Court of Appeals of Georgia

October 14, 2015

TO: Mr. Elliott Franklin, GDC149083, Wheeler Correctional Facility, 195 North Broad Street, Alamo, Georgia 30411

RE: **A16A0031. Elliott Franklin 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 - DISPOSED

☑ **The referenced appeal was dismissed on October 7, 2015.**

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 or around

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.

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: Elliott Franklin Style: Elliott Franklin v. The State
Docket Number: A16A0031

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

1. ☐ Your Appellant's Brief, was not accompanied by the statutory filing fee ($300.00 civil; $80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**

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17. ☐ The Motion to Supplement has not been granted.

18. ☑ Other: Case dismissed 10.7.15

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Court of Appeals
of the State of Georgia

ATLANTA, October 07, 2015

The Court of Appeals hereby passes the following order:

A16A0031. ELLIOTT JAY FRANKLIN v. THE STATE.

In 2002, Elliott Jay Franklin was convicted of possession of cocaine and marijuana with intent to distribute and obstruction of an officer. We affirmed his convictions on appeal. *Franklin v. State*, 281 Ga. App. 409 (636 SE2d 114) (2006). Elliott later filed a motion to amend his motion to suppress and two motions to vacate a void conviction and sentence. The trial court denied all three motions. In Case No. A14A1607, Franklin appealed the denial of his motion to amend his motion to suppress and the denial of his first motion to vacate. In Case No. A14A1608, Franklin appealed the denial of his second motion to vacate. We dismissed both appeals in May of 2014.

In June of 2015, Franklin filed a request for declaratory judgment and injunctive relief. Despite its nomenclature, Franklin's latest filing was a challenge to the validity of his convictions. As we advised Franklin in our order dismissing his earlier appeals, the Supreme Court has explained that a post-conviction motion to vacate an allegedly void conviction is not an appropriate remedy in a criminal case. See *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010); *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009).[1] Any appeal from an order denying or dismissing such a motion must be dismissed. See *Harper*, supra; *Roberts v. State*,

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[1] The Court has also explained that a criminal defendant seeking to challenge a conviction after it has been affirmed on direct appeal may "file an extraordinary motion for new trial, OCGA § 5-5-41, a motion in arrest of judgment, OCGA § 17-9-61, or a petition for habeas corpus, OCGA § 9-14-40." *Harper*, supra at 217 (1).

286 Ga. 532 (690 SE2d 150) (2010). All of Franklin's challenges in his request for declaratory relief relate to the legitimacy of his convictions. Because Franklin may not attack his convictions at this juncture, however, this appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 10/07/2015
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen, *Clerk.*

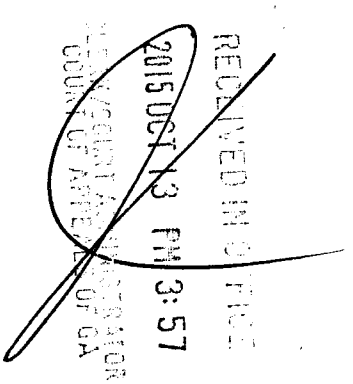
IN THE COURT OF APPEALS OF GEORGIA

ELLIOTT FRANKLIN,
DEFENDANT-APPELLANT

vs.

STATE OF GEORGIA,
PLAINTIFF-APPELLEE

CASE NO. A16A0031
2000-CR-955.1



Brief of Appellant
prepared by
ELLIOTT JAY FRANKLIN
STATE GDC# 149083

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ALAMO, GEORGIA 30411

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellant Elliott Franklin was riding his bicycle in Covington, Ga. when he crossed a road at a stop sign where officer Phillip Bradford of the Covington Police Department had stopped. Officer Bradford Testified that he Though it strange that Mr. Franklin did not greet him by name although it was dark. Trial Transcript, hereinafter "T." at p. 25, ins. 15-25.

Officer Bradford continued to watch Mr. Franklin and saw him looking back over his shoulder at his car. T. 27, ins. 4-6. Officer Bradford decided to follow Mr. Franklin and next saw him cross a road and go to a house. T. 27, ins. 18-19.

Officer Bradford drove by at 25 M.P.H. and Mr. Franklin, who was in the yard of a residence with some other people, watched the police car crawl by. T. 28, ins. 8-13.

The officer, who started his surveillance because Mr. Franklin did not look at him ("turned a light on of suspicion in mi headd." T. 27, ins. 10-11), now paradoxically became suspicious ("My suspicions were arised [sic]" T. 29. in. 2) when Mr. Franklin did look at him. so he decided to continue his surveillance by driving out of sight. ("so it don't look suspicious" T. 29. in. 4) Turning around and driving back by the residence. not finding Mr. Franklin at the house. officer Bradford went looking for him.

Three minutes after officer Bradford first saw Mr. Franklin crossing the street in front of him. (T. p. 29, in. 16. T. 31, ins. 1-2) during which time Mr. Franklin had been under almost constant surveillance by officer Bradford, an alarm went off at a car lot near the Residence where Mr. Franklin had been visiting. Although

unit were dispatched to check out alarm, officer Bradford neither joined them that Mr. Franklin might be a suspect: (T. 31, ins. 1-16) rather he continued to drive around looking for Mr. Franklin because he "was just thinking... what's he doing." T. 30, ins. 12-16.

Meanwhile, the officers who went to the car lot spent five minutes there assuring themselves that everything was intact, and then left. T. 31, ins. 1-8. At the time of trial it was still unknown whether something had triggered the alarm or it had simply malfunctioned. T. 30, ins. 16-20.

A few minutes later officer Bradford located Mr. Franklin pushing his bicycle down a little used railroad track, which people frequently use for foot traffic. (T. 31-32. p. 47, ins. 16-19) because it had a flat tire. There the officer proceeded to shine a spotlight on Mr. Franklin (T. 31, in. 25) and call for backup. T. 32. ins. 4-5.

After ascertaining that the tire was flat officer Bradford took the bike out of Mr. Franklin's hands, put the kick stand down and commanded Mr. Franklin to "leave the bike down," allegedly because he feared Mr. Franklin might throw the bicycle at him, although to this point Mr. Franklin had done nothing more than ride, then push, a bicycle, not look, then look at the patrol car and decline to answer the officer's questions about where he was going other than to say his tire was flat. T. 32-33.

Next officer Bradford walked up to Mr. Franklin while officer Byrd boxed him in from behind, and officer Bradford announced that he was going to perform a pat-down search. T. 33. ins. 7-23.

Viewing the evidence most favorably to the state, what then happened is that Mr. Franklin preferred not to be searched, and evidence this intention by running, unfortunately for him, into officer Byrd who tackled him. A scuffle ensued which ended with Mr. Franklin being sprayed with pepper spray, handcuffed and searched. As his pockets were found suspected marijuana and cocaine, and, depending on whom one believes, either "about a hundred and thirty dollars." (officer Bradford. T. 41, ins. 7-8) or "sixteen hundred and something dollars". Mr. Franklin. T. 91. ins. 7-8.)

Mr. Franklin was tried by a Newton County Jury on July 16, 2002 and convicted of possession of cocaine with intent to Distribute, possession of marijuana with intent to Distribute, and obstruction of an officer, Misdemeanor. The Trial court denied his Requests for Appointment of new counsel to Raise a Claim of ineffective Assistance of Trial counsel on motion for new Trial. At any rate, current counsel was appointed to handle the appeal because ineffective assistance of Counsel was Raised on Appeal.

STATEMENT OF JURISDICTION

This Court, rather than the Supreme Court of Georgia, has Jurisdiction of this case on Appeal based upon its Jurisdiction over all cases not Reserved to the Supreme Court or conferred on other courts by law as provided by Article VI, section V, paragraph 3 of the Constitution of Georgia of 1983.

ENUMERATION OF ERRORS

STEP ONE: DENIED EFFECTIVE ASSISTANCE OF COUNSEL, AND POLICE HAVE NOT EFFECTIVELY WARNED MR. FRANKLIN OF HIS ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ACCUSED HAS BEEN DENIED HIS CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL.

I. PREJUDICIAL ERROR

(A) MALICIOUS PROSECUTION
(B) MALICIOUS ABUSE OF LEGAL PROCESS
(C) MALICIOUS USE OF PROCESS
(D) WANTON MISCONDUCT
(E) LACK OF JURISDICTION
(F) MISCARRIAGE OF JUSTICE
(G) FRAUD
(H) INEFFECTIVE ASSISTANCE OF COUNSEL

ISSUES PRESENTED

IN THE FACE OF THIS COURT'S CONTROLLING OPINION IN RE CARTER, 235 GA. 551, 510 S.E. 2d 91 (1998):

Appellant sought review of the order of the Newton Superior Court (Georgia) that forbade him from filing any pro se action unless an attorney certified that the action set out a prima facie case upon which could be granted. The Appellant argue that the orders to be invalid, as it violated Appellant's Rights of self-representation and of access of the court's, guaranteed by both the Georgia and united States constitutions. The

Appellant assert listed several statutory methods of dealing with frivolous suits, and noted that the trial court's action was not itself statutorily authorized; the order required appellant to hire an attorney in order to gain access to the courts for any claim legitimate or not. It created a conclusive presumption that any suit filed by appellant pro se constituted harassment. It absolved the trial court of responsibility to examine the suit for frivolousness on a case-by-cases basis. The order was also faulty because appellant was not given notice or an opportunity to be heard or to dispute the facts upon which it was grounded

I. As stated in Ga. Const. Bill of Rights para. 12, a person has a right to represent him self or herself in court. This provision was primarily intented to guarantee the right to self-representation in the courts of Georgia. Its purpose is to provide a right of choice between self-representation and representation by counsel. The very first provision of the Bill of Rights in the Georgia constitution guarantees to all persons due process of law and unfettered access to the court of Georgia. These fundamental constitutional rights require that every party to a lawsuit be afforded the opportunity to be heard and to be heard and to present his claim or defense, i.e., to have his day in court. But like all right, responsibilities are attached and limits are imposed. No person is free to abuse the courts by inundating them with frivolous suits which burden the administration of the courts for no useful purpose.

II. No person is free to abuse the right of self-representation by hauling other persons into court for the purpose of harassment.

III. Under the United States Constitution, access to the courts is regarded as a corollary of due process of law. No less may be said of the first paragraph of the Georgia Constitution.

IV. Meaningful access to courts must be scrupulously guarded, as it is a constitutional right universally respected where the rule of law governs. Those regulations and restrictions which bar adequate, effective and meaningful access to the courts are unconstitutional.

V. Although a court may in some circumstances issue sua sponte dismissals pursuant to its inherent authority recognized in Ga. Code Ann. § 15-6-9 (8), a blanket pre-filing order entered outside of a pending suit, imposing restrictions on the pro se right of access, is improper.

VI. Both the Georgia and United States constitutions prohibit the state from depriving any person of life, liberty, or property without due process of law. U.S. Const. Amend. XIV. § 1; Ga. Const. Art. I, § I, Para. I. The fundamental idea of due process is notice and an opportunity to be heard. The benefit of notice and a hearing before judgment is not a matter of grace, but is one of right. A party's cause of action is a property interest that cannot be denied without due process.

VII. THE DUE PROCESS CLAUSE DOES NOT GUARANTEE TO THE CITIZEN OF A STATE ANY PARTICULAR FORM OR METHOD OF STATE PROCEDURE. ITS REQUIREMENTS ARE SATISFIED IF HE HAS REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD AND TO PRESENT HIS CLAIM OR DEFENSE, DUE REGARD BEING HAD TO THE NATURE OF THE PROCEEDING AND THE CHARACTER OF THE RIGHTS WHICH MAY BE AFFECTED BY IT.

ARGUMENT AND CITATION OF AUTHORITIES

STEP ONE: DENIED EFFECTIVE ASSISTANCE OF COUNSEL, AND POLICE HAVE NOT EFFECTIVELY WARNED MR. FRANKLIN OF HIS ABSOLUTE CONSTITUTION RIGHT TO ASSISTANCE OF COUNSEL.

WHERE THE INVESTIGATION IS NO LONGER A GENERAL INQUIRY INTO UNSOLVED CRIME BUT HAS BEGUN TO FOCUS UPON PARTICULAR SUSPECT HAS BEEN TAKEN INTO POLICE CUSTODY, THE POLICE CARRY OUT PROCESS OF INVESTIGATION OR INTERROGATIONS THAT LENDS ITSELF TO ELICITING INCRIMINATING STATEMENT, SUSPECT HAS REQUESTED AND BEEN DENIED OPPORTUNITY TO CONSULT WITH HIS LAWYER, AND POLICE HAVE NOT EFFECTIVELY WARNED HIM OF HIS ABSOLUTE RIGHT TO REMAIN SILENT, THE ACCUSED HAS BEEN DENIED CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL, AND NO STATEMENT ELICITED BY POLICE DURING INVESTIGATION OR INTERROGATION MAYBE USE AGAINST HIM AT HIS CRIMINAL TRIAL. Escobedo v. State of Illinois, 378 U.S. 478, 490, 491 S.Ct. 1758, 12 L.Ed. 2d 977 (1964).

PRIOR TO ANY CRIMINAL INTERROGATION That is, questioning initiated by LAW ENFORCEMENT officers AFTER A PERSON IS TAKEN into CUSTODY OR OTHERWISE deprived of his FREEDOM OF ANY SIGNIFICANT WAY THE PERSON MUST BE WARNED; (1) That he has A Right TO REMAIN SILENT; (2) That ANY STATEMENT he does MAKE MAY BE USED AS EVIDENCE AGAINST him; (3) That he has A Right to THE PRESENCE OF AN ATTORNEY, ONE WILL BE APPOINTED FOR him PRIOR TO ANY QUESTIONING IF he SO DESIRES. UNLESS AND UNTIL THESE WARNINGS OR A WAIVER OF THESE Rights ARE DEMONSTRATED at THE TRIAL, NO EVIDENCE obtained IN THE INTERROGATION MAY BE USED AGAINST THE ACCUSED. MIRANDA V. ARIZONA, 384 U.S. 436, 444, 478, 479, 86 S.Ct. 1602. 1630. 16 L. Ed. 694.

1. PREJUDICIAL ERROR

ERROR substantially AFFECTING APPELLANT'S Rights AND OBLIGATIONS.

PLAINTIFF ASSERTS That FROM THE INITIATION OF his ILLEGAL/UNAUTHORIZED ARREST, JURY TRIAL, APPELLATE REVIEW, AND STATE HABEAS CORPUS PROCEEDINGS, HE HAS NOT BEEN AFFORDED A FULL AND FAIR OPPORTUNITY TO HAVE THE disputed MERITS RESOLVED.

THE TRIAL COURT "LACK PERSONAL" AND OR "SUBJECT MATTER" JURISDICTION PURSUANT TO O.C.G.A. § 17-4-41, U.S.C.A. CONST. AMEND. 4, GA. CONST. ART. 1, § 1, PAR. 13. THE FOURTH (4TH AMENDMENT REQUIRES That ARREST WARRANT(S) BE BASED UPON PROBABLE-CAUSE, SUPPORTED BY OATH; SEE KALINA V. FLETCHER, 118 S.Ct. 502 (1997); BICKLEY V. STATE, 227 GA. 413 (489 S.E.2d 167 (1997).

Plaintiff assert, Due process can be applied to provent the Application of Civil Rights Action pro-se pursuant to 42 U.S.C. § 1983, Alleging That his Constitutional Rights to The Fourth, fifth, Eighth, and Fourteenth Amendment to The united states Constitution were Violated in The course of his Arrest For possession of cocaine with intent to distribut, possession of marijuana with intent to distribute, and obstruction of an officer but only if a Appellant "shows (1) That he has been pursuing his Rights diligently, and (2) That same extraordinary circumstances stoods in his way and prevented Timely filing. [redacted] United States V. Kwia Fun Wong, 135 S.Ct. 1625 (2014 (quoting Holland V. Florida, 560 U.S. ___, 130 S.Ct. 2549 (2010). Pace V. Diguglielm, 544 U.S. 408, 418 (2005).

Where There is such A limition usually it is The duty of The Arresting person to Turn The suspect over to an officer having a general power to Arrest. Appellant Argues That "said cause" of The prejudicial error, is based upon Arrest Warrants being issue by issuing officer ten (10) days After Arrest and failed to provide The Magistrate with A sufficient showing of probable cause as required by Georgia's Bill of Rights Art. I, sec. I, para. xiii and IV Amendment of The united states constitution.

Appellant Franklin's contends That he should be granted Release because O.C.G.A. § 17-4-62 mandates only That an Accused Arrested without A Warrant And detained in excess of 48 hours without hearing be Release from custody; it does not Act to divest The Trial court Jurisdiction properly Acquired over such A defendant. The Appellant Argues, That since A Warrant £184 GA.

348} FOR HIS ARREST WAS NEVER ISSUE, AND SINCE HE HAS NO TIME DURING THE PROCEEDINGS CONSENTED TO THE COURT EXERCISE OF JURISDICTION OVER HIM, SHOULD BE GRANTED RELEASE.

THEREAFTER, APPELLANT PROCEEDING PRAISE REQUEST RELIEF FOR LACK OF JURISDICTION BASED UPON THE ARRESTING OFFICER FAILED TO CONVEY HIM TO A JUDICIAL OF EMPOWERED TO ISSUE WARRANTS WITHIN 48 HOURS OF HIS WARRENTLESS ARREST, PURSUANT TO O.C.G.A. § 17-4-62. THE RECORD SHOWS THAT APPELLANT WAS IN CUSTODY FROM MAY 20, 2000 UNTIL MAY 23, 2000.

ON MAY 23, 2000, THREE DAYS AFTER APPELLANT FRANKLIN ARREST, HE WAS TAKEN BEFORE A MAGISTRATE. THE MAGISTRATE JUDGE HERNY BAKER READ THE CHARGE AGAINST MR. FRANKLIN WITHOUT THE WARRANT BEEN ISSUE. HOWEVER, EVIDENCE OF PROBABLE CAUSE WAS NOT OR THE WARRANT WAS NOT PRESENTED AND THE MAGISTRATE SET BAIL. UNDER GEORGIA LAW, ONLY A SUPERIOR COURT JUDGE MAY SET BAIL FOR SOMEONE ACCUSED OF SELLING COCAINE. SEE O.C.G.A. § 17-6-1 (A)(8) (MICHIE 1990 & SUPP. (1993).

NOTE → THREE SEPARATE WARRANTS STATES THAT MR. ELLIOTT JAY FRANKLIN OFFENSE (S) V.G.C.S.A. POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE, V.G.C.S.A. POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE (F) AND OBSTRUCTION OF AN OFFICER 16-10-24 (F), AND THAT IT WAS THROUGH OFFICER PHILLIP BRADFORD.

THE DISTRICT ATTORNEY HEREIN ALAN A. COOK OF NEWTON COUNTY DISTRICT ATTORNEY OFFICE DURING THE JULY TERM, 2000 UNDER THE STATES OWN ACCUSATION FORMULATED THREE COUNTS BILL OF INDICTMENT 2000CR955.1

charge Possession of cocaine with intent to distribute, Possession of marijuana with intent to distribute and obstruction of an officer and was presented by District Attorney Alane A. Cook.

Note → The "Act and omission" by the District Attorney office in charing the charge in which Mr. Elliott Jay Franklin warrant (s) No. 00W0733-1, 00W0732-1, and 00W0731-1 illustrates at most that the DA's office sabotaged the charge that warrants stated upon the accused.

The Appellant / Defendant Attacks these charge being formulated by the District Attorneys office as Possession of cocaine with intent to distribute, Possession of marijuana with intent to distribute and obstruction of an officer in a form of "as malicious Prosecutions.

Appellant / Defendant Rebuts these charges in his "Appeal" as being Vague.

Here the Defendant Rights were Violated by officer Phillip Bradford in which the constitution secures the Fourth Amendment of a defendant in a criminal matter illustrates the securement or seizure of that persons "liberty" at most Defendant Franklin should have not been charge with Possession of cocaine with intent to distribute, Possession of marijuana with intent to distribute, and obstruction of an officer.

Note: → at this timeframe is nothing stated in officer Bradford complaint about a alarm at the car lot.

WITHIN THE PROCESS OF THE READING of his Rights being THE HONORABLE JUDGE HENRY A BAKER OF THE NEWTON COUNTY COURT. THE DEFENDANT AT THAT TIME CLEARLY didn't UNDERSTAND THE Right he WAS giving up which public DEFENDER OF NEWTON COUNTY CLEARLY didn't EXPLAIN his Rights.

i. LIABILITY OF officer Phillip BRADFORD

APPELLANT FRANKLIN ASSERT THAT THE AFFIDAVIT signed by officer Phillip BRADFORD AND PRESENTED TO HENRY A. BAKER THE magistrate Judge WAS INSUFFICIENT TO support FINDING OF PROBABLE CAUSE FOR THE ARREST OR WARRANTS. THE OMISSION ARE "CLEARLY CRITICAL FACTS, INCLUDING THREE MINUTES AFTER officer BRADFORD FIRST SAW APPELLANT FRANKLIN CROSSING THE STREET IN FRONT OF HIM. (T. p. 29, In. 16. T. 31, INS. 1-2) during which TIME MR. FRANKLIN had BEEN UNDER ALMOST CONSTANT SURVEILLANCE by officer officer BRADFORD, AN ALARM WENT OF AT A CAR LOT NEAR THE RESIDENCE WHERE MR. FRANKLIN had BEEN visiting. ALTHOUGH UNIT WERE dispatched TO check out ALARM, officer BRADFOR NEITHER JOINED THEM NOR REPORTED TO THEM THAT MR. FRANKLIN might BE A SUSPECT: (T. 31, INS. 1-6) RATHER HE CONTINUED TO DRIVE AROUND LOOKING FOR MR. FRANKLIN BECAUSE HE "WAS JUST THINKING What's he doing." T. 30. INS. 12-16.

MR. FRANKLIN'S CONTENTD THAT NO EVIDENCE OF officer Phillip BRADFORD KNOWINGLY OF THE ALARM WAS NOT IN THE Affidavit, AS HE WAS A EYEWITNESS WHOSE RELIABILITY NEED TO BE PROVEN. FRANKS V. DELAWARE, 438 U.S. 154. 98 S.Ct. 2674. 57. L. Ed. 2d 668 (1978). HOWEVER, dealt THE LETHAL [redacted] blow [redacted] TO AN ALREADY CRIPPLED Affidavit. THESE INCLUDED FALSE AND MISLEADING STATEMENT, AS MATERIAL OMISSION RELEVANT TO THE PROBABLE CAUSE DETERMINATION.

THE TASK OF THE ISSUING MAGISTRATE IS SIMPLY TO MAKE A PRACTICAL COMMONSENSE DECISION WHETHER, GIVEN ALL THE CIRCUMSTANCES SET FORTH IN THE AFFIDAVIT BEFORE HIM, INCLUDING THE "VERACITY" AND "BASIS OF KNOWLEDGE" OF PERSONS SUPPLYING HEARSAY, INFORMATION, THERE IS A FAIR PROBABILITY THAT CONTRABAND OR EVIDENCE OF A CRIME WILL BE FOUND IN A PARTICULAR PLACE AND THE DUTY OF A REVIEWING COURT IS SIMPLY TO ENSURE THAT THE MAGISTRATE HAD A SUBSTANTIAL BASIS FOR ... CONCLUDING THAT PROBABLE CAUSE WAS LACKING FOR THE ISSUANCE OF THE ARREST WARRANTS IN PRESENT CASE. THE COURT OVER LOOKED TWO DEFECTS IN THE AFFIDAVIT SUPPORTING THE WARRANT. FIRST, THE COURT OVER LOOKE THAT THE AFFIDAVIT MADE NO REFERENCE TO OFFICER BRADFORD'S RELIABILITY AS TO AN EYEWITNESS OF THE CRIME BEING COMMITTED IN HIS PRESENCE. O.C.G.A. 17-4-20 (GCA § 27-207).

SECOND, THE COURT OVER LOOKED THAT THE AFFIDAVIT CONTAINED INCONSISTENT STATEMENT AS SUBSTANTIVE EVIDENCE UNDER A REPEALED LAW AND LACK OF OMISSIONS.

II. HENRY A. BAKER, MAGISTRATE JUDGE

THE AFFIDAVIT AT ISSUE IN THIS CASE, ALTHOUGH SIGNED BY JUDGE HENRY A. BAKER, WAS DRAFTED BY ALAN A. COOK, DISTRICT ATTORNEY OFFICE, APPELLANT MR. FRANKLIN CONTENDS THAT THE ACTION OF DISTRICT ATTORNEY ALAN A. COOK AND MAGISTRATE HENRY A. BAKER BREAKED THE CAUSAL CHAIN BETWEEN HIS ACTS AND THE APPELLANT FRANKLIN DEPRIVATION OF THE FOURTH AMENDMENT RIGHTS SUPPORT OF THIS THEORY, APPELLANT FRANKLIN'S RELIES UPON HALL V. GARY, 838 F. 2d 1420 (5TH CIR. 1988), WHICH HELD THAT EVEN AN OFFICER WHO ACTS WITH MALICE IN PROCURING THE WARRANT OR THE INDICTMENT WILL NOT BE LIABLE IF THE FACTS SUPPORTING THE WARRANT OR INDICTMENT ARE PUT BEFORE AN IMPARTIAL INTERMEDIARY SUCH AS A MAGISTRATE OR A GRAND JURY, FOR THE INTERMEDIARY'S INDEPENDENT DECISION BREAK THE

CAUSAL CHAIN AND INSULATES THE INITIATING PARTY . . . ANY MISDIRECTION OF THE MAGISTRATE OR THE GRAND JURY BY OMISSION OR COMMISSION PERPETUATES THE TAINT ON THE ORIGINAL OFFICER BEHAVIOR.

APPELLANT FRANKLIN CONTENDS THAT ALTHOUGH OFFICER PHILLIP BRADFORD STIPULATED THAT THE AFFIDAVIT CONTAINED ALL OF THE FACTS BEFORE THE MAGISTRATE, THERE WAS OTHER OMISSION INFORMATION AND CITES IN THE RECORD WHERE IT MAY BE FOUND. OFFICER PHILLIP BRADFORD ALSO MAINTAINS THAT HE PRESENTED ALL OF THE RELEVANT FACTS TO DISTRICT ATTORNEY ALAN A. COOK WHO DRAFTED THE AFFIDAVIT.

APPELLANT FRANKLIN, INDICATION THE RECORD REFLECTS TO NUMEROUS MATERIAL FACTS NOT PRESENTED TO DISTRICT ALAN A. COOK. EVEN IF OFFICER BRADFORD THEORY FAILS AS AN ASSISTANCES DISTRICT ATTORNEY IS NOT AN "IMPARTIAL INTERMEDIARY" UNDER HAND V. GARY, 838 F. 2d 1420 (5th CIR. 1988).

(A) MALICIOUS PROSECUTION

A. FAILURE TO POINT OUT THE DISCREPANCY BETWEEN APPELLANT FRANKLIN'S APPEARANCE AND THE DESCRIPTION IN OFFICER BRADFORD'S ARREST WARRANT(S) AFFIDAVIT OF THE PERSON INVOLVEMENT IN THE ALARM AT THE CAR LOT.

ONE BEGUN IN MALICE WITHOUT PROBABLE CAUSE TO BELIEVE THE CHARGES CAN BE SUSTAINED. AN ACTION FOR DAMAGES BROUGH BY PERSONS AGAINST WHOM CIVIL SUIT OR CRIMINAL PROSECUTION HAS BEEN INSTITUTED MALICIOUSLY AND WITHOUT PROBABLE CAUSE, AFTER TERMINATION OF PROSECUTION OF SUCH SUIT IN FAVOR OF PERSONS CLAIMING DAMAGES.

(B) MALICIOUS ABUSE OF LEGAL PROCESS

WILFULLY MISAPPLYING COURT PROCESS TO OBTAIN OBJECT NOT INTENDED BY LAW. THE WILFUL MISUSE OR MISAPPLICATION OF PROCESS TO ACCOMPLISH A PURPOSE NOT WARRANTED OR COMMANDED BY WRIT. THE MALICIOUS PERVERSION OF A REGULARLY ISSUE PROCESS. WHEREBY A RESULT NOT LAWFULLY OR PROPERLY OBTAINED OR A WRIT IS SECURED; NOT INCLUDING CASES WHERE THE PROCESS WAS PROCURED MALICIOUSLY BUT NOT ABUSED OR MISUSED AFTER ITS ISSUANCE.

(C) MALICIOUS USE OF PROCESS

UTILIZATION OF PROCESS TO INTIMIDATION, OPPRESS OR PUNISH A PERSON AGAINST WHOM IT IS SUED OUT. EXISTS UNDER PLAINTIFF PROCEEDS MALICIOUSLY AND WITHOUT PROBABLE CAUSE TO EXECUTE OBJECT WHICH LAW INTENDS PROCESS TO SUBSERVE. IT HAS TO DO WITH WRONGFUL INITIATE OF SUCH PROCESS. WHERE ABUSE OF CIVIL PROCESS IS CONCERNED WITH PERVERSION OF A PROCESS AFTER IT IS ISSUED.

(D) WANTON MISCONDUCT

ACT OR FAILURE TO ACT, WHEN THERE IS A DUTY TO ACT, IN RECKLESS DISREGARD OF RIGHTS OF ANOTHER, COUPLED WITH A CONSCIOUSNESS THAT INJURY IS A PROBABLE CONSEQUENCE OF ACT OF OMISSION. TERM REFERS TO INTENTIONAL ACT OF UNREASONABLE CHARACTER PERFORMED IN DISREGARD TO RISK KNOWN TO HIM OR SO OBVIOUS THAT HE MUST BE TAKEN TO HAVE BEEN AWARE OF IT AND SO GREAT AS TO MAKE IT HIGHLY PROBABLE THAT HARM WOULD FOLLOW AND IT IS USUALLY ACCOMPANIED BY CONSCIOUS INDIFFERENCE TO THE CONSEQUENCES.

THE NEGLECT FOR AN UNREASONABLE AND UNEXPLAINED LENGTH OF TIME UNDER CIRCUMSTANCES PERMITTING DILIGENCE, TO DO WHAT IN LAW, SHOULD HAVE BEEN DONE.

UNREASONABLE OR UNEXPLAINED DELAY IN ASSERTING RIGHT WHICH WORKS DISADVANTAGE TO ANOTHER, KNOWLEDGE, UNREASONABLE DELAY, AND CHANGE OF POSITION ARE ESSENTIAL ELEMENTS, LACHES REQUIRES AN ELEMENT OF ESTOPPEL OR NEGLECT WHICH HAS OPERATED TO PREJUDICE OF DEFENDANT.

(E) LACK OF JURISDICTION

THE PHRASE MAY MEAN LACK OF POWER OF A COURT TO ACT IN A PARTICULAR MANNER OR TO GIVE CERTAIN KINDS OF RELIEF. IT MAY CONSIST IN COURT'S WANT OF POWER TO ACT AT ALL, OR LACK OF POWER TO ACT IN A PARTICULAR CASE BECAUSE CONDITIONS ESSENTIAL TO EXERCISE OF JURISDICTION OVER SUBJECT OR OVER PERSON.

E. MISCARRIAGE OF JUSTICE

DECISION OR OUTCOME OF LEGAL PROCEEDING THAT IS PREJUDICIAL OR INCONSISTENT WITH SUBSTANTIAL RIGHTS OF PARTY.

AS USED IN CONSTITUTION STANDARD OF REVERSIBLE ERROR, "MISCARRIAGE OF JUSTICE" MEANS A REASONABLE PROBABILITY OF MORE FAVORABLE OUTCOME FOR THE DEFENDANT, A MISCARRIAGE OF JUSTICE, WARRANTING REVERSAL, SHOULD BE DECLARED ONLY WHEN THE COURT, AFTER EXAMINATION OF ENTIRE CAUSE, INCLUDING THE EVIDENCE, IS OF THE OPINION THAT IT IS REASONABLE PROBABLE THAT A RESULT MORE FAVORABLE TO APPEALING PARTY WOULD HAVE BEEN REACH IN ABSENCE OF THE ERROR.

MISCARRIAGE OF JUSTICE FROM ERRONEOUS CHARGE TO JURY, UNDER STATUTE DECLARING THAT NO JUDGMENT SHALL BE SET ASIDE OR NEW TRIAL GRANTED ON BASIS OF ERROR WHICH DOES NOT RESULT IN SUCH MISCARRIAGE, RESULTS ONLY WHEN AN ERRONEOUS CHARGE IS REASONABLE CALCULATED TO CONFUSE OR MISLED.

(G) FRAUD

AN INTENTIONAL PERVERSION OF TRUTH FOR THE PURPOSE OF INDUCING ANOTHER IN RELIANCE UPON IT TO PART WITH SOME VALUABLE THING BELONGING TO HIM OR TO SURRENDER A LEGAL RIGHT, A FALSE REPRESENTATION OF A MATTER OF FACT, WHETHER BY WORDS OR BY CONCEALMENT OF THAT WHICH SHOULD HAVE BEEN DISCLOSED, WHICH DECEIVES AND IS INTENDED TO DECEIVE ANOTHER SO THAT HE SHALL ACT UPON IT TO HIS LEGAL INJURY. ANYTHING CALCULATED TO DECEIVE, WHETHER BY A SINGLE ACT OR COMBINATION, OR BY SUPPRESSION OF TRUTH, OR SUGGESTION OF WHAT IS FALSE, WHETHER IT BE BY DIRECT FALSEHOOD OR INSINUENDO, BY SPEECH OR SILENCE, WORD OF MOUTH, OR LOOK OR GESTURE. A GENERIC TERM, EMBRACING ALL MULTIFARIOUS MEANS WHICH HUMAN INGENUITY CAN DEVISE, AND WHICH ARE RESORTED TO BY ONE INDIVIDUAL TO GET ADVANTAGE OVER ANOTHER BY FALSE SUGGESTIONS OR BY SUPPRESSION OF TRUTH, AND INCLUDES ALL SURPRISE, TRICK, CUNNING, DISSEMBLING, AND ANY UNFAIR WAY BY WHICH ANOTHER IS CHEATED.

(H) INEFFECTIVE ASSISTANCE OF COUNSEL

FIRST ARE SUBSTANTIVE ARGUEMENTS CONCERNING LEGAL ISSUE THAT WERE AVAILABLE BUT NOT RAISED ON MOTION FOR NEW TRIAL OR ON DIRCT APPEAL. THE SECOND ARE ALLEGATIONS THAT HIS ATTORNEYS WAS CONSTITUTIONALLY INEFFECTIVE ASSISTANCE BECAUSE HE FAILED TO

ARGUE THE SUBSTANCES ISSUE IN THE FIRST CATEGORY, FAILED TO ADVANCE CERTAIN OTHER ARGUMENTS. PROVIDED IMPROPER LEGAL ADVICE.

APPELLANT IS ENTITLED UNDER THE UNITED STATES AND GEORGIA CONSTITUTIONS OF EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL. STRICKLAND V. WASHINGTON, 466 U.S. 668. 104 S.Ct. 2052. 80 L.Ed. 2d 674 (1984); SMITH V. FRANCIS, 253 GA. 782. 783-784 (1), 325 S.E. 2d 362 (1985). SEE ALSO CUYLER V. SULLIVAN, 446 U.S. 335, 343 (III), 100 S.Ct. 1708. 64 L.Ed. 2d 333 (1980) ("UNLESS A DEFENDANT CHARGE WITH A SERIOUS OFFENSE HAS COUNSEL ABLE TO INVOKE THE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS THAT DISTINGUISH OUR SYSTEM OF JUSTICE, A SERIOUS RISK OF INJUSTICE INFECTS THE TRIAL ITSELF. [CITS.]"). APPELLANT'S RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL EXTENDS TO DIRECT APPEAL FROM HIS CRIMINAL CONVICTION. EVITTS V. 469 U.S. 387 (II)(A). 105 S.Ct. 830 L.Ed. 2d 821 (1985). BECAUSE APPELLANT WAS FOUND TO LACK THE FINANCIAL RESOURCES TO RETAIN COUNSEL, THE STATE WAS REQUIRE TO PROVIDE COUNSEL FOR HIS TRIAL. GIDEON V. WAINWRIGHT, 372 U.S. 335. 83 S.Ct. 792. 9 L.Ed. 2d 799 (1963). AND FOR HIS FIRST APPEAL AS A MATTER OF RIGHT. DOUGLAS V. CALIFORNIA, 372 U.S. 353. 83 S.Ct. 814. 9 L.Ed. 2d 811 (1963). APPOINTED COUNSEL, NO LESS THAN RETAINED COUNSEL, IS REQUIRED TO PROVIDE EFFECTIVE ASSISTANCE. CUYLER V. SULLIVAN, SUPRA AT 344-345 (III), 100 S.Ct. 1708. EFFECTIVE COUNSEL IS COUNSEL FREE FROM CONFLICTS OF INTEREST. WOOD V. GEORGIA, 450 U.S. 261, 271, 101 S.Ct. 1097. 67 L.E.2d. 220 (1981).

AS STRICKLAND MAKE CLEAR, THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS PERSONAL TO THE DEFENDANT, AND IS EXPLICITLY TIED TO THE DEFENDANT'S RIGHT TO A FUNDAMENTALLY FAIR TRIAL - A TRIAL IN WHICH THE DETERMINATION OF GUILT OR INNOCENCE IS "JUST" AND "RELIABLE." STRICKLAND, SUPRA, 466 U.S., AT 685-

686, 696, 104 S.Ct., at 2063-2064. 2069. SEE ALSO UNITED STATES V. CRONIC, 466 U.S. 648-658. 104 S.Ct. 2039. [redacted] 80 L.Ed.2d 657 (1984) ("THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IS RECOGNIZED NOT FOR ITS SAKE, BUT BECAUSE OF THE EFFECT IT HAS ON THE ABILITY TO THE ACCUSED TO RECEIVE A FAIR TRIAL"). A CRIMINAL DEFENDANT WHO OBTAIN RELIEF UNDER STRICKLAND DOES NOT RECEIVE A WINDFALL: ON THE CONTRARY, REVERSAL OF SUCH A DEFENDANT'S CONVICTION IS NECESSARY TO ENSSURE A FAIR AND JUST RESULT. STRICKLAND, SUPRA, 466 U.S. AT 685-687. 104 S.Ct. AT 2068-2064. FOR THIS REASON, STRICKLAND ALLEGATION OF INEFFECTIVENESS, THE DEFENDANT MUST ALSO PROVE THAT HIS FOURTH AMENDMENT CLAIMS IS MERITORIOUS AND THAT THERE IS A REASONABLE PROBABILITY THAT THE VERDICT WOULD HAVE BEEN DIFFERENT ABSENT THE EXCLUDABLE EVIDENCE IN ORDER TO DEMONSTRATE ACTUAL PREJUDICE. THUS, WHILE APPELLANT'S DEFAULTED FOURTH AMENDMENT CLAIM IS ONE ELEMENT OF PROOF OF HIS SIXTH AMENDMENT CLAIM. THE TWO CLAIMS HAVE SEPARATE IDENTITIES AND REFLECT DIFFERENT CONSTITUTION VALUES. EFFECTIVE COUNSEL IS COUNSEL FREE FROM CONFLICTS OF INTEREST. WOOD V. GEORGIA, 450 U.S. 261. 171. 101 S.C. 1097. 67 L.Ed. 2d 220 (1981).

IN CONCLUSION, MR. FRANKLIN RESPECTFULLY REQUEST THAT THIS COURT OF APPEALS GRANT HIS MOTION TO CORRECT A MANIFEST INJUSTICE AND BECAUSE HIS DEFENSE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL. MR. FRANKLIN FURTHER REQUESTS THAT THIS COURT REVIEW THE TRANSCRIPT TO ADDRESS THIS MATTER AND THAT THE PARTIES BE PROVIDED RELIEF.

THIS THE 6 DAY OF OCT, 2014.

Elliott Franklin

SHERRY TRAVIS NOTARY Comm. Exp. 6/24/17 PUBLIC WHEELER COUNTY, GA

Sherry Travis 10/06/15

b. A PERSON CONVICTED OF THE OFFENSE OF PERJURY SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $1.000 OR BY IMPRISONMENT FOR NOT LESS THAN ONE NOR MORE THAN TEN YEARS, OR BOTH. O.C.G.A. § 16-10-70.

This 6 day of Oct, 2015.

Elliott Franklin
Signature of Plaintiff

VERIFICATION

I, Elliott Franklin, do swear and affirm under penalty of law that the statements contained in this Affidavit are true. I further attest that this Application for in forma pauperis status is not presented to harass or to cause unnecessary delay or needless increase in the cost of litigation. I am the plaintiff in this action and know the content of the above Request to proceed in forma pauperis. I verify that the answers I have given are true of my own knowledge, except as to those matters that are stated in it on my information and belief, and as to those matters I believe them to be true. I have read the perjury statute set out above and am aware of the penalties for giving any false information on this form.

Elliott Franklin
Signature of Affiant

10/6/15
Date

SHERRY TRAVIS NOTARY Comm. Exp. 6/24/17 PUBLIC WHEELER COUNTY, GA

Sherry Travis 10/06/15

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing document(s) upon the party (s) listed below by depositing a copy of same in the united states mail in a properly addressed envelope with adequate postage thereon to below addresse (s).

Court of Appeals of Georgia
Suite 501
47 Trinity Avenue
Atlanta, Georgia 30334

This the 6 day of Oct, 2015

Signature, Elliott Saunders

SHERRY TRAVIS NOTARY Comm. Exp. 6/24/17 PUBLIC WHEELER COUNTY, GA

Sherry Travis 10/06/15

COURT OF APPEALS OF GEORGIA

ELLIOTT JAY FRANKLIN
(APPELLANT)

VS.

STATE OF GEORGIA
(APPELLEE)

APPEAL NO. A16A0031
2008CR955.1

REQUEST TO PROCEED IN FORMA PAUPERIS

I, ELLIOTT FRANKLIN, DEPOSE AND SAY THAT I AM THE PLAINTIFF IN THE ABOVE ENTITLED CASE; THAT IN SUPPORT OF MY REQUEST TO PROCEED WITHOUT BEING REQUIRED TO PREPAY FEES, COSTS, OR GIVE SECURITY THEREFOR, I STATE THAT BECAUSE OF MY POVERTY I AM UNABLE TO PAY THE $80.00 FILING FEE REQUIRED FOR FILING COSTS IN THE COURT OF APPEALS OF GEORGIA OR TO GIVE SECURITY THEREFOR; THAT I BELIEVE I AM ENTITLED TO REDRESS.

I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTION IN THIS AFFIDAVIT WILL SUBJECT ME TO PENALTIES FOR PERJURY AND THAT STATE LAW PROVIDES AS FOLLOWS:

a. A PERSON TO WHOM A LAWFUL OATH OR AFFIRMATION HAS BEEN ADMINISTERED COMMITS THE OFFENSE OF PERJURY WHEN, IN A JUDICIAL PROCEEDING, HE KNOWINGLY AND WILLFULLY MAKES A FALSE STATEMENT MATERIAL TO THE ISSUE OR POINT IN QUESTION