



Court of Appeals of Georgia

September 1, 2015

TO: Mr. James Kurtz, GDC1202269 L-1, Calhoun State Prison, Post Office Box 249,
Morgan, Georgia 39866

RE: **A15A2153. James Kurtz v. The State**
A15A2154. James Kurtz 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 _____.

CASE STATUS - DISPOSED

- The referenced appeals were dismissed on August 3, 2015. The remittitur issued on each appeal on August 18, 2015, divesting this Court of any further jurisdiction of your cases. The cases are therefore, final.**

I have enclosed a copy of the orders in both appeals for your review.

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.

Court of Appeals of the State of Georgia

ATLANTA, August 03, 2015

The Court of Appeals hereby passes the following order:

A15A2153. JAMES KURTZ v. THE STATE.

In 2005, a jury convicted James Kurtz of several sexual offenses. In 2007, we affirmed the trial court's denial of his motion for a new trial. *Kurtz v. State*, 287 Ga. App. 823 (652 SE2d 858) (2007). Kurtz later filed a motion to vacate a void judgment, which the trial court denied. He then filed a notice of appeal to this Court. We lack jurisdiction.

"[A] petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case." *Harper v. State*, 286 Ga. 111 (686 SE2d 786) (2009). Any appeal from an order denying a motion must be dismissed. See *id.* at 218 (2); *Roberts v. State*, 286 Ga. 111 (690 SE2d 150) (2010). A direct appeal may lie from an order denying a motion to vacate or correct a void sentence, but only if the defendant is, in fact, void. See *Harper*, *supra* at 217 (686 SE2d 786) (2009). App. 118, 119 (686 SE2d 786) (2009). When a sentence is void, the range of punishment, it is not void. *Jones v. State*, 278 Ga. 669, 671 (611 SE2d 483) (2004).

Kurtz does not argue that his sentence exceeded the legal limits; rather, he claims that his counsel rendered various instances of ineffective assistance and that several of his convictions and sentences violated his right to be free from double jeopardy. In none of these claims, however, does Kurtz raise a colorable argument that he received a sentence above the statutory maximum. See *id.* Because Kurtz has not raised a valid void-sentence claim, this appeal is hereby DISMISSED for lack of jurisdiction.

Dismissed
8.3.15



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 08/03/2015

*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. Carlton, Clerk.

IN THE COURT OF APPEALS OF GEORGIA

JAMES KURTZ)
v) APPEAL CASE NO. A15A2154
THE STATE)

APPELLANT'S MOTION FOR EXTENSION OF TIME

APPELLANT, PRO SE, FILES THIS MOTION FOR EXTENSION OF TIME HAVING RECEIVED TWO NOTICES OF DOCKETING (A15A2153 AND A15A2154). THE COURT REQUIRES APPELLANT'S BRIEF(S) TO BE FILED WITHIN 20 DAYS OF DATE ON THE DOCKET NOTICES (7/16/15). AN EXTENSION OF TIME IS REQUESTED SINCE

1. APPELLANT IS INCARCERATED -
2. APPELLANT IS INDIGENT AND FILING PRO-SE -
3. APPELLANT, HAVING RECEIVED SAID NOTICES ON 7/22/15 DOES NOT HAVE ADEQUATE TIME REMAINING BEFORE THE 20 DAY DEADLINE TO DO THE NECESSARY LEGAL WORK TO COMPLETE SAID BRIEF -
4. APPELLANT HAS LIMITED ACCESS TO THE LAW LIBRARY BEING ALLOTTED ONLY TWO HOURS PER WEEK IN ORDER TO DO THE RESEARCH AND WRITING -

WHEREFORE, FOR THE ABOVE REASONS, APPELLANT REQUESTS THAT HE BE GIVEN A SIXTY (60) DAY EXTENSION OF TIME.

DATED: 7/22/15

James Kurtz
(PRO-SE) JAMES KURTZ 1202269 L-1

CALHOUN STATE PRISON
P O BOX 249
MORGAN, GA 39866

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE WITHIN AND FOREGOING DOCUMENT(S) UPON THE PARTIES LISTED BELOW BY DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL IN A PROPERLY ADDRESSED ENVELOPE WITH ADEQUATE POSTAGE AFFIXED TO ENSURE THAT IT REACHES ITS DESTINATION.

COURT OF APPEALS OF GEORGIA
SUITE 501
47 TRINITY AVE
ATLANTA, GA 30334

DISTRICT ATTORNEY - WARE CO.
G.E. BARNHILL
306 ALBANY AVE
WAYCROSS, GA 31501

RESPECTFULLY SUBMITTED,
JAMES KURTZ

THIS 22ND DAY OF JULY, 2015

James Kurtz
GDC# 1202269 L-1
CALHOUN STATE PRISON
PO Box 249
MORGAN, GA 39866

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

August 18, 2015

To: Mr. James Kurtz, GDC1202269 L-1, Calhoun State Prison, Post Office Box 249, Morgan, Georgia 39866

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: A15A2154

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

- There is no case pending in the Court of Appeals of Georgia under your name.
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37. Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service. A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained. An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate. An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on _____. The Court of Appeals _____ . The remittitur issued on _____ divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the _____ is: _____
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court. As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing. If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.
- Thank you for returning the Certificate of Service and postage paid stamped envelope. You did not return the Motion for Extension of Time. Please add your filing, the Certificate of Service and postage paid stamped envelope together and return to this office.

1. MOTION FOR EXT OF TIME A15A2153 } (ENCLOSED)
 2. CERT. OF SERVICE (ENCLOSED A15A2154 }

IN THE COURT OF APPEALS OF GEORGIA

JAMES KURTZ

v
THE STATE

)
)
)

APPEAL CASE NO: A15A2153

FILED IN OFFICE

AUG 26 2015

COURT CLERK
CLERK COURT OF APPEALS OF GA

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DATED: 7/22/15

James Kurtz
(PRO SE) JAMES KURTZ 1202269 L-1
CALHOUN STATE PRISON
PO BOX 249
MORGAN GA 39866

RECEIVED IN OFFICE

2015 AUG 28 PM 3:36

COURT OF APPEALS OF GA