



Court of Appeals of Georgia

March 5, 2015

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

RE: **A15D0225. Lucious L. Johnson 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 _____ .

APPLICATION - DISPOSED

- Your appeal was dismissed on February 2, 2015.**

**Copies are \$1.50 per page in this Court. Your pauper status does not excuse you
from the copy fees in this Court. The Court of Appeals of Georgia is not subject to
the Open Records Act. You may want a copy of the following:**

Court's Order in A15D0225 2 pages \$3.00

**Please send your check or money order to the following address specifying exactly
what copies you want to be sent to you. Your request will be processed and sent to
you by return mail.**

**Court of Appeals of Georgia
47 Trinity Avenue, S.W. • Suite 550
Atlanta, Georgia 30334**

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 _____ .

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.

FROM: LUCIOUS L. JOHNSON, PRO SG
GDC/ID# 212636
TEIFAIR STATE PRISON-H2
P.O. BOX 549
HELINA, GEORGIA 31037-0549

FEBRUARY 26, 2015

c/o STEPHEN E. CASTLEN, CLERK
COURT OF APPEALS OF GEORGIA
SUITE 501
47 TRINITY AVENUE
ATLANTA, GEORGIA 30334

RECEIVED IN OFFICE
2015 MAR -8 PM 4:16
CLERK OF APPEALS DINA

RE: FROM THE SUPERIOR COURT OF HARRIS COUNTY - STYLE OF CASE: LUCIOUS L. JOHNSON VS THE STATE OF GEORGIA - CASE /INDICTMENT NO. 96-CR-420
"NOTICE OF APPEAL" FILED IN TRIAL COURT > DECEMBER 24, 2014 - CLERK OF TRIAL COURT'S CERTIFICATE FILED [IN COURT OF APPEALS] FEBRUARY 2, 2015
INSTANT ULTIMATE ISSUE: RULE 40(B) MOTION

DEAR MR. CASTLEN:

DEPUTY CLERK OF HARRIS COUNTY SUPERIOR COURT, DEBRA GOMEZ, ADVISED ME IN A NOTICE POST-MARKED FEBRUARY 5TH, 2015, THAT THE CLERK OF COURT'S CERTIFICATE WAS FILED IN THIS COURT FEBRUARY 2, 2015. [SHE PROVIDED ME WITH A COPY OF THE "INDEX TO RECORD", I.E. OF WHAT I HAD REQUESTED OF THE TRIAL COURT CLERK TO SEND-UP TO THE COURT OF APPEALS FOR APPELLATE REVIEW. THEN, ON FEBRUARY 16TH, 2015, I SUBMITTED MY "RULE 40(B) MOTION" FOR FILING AND CONSIDERATION. ON OR ABOUT FEBRUARY 24, 2015, THE MOTION WAS RETURNED TO ME FOR THE FOLLOWING REASONS:

"NO FEE OR PAUPER'S AFFIDAVIT WAS ENCLOSED"
"NO COPY OF THE ORDER APPEARED FROM, STAMPED-FILED BY CLERK"

RULE 40(b) MOTION/REQUIREMENTS WERE
SUBSTANTIALLY MET

AS A MATTER OF FIRST IMPRESSION, I (I) EXPLAINED WHY THE MOTION WAS NECESSARY AND TIME-SENSITIVE; (II) EXPLAINED THAT THE TRIAL COURT CLERK HAD SENT UP TO THE COURT OF APPEALS A STAMPED-FILED-COPY OF THE COURT'S ORDER BEING APPEALED [RECORD ON APPEAL # 74] ON OR ABOUT FEBRUARY 2, 2015; (III) EXPLAINED AND REFERENCED TO THE "NOTICE OF APPEAL" FILED IN THE TRIAL COURT, DECEMBER 24, 2014 [RECORD ON APPEAL # 1.]; (IV) A "CERTIFICATE OF SERVICE" WAS ATTACHED TO THE "RULE 40(b) MOTION" SHOWING THAT SERVICE WAS EXECUTED UPON THE CONCERNED DISTRICT ATTORNEY/AGENCIES; (V) EXPLAINED THAT "INFORMA PAUPERIS STATUS" TO PROCEED IN THE "TRIAL COURT" AND "ON APPEAL" HAD BEEN ORDERED BELOW. IT IS RELEVANT AND MATERIAL THAT COURT OF APPEALS RULE 40(b) PROVIDES IN PERTINENT PART AS FOLLOWS:

"GENERALLY, NO ORDER WILL BE MADE OR DIRECTION GIVEN IN AN APPEAL UNTIL IT HAS BEEN DOCKETED IN THIS COURT." (C.A.P.P. R. 40(b)).

O.C.G.A. § 9-15-2 (A)-(D), PROVIDES IN PERTINENT PART THAT ONCE "PAUPER STATUS" HAS BEEN ORDERED IN A CASE, IT REMAINS EFFECTIVE THROUGHOUT THE DURATION OF THAT PARTICULAR/SPECIFIC CASE OR ACTION, -- EVEN ON APPEAL (CITES OMITTED).

O.C.G.A. § 9-10-14 (A)

O.C.G.A. § 9-10-14 (A), PROVIDES THAT "INMATES" ARE TO UTILIZE CERTAIN FORMS PROMULGATED BY "THE ADMINISTRATIVE OFFICE OF THE COURTS" EVEN WHEN SEEKING TO "PROCEED INFORMA PAUPERIS". I UTILIZED THOSE FORMS IN THE TRIAL COURT AND THEY ARE PART OF THE "APPELLATE RECORD" THAT IS CURRENTLY BEFORE YOU SINCE 2/2/15.

"PRO SE" MOTIONS ARE TO BE CONSTRUED "LIBERALLY"

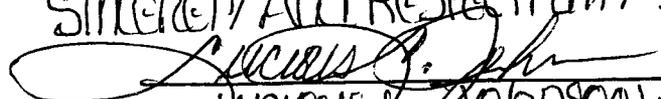
I CANNOT SPEAK FOR "ALL" INMATES, EXCEPT FOR MYSELF AND OTHER SIMILARLY SITUATED INMATES. "TRUTH-IN-PLEADINGS" AS IT CONCERNS THE "CERTIFICATE OF SERVICE" REQUIRE THAT I SERVE THE "SAME PLEADINGS" OR "DOCUMENTS" UPON THE OPPOSING PARTIES (RULE 40(b)(4)). PLEASE BE ADVISED THAT PRISON OFFICIALS DO NOT MAKE COPIES OF LEGAL MATERIALS FOR INMATES AT TELFAIR STATE PRISON, AND BECAUSE THEY DO NOT, YOU HAVE ATTRIBUTED MY FAILURE TO "DIRECTLY" PROVIDE COPIES ^{OF} THE "PAUPER'S AFFIDAVIT" AND "FINAL ORDER" TO ME. HOWEVER, I "INDIRECTLY" PROVIDED WHAT "RULE 40(b)" REQUIRES BY ADOPTING AND REFERENCING TO THOSE DOCUMENTS AS SENT UP BY THE TRIAL COURT CLERK.

FINALLY, MY "REQUEST TO PROCEED IN FORMA PAUPERIS" (WHICH WAS "GRANTED" BY THE TRIAL COURT) MEANS THAT I HAVE NO MONEY IN MY INMATE TRUST ACCOUNT. "LEGAL MATERIALS", SUCH AS PAPER, PENS, ENVELOPES, AND POSTAGE STAMPS, ARE A "LOAN-ON-CREDIT". -- CHARGED TO MY ACCOUNT. SIR, REFUSING TO "FILE" MY "RULE 40(b) MOTION" FOR FAILING TO "STRICTLY" COMPLY WITH THE RULE IS COUNTER TO THE AIM, SPIRIT AND PURPOSE OF THE GEORGIA APPELLATE ACT AS ANNOUNCED BY THE GEORGIA SUPREME COURT IN ELIX V. STATE, 271 GA. 534 (523 S2d 1) (1999).

THE ACCOMPANYING "PAUPER'S AFFIDAVIT" OR, "REQUEST TO PROCEED IN FORMA PAUPERIS", AND THE TRIAL COURT'S "ORDER", WHICH YOU REQUEST WAS "ALREADY FILED" WITH THE CLERK'S (YOURS) OFFICE BEFORE YOU RETURNED MY RULE 40(b) MOTION" TO ME. THAT IS WHY I ADOPTED AND REFERENCED THEM ON THE COVER PAGE OF MY MOTION. THUS, I "INDIRECTLY" COMPLIED WITH THE RULE 40(b) MOTION REQUIREMENTS. AS YOU ARE AWARE, CLERKS OF COURT REQUIRE ORIGINAL COPIES OF PLEADINGS; AND THE RULES OF LAW REQUIRE THAT THE "CERTIFICATE OF SERVICE" TRUTHFULLY REFLECT THAT THE "OPPOSING PARTY" RECEIVING A TRUE AND EXACT COPY(IES) OF WHAT THE CLERK OF COURT RECEIVES.

PLEASE ALLOW MY MOTION TO BE "FILED" AS IS DUE TO MY INABILITY TO OTHERWISE COMPLY. ALTERNATIVELY, DIRECT OR ORDER THE WARDEN TO ALLOW ME TO MAKE THE DESIRED COPIES. OTHERWISE, I AM BEING UNFAIRLY DISCRIMINATED AGAINST (DUE TO CIRCUMSTANCES BEYOND MY CONTROL).

SINCERELY AND RESPECTFULLY YOURS,


WICORIUS L. JOHNSON, PROSE
APPELLANT

Court of Appeals of the State of Georgia

ATLANTA, February 02, 2015

The Court of Appeals hereby passes the following order:

A15D0225. LUCIOUS L. JOHNSON v. THE STATE.

Lucious Johnson was convicted of aggravated assault, rape, and false imprisonment, and we affirmed his convictions on appeal. *Johnson v. State*, 238 Ga. App. 577 (520 SE2d 221) (1999). Johnson later filed a motion to vacate a void sentence and an extraordinary motion for new trial. The trial court merged two of his convictions and vacated his sentence as to one count but otherwise denied the motions, and we again affirmed on appeal. *Johnson v. State*, 272 Ga. App. 294 (612 SE2d 29) (2005). Johnson then filed another motion to vacate a void sentence, along with other pro se motions. The trial court denied the motions, and once more we affirmed, this time in an unpublished opinion. *Johnson v. State*, Case No. A13A1411, decided July 16, 2013.

Back in the trial court, Johnson filed new pro se motions, including a motion for an out-of-time appeal and a motion for relief from convictions due to actual innocence. The trial court denied the motions on the ground that its prior orders were “*res judicata* as to these matters.” Johnson then filed this application for discretionary review. We lack jurisdiction.

To the extent that Johnson seeks another appeal from his convictions, he is not entitled to one. “An out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal. . . . [I]t is not a remedy available to a criminal defendant whose conviction has been reviewed by an appellate court on direct appeal since that defendant is not entitled to a second direct appeal from his judgment of conviction.” *Milliken v. State*, 259 Ga. App. 144, 145 (575 SE2d 910) (2003) (punctuation and citation omitted). Johnson has already had multiple appeals to this

Court and may not have yet another one. Accordingly, his appeal from the denial of his motions for out-of-time appeal must be dismissed. See *Brown v. State*, 296 Ga. App. 224 (674 SE2d 91) (2009) (dismissing appeal from denial of motion for out-of-time appeal because defendant “has already had a direct appeal, and raises no arguments now that he could not have raised then”).¹

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. See *Harper*, supra; *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010).

For these reasons, this application is hereby DISMISSED for lack of jurisdiction.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 02/02/2015

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. Castle, Clerk.

¹ To the extent that Johnson's request for an out-of-time appeal was based on his claim that he received ineffective assistance of appellate counsel, we reiterate that his exclusive remedy is a petition for writ of habeas corpus. See *Johnson*, 272 Ga. App. at 296 (5).