

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

**February 25, 2015**

**To:** Mr. Wayne Kitchens, GDC58683, Wheeler Correctional Facility, Post Office Box 466, Alamo, Georgia 30411

**Docket Number: Style: Wayne Kitchens 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)
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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)
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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:**

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In The Court of Appeals  
State of Georgia

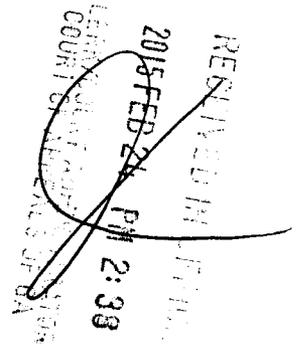
Wayne Lee Kitchens

v.

State of Georgia

Appealing Houston County  
Case No. 2012-C-46436-N

Docket No. \_\_\_\_\_



Application For Discretionary Appeal

Jurisdiction

Jurisdiction of this criminal case on discretionary appeal is vested in the Court of Appeals of Georgia pursuant to O.C.G.A. § 42-12-8, and 5-6-35.

In The Court Below

ON October 30, 2013 Wayne Kitchens filed a Motion To Vacate A void judgement in the Superior Court of Houston County pursuant to O.C.G.A. § 17-9-4, 17-10-1 (f). Crumbley v. State, 261 Ga. 610 (1991), after he discovered errors in his case that he was not made aware of prior to entering a plea of guilty.

These errors consist of the accusations failure to charge the essential elements of the offenses charged. O.C.G.A. § 17-7-54, 17-2-2 (a) (e). Smith v. Hardrick, 266 Ga. 54, 464 S.E.2d. 148 (1995).

ON October 15, 2014 the motion to vacate a void judgement was denied by ORDER of Judge George Nunn and a timely Notice of Appeal was filed with an attached forma pauperis.

In August of 2014 attempts to have a hearing were denied and on October 20, 2014 an out of time appeal was filed with the Superior Court of Houston County to perfect service on his appeal.

ON February 4, 2015, Wayne Kitchen's out of Time Appeal was denied by ORDER of Judge George Nunn.

This Application For Discretionary Appeal is filed on February 17, 2015 seeking review of the following:

### Argument And Citation of Law

The basis of MR. Kitchen's motion to vacate a void judgement was to vacate the convictions and sentence imposed by the Houston County Superior Court for the offense of VGCSA - Poss. with Intent to Distribute and Poss. of Marijuana and consequently receiving a sentence of 15 years to serve.

Kitchen's discovered errors in the charging document that was presented as an Accusation that failed to lay venue in Houston County as no specific address was charged, O.C.G.A. § 17-2-2 (a), Jones v. State, 272 Ga. 900 S.E.2d. 80 (2000), this being an essential element when the arresting officer's testimony stated the crime began in Bibb County and MR. Kitchen's was driving when the arrest

was made. O.C.G.A. § 17-2-2 (E). Stockard v. State, 327 Ga. App. 184 (2014).

At no time in this criminal case was venue set forth in a manner that established subject matter jurisdiction to accept a guilty plea by the trial court. U.S. v. Gayle, 967 F.2d. 483 (11th Cir. 1992).

This fact is further proven when the State provided no proof of a commitment hearing under Article 2 of O.C.G.A. § 17-7-20. Brackins v. State, 249 Ga. App. 788, 789 (2), 549 S.E.2d. 775 (2001).

The essential elements simply were not charged in this crime to constitute a guilty verdict, even if entered in the form of a guilty plea when the true nature of the offenses were not explained to Mr. Kitchens before entering his plea. Taylor v. State, 304 Ga. App. 878 (2012); Hill v. Lockhart, 474 U.S. 52, 56 (88 L.Ed. 2d. 203).

### Relief Requested

Wayne Kitchens respectfully requests the Court to remand this criminal case back to the trial court with directions to vacate all convictions and sentence due to lack of jurisdiction of person and subject matter.

Respectfully submitted this 17<sup>th</sup> day of February, 2015.

Wayne Kitchens, Pro se

CERTIFICATE OF SERVICE

I hereby certify I have sent true copies of Discretionary Appeal to the Georgia Court of Appeals and the Houston Co. District Atty. by U.S. Postal Service, mailed to:

Georgia Court of Appeals  
SUITE 501  
47 TRINITY AVE.  
Atlanta, Georgia 30334

Houston Co. District Atty.  
201 N. PERRY PKWY.  
PERRY, Georgia 31069

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Notary Public Sherry Travis  
02/18/15

