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

February 20, 2015

To: Mr. Lucious L. Johnson, GDC212636 H-2, Telfair State Prison, Post Office Box 549, Helena, Georgia 31037

Docket Number: **Style:**

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

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Updated Form: Sep 2013

FROM: LUCIOUS L. JOHNSON, PRO SE
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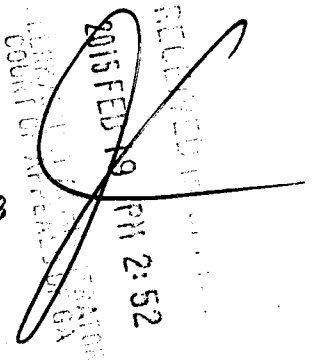

DATE: MONDAY, FEBRUARY 16TH, 2015

C/O CLERK
COURT OF APPEALS OF GEORGIA
SUITE 501
47 TRINITY AVENUE
ATLANTA, GEORGIA 30334

RE: JOHNSON V. STATE, CASE NO. 96-CR-420-SUPERIOR COURT OF HARRIS COUNTY-RULE 40(B) MOTION)-ACCORD RULE 11(A) DOCKETING:

DEAR CLERK:

PER THE ABOVE-REFERENCED, PLEASE FIND ENCLOSED MY "RULE 40(B) MOTION" TO BE ACCORDED ITS DOCKET NUMBER AND EXPEDITIOUSLY "FILED" FOR PROMPT CONSIDERATION.

PER COURT OF APPEALS RULE 11(A), DOCKETING, THE TRIAL COURT CLERK'S CERTIFICATE WAS "FILED" IN THE COURT OF APPEALS FEBRUARY 2nd, 2015. BY THIS TIME, I SHOULD HAVE RECEIVED "NOTICE OF DOCKETING" FROM YOUR OFFICE. AT THIS TIME, I.E., 2/16/15, I HAVE NOT. THUS IY, THE REASON THERE IS NO "DOCKET NUMBER" ON THE MOTION. ALSO, I HAVE SUBSTANTIALLY COMPLIED WITH RULE 40(B) REQUIREMENTS. I HAVE PROVIDED YOU WITH THE ORIGINAL COPY AND RESPECTFULLY REQUEST THAT, AS A COURTESY, YOU PROVIDED THE ADDITIONAL COPIES. RULE 41(A)

RESPECTFULLY YOURS, Lucious L Johnson

IN THE COURT OF APPEALS
STATE OF GEORGIA

LUCIOUS L. JOHNSON, PRO SE,
APPELLANT,

VS.

THE STATE OF GEORGIA,
APPELLEE

CIVIL ACTION
CASE NO.: _____
RULE 40(B) MOTION)

RULE 40(B) MOTION)
MOTION) FOR ORDER CONSTRUING "PRO SE" PLEADING AS "CIVIL ACTION" G.A. CONST. ART. VI, SECT. V, PAR. III.

COMES NOW) THE MOVANT/APPELLANT, LUCIOUS L. JOHNSON), PRO SE, AND MOVES THIS COURT FOR AN ORDER DIRECTED TO THE STATE/APPELLEE/TRIAL COURT THAT THE MOVANT'S/APPELLANT'S MOTION) PLEADINGS COMMENCED IN) THE TRIAL COURT SHALL BE DEEMED A "CIVIL ACTION", AS A MATTER OF LAW; FACT; FUNDAMENTAL FAIRNESS; AND TO BESTOW) SUBJECT-MATTER-JURISDICTION) UPON) THE COURT OF APPEALS. AN ORDER IS REQUESTED BECAUSE NO OTHER POST-CONVICTION) REMEDIES SUCH AS: (1) EXTRAORDINARY MOTION) FOR NEW) TRIAL (2) MOTION) IN) ARREST OF JUDGMENT; AND (3), "PETITION) FOR WRIT OF HABEAS CORPUS", REMAINS AVAILABLE TO MOVANT/APPELLANT. THE ORDER REQUESTED IS "TIME-SENSITIVE" BECAUSE MOVANT IS CONTENDING THAT HE IS "ACTUALLY INNOCENT" AND ITS RESULTS WOULD PREVENT THE ON)-GOING IMPRISONMENT OF MOVANT. THE TRIAL COURTS ORDER being APPEALED FROM IS AT [RECORD, 74]; A COPY OF THE "NOTICE OF APPEAL IS AT [RECORD, 1]; "CERTIFICATE OF SERVICE" UPON APPELLEE IS ATTACHED TO THIS MOTION). THE TRIAL CLERKS CERTIFICATE WAS FILED IN) THIS COURT FEBRUARY 2, 2015, AS PROOF THAT MOVANT/APPELLANT WAS ALLOWED TO APPEAL IN) FORMA PAUPERIS.

SUBMITTED THIS 16th DAY OF February, 2015

Lucious L. Johnson
LUCIOUS L. JOHNSON), PRO SE
GDC/ID# 212636
MOVANT/APPELLANT

MOVANTS' MAILING ADDRESS:
TELFAIR STATE PRISON) - P.O. BOX 649
HELENA, GEORGIA 31037-0549

COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA

STATE OF GEORGIA
VS.
LUCIOUS L. JOHNSON,
APPELLANT/PETITIONER.
VS.
THE STATE OF GEORGIA,
APPELLEE/RESPONDENT.

CIVIL ACTION
CASE NO.: _____
FROM HARRIS COUNTY SUPERIOR COURT - CASE NO.: 96-CR-420
RE: COURT OF APPEALS RULES: 40(A), 41

(RE: O.C.G.A. §§9-11-60, 17-9-4, ET SEQ.)

"APPELLANT'S MOTION FOR ORDER CONSTRUING APPELLANT'S" "PLEADINGS LIBERALLY AS CIVIL PLEADINGS TO" "AVOID A MISCARRIAGE OF JUSTICE"

COMES NOW THE MOVANT-APPELLANT, LUCIOUS L. JOHNSON, PRO SE, IN THE ABOVE-STYLED ACTION AND MOVES THIS COURT FOR AN ORDER, EX PARTE, TO CONSTRUE HIS PLEADINGS LIBERALLY, AS "CIVIL" PLEADINGS, TO AVOID A MISCARRIAGE OF JUSTICE AND, AS JUSTICIABLE CAUSE THEREFOR, SHOWS THIS COURT AS FOLLOWS:

PART ONE

(1.)

PROCEDURAL POSTURE

APPELLANT/MOVANT WAS CONVICTED OF AGGRAVATED ASSAULT (3 CTS), RAPE, AND FALSE IMPRISONMENT, WHICH WERE AFFIRMED ON DIRECT APPEAL. JOHNSON V. STATE, 238 GA. APP. 577 (520 S.E.2d 221) (1999). SUBSEQUENTLY MOVANT FILED OTHER POST-CONVICTION MOTIONS THAT WERE APPEALED AND DENIED. JOHNSON V. STATE, 272 GA. APP. 294 (612 S.E.2d 29) (2005);

JOHNSON V. STATE, CASE NO. A13A1411 (2013). THEN, MOVANT SOUGHT "DISCRETIONARY REVIEW" TO THIS COURT FROM THE TRIAL COURT'S DENIAL AND DISMISSAL OF his CONSOLIDATED MOTIONS FOR "OUT-OF-TIME APPEAL" (BASED ON INEFFECTIVE OF APPELLATE COUNSEL) AND "RELIEF DUE TO ACTUAL INNOCENCE". THIS COURT DISMISSED MOVANT'S APPLICATION FOR DISCRETIONARY REVIEW ... "FOR LACK OF JURISDICTION" AND, ESSENTIALLY, BECAUSE "A PETITION TO VACATE OR MODIFY A JUDGMENT OF CONVICTION IS NOT AN APPROPRIATE REMEDY IN A ["CRIMINAL CASE"]." JOHNSON V. STATE, A15D0225 (2/02/15). HOWEVER, BECAUSE MOVANT/APPELLANT EXCEPTS TO THIS COURT'S APPELLATION OF HIS CAUSE OF ACTION AS [CRIMINAL] IN NATURE RATHER THAN ["CIVIL"], he brings THIS INSTANT MOTION.

PART TWO

(1.)

ENUMERATION OF OBVIOUS ERRORS, ABUSE OF DISCRETION, AND MISCHARACTARAZATION OF PLEADINGS AND INTENT

HELD: COURT OF APPEALS READS "PRO SE" MOTIONS TO VACATE MORE LIBERALLY THAN THOSE DRAFTED BY LAWYERS." - "WE READ "PRO SE" PETITIONS MORE LIBERALLY THAN THOSE DRAFTED BY LAWYERS": HAINES V. KERNER, 404 U.S. 519, 520 (92 S.CT. 594, 595) (1972)

HELD: "NO MATTER BY WHAT NAME A PLEADING IS CALLED, THE NATURE OF THE ACTION IS DETERMINED BY THE SUBSTANCE. [CITS.] "DEEN V. STATE, 216 GA. 387(2) (116 S.E.2d 595) (1960) - "COURTS ARE NOT bound BY THE DESIGNATION GIVEN MOTIONS BY THE PARTIES; IT WILL LOOK TO SUBSTANCE OVER NOMENCLATURE": ECHOLS V. THOMAS, 33 F.3d 1277 (11TH CIR. 1994).

HELD: "IT IS THE DUTY OF THE REVIEWING COURT TO ENTERTAIN THE THRESHOLD QUESTION OF ITS JURISDICTION WHERE THERE MAY BE ANY DOUBT." [CITS.] "SHIRLEY V. STATE, 188 GA. APP. 357, 373 S.E.2d 257 (1988), CITED IN ROYAL V. STATE, 189 GA. APP. 756 (1) (377 SE2d 526) (1989), ET SEQ.

VOID JUDGMENTS

(O.C.G.A. § 17-9-4)

HELD: "IF THE JUDGMENT IS A NULLITY AND VOID, THE RIGHT TO ATTACK IT IS NOT LOST BY LATCHES [,] NOR IS IT WAIVED BY THE FAILURE TO ATTACK IT BEFORE, SINCE IT IS VOID, AND NOT VOIDABLE, IN THAT THE ABATEMENT ABSOLUTELY EXTINGUISHES THE PROSECUTION, AND BY DEFINITION AMOUNTS TO THE ENTIRE OVERTHROW OR DESTRUCTION OF THE ACTIONS." (CITATIONS AND PUNCTUATIONS OMITTED). BARRETT V. STATE, 183 GA. APP. 729, 730 (360 S.E.2d 400) (1987); GONZALEZ V. ABBOTT, 262 GA. 671 (425 SE2d 272) (1993)

HELD: "A MOTION TO VACATE A JUDGMENT WILL NOT LIE IN A CRIMINAL CASE". WRIGHT V. STATE, 2004, WL 955059

AS "APPELLATE COURTS", THE "SUPREME COURT" AND THE "COURT OF APPEALS" ARE COURTS FOR THE CORRECTION OF ERRORS OF LAW MADE BY THE TRIAL COURTS. GA. CONST. ART. 6, §§ 5, PAR. 3, 6, 2. FELIX V. STATE, 271 GA. 534 (523 S.E.2d 1) (1999), ON REMAND 241 GA. APP. 329, 526 S.E.2d 637; STATE V. ELLISON, 271 GA. APP. 898 (2005) (DISPUTED FACTS).

(A.)

AS A MATTER OF FIRST IMPRESSION, IRREGARDLESS OF WHETHER MOVANT'S/APPELLANT'S MOTIONS IN THE TRIAL COURT EXPRESSLY, OR IMPLICITLY, SUGGESTS THAT THEY ARE/WERE "CRIMINAL" OR "CIVIL", THE OBVIOUS FACT THAT

MOVANT-APPELLANT IS CONTEMPORARILY CONTENDING THAT HE IS "ACTUALLY INNOCENT" OF THE CRIMES FOR WHICH HE STANDS CONVICTED AND SENTENCED, NECESSARILY INVOKES CONSTITUTIONALLY-GUARANTEED CIVIL RIGHTS, PRIVILEGES, AND IMMUNITIES. MOREOVER, MOVANT'S/APPELLANT'S MOTION UNAMBIGUOUSLY AND SPECIFICALLY STATES THAT HE IS "ACTUALLY INNOCENT" AND THAT "SEVERAL "BRADY" [V. MARYLAND] VIOLATIONS OCCURRED. -HELD: "A MOTION TO VACATE A CONVICTION AS "VOID" MUST ALLEGE A GROUND UPON WHICH THE JUDGMENT OF CONVICTION ENTERED AGAINST A CRIMINAL DEFENDANT CAN BE DECLARED "VOID." LEST'S GA. CODE ANN. §17-9-4. COLLINS V. STATE, 277 GA. 586 (591 S.E.2d 820) (2004); JONES V. STATE, 282 GA. 568 (651 S.E. 2d 728) (2007). IF THE GROUND RAISED IS NOT ONE WHICH WOULD "VOID" THE CONVICTION, THE MOTION DOES NOT QUALIFY AS AN O.C.G.A. §17-9-4 MOTION. "COLLINS" V. STATE, SUPRA, 277 GA. AT 587, 591 S.E. 2d 820; JONES V. STATE, SUPRA.

IN HARPER V. STATE, 286 GA. 216 (686 S.E.2d 786) (2009), THE SUPREME COURT OF GEORGIA RULED THAT PETITIONER'S "MOTION TO VACATE THE CONVICTION" WAS NOT AN APPROPRIATE REMEDY IN A "CRIMINAL CASE". FOR SUCH, PETITIONER WAS REQUIRED TO FILE: (A) AN EXTRAORDINARY MOTION FOR NEW TRIAL; (B) MOTION IN ARREST OF JUDGMENT, OR (C) PETITION FOR HABEAS CORPUS. O.C.G.A. §§ 5-5-41, 17-9-61, 9-14-40.

"ACTUAL INNOCENCE-MISCARRIAGE OF JUSTICE EXCEPTION"

MOVANT'S-APPELLANT'S CONTENTION AND CLAIM THAT HE IS "ACTUALLY INNOCENT" IS NOT SUBJECT TO PROCEDURAL DEFAULT, LATCHES, OR RES JUDICATA... FOR THE REASON THAT MOVANT-APPELLANT MUST BE-

"PROCEDURALLY-UNINCUMBENT" TO MEET HIS BURDEN OF DEMONSTRATING THAT HE IS, IN FACT, "ACTUALLY INNOCENT" OF THE CRIMES FOR WHICH HE STANDS CONVICTED. MOREOVER, A CLAIM THAT IS CONSTITUTIONALLY-NON-WAIVABLE, SUCH AS "ACTUAL INNOCENCE", IS, BY DEFINITION OF LAW, "CIVIL" OR "CONSTITUTIONAL". IN HALL V. VARGAS, 278 GA. 868 (608 SE2d 200) (2005); SCHOFIELD V. PALMER, 279 GA. 848 (621 SE2d 726) (2005), THE GEORGIA SUPREME COURT SAID THAT "RES JUDICATA" IS NOT A BAR TO A CLAIM OF "ACTUAL INNOCENCE" AND THAT A "BRADY" VIOLATION INVOLVING THE "SUPPRESSION" OF "MATERIAL" EVIDENCE REACHING THE DEFENDANT'S "GUILT" OR "INNOCENCE" IS "COGNIZABLE" AND "NON-WAIVABLE".

"MOTION TO VACATE A JUDGMENT WILL NOT LIE IN A "CRIMINAL" CASE."
WRIGHT V. STATE, WL 955059 (2004)

EVEN SO, THE TRIAL COURT DISMISSED MOVANT'S "ACTUAL INNOCENCE" MOTION ON "RES JUDICATA" GROUNDS, ERRONEOUSLY SO. THE TRIAL COURT, AS WELL AS THE "REVIEWING COURT OF APPEALS" IS ADJURED TO READ MOVANT'S-APPELLANT'S "PRO SE" MOTIONS-PLEADINGS LIBERALLY AND THEN CONSTRUE AND DESIGNATE TO THE PLEADINGS THEIR PROPER CLASSIFICATION AS "DETERMINED BY THEIR (S) SUBSTANCE". DEEN V. STATE, SUPRA; ECHOLS V. THOMAS, SUPRA. IN JOHNSON V. STATE, A15D0225 (02-02-15), THE COURT OF APPEALS DISMISSED JOHNSON'S "APPLICATION FOR DISCRETIONARY REVIEW" BECAUSE, SUPPOSEDLY, IT "LACKED JURISDICTION". TO BE SURE, JOHNSON'S "MOTION FOR OUT-OF-TIME APPEAL" WAS DISMISSED BECAUSE, SUPPOSEDLY, THE COURT OF APPEALS IS STATUTORILY-UNAUTHORIZED TO GRANT OR ENTERTAIN A "SECOND-DIRECT-APPEAL". MOVANT CATEGORICALLY DENIES [EVER] SEEKING A DIRECT APPEAL OF/FROM HIS CONVICTIONS. TO THE CONTRARY, MOVANT

SEEKS THAT UNLAWFUL CONVICTIONS AND SENTENCES IMPOSED AGAINST him BE VACATED AND his liberty RESTORED. HOWEVER, WHERE THE COURTS CONTINUE TO "MIS-READ" his PLEADINGS AND CITE "PROCEDURAL NICETIES" AS "CAUSE" TO DENY THE RELIEF THAT DUE PROCESS AND EQUAL PROTECTION OF THE LAW REQUIRE, THE MISCARRIAGE OF JUSTICE INURES.

COURT OF APPEALS RULE 11.(b) TRANSFER OF CASES

WHENEVER AN APPEAL (OR APPLICATION) FILED IN THIS COURT IS WITHIN THE JURISDICTION OF THE SUPREME COURT, SUCH APPEAL (OR APPLICATION) SHALL BE TRANSFERRED BY ORDER TO THAT COURT.

IN JOHNSON V. STATE, A15D0225 (02-02-15) (APPLICATION FOR DISCRETIONARY REVIEW) THE COURT OF APPEALS SAID: "TO THE EXTENT THAT JOHNSON SEEKS TO SET ASIDE his CONVICTIONS, THE SUPREME COURT has MADE CLEAR THAT "A PETITION TO VACATE OR MODIFY A JUDGMENT OF CONVICTION IS NOT AN APPROPRIATE REMEDY IN A CRIMINAL CASE." HARPER V. STATE, 286 GA. 216, 218 (1) (686 SE2d 786) (2009). FURTHER, ANY APPEAL FROM AN ORDER DENYING SUCH A MOTION MUST BE DISMISSED." - FOR THESE REASONS, THIS APPLICATION IS HEREBY DISMISSED FOR LACK OF JURISDICTION."

"BECAUSE MOVANT/APPELLANT FILED his TRIAL COURT/APPELLATE COURT PLEADINGS "PRO SE", he IS ENTITLED TO HAVE his PLEADINGS CONSTRUED EVER SO LIBERALLY". BENTLY V. UNITED STATES, 701 F.2d 897 (11TH CIR. - 1983).

PART THREE

(1.)

ARGUMENT(S) AND CITATIONS OF CLEARLY ESTABLISHED LEGAL AUTHORITY

(A.)

PROPER DESIGNATION OF MOTIONS

IN FELIX V. STATE, 271 GA. 534 (523 S.E.2d 1) (1999), THE GEORGIA SUPREME COURT HELD: "*THE CONSTITUTIONAL AUTHORITY OF A COURT TO EXERCISE SUCH POWERS AS NECESSARY TO PROTECT OR EFFECTUATE ITS JUDGMENTS IS NOT AUTHORITY FOR AN APPELLATE COURT TO PROTECT AN APPELLATE ADJUDICATION FROM FURTHER APPELLATE REVIEW BY DECLINING TO REACH THE MERITS OF AN ALLEGATION OF TRIAL COURT ERROR SUFFICIENTLY SET FORTH PURSUANT TO THE APPELLATE PRACTICE ACT IN THE ENUMERATION OF ERRORS.*" CONST. ART. 6, §1, PAR. 4; OCGA § 5-6-40

IN JOHNSON V. STATE, A15D0225 (2-02-15), INVOLVING AN "*APPLICATION FOR DISCRETIONARY REVIEW*", JOHNSON CITED SUFFICIENT STATE AND FEDERAL CONSTITUTIONAL LAW AND FACTS FROM THE TRIAL RECORD IN SUPPORT OF HIS CLAIM OF "*ACTUAL INNOCENT*" TO CLEARLY SUGGEST, IF NOT CLEARLY SHOW, THAT [THIS COURT'S] JUDGMENT/ADJUDICATION IN JOHNSON V. STATE, 238 GA. APP. 677 (520 SE2d 221) (1999), IS CONSTITUTIONALLY INFIRM BASED ON EQUALLY CONSTITUTIONALLY INFIRM AND, CLEARLY ERRONEOUS, ERRORS MADE IN THE TRIAL COURT. THUS, RATHER THAN EXERCISE ITS CONSTITUTIONALLY-VESTED AUTHORITY TO "REACH THE MERITS [THIS COURT] CITES "*LACK OF JURISDICTION*" BASED ON ITS CONSTRUCTION THAT JOHNSON "*SEEKS A SECOND-DIRECT APPEAL*" UNLAWFULLY AND JOHNSON'S *MOTION CONTENDING "ACTUAL INNOCENCE" DOES NOT "LIE IN A CRIMINAL CASE".* IT IS DULY NOTED THAT [THE COURT OF APPEALS] FUNDAMENTALLY UNFAIRLY DESIGNATED JOHNSON'S CASE-PLEADINGS "CRIMINAL" SO AS TO DIVEST ITSELF OF SUBJECT-MATTER JURISDICTION. IT IS FURTHER DULY-NOTED THAT IN *BROWN V. STATE*, 229 GA. APP. 87, 90 (4) (493 SE2d 230) (1997) (QUOTING *STATE V. BIAL*,

192 GA. APP. 185 (384 S.E.2d 253) (1989) [THIS COURT] POINTED OUT THAT "[A MOTION FOR ACQUITTAL NOTWITHSTANDING THE VERDICT IS TREATED SIMPLY AS A "MOTION FOR NEW TRIAL"]." WHY, THEN, WASN'T JOHNSON'S "ACTUAL INNOCENCE MOTION" ["LIBERALLY READ AND CONSTRUED"] AND THIS COURT CONSIDERED ITS ["SUBSTANCE"] AND DESIGNATED IT FOR WHAT JOHNSON UNARTFULLY-INTENDED IT TO BE, I.E., A POST-CONVICTION CHALLENGE-ATTACK ON THE "CONSTITUTIONAL-VALIDITY" OF HIS CONVICTIONS AND SENTENCES. AS [THIS COURT] ACKNOWLEDGED IN JOHNSON V. STATE, A15D0225 [02-02-15], SUCH A MOTION AS JOHNSON'S, ALLEGING THE "VOIDNESS" OF HIS "CONVICTIONS" AND "SENTENCES", IS INHERENTLY "CIVIL" IN NATURE. IT IS, EVEN, FURTHER NOT ~~ED~~ THAT THE TRIAL COURT IN JOHNSON V. STATE, SUPRA, MADE NO DETERMINATION, AS AN INITIAL MATTER, AS TO WHETHER JOHNSON'S CONSOLIDATED-MOTIONS WERE EITHER "CIVIL" OR "CRIMINAL"... AS REQUIRED UNDER O.C.G.A. § 9-10-14(A), ET SEQ. IT MERELY DECLARED THE CLAIMS "RES JUDICATA" WITHOUT REQUISITE PROOF.

HELD: "THE TRIAL COURTS' FAILURE TO COMPLY WITH MANDATORY RULE OR STATUTE IS PRESUMPTIVELY HARMFUL." SPRAGGINS V. STATE, 258 GA. 32, 33 (3) (364 S.E.2d 861) (1988); POULTRY-LAND INC. V. ANDERSON, 200 GA. 549, 561 (2) (37 S.E.2d 785) (1946); STATE V. HIGHTOWER, 236 GA. 58, 60 (1976); FOSTER V. STATE, 156 GA-APP. 672, 674 (1980); HOWARD V. GAVIN, 810 F. SUPP. 1269 (S.D. GA. 1993); O'NEAL V. MCANINCH, 115 S. CT. 993 (1995), ET SEQ.

TRIAL COURTS' NON-COMPLIANCE WITH O.C.G.A. § 9-10-14(A)

MOVANT/APPELLANT SUBMIT THAT WHERE IT IS SUBSEQUENTLY ALLEGED

WERE IT IS SUBSEQUENTLY, OR LATER, ALLEGED THAT HIS "MOTION FOR RELIEF DUE TO ACTUAL INNOCENCE" ("MISCARRIAGE OF JUSTICE EXCEPTION") WAS "INCORRECTLY FILED" IN A "CRIMINAL CASE" RATHER THAN IN A "CIVIL CASE", OR FORUM, SUBSEQUENTLY DIVESTING THE APPELLATE COURT OF SUBJECT-MATTER-JURISDICTION, "DUE PROCESS OF LAW" AND "FUNDAMENTAL FAIRNESS" REQUIRE THAT THE "ABUSE OF DISCRETION" AND "ERROR" BE ASSIGNED TO THE TRIAL COURT-GATE-KEEPER AS AN INITIAL MATTER DUE TO THE STATUTORY MANDATES OF O.C.G.A. §9-10-14(A). THE TRIAL COURT, AS AN INITIAL MATTER, WAS REQUIRED NOT TO FILE MOVANT'S-APPELLANT'S "CIVIL PLEADINGS" UNLESS THEY COMPLIED WITH THE REQUIREMENTS OF O.C.G.A. §9-10-14(A). AS A RESULT, ITS FAILURE, OR REFUSAL, TO DO SO SUBSEQUENTLY "HARMED" AND "PREJUDICED" MOVANT-APPELLANT. TO BE SURE, O.C.G.A. §9-10-14 ET SEQ., DOESN'T REQUIRE DISMISSAL OF AN INMATE'S/PRISONER'S PLEADINGS FOR FAILURE TO COMPLY BUT, RATHER, PREVENTS "FILING" [WITHOUT PREJUDICE] UNTIL THE INMATE'S/PRISONER'S PLEADING COMPORT WITH THE STATUTORILY-REQUIRED-FORMAT. ADDITIONALLY, CONSTRUING [THE] "PRO SE" LITIGANT'S PLEADING "LIBERALLY", THE CONCERNED COURT WILL LOOK PAST THE "NAME" OF THE PLEADING TO CONTEMPLATE ITS [S]UBSTANCE AND THEN, ASSIGN IT THE APPROPRIATE TREATMENT OR DESIGNATION. HAINES V. KERNER, SUPRA; DEGS V. STATE, SUPRA; ECHOLS V. THOMAS, SUPRA; BROWN V. STATE, SUPRA; STATE V. BILAL, SUPRA.

CONSIDERATION OF [STATE] OR [FEDERAL CONSTITUTIONAL] ISSUES IN COURT OF APPEALS IS LIMITED TO MERE APPLICATIONS OF UNQUESTIONED AND UNAMBIGUOUS PROVISIONS." WOODS V. STATE, 117 GA. APP. 546 -

(160 S.E.2d 922)(1968) – "COURT OF APPEALS, AND NOT SUPREME COURT, HAS JURISDICTION TO DECIDE QUESTIONS OF LAW INVOLVING APPLICATION OF PLAIN AND UNAMBIGUOUS PROVISIONS OF CONSTITUTION." ABBOTT V. STATE, 211 GA. 200 (84 S.E.2d 667)(1954), TRANSFERRED TO > 91 GA. APP. 380 S.E.2d 615; HILLIARD V. STATE, 209 GA. 427 (74 S.E.2d 65)(1953), TRANSFERRED TO 87 GA. APP. 769 (75 S.E.2d 173).

[JURISDICTION] IS NOT VESTED IN THE [SUPREME COURT] MERELY BECAUSE THE JUDGMENT OF THE TRIAL COURT IS ALLEGED TO BE CONTRARY TO SOME PROVISION OF THE CONSTITUTION". TURNER V. BOARD OF TAX ASSESSORS (OF FULTON COUNTY, 197 GA. 241 (28 S.E.2d 902)(1944), TRANSFERRED TO > 71 GA. APP. 374 (31 S.E.2d 61), ET SEQ.

"AS APPELLATE COURTS, THE SUPREME COURT AND THE COURT OF APPEALS ARE COURTS FOR THE ["CORRECTION OF ERRORS OF LAW MADE BY THE TRIAL COURTS"]. GA. CONST. ART. 6, §§ 5, PAR. 2, 3, 6. FELIX V. STATE, 271 GA. 534 (523 S.E.2d 1), ON REMAND, 241 GA. APP. 323 (526 S.E.2d 637); STATE V. ELLISON, 271 GA. APP. 898 (2005).

CONCLUSION(S)

MOVANT-APPELLANT SUBMIT THAT WHERE, IN THE TRIAL COURT, HE CONTENDS THAT HE IS "ACTUALLY INNOCENT" OF THE CONVICTIONS AND SENTENCES IMPOSED AGAINST HIM THEREIN, BUT THE TRIAL COURT DENIES RELIEF AND DISMISSES MOVANT-APPELLANT'S CLAIMS ON THE GROUND OF "RES JUDICATA", SUCH IS SUBJECT TO "DE NOVO REVIEW" ON APPEAL AND WITHIN THE [JURISDICTION] OF THE COURT OF APPEALS. WHERE THE TRIAL COURT AUTHORIZED THE "FILING" OF APPELLANT'S MOTIONS WITHOUT REQUIRING THAT THEY COMPORT WITH THE STATUTORY REQUIREMENTS OF O.C.G.A. §9-10-14, ET SEQ., SUCH AMOUNTED

TO AN "ABUSE OF DISCRETION" THAT IS WITHIN THE [JURISDICTION] OF THE COURT OF APPEALS TO DECIDE. - WHERE A DEFENDANT SUBSEQUENTLY CONTENDS THAT HE IS[IS] "ACTUALLY INNOCENT" OF THE CONVICTIONS AND "SENTENCES" IMPOSED AGAINST him, SUCH A CLAIM INVOKES THE "MISCARRIAGE OF JUSTICE [EXCEPTION]" TO THE GENERALITIES OF PROCEDURAL DEFAULT DOCTRINE(S) SUCH AS "LATCHES", "RES JUDICATA", AND "SUCCESSIVE MOTIONS AND PETITIONS": MURRAY V. CARRIER, 477 U.S. 478, 488 (106 S.CT. 2639)(1986); KUHLMAN V. WILSON, 106 S.CT. 2616 (1986); SCHLUP V. DELO, 115 S.CT. 851 (1995); SCHOFIELD V. MEDERS, 280 GA. 865 (632 S.E.2d 369)(2006), ("NOT REQUIRED TO OVERCOME "CAUSE AND PREJUDICE TEST"); SCHOFIELD V. PALMER, 279 GA. 848 (621 S.E.2d 726)(2005)("A "BRADY" CLAIM NOT RAISED IN EARLIER PROCEEDINGS IS NOT "PROCEDURALLY BARRED"); HALL V. VARGAS, 278 GA. 868 (608 S.E.2d 200)(2005)("RES JUDICATA" DOCTRINE DOES NOT BAR "ACTUAL INNOCENCE"/"MISCARRIAGE OF JUSTICE CLAIM"), ET SEQ.

A.) EXTRAORDINARY MOTION FOR NEW TRIAL (OCGA § 5-5-41)

B.) MOTION IN ARREST OF JUDGMENT (OCGA § 17-9-61)

C.) PETITION FOR WRIT OF HABEAS CORPUS (OCGA § 9-14-40)

IN JOHNSON V. STATE, A15D0225 (2-2-15), THIS COURT REMINDED JOHNSON OF ITS SUGGESTION PROFFERED IN JOHNSON V. STATE, 272 GA. APP. 294 (612 S.E.2d 29)(2005), SUCH THAT A "PETITION FOR WRIT OF HABEAS CORPUS" WAS "[T]HE [EXCLUSIVE] REMEDY" FOR CONTENDING "ACTUAL INNOCENCE"-"MISCARRIAGE OF JUSTICE".

MOVANT-APPELLANT SUBMITS THAT, AS SUGGESTED IN HARPER V. STATE, 286 GA. 216 (686 SE2d 786)(2009), HE HAS ALREADY FILED THE POST-CONVICTION REMEDIES CITED ABOVE ("A.", "B.", "C."). IN FACT,

MOVANT-APPELLANT did, IN FACT, FILE A HABEAS CORPUS PETITION IN THE SUPERIOR COURT OF MACON COUNTY (JOHNSON V. WILLIAM TERRY, WARDEN). PRIOR TO THAT, MOVANT had FILED TWO(2) OTHER HABEAS CORPUS PETITIONS IN THE SUPERIOR COURT OF GWINNET COUNTY: CASE NOS. 99-A-6456-5; 03-A-00485-1. THE SECOND (2nd) HABEAS PETITION, I.E., 03-A-00485-1, WAS ORDERED TO BE FILED BECAUSE NONE OF PETITIONER'S GROUNDS WERE "ADJUDICATED ON THE MERITS" IN THE FIRST PETITION. AT THE SECOND PETITION HEARING, A "DIFFERENT JUDGE" OTHER THAN THE "ASSIGNED JUDGE" REFUSED TO HEAR THE CLAIMS ON THE GROUNDS THAT THE CLAIMS WERE EITHER "SUCCESSIVE" OR "RES JUDICATA." (THERE WERE NO "FINDINGS OF FACTS AND CONCLUSIONS OF LAW": O.C.G.A. §9-14-49 SUPPORTING SUCH AN ADJUDICATION). AT THE THIRD PETITION HEARING, THE HABEAS COURT ACCEPTED RESPONDENT'S ERRONEOUS ARGUMENT THAT PETITIONER'S (i.e., JOHNSON'S, GROUNDS / CLAIMS WERE EITHER "[S]UCCESSIVE" OR "RES JUDICATA". MOVANT SUBMITS THAT EACH PETITION WAS "TIMELY APPEALED" ACCORDING TO O.C.G.A. §9-14-52, EXCEPT THAT THE SUPREME COURT DENIED EACH APPLICATION FOR PROBABLE CAUSE WITHOUT EVER ISSUING A "REASONED OPINION".

APPELLATE COURTS' ERRONEOUS DEFERENCE TO TRIAL COURT'S ERRONEOUS "RES JUDICATA" RULINGS

TO JUSTIFY ITS "RES JUDICATA" RULINGS AGAINST JOHNSON'S PLEADINGS OVER THE YEARS, THE TRIAL COURT REFERENCES [THIS COURTS DECISIONS] IN JOHNSON V. STATE, 272 GA. APP. 294 (2005). HOWEVER, IN THAT CASE [THIS] COURT OF APPEALS did NOT REACH THE MERITS OF JOHNSON'S CLAIMS BUT, RATHER, SUGGESTED THAT RELIEF WAS TO BE had IN FILING A HABEAS CORPUS PETITION. BUT, AS POINTED OUT ABOVE, "RES

JUDICATA'S "DOCTRINE HAS BEEN REPEATEDLY INVOKED ERRONEOUSLY TO OVERRIDE JOHNSON'S CONTENTION OF "MISCARRIAGE OF JUSTICE" EXCEPTION" AND "ACTUAL INNOCENCE". MOVANT JOHNSON SUBMIT THAT, AS A MATTER OF LAW, A DEFENSE OF "RES JUDICATA" MUST BE PROVED AND, ON APPEAL, SUBJECT TO "DE NOVO REVIEW". AKIN V. PAFEC LTd. 991 F.2d 1550 (11TH CIR. 1993); O.C.G.A. §§ 9-12-40. MOVANT JOHNSON SUBMIT THAT, AT NO TIME, HAS THE TRIAL OR HABEAS COURT REQUIRED THE "PROOF" OF "RES JUDICATA" AND, AT NO TIME, has THE GEORGIA APPELLATE COURTS APPLIED "DE NOVO REVIEW" TO THE TRIAL/HABEAS COURTS' ASSERTION OF "RES JUDICATA" AS PROVIDED BY LAW. YET, ON THE OTHER hand, EVEN Where JOHNSON IS CONTENDING THAT he IS "ACTUALLY INNOCENT" AND THAT A "MISCARRIAGE OF JUSTICE" has OCCURRED. THIS COURT ERRONEOUSLY CONCLUDES THAT IT "LACKS JURISDICTION" BECAUSE JOHNSON'S MOTIONS WERE "FILED" IN A "CRIMINAL" CASE RATHER THAN A "CIVIL" CASE. HOWEVER, AS SHOWN ABOVE, CLEARLY-ESTABLISHED-LAW PROVIDES THAT COURTS READ AND CONSTRUE "PRO SE" PLEADINGS "LIBERALLY"; THAT ATTENTION BE GIVEN TO THE "SUBSTANCE" OF PLEADINGS RATHER THAN THEIR NOMENCLATURE, I.E., "NAME"; THAT AS A GATE-KEEPING SAFE-GUARD TO PRISONERS "FILINGS" IN THE COURTS, THE PROVISIONS OF O.C.G.A. 59-10-14; O.C.G.A. §§ 42-12-1; 42-12-8, 42-12-9, ET SEQ., WERE ENACTED. THUSLY, WERE THE COURTS have FAILED, OR REFUSED, TO FOLLOW MANDATORY RULES AND STATUTES, THAT IS NOT JUST CAUSE TO KEEP JOHNSON UNLAWFULLY IMPRISONED. "DUE PROCESS OF LAW"; "FUNDAMENTAL FAIRNESS"; AND THE "ENDS OF JUSTICE", demand THAT JOHNSON be ALLOWED TO SHOW THAT he IS, IN FACT, "ACTUALLY INNOCENT"; THAT

THIS COURT, AS AN INITIAL MATTER, CONDUCT "DE NOVO REVIEW" OF JOHNSON'S PLEADINGS, CLAIMS, GROUNDS FOR PROOF OF "RES JUDICATA"; THAT, ALTERNATIVELY, THIS COURT [REMAND] THIS CASE TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING, FULLY AND FAIRLY CONDUCTED, WHEREBY "FINDINGS OF FACT AND CONCLUSIONS OF LAW" MAY BE REACHED. OTHERWISE, WHERE "RES JUDICATA" has been employed to frustrate the administration of justice, the issue begs resolving once and for all. Because the "CAUSE" for Johnson's pleadings being "filed" as "criminal", rather than "civil", may fairly be attributed to the trial court, as shown above, fundamental fairness prohibits that Johnson be deprived of his liberty because of the legal errors of others. Finally, THIS COURT HAS JURISDICTION TO CORRECT ERRORS OF LAW.

WHEREFORE, THIS MOTION SHOULD BE GRANTED. - SUBMITTED THIS 16TH DAY OF February, 2015

RESPECTFULLY Submitted,
Lucious L. Johnson
LUCIOUS L. JOHNSON, PROSE
GDC # 212636
APPELLANT

APPELLANT'S MAILING ADDRESS:
TELFAIR STATE PRISON - P.O. BOX 549
HELENA, GEORGIA 31037-0549

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING "MOTION FOR "CIVIL" DESIGNATION" UPON THE APPELLEE BY PLACING A COPY IN THE U.S. MAIL WITH SUFFICIENT POSTAGE PREPAID, AM AFFIXED, AND CORRECTLY ADDRESSED TO: JULIA SLATER, DISTRICT ATTORNEY, CHATTAHOOCHEE JUDICIAL CIRCUIT, P.O. BOX 528, HAMILTON, GEORGIA 31811-0528

THIS 16TH DAY OF February, 2015.

Lucious L. Johnson
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