

**COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS**

December 11, 2015

To: Mr. Dante G. Fredrick, GDC114121, Georgia State Prison, 300 First Avenue, Reidsville, Georgia 30453

Docket Number: A16I0082 **Style:** Dante G. Fredrick v. Stanley Williams, Warden

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

1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, 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.
2. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)
4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. **An improper Certificate of Service accompanied your document(s). Rule 6 You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.**
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. Margins were too small or paper size was incorrect. Rules 1(c), 24(c), 30(e), 31(c) and 41(b).
15. Your document was submitted for filing more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration. Rules 30(j) and 31(j).
16. **Other:**

For Additional information, please go to the Court's website at: www.gaappeals.us

Court OF Appeals OF Georgia

Case No: A1610082

Dante G. Fredrick vs. The State

2015 DEC -9 PM 3:07
COURT OF APPEALS OF GEORGIA

Notice of LAW TO Clerk S. Easton

Comes now, Dante G. Fredrick, United States Citizen, pro-se litigant, and Appellant with this "Notice of LAW" on this 5th day of December, 2015 by Dante G. Fredrick #1141121 Georgia State Prison 300 1st Ave Reidsville GA 30453. * O.C.G.A. 13-8-2 *

Provides that a contract against the policy of law cannot be enforced, because the criminal Justice System is suppose to operate within the bounds of the law. Cited in Nazario U. State 293 Ga. 480; 746 S.E.2d 109 (2013) Appellant has filed several applications in this court attacking a conviction that was entered on non chargeable ~~offense~~ offenses by Glynn County courts also in connection to crimes, All convictions merge as a matter of fact and law. Clearly ~~the~~ convictions that goes against the policy of law.

* Legal Issue *

Clerk ~~Sam~~ Easton you are enforcing rules of the court against a conviction that goes against the policy of law. ~~and~~ and O.C.G.A. 13-8-2 prohibits that anything be enforced against the policy

of law. The law clearly overrides rules of Court. It appears you are violating my due process of law because by you keep refusing to submit my applications to the Judges you are endangering a legal innocent pro-se litigant from life and liberty. Appellant understands the court has rules but does the court understand Appellant is pro-se not ~~an~~ an attorney. I ask you to Act in the interest of Justice and let the Judges of this court decide my fate.

Notice of Filing

First three pages of Nazarro v. State

Certificate of Service

Clerk S. Gaston
Court of Appeals of Georgia
47 Trinity Ave
Atlanta Ga 30334



NAZARIO v. THE STATE.
SUPREME COURT OF GEORGIA

293 Ga 480293 Ga. 480; 746 SE2d 109746 S.E.2d 109; 2013 Ga LEXIS 6112013 Ga. LEXIS 611; 2013
Fulton County D Rep 22062013 Fulton County D. Rep. 2206

S13A0006.

July 11, 2013, Decided

Editorial Information: Subsequent History

Editorial Information: Prior History

Murder. Clayton Superior Court. Before Judge Simmons.

Disposition:

Judgment affirmed in part and vacated in part. CASE SUMMARY PROCEDURAL POSTURE: Appellant challenged the judgment of the Clayton County trial court (Georgia), which convicted him for felony murder and other crimes arising from the beating and stabbing death of his girlfriend and the mistreatment of her three young daughters. Appellant pled guilty to 17 counts of a 26-count indictment. An appellant's merger claims cannot simply be deemed waived on appeal following the entry of a guilty plea, even if appellant fails to raise the issue, and four of appellant's five convictions for concealing the death of his girlfriend (O.C.G.A. § 16-10-31) merged since only one violation occurred. OVERVIEW: Despite appellant's argument at the plea hearing that several of his 17 convictions merged, the trial court sentenced him for all 17 crimes. On appeal, appellant claimed that several of his convictions and sentences were void because they merged. The State contended that the Court did not have to address those claims because appellant's entry of a guilty plea waived any and all merger claims. The Court disagreed and held that a conviction that merges with another conviction is void, a nullity, and a sentence imposed on such a void conviction is illegal and will be vacated if noticed by the appellate court, even if no merger claim was raised in the trial court and even if defendant does not enumerate the error on appeal. Accordingly, the Court held that appellant's merger claims could not simply be deemed waived. The Court found that appellant did show merit to one of his merger argument. Namely, both the indictment and the factual basis for the guilty plea show that appellant's five separate convictions for concealing the death of his girlfriend merged into a single conviction and should have resulted in only one sentence for that crime. OUTCOME: The Court vacated four of appellant's convictions and sentences for concealing the death of another. Otherwise, appellant's other convictions and sentences were affirmed. LexisNexis Headnotes

Criminal Law & Procedure > Sentencing > Merger There is a line of Georgia Court of Appeals cases, as well as one habeas case from the Georgia Supreme Court, that hold that a guilty plea waives merger claims. But the Georgia Supreme Court concludes that those cases were wrongly decided. Under Georgia law, O.C.G.A. § 16-1-7(a), a defendant may not be legally convicted of a crime that is included as a matter of law or fact in another crime for which the defendant also stands convicted. A conviction that merges with another conviction is void, a nullity, and a sentence imposed on such a void conviction is illegal and will be vacated if noticed by the Supreme Court, even if no merger claim was raised in the trial court and even if the defendant does not enumerate the error on appeal. The merger issue must arise in a proceeding in which void convictions may be challenged, but a direct appeal is such a proceeding. And the merger of the convictions at issue must, of course, be established by the record.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > Merger Because the factual record in a guilty plea case is usually very limited, defendants who raise merger claims after pleading guilty, particularly claims that a conviction merged as a matter of fact, will rarely prevail. But while the defendants who plead guilty waive trial, and the more fully developed factual record that a trial produces, they do not waive appellate review of merger claims, which are a species of void-conviction claim, a claim long recognized as an appropriate issue to consider on appeal from a guilty plea.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > Merger It is well established that a plea of guilty waives all defenses other than that the indictment charges no crime. A valid plea of guilty waives all known or unknown defenses. Smith and Clark are both habeas corpus cases, not direct appeals from guilty pleas, and neither case involved a merger claim. However, the Georgia Court of Appeals has a long line of

cases extending Smith to apply a similar waiver rule to merger claims raised in direct appeals challenging convictions based on guilty pleas.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > MergerWhen a criminal defendant pleads guilty to counts of an indictment alleging multiple criminal acts, and willingly and knowingly accepts the specified sentences as to such charged counts, the defendant waives any claim that there was in fact only one act and that the resulting sentences are void on double jeopardy grounds. However, the Georgia Court of Appeals cases, and Turner, do not cite or distinguish cases in which this Court has addressed and denied a defendant's merger claim raised in a direct appeal from a guilty plea, rather than holding that the claim was waived.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > MergerCase law decisions hold flatly that merger claims cannot be waived because a conviction that merges as a matter of law or fact with another conviction is void, and any resulting sentence is void and illegal, which means that they may be challenged in any proper proceeding. The leading case is Curtis v. State, wherein the Georgia Supreme Court has overruled a line of Georgia Court of Appeals cases that had held, based on the general proposition of appellate law that issues not raised in the trial court will not be considered on appeal, that merger claims are waived if not raised at the proper time in the trial court. The Supreme Court has held that that customary waiver rule does not apply to merger claims, because merger as a matter of law or fact renders the merged conviction void and the resulting sentence illegal and requires the reviewing court to vacate the conviction and sentence even if the error was not raised in the trial court and indeed even if it is not enumerated as error on appeal.

Criminal Law & Procedure > Double Jeopardy > Double Jeopardy Protection > Convictions

Criminal Law & Procedure > Double Jeopardy > Double Jeopardy Protection > Tests

Criminal Law & Procedure > Sentencing > MergerThe Georgia Supreme Court has consistently considered the issue of included offenses as a matter of statutory double jeopardy. Georgia's statutory bar to successive prosecutions and multiple convictions for the same conduct, O.C.G.A. § 16-1-7, is more expansive than the constitutional proscription of double jeopardy. O.C.G.A. § 16-1-7(a) sets forth the substantive bar of double jeopardy by providing that an accused may be prosecuted for each crime that arises from the accused's conduct, but an accused may not be convicted of more than one crime, if one crime is included in the other. Thus, Georgia law bars conviction and punishment of all crimes which arise from the same criminal conduct and are as a matter of law or a matter of fact included in the major crime for which the defendant has been convicted. The judgment of conviction and the sentence imposed for offenses included as a matter of fact or law in another offense arising out of the same facts for which the defendant has been found guilty and been sentenced are vacated by operation of law. Since one may not be convicted legally of a crime which is included as a matter of law or fact in another crime for which the defendant stands convicted, the conviction and sentence for the included crime must be vacated by the appellate court, even if not enumerated as error.

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Illegal Sentences

Criminal Law & Procedure > Sentencing > MergerGeorgia Supreme Court has previously labeled as void convictions and sentences for offenses which are included in others, but that holding that one may not be convicted legally of a crime which is included as a matter of law or fact in another crime for which the defendant stands convicted and that such convictions and sentences are vacated by operation of law demand that conclusion. Since such convictions and sentences amount to punishment the law does not allow, and a sentence is void if the court imposes punishment that the law does not allow, such convictions must be considered void. That being so, their illegality is not an issue that may be waived because a judgment which is void for any cause is a mere nullity and it may be so held in any court where it becomes material to the interest of the parties to consider it.

Civil Procedure > Judgments > Relief From Judgment > Void JudgmentsO.C.G.A. § 17-9-4 provides that the judgment of a court having no jurisdiction of the person or subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it.

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Court's Authority

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Illegal Sentences

Criminal Law & Procedure > Sentencing > MergerThe Georgia Supreme Court regularly decides merger issues, and vacates convictions and sentences, even where the issue was not raised in the trial court and is not enumerated as error on appeal. When a case challenging criminal convictions is properly brought

before a court and the court realizes, on its own or based on the defendant's argument, that the record shows that certain convictions merged, to disregard that determination and allow the defendant to serve a sentence for a criminal conviction that has been identified as illegal and void would not comport with fundamental fairness and due process of law. Void convictions and illegal sentences have never been subject to general waiver rules. Merger claims are a species of void conviction, just like a conviction on an indictment that charges no crime.

Contracts Law > Defenses > Public Policy Violations

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Illegal Sentences

Criminal Law & Procedure > Sentencing > MergerThe criminal justice system must operate within the bounds of the law. Thus, the Georgia Supreme Court's conclusion in Turner that the defendant, having knowingly entered into the plea agreement, and having accepted the benefit of such bargain with the State, could not attempt to renege, has no force when the record shows that the bargain at issue was for the imposition of an illegal sentence. O.C.G.A. § 13-8-2(a) provides that a contract that is against the policy of the law cannot be enforced. That rule is not without its legal and practical limits, however.

Nothing the Supreme Court has said about merger and its effects on the legality of a conviction and the resulting sentence is limited to convictions resulting from trials rather than guilty pleas. In addition, other limits may also apply in particular cases. For example, if a defendant's merger claim has previously been litigated and decided against him, the issue may be precluded from further review.

Criminal Law & Procedure > Sentencing > Appeals > Legality Review

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Illegal Sentences

Criminal Law & Procedure > Sentencing > MergerA merger claim must come before the court in a type of proceeding in which criminal convictions may be challenged. Thus, a merger claim cannot be considered in a free-standing motion to vacate a sentence and/or vacate a conviction as void or pleadings of a similar nature, the sort of motion at issue in the appeal decided in Curtis. Williams, Williams has overruled Curtis to the extent that it suggested that such a motion was cognizable and could be directly appealed. But Williams does so by reiterating Curtis's core holding that O.C.G.A. § 16-1-7(a) renders illegal a conviction for a crime that should have merged, and a claim that a charge should have merged under O.C.G.A. § 16-1-7 is a specific attack on the conviction, as opposed to simply an attack on an allegedly illegal sentence. The Georgia Supreme Court has held that a motion to vacate a conviction is not an appropriate remedy in a criminal case. Instead, such a challenge, including a merger claim, may be considered only in a traditionally recognized proceeding to challenge a criminal conviction: a direct appeal of the conviction; an extraordinary motion for new trial, O.C.G.A. § 5-5-41; a motion in arrest of judgment, O.C.G.A. § 17-9-61; or a petition for habeas corpus, O.C.G.A. § 9-14-40.

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Illegal Sentences

Criminal Law & Procedure > Sentencing > Merger

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > RequirementsThere is no duty on the appellate court to scour the record searching for merger issues. If the defendant does not properly raise and argue a merger issue, he does not, under Curtis, waive its consideration by the court, if the court notices the issue. But he risks that the court too may overlook the issue.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > Merger

Criminal Law & Procedure > Appeals > Records on AppealMost significantly with respect to merger issues arising in guilty plea cases, the reviewing court is limited to finding error, as in all cases, based on the record. The factual record when a defendant pleads guilty will usually be quite limited, often consisting only of the indictment or accusation, the record of the plea hearing, a transcript, in most instances, and perhaps some plea forms, and the judgment of convictions and sentences. While a defendant does not waive consideration of merger issues by pleading guilty, his guilty plea does waive the expansion of the factual record that occurs with a trial. The practical effect of that waiver will usually mean that he cannot establish, and the court cannot discern, that any of his convictions merged, particularly as a matter of fact, based on the limited record.

Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses

Criminal Law & Procedure > Sentencing > Merger

Criminal Law & Procedure > Appeals > Records on AppealMerger claims in guilty plea cases are like other claims that a defendant who pleads guilty may try to raise but rarely will be able to establish based on the limited record. A direct appeal, timely or untimely, from a guilty plea is available only if the issue on appeal can be resolved by facts appearing in the record. Nevertheless, the limited record does not mean