

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

April 20, 2015

To: Mr. Johnny Brett Gregory, Reg. No. 57012-019, Federal Correctional Institution - Englewood, 9595 West Quincy Avenue, Littleton, Colorado 80123

Docket Number: A12D0411 **Style:** Johnny Brett Gregory v. Clayton M. Wittaker, Mack & Whittaker

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. No 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. The Discretionary Application is final pursuant to Rule 31(j).**
16. **Other:**

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

COURT OF APPEALS
OF THE STATE OF GEORGIA

JOHNNY BRETT GREGORY,

Appellant,

v.

CLAYTON M. WHITTAKER,
MACK & WHITTAKER, ATTORNEYS
AT LAW,

Appellee.

Appeals Court No. A12D0411

RECEIVED IN OFFICE
JULY 17 2011
PR 331

MOTION TO SET ASIDE PURSUANT TO

O.C.G.A. § 9-11-60(d) (2)

COMES NOW, Johnny Bret Gregory (hereinafter, "Appellant"), to move this Honorable Court, with clean hands and good faith, pursuant to O.C.G.A. § 9-11-60(d) (2), which reads, "A motion to set aside may be brought to set aside a judgment based upon fraud."

ARGUMENT

1. This fraud aros in virtue of the Court of Appeals of the State of Georgia order date July 2, 2011 a copy of which is attached hereto and made a part hereof as Exhibit 9.

Said order read:

"Upon consideration of the Application for Discretionary Appeal, it is ordered it be hereby DENIED."

This, O.C.G.A. § 9-11-60(d) (2) is applicable herein, because "all motion to set aside judgments shall be brought within three years of the judgment complained of." O.C.G.A. § 9-11-60(f). Here, the Appeal final order was passed on July 2, 2011, accordingly, this court has equity jurisdiction and this motion is timely.

2. On June 14, 2011 in the Cobb County Superior court-house by designation Judge J. Stephen Schuster (see Exhibit 2)

held a Rule nisi proceeding over appellant cases pending in the Superior Court of Whitfield County, State of Georgia.

However, only said pending cases styled in Gregory v. Chitwood, et al., case no. 10-CI-272-B; Gregory v. Whittaker, et al., case no. 10-CI-698-A; State of Georgia v. Gregory, case no. 09-CI-1374-M; Gregory v. Giddene, et al., case no. 09-CI-3154-B; because of a defect in the integrity of Judge Schuster's proceedings.

This record in this case will speak for itself, currently, in the Court of Appeals of the State of Georgia, in the case of Gregory v. Schuster, case no. A15D0183; is regarding the above Superior Court of Whitfield County civil action's styled in Johnny Brett Gregory and is pending resolution of fraudulently obtained judicial proceedings including this particular matter, to set aside this court of appeal's order dated July 2, 2011.

3. Appellant point to pending action no. A15D0183, Gregory v. Schuster, which is an equitable estoppel O.C.G.A. § 24-4-27, entered in the appellate court on or about March 16, 2015 and an Addendum on March 23, 2015, a copy of which is attached as Exhibit V and Exhibit U. Said motion for equitable estoppel provides in part that, "... Judge Schuster's order/decreed July 28, 2011, was obtained by fraud upon the court by the Defendant Judge Schuster's improper conduct acting without legitimate subject-matter jurisdiction and the Judge defiled the court itself"

Arguendo, the appeal from Gregory v. Whittaker, et al., supra, was an oversight by the clerk of the court by not placing this civil action number on the face of the rule nisi proceedings, simply put the appeal number A12D0411 was not a discretionary appeal but only an equitable remedy to the extent Appellant has shown fraud upon the court, and his facts have merit by clear and convincing evidence that there was in fact a fraud upon the court. (see exhibit 50).

Appellant's claim of liability in total sum of \$15,340,500.00 for fraud by Lisa and Clayton Whittaker who purpose and intent of interference in furtherance of Appellant's right to own property.

Appellant wishes to remind the court that pro se pleadings should be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

CONCLUSION

WHEREFORE, this court should breath life back into this court's order dated July 2, 2011 and then set aside the order due to fraud upon the court. This act must reflect back nunc pro tunc to March 14, 2012 order, case no. 10CI698A.

Dated this 10th day of April, 2015.

Respectfully submitted,



Johnny Brett Gregory
Appellant/sui juris

NOTICE TO AGENT IS NOTICE TO PRINCIPAL
NOTICE TO PRINCIPAL IS NOTICE TO AGENT

NOTICE OF PROOF OF SERVICE

I hereby certify that on this 10th day of April, 2015 the original plus 1 copies were mailed to _____ :

⇔57012-019⇔
Mack and Whittaker
Attorneys at Law
846 Oak Street
Chattanooga, TN 37403
United States

CERTIFICATE OF SERVICE

placing said documents in the U.S. Mail postage pre-paid in full at FCI/Low Englewood.

DECLARATION UNDER THE PENALTY OF PERJURY

The undersigned declares under the penalty of perjury that I am the applicant in this action, that I have read this application, and that the information contained in this application is true and correct pursuant to 28 USC §1746 and 18 USC §1621.

DATED this 10th day of April, 2015.

Respectfully Submitted,

Johnny Brett Gregory
Johnny Brett Gregory sui juris