

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

December 1, 2015

To: Mr. Reginald Johnson, GDC1307816, Telfair State Prison, Post Office Box 549, Helena, Georgia 31037

Docket Number: Style: Reginald Johnson v. The State

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
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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.
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13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
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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

Affidavit

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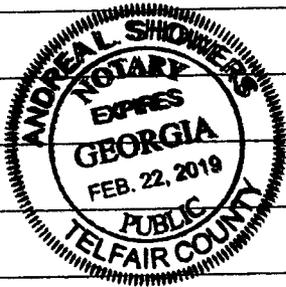
NOV 23 2015

COURT CLERK
CLERK COURT OF APPEALS OF GA

I, Reginald Johnson, a human being, am unable to pay the filing fee in the Court of Appeals of Georgia. I am currently incarcerated and am therefore unable to generate any revenue for this instant matter -- any money received by me are loans from friends and family, and are not guaranteed to continue.

This 19 day of November, 2015.

Reginald Johnson, Without Prejudice VCC, Under Dur



Notary Public

Andreia Showers

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Court of Appeals of Georgia

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Reginald Johnson

Case No.:

v.

State of Georgia

Application for a Certificate of Probable Cause to Appeal

Appellant COMES NOW to challenge the judgment of the Fulton Superior Court denying his motion to set aside on the basis of fraud and a lack of lawful jurisdiction in case number 11SC100848. Said motion was filed in accordance with Georgia Code Section 9-11-60 and Uniform Superior Court Rule 6.2.

Appellant further requests that this Court summarily review this instant matter for all the foregoing reasons enunciated in Appellant's brief.

This 19 day of November, 2015.

Court of Appeals of Georgia

Reginald Johnson

Case No.: _____

v.

State of Georgia

Brief

According to court records, Appellant filed a Motion to Set Aside in the Fulton Superior Court on August 17, 2015, although it was received by the Court on or about August 11, 2015. According to O.C.G.A. § 9-11-60 (f), in relevant part: "A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time." And O.C.G.A. § 17-9-4 states: "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." Also see O.C.G.A. § 9-12-16. Within Appellant's motion to set aside, he irrefutably proved that the corporate court (i.e. Fulton Superior Court) had no lawful authority or jurisdiction to enforce any corporate statutes against ~~him~~, a human being and nongovernment property. I am not, and have never been, a member of the corporate State of Georgia, thus its statutes do not apply to me.

Upon the filing of said motion, the Respondent in the matter was required to rebut (prove untrue and incorrect) Appellant's prima facie case within 30 days

of receipt. See U.S.C.R. 6.2; U.S. v. Kis, 658 F.2d 526 (7th Cir. 1981). Clearly this failed to happen. As such, the Appellant then filed a Motion for Default Judgment, which was filed in accordance with O.C.G.A. § 9-11-55(a), U.S.C.R. 15, and U.S.C.R. 6.2. This motion was filed on September 28, 2015, although the Fulton Superior Court received it on September 21, 2015. This motion had to be granted and a default judgment ruled in Appellant's favor due to the Appellee's failure to rebut Appellant's prima facie case within the 30 day provision required in civil law. Further, O.C.G.A. § 9-11-55(a) states, in relevant part: "If in any case an answer has not been filed within the time required by this chapter, the case shall AUTOMATICALLY BECOME IN DEFAULT unless the time for filing the answer has been extended by law." [emphasis added] No extension has been made nor is one warranted by law, thus, BY LAW, a default judgment had to be ruled in my favor.

As is reputable, especially in the legal world, the definition of 'default' is the omission or failure to perform a legal or contractual duty. See Black's Law Dictionary. Had the Fulton Superior Court acted in accordance with Georgia law, Appellant would have been relieved of his unconstitutional and unlawful confinement.

In Judge Henry Newkirk's order denying motion to set aside, he never discloses why Appellant's motion was denied, despite the fact the law requires the Respondent

to rebut the prima facie case within 30 days of receipt. Furthermore, Judge Newkirk did not rule on said motion until 72 days after initial filing of the motion to set aside. U.S.C.R. 6.2 requires a rebuttal in 30 days. [The delayed 72-day response in this matter also violates D.C.G.A. § 9-11-55(a). If a judge is not subject to a time limit in ruling in this case, that would mean there's no such thing as a "default judgment" and D.C.G.A. § 9-11-55(a) would be ineffective]. The Respondent in Appellant's motion had a legal duty to substantially prove untrue and incorrect the substantial facts put forth in Appellant's prima facie case. As the 11th Circuit's ruling in such cases shows: "Silence can only be equated with FRAUD where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading.... We cannot condone this shocking conduct.... If that is the case we hope our message is clear. This sort of DECEPTION will not be tolerated and if this is the "routine" it should be corrected IMMEDIATELY." [emphasis added]. U.S. v. Tweel, 550 F.2d 297 (5th Cir. 1977).

Since the Respondent did not, and likely unable to, prove (rebut) said facts in Appellant's prima facie case to be untrue and incorrect, they stand as true and correct. And as this Court has decided: "When sentences are void ab initio, a trial court has BOTH the JURISDICTION AND THE OBLIGATION TO GRANT a defendant's

motion to vacate the sentences." Syms v. State, 244 Ga. App. 21 (534 S.E. 2d 502) (2000). [emphasis mine throughout].

Therefore, for all of the foregoing reasons, Appellant requests that this Court reverse the Superior Court's decision to deny said motion and give instructions for acquittal.

This 19 day of November, 2015.

Reginald Johnson, Without Prejudice UCC1-207