Gregory Ficht Jr. moves this court's Honorable Judge with this motion To Appeal.

Defendant was given a plea deal on 3-18-15 to count-1, EXPLOITATION OF AN ELDER PERSON, COUNT-2, FINANCIAL TRANSACTION CARD THEFT AND COUNT-3, EXPLOITATION. Defendant took the plea deal of 10 yrs serve, with 267 days, credit for time served, with 9 yrs, 98 days probation

Defendant files this motion to dismiss without prejudice, this matter for violation of Defendant's Rights To A FAST AND SPEEDY TRIAL, GUARANTEED

by the sixth Amendment of the UNITED STATES
CONSTITUTION. DEFENDANT FILED FOR A FAST
AND SPEEDY TRIAL BACK IN JULY 2014, ONLY TO
BE GIVEN A TRIAL DATE 3-9-15, 260 DAYS
AFTER HIS INCARCERATION DATE OF 6-21-15,
WELL PAST THE REQUIRED 180 DAY RULE.

THE RIGHT TO A SPEEDY TRIAL IS NOT THEORETICAL
OR ABSTRACT RIGHT, BUT ONE ROOTED IN HARD REALITY
IN THE NEED TO HAVE CHARGES PROMPTLY EXPOSED
DICKER V FLORIDA, 398 U.S. 30, 37 (1970)

DEFENDANT WAS SENTENCED ON 3-18-15, PLEA
DEAL AND WAS SENTENCED IN THE SUPERIOR COURT
OF COBB COUNTY, MARITTA, GA, BY JUDGE ADELE P.
GRUBBS, DEFENDANT FILED A MOTION TO DISMISS
ON 6-8-15 ONLY TO BE DENIED ON 6-9-15

THE U.S. SUPREME COURT HAS HELD THAT
COURTS MUST EMPLOY A BALANCING TEST WHEN
DETERMINING WHETHER A DEFENDANT'S SPEEDY
TRIAL RIGHTS HAS BEEN VIOLATED, AND IDENTIFIED
FOUR FACTORS TO BE CONSIDERED. 1.) LENGTH OF THE
DELAY, 2.) REASON FOR DELAY, 3.) THE DEFENDANT'S
ASCERTAIN OF HIS RIGHTS, 4.) PREJUDICE TO THE
DEFENDANT'S BARKER AT 530.

DEFENDANT RISK FOR THIS DISMISSAL DO
TO NOT GIVEN A TRIAL DATE 80 DAYS, WELL
PAST THE REQUIRED 180 LIMIT.
DEFENDANT DID NOT DELAY THE TIME FRAME
OF THIS DELAY, IT WAS ALL DELAY BY THE
COURTS AND GOVERNMENT.

Different weights should be assigned to different reasons for the delay. A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government, a more neutral reason such as negligence or over crowded courts should be weighed less heavily, but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government, rather than with the defendant. The government should have a valid reasons, such as a missing witness, should serve to justify appropriate delay. (BARKER AT 531.

A defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of his rights. The failure to assert the rights makes it difficult for a defendant to prove he has and was denied a speedy trial. BARKER AT 531-32.

Prejudice should be assessed in the light of the interests of the defendant whom the speedy trial rights was denied to protect. The court has identified three such interests, 1.) To prevent oppressive pretrial incarceration, 2.) To minimize anxiety and concern of the accused. 3.) To limit the possibility that defense will be impaired. BARKER AT 532.

The most serious consequences of delay is the possibility of impairment of the defense because the inability of a defendant to adequately prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious, but there is also prejudice if defense witnesses are unable to recall accurately the events of the distant past. Barker at 532.

The disadvantages for the defendant who cannot obtain release from custody while awaiting trial are serious. The time spent in jail awaiting trial, has a detrimental impact on the individual. It often means loss of jobs, house, car and family. If defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare for defense. Barker at 532-33.

The Supreme Court has held that none of the four factors are either a necessary or sufficient condition to finding of a deprivation of the right to a speedy trial, but they must be considered together with such other circumstances as may be relevant. Barker at 533.

The delay in trial has resulted in unfair prejudice to defendant. Defendant has continuously been in custody on these charges since June 21, 2014, as of 3-18-15 he had been incarcerated for a total of 268 days, total of over 80 days

past the 180 day Rule.
Defendant signed for a fast and speedy
trial.

Defendant never waived his right to
a fast and speedy trial.
The reason for delay weights in
Defendant's favor.

Finally in a constitution analysis, pretrial
incarceration must always be considered under
the prejudice component. In the course of
this incarceration Defendant has lost his
close relationship with his children, his family,
his job and his home.

The United States Supreme Court has
said, lengthy delay may seriously
interfer with defendant's liberty, whether
he is free on bail or not, and may
disrupt his work, drain public obloguy
and create anxiety with his family.

Berty vs State, 2004 WY 81, 28, 93 P.3d 222,
236-37 (Wyo 2004).

There can be no doubt that the
Defendant has suffered lengthy pretrial
incarceration. As of 3-18-15 defendant
was held for 268 days before sentencing
date. Defendant has been prejudiced

because his case was not tried in a fashion of time. All four constitutional factors weigh in his favor, and this case should be dismissed.

Therefore, the Defendant, Gregory Ficht Jr. Rights to a Speedy trial under the six and Fourteenth Amendment of the United States Constitution has been violated and this case should be dismissed.

Defendant asks the honorable Judge to dismiss with prejudice.

Respectfully submitted this 23rd
day of JUNE 2015

Pro Se

Gregory Ficht Jr
L.C.S.D. 04-50-49
1910 PIONEER AVE
CHEYENNE, WY
82001

Gregory Ficht Jr
Signed
6-23-15

See
Attached
→
Exhibit-A

(6)

Received
6-15-15

IN THE SUPERIOR COURT OF COBB COUNTY, GA
STATE OF GEORGIA

FILED IN OFFICE
2015 JUN -9 PM 3:56

STATE OF GEORGIA

vs.

GREGORY FITCH JR.,

Defendant.

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CRIMINAL *Deleessa Keaton*
FILE NO.: 14-9-4121-42
COBB SUPERIOR COURT CLERK

ORDER

The Defendant's Motion to dismiss for lack of speedy trial having been read and considered and the file having been reviewed,

IT IS HEREBY ORDERED and ADJUDGED as follows:

1.

The crimes alleged in this Bill of Indictment occurred March 14, 2014 and the Defendant was indicted on November 20, 2014.

2.

The Defendant pled guilty to the charges on March 17, 2015. At that time any allegation of lack of speedy trial were waived.

3.

Of the four factors that the court must weigh in determining the lack of a speedy trial as set out in *Barker v Wingo* 407 U.S. 514, 530 (IV), none support the Motion to dismiss for lack of a speedy trial.

- a) It was 4 months between Indictment and plea
- b) There was no delay
- c) The Defendant did not assert his right
- d) The Defendant was not prejudiced

4.

Defendant's Motion to Dismiss for lack of a speedy trial is **DENIED**.

SO ORDERED this 9 day of June 2015.



JUDGE ADELE P. GRUBBS
Superior Court of Cobb County
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served all interested parties in the within and foregoing matter by deposit a copy of the Order dated the 9th day of June, 2015 in the Cobb County Mail System in the properly addressed envelopes with adequate postage thereon addressed as follows:

Marc Cella, Esq.
Office of the District Attorney
Assistant District Attorney
Cobb Judicial Circuit
Interdepartmental Mail

Gregory Fitch Jr.
LCSD
1910 Pioneer Ave.
Cheyenne, WY 82001

This 9th day of June, 2015.



Peggy Massey
Judicial Administrative Assistant to
Judge Adele P. Grubbs