

COURT OF APPEALS OF GEORGIA
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Docket Number: A15A0312

Style: KEVIN MARIO LEE v. THE STATE

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COURT OF APPEALS OF GEORGIA

KEVIN MARIO LEE
APPELLANT
VS.
STATE OF GEORGIA
APPELEE

INDICTMENT NO: 07SC58528
A15A 0312

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AMENDED BRIEF ON BEHALF OF APPELLANT

I. STATEMENT OF THE CASE & STATEMENT OF FACTS.

STATEMENT OF THE CASE: THIS IS A DIRECT APPEAL FROM A FINAL ORDER OF THE FULTON COUNTY SUPERIOR COURT DENYING APPELLANT KEVIN MARIO LEE'S MOTION FOR NEW TRIAL IN AN ALLEGED ARMED ROBBERY CASE THAT AROSE FROM A SUSPECTED BURGLAR CALL AT THE RESIDENCE OF RICHARD MCDANIEL AND CHRISTOPHER MCCLAIN AT 948 OAK STREET IN ATLANTA, GA. JUNE 13 2007.

APPELLANT WAS INDICTED FOR 2CTS OF ARMED ROBBERY, AGGRAVATED ASSAULT TO ROB, 2CTS POSSESSION OF FIRE ARM. APPELLANT WAS INDICTED ALONG WITH CO-DEFENDANT LARRY JAMES BROWN WHO WAS ALSO IN FACT CHARGED WITH SAME OFFENSES. PLED TO A LESSER SENTENCE IN AGREEMENT TO EMPLOY APPELLANT AFTER A TWO DAY TRIAL IN MAY 2010. THE JURY IN THE FULTON COUNTY SUPERIOR COURT SENTENCED APPELLANT TO LIFE W/O PAROLE. CO-DEFENDANT RECEIVED A SPLIT SENTENCE OF 10 YRS TO SERVE 7 YRS. IN EXCHANGE FOR TESTIMONY AGAINST APPELLANT OF ALLEGED CHARGES. APPELLANT TIMELY MOVED FOR A NEW TRIAL FOLLOWING SENTENCE AND CONVICTION.

STATEMENT OF FACTS: ON JULY 13, 2007 APPELLANT HAD BEEN TRAVELING BY BUS JOB SEEKING WITH FRIENDS AT THE PRESENT TIME, AND DECIDED TO EXIT THE WESTEND TRAIN STATION IN SEARCH OF A PLACE TO EAT. WALKING DOWN RALPH DAVID ABERNATHY, APPELLANT AND FRIEND DECIDED TO STOP AT IDENDY'S AND EAT. WHEN TWO ATLANTA POLICE ON BLACK AND ONE WHITE APPROACHED APPELLANT WITH GUNS DRAWN AND ROUGHLY TOOK APPELLANT TO THE GROUND AND BELEAGUED APPELLANT INJURING RIGHT HAND AFTER APPELLANT USE IT TO PROTECT HIS FACE FROM HITTING THE PAVEMENT. ONCE APPELLANT WAS CUFFED AND PLACED IN PATROL CAR APPELLANT WAS THEN DRIVEN TO A LOCATION WHERE TWO MORE ATLANTA POLICE WERE STANDING WITH TWO BLACK MALES OUTSIDE OF A HOME.

APPELLANT CLAIMS AT THE TIME OF HIS ARREST, THE MIRANDA RIGHTS WERE NEVER READ. THE TWO ISHAKMALES WERE PLACED INSIDE THE PATROL CAR DRIVEN BY THE TWO WHITE OFFICERS THAT WERE WITH THEM OUTSIDE OF THE RESIDENCE. BOTH PATROL CARS WERE THEN DRIVEN TO A SIDE STREET WHERE AN AMBULANCE WAS PARKED. THE TWO MALES WERE TAKEN OUT OF THE PATROL CAR AND WALKED TO THE BACK OF THE AMBULANCE AND AFTERWARDS WERE DRIVEN OFF. APPELLANT WAS THEN TAKEN OUT OF THE PATROL CAR OCCUPIED BY THE BLACK AND WHITE OFFICER AND WAS GIVEN OVER TO OFFICER JOHNSON AND CRUMP. APPELLANT WAS THEN FRISKED AND HIS PROPERTY WAS AT THAT TIME CONFISCATED. ITEMS TAKEN WERE, SOCIAL SEC CARD, BIRTH CERTIFICATE, NOKIA CELLPHONE, KEYS, WALLET, DRIVERS LICENSE # 814 IN CASH. WAS ALL TAKEN TO CITY HALL AS LAND APPELLANT WAS TAKEN TO FULTON COUNTY JAIL.

APPELLANT WAS HELD AT THE FULTON COUNTY JAIL FROM JULY 13 2007 TO JANUARY 2ND 2008. BEFORE HAVING ANY COMMUNICATION WITH COUNSEL CONCERNING THE ALLEGED CHARGES. ATTORNEY ASHLEIGH B. MERCHANT PRESSENT APPELLANT STATED HE WAS IN ATLANTA WITH LARRY JAMES BROWN. BUT HE WAS SOME YEARS OLDER THAN APPELLANT AND WAS A KNOWN CRACK USER APPELLANT WAS MORE FAMILIAR WITH BROWN'S YOUNGER BROTHER BUT ONLY THROUGH SCHOOL AND RECREATION SPORTS.

ATTORNEY ASHLEIGH B. MERCHANT THEN ASKED APPELLANT DID HE THINK LARRY BROWN WOULD TURN STATES WITH APPELLANT STATED HE HAD NO IDEA AND FOR WHAT REASON. APPELLANT HAD NO IDEA OF BEING IMPLICATED ON THE ALLEGED CHARGES LARRY BROWN COMMITTED. FEBRUARY 2008 APPELLANT RECEIVED A NOTICE THE ATTORNEY ASHLEIGH B. MERCHANT ALONE WITH A NOTICE FROM ANOTHER ATTORNEY RACHEL SAMUDA. ATTORNEY ASHLEIGH B. MERCHANT STATED SHE NO LONGER HAD ANY CASE, THAT WAS RACHEL SAMUDA HAD TAKEN IT. MS. SAMUDA'S NOTICE STATED SHE WOULD SUPPENA THE 911 CALL AND BOLD, AND FILE MOTION FOR WITNESS IDENTIFICATION.

MARCH 10 2008, WITNESS IDENTIFICATION HEARING WAS CONDUCTED AND DURINE HEARING MS. SAMUDA STATED TO OFFICER T. E. JOHNSON THAT HE WASNT SUPPOSE TO HAVE BEEN PRESENT BECAUSE HE WASNT THE ARRESTING OFFICER. AND SHE STATED TO THE VICTIM RICHARD MCDANIEL THAT THE STATEMENT HE GAVE WAS OF SOME ONE IN ALL BLACK WHOM HE NEVER SAID BEFORE, AND HE FAILED TO GIVE ANY DETAILED DESCRIPTION. MS. SAMUDA PREVIOUSLY STATED TO APPELLANT THAT HE SHOULD MOST LIKELY BE PREJUDICED IN THIS CASE BECAUSE OF MY RECORD AS OPPOSED TO CO-DEFENDANT.

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STATEMENT OF FACTS; CONTINUED

MARCH 17, 2008 AT FULTON COUNTY SUPERIOR COURTHOUSE APPELLANT WAS APPROACHED BY ATTORNEY KEVIN SCHUMAKER WITH TWO INDICTMENTS, WHO WAS RECOGNIZED AS CO-DEFENDANT LARRY JAMES BROWN ATTORNEY. MR SCHUMAKER WAS REQUESTING APPELLANT PLEA TO BOTH PENDING INDICTMENTS. ONE INDICTMENT CONSISTED OF THE JANUARY 19, 2007 CASE WHICH WAS DEAD DOCKET MAY 2007.

APRIL 28, 2008; APPELLANT FILED BAR COMPLAINT OF CONFLICT OF INTEREST ON THE ATTORNEY KEVIN SCHUMAKER WHERE HE WAS REPRESENTING CO-DEFENDANT WITH OPPOSING INTEREST IN CASE, LARRY JAMES BROWN ON SUBSEQUENT INDICTMENT 07SC58528 AND ATTORNEY SCHUMAKER WAS ALSO IN REPRESENTATION OF MARCO THOMAS ON INDICTMENT 07SC55564, BUT ACTUALLY REPRESENT APPELLANT IN SPITE OF STATE BAR COMPLAINT WHICH WAS PENDING WHILE TRIAL ENSUED.

II. JURISDICTION AND ENUMERATION OF ERRORS.

A. JURISDICTION: THIS COURT HAS JURISDICTION OVER THIS MATTER UNDER ARTICLE VI SECTION VI AND APPEALS OF SUCH CASES, PRE-RESERVED TO THE SUPREME COURT OF GEORGIA UNDER THE CONSTITUTION OF THE STATE OF GEORGIA.

B. ENUMERATION OF ERRORS

1. THE APPELLANT WAS DENIED A FUNDAMENTALLY FAIR TRIAL WHEN HE WAS DENIED THE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT WHERE APPELLANT WAS DENIED HIS RIGHT TO A PRELIMINARY HEARING, APPELLANT RECEIVED VIA MAZL AT THE FULTON COUNTY JAIL JULY 2007, A NOTICE STATING THE PRELIMINARY HEARING ENTITLED TO HIM WAS WAIVED, WITHOUT COUNSEL, OR EVEN KNOWING COUNSEL WAS APPOINTED TO HIM.

2. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE AT NO TIME AFTER MARCH 10, 2008 APPELLANT CONSULTED WITH COUNSEL DUE TO CONSTANT CHANGING OF COUNSEL AND NO CONTACT.

3. APPELLANT FILED STATE BAR COMPLAINT OF CONFLICT OF INTEREST ON CO-DEFENDANT LARRY JAMES BROWN'S ATTORNEY KEVIN SCHUMAKER WHO ACTUALLY REPRESENTED APPELLANT IN PRIOR TRIAL WHERE APPELLANT WAS CONVICTED BY JURY AND SENTENCED TO 11 YRS WHILE COMPLAINT WAS ON SEPERATE INDICTMENT 07SC55564 JUNE 2008.

4. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL REID THOMPSON FAILED TO INTERVIEW WITNESS IN BEHALF OF APPELLANTS DEFENSE, ATTORNEY FAILED TO ASK WHETHER OR NOT APPELLANT HAD ANY REBUTILE TO ALLEGED OFFENSE. TRIAL ATTORNEY REID THOMPSON STATED THAT CO-DEFENDANT LARRY JAMES BROWN STATED TO HIM THE ROBBERY WAS SET UP BY HIS COUSIN WHICH WAS CHRISTOPHER MCCLAIN'S EX-GIRLFRIEND AND THAT HE WOULD TELL THE TRUTH, THAT APPELLANT HAD NOTHING TO DO WITH THE ROBBERY BUT ATTORNEY FAILED TO CROSS EXAMINE BROWN FOR PERJURED TESTIMONY.

5. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL ON MOTION FOR NEW TRIAL ON INDICTMENT 07SC58528, WHERE ATTORNEY JENNIFER TRIESHIMANN STATED PRIOR TO TRIAL THAT IF ALL ELSE FAIL I COULD FILE INEFFECTIVE COMPLAINT TO PRESERVE ARGUMENT, AFTER SHE DISMISSED CLAIM OF INEFFECTIVE COUNSEL ON REID THOMPSON DURING MOTION FOR NEW TRIAL WHERE IT WAS DENIED.

III. ARGUMENTS AND CITATIONS OF AUTHORITY.

1. APPELLANT WAS DENIED A FUNDAMENTALLY FAIR TRIAL WHEN HE WAS DENIED THE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT WHERE HIS PRELIMINARY HEARING WAS WAIVED VIA MAZL AT THE FULTON COUNTY JAIL, JULY 2007. UNITED STATES V. ~~WADDE~~ 413 U.S. 300, 310, 93, S. CT. 2568. 37. L. ED 2d 619 (1973) COUNSEL MUST BE PRESENT DURING ANY CRITICAL STAGE ABSENT AN INTELLIGENT WAIVER BY DEFENDANT. CHARNLEY V. COCHRAN 396 U.S. 506, 82 S. CT. 884, 8 L. ED. 2D 70 (1970) UNITED STATES V. WADDE 388 U.S. 218, 224, 87 S. CT. (1926). 18 L. ED. 2D 1149 (1967).

2. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE AT NO TIME AFTER MARCH 10 2008, DID APPELLANT RECEIVE AFFECTIVE ASSISTANCE OF COUNSEL DUE TO CONSTANT CHANGING OF ATTORNEYS ACCEPT AT COURT APPEARANCES WHERE APPELLANT WAS CONSTANTLY APPROACHED BY CO-DEFENDANTS ATTORNEY REQUESTING APPELLANTS PLEA AGREEMENT. UNITED STATES V. CRONIC 466 U.S. 648, 653, 104 S. CT 2039 80 L. ED 2D 657 (1984) CRIMINAL DEFENSE LAWYER'S PRESENCE IS ESSENTIAL BECAUSE THEY ARE THE MEANS THROUGH WHICH THE OTHER RIGHTS OF THE PERSON ON TRIAL ARE SECURED. ID OF ALL THE RIGHTS THAT AN ACCUSED PERSON HAS THE RIGHT TO BE REPRESENTED BY COUNSEL BY FAR THE MOST PERVASIVE FOR IT AFFECTS HIS ABILITY TO ASSERT ANY OTHER RIGHTS HE MAY HAVE. CHAPMAN V. CALIFORNIA 386 U.S. 18 23.

III. ARGUMENTS AND CITATIONS OF AUTHORITY

3. APPELLANT FILED STATE BAR COMPLAINT OF CONFLICT OF INTEREST ON ATTORNEY KEVIN SCHUMAKER, WHO WAS APPOINTED BY, ACCORDING TO RECORDS (CRIMINAL DOCKET REPORT) TO REPRESENT LARRY JAMES BROWN ON INDICTMENT ON 07SC58528 PRIOR TO TRIAL. APPELLANT CLAIMS THAT ATTORNEY APPROACHED HIM ON SEVERAL OCCASIONS AS ACTUAL ATTORNEY IN ATTEMPTS TO PERSUADE APPELLANT TO PLEA TO INDICTMENT. ATTORNEY ALSO REPRESENTED APPELLANT ON PREVIOUS TRIAL INDICTMENT 07SC58564 WHERE APPELLANT WAS FOUND GUILTY AND SENTENCED TO 11 YRS WHILE COMPLAINT WAS PENDING. A SIXTH AMENDMENT RIGHT TO COUNSEL INCLUDES THE RIGHT TO BE REPRESENTED BY AN ATTORNEY WITH UNDIVIDED LOYALTY. WOOD V. GEORGIA 450 U.S. 261, 271, 101, S. CT. 1097 67 L. Ed 2d 220 (1981) THIS GUARANTEE IS SO IMPORTANT THAT UNLIKE WITH OTHER SIXTH AMENDMENT CLAIMS WHEN A DEFENDANT ALLEGES AN UNCONSTITUTIONAL ACTUAL CONFLICT OF INTEREST PREJUDICE MUST BE PRESUMED. DELGADO V. LEWIS 233 F 3d 976, 981 (9TH CIR 2000) CUYLER V. SULLIVAN 446 U.S. 335, 350, 100 S. CT 1708, 64 L. Ed 2d 333 (1980) FITZGIBBON V. UNITED STATES 465, U.S. 259, 268, 104, S. CT. 1051, 79, L. Ed 2d 288 (1984) HARMLESS ERROR DOESN'T APPLY.

4. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL ATTORNEY REID THOMPSON 1. FAILED TO INTERVIEW MY WITNESS ON BEHALF OF APPELLANT. 2. ATTORNEY FAILED TO ASK APPELLANT'S VERSION OF ALLEGED OFFENSES AGAINST HIM. 3. ATTORNEY FAILED TO OBJECT TO CO-DEFENDANT'S PERJURED TESTIMONY AT TRIAL. AFTER ATTORNEY STATED TO APPELLANT CO-DEFENDANT TOLD HIM THAT HIS COUSIN STAGED THE ROBBERY OF CHRISTOPHER MCCLAIN WHICH WAS HER EX-BOYFRIEND, AND THAT HE WOULD TELL THE TRUTH THAT APPELLANT HAD NOTHING TO DO WITH ROBBERY. STATE BAR OF GEORGIA PART IV DISCIPLINE STANDARDS OF CONDUCT RULE 4-102(d) (STANDARD 44) A LAWYER SHALL NOT WITHOUT JUST CAUSE TO THE DETRIMENT OF HIS CLIENT IN EFFECT WILLFULLY ABANDON OR WILLFULLY DISREGARD A LEGAL MATTER ENTRUSTED TO HIM. A VIOLATION OF THIS STANDARD MAY BE PUNISHED BY DISBARMENT.

"THE LAW QUOTA; IF AN ATTORNEY HAD KNOWLEDGE THAT UNJUST HAD BEEN DONE AND IF HE DOESN'T CLARIFY THE ERRORS HE IS INEFFECTIVE COUNSEL."

5. APPELLANT WAS PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL ON MOTION FOR NEW TRIAL ON INDICTMENT 07SC58528 WHERE ATTORNEY JENNIFER TRIESHAMMI DISMISSED CLAIM OF INEFFECTIVE COUNSEL ON REID THOMPSON APPELLANT'S TRIAL COUNSEL ON INDICTMENT 07SC58528. APPELLANT CLAIMS "ATTORNEY REFUSED TO FILE CLAIM OF INEFFECTIVE COUNSEL ON FELLOW ATTORNEY" NEGLECTING THE RIGHTS OF APPELLANT ON MOTION FOR NEW TRIAL. A DIVIDED-PANEL OF THE COURT OF APPEALS REVERSED, 665, F. 2d 427 (CA2 1981). LAYNE IS A NEW STANDARD, THE MAJORITY HELD THAT WHEN AN APPELLANT REQUESTS THAT (HIS ATTORNEY) RAISE ADDITIONAL COLORABLE POINTS ON (APPEAL) COUNSEL MUST ARGUE THE ADDITIONAL POINTS TO THE FULL EXTENT OF HIS PROFESSIONAL ABILITY. ANDERS. V CALIFORNIA 386, U.S. 738, 87 S. CT. 1396, 18 L. Ed. 2d 493 (1967) IN ANDERS. THIS COURT HELD THAT AN APPOINTED ATTORNEY MUST ADVOCATE HIS CLIENTS CAUSE VIGOROUSLY AND MAY NOT WITHDRAW FROM A NON FRIVOLOUS APPEAL. IT ALSO BARS COUNSEL FROM ABANDONING A NON FRIVOLOUS ISSUE ON APPEAL. SEE 103, S. CT. 3308, 463 U.S. 745, JONES V. BIRNES (U.S.N. 4. 1983).

IV CONCLUSION: APPELLANT WAS DENIED HIS BASIC AND ESSENTIAL RIGHT TO A FAIR TRIAL ENTITLED TO HIM BY THE SIXTH AMENDMENT AND THE CONSTITUTION. ACCORDING TO FACTUAL STATEMENTS THAT SUBSTANTIATES THIS DOCUMENT THAT APPELLANT WAS PREJUDICED TO THE DEGREE THAT EXCEEDS HARMFUL ERROR, AND DELIBERATE INDIFFERENCE AS WELL. WHERE THE ISSUES OF INEFFECTIVE ASSISTANCE AND CONFLICT OF INTEREST WAS PROFOUNDLY EVIDENT THROUGHOUT THE ENTIRE EXISTENCE OF THIS CASE, THE CONSTANT CHANGING OF COUNSEL AND THE PERSISTENCE OF CO-DEFENDANT'S COUNSEL TO PERSUADE APPELLANT TO PLEA BARGAIN TO CHARGES WHERE CO-DEFENDANT WAS OBVIOUSLY MORE CULPABLE THAN APPELLANT WAS IN VIOLATION OF THE PROFESSIONALISM AND ETHICS OF THE STATE BAR OF GEORGIA AND THE COURT OF LAW AS WELL. APPELLANT EXERCISED HIS RIGHT AS A CITIZEN AND THUS EXERCISED THOSE TO THE BEST OF HIS ABILITY, TO NO AVAIL, BE SUBJECTED TO UNJUST AND CRUEL VINDICTIVE PROSECUTION.

WHEREFORE; MR LEE PRAYS THIS COURT VACATE HIS CONVICTIONS AND GRANT HIM A NEW TRIAL BASED ON THE ABOVE ALLEGMENTS.

RESPECTFULLY SUBMITTED THIS _____ DAY OF NOV 2013.

KEVIN MAZIO LEE
Kevin Mazio Lee
GDS# 692007
PRO SE DEFENDANT
MACON STATE PRISON
P.O. BOX 426
OGLETHORPE, GA 31068

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THE WITHIN AND FORGOING APPELLANTS BRIEF AND ENUMERATION OF ERRORS BY DEPOSITING SAID COPY IN THE U.S. MAIL IN A PROPERLY ADDRESSED ENVELOPE WITH ADEQUATE POSTAGE ADDRESSED TO;

MR PAUL HOWARD DA
C/O LENNY KIZICK A DA
OFFICE OF THE DISTRICT ATTORNEY
136 PRYOR ST SW RM # 300
ATLANTA, GA 30303

Bennie R. Solomon
11/14/13

NOTARY

Bennie R. Solomon
Notary Public
Peach County, State of Georgia
Comm. Expires 07-14-2014
Bennie R. Solomon
Notary Public
Peach County, State of Georgia
Comm. Expires 07-14-2014

COURT OF APPEALS OF GEORGIA

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INDICTMENT NO: 17SC59529

KEVIN MARIO LEE
APPELLANT
VS
STATE OF GEORGIA

ENUMERATION OF ERRORS

I. STATEMENT OF THE CASE: STATEMENT OF FACTS:

STATEMENT OF THE CASE: THIS IS A DIRECT APPEAL FROM A FINAL ORDER OF THE FULTON COUNTY SUPERIOR COURT DENYING APPELLANT KEVIN MARIO LEE'S MOTIONS FOR NEW TRIAL IN AN ALLEGEDLY ARMED ROBBERY CASE THAT AROSE FROM A SUSPECTED BURGLARY CALL AT THE RESIDENCE OF RICHARD MC DANIEL AND CHRISTOPHER MC CLAIN AT 968 OAK STREET IN ATLANTA, GA JULY 13 2007

II. JURISDICTION AND ENUMERATION OF ERRORS

A. JURISDICTION: THIS COURT HAS JURISDICTION OVER THIS MATTER UNDER ARTICLE VI SECTION VI AND APPEALS OF SUCH CASES ARE RESERVED TO THE SUPREME COURT OF GEORGIA UNDER THE CONSTITUTION OF THE STATE OF GEORGIA.

B. ENUMERATION OF ERRORS

1. PETITIONER ALLEGES THAT INDICTMENT WAS FATALLY DEFECTIVE IN FAILING TO ALLEGE SPECIFICALLY THE FELONY HE "WITHOUT AUTHORITY" AND WITH INTENT TO COMMIT A FELONY THEREIN ENTERED THE DWELLING HOUSE... TO COMMIT. STATE V. LOCKHART. 24 GA. 420 (1858) AND EATY V. STATE. 136 GA APP. 297 (221 S.E. 2d 501 (1975)).

2. PETITIONER CONTENTS THE ESSENTIAL ELEMENTS OF ARMED ROBBERY ARE "WHEN, WITH INTENT TO COMMIT THEFT, HE TAKES THE PROPERTY OF ANOTHER FROM THE PERSON OR IN IMMEDIATE PRESENCE OF ANOTHER BY USE OF OFFENSIVE WEAPON."

3. PETITIONER CONTENTS THAT SINCE NO VALUE WAS ATTRIBUTED TO THE CELL PHONES THAT WAS SUPPOSEDLY TAKEN, WHICH NONE WAS SUBMITTED AS EVIDENCE TO SUBSTANTIATE AND VALIDATE INDICTMENT MADE INDICTMENT VALUE AND AMPLE. MCKISIC V. STATE. 238 GA. 644; 234 S 2d 908 (1977).

4. PETITIONER CONTENTS THE INDICTMENT SHOULD CONTAIN SUFFICIENT DETAILS TO ENABLE THE DEFENDANT TO PREPARE HIS DEFENSE OR TO SUBMIT TO THE COURT THE QUESTION OF WHETHER HE SHOULD BE REQUIRED TO ANSWER THE CHARGE AND TO DESCRIBE THE OFFENSE SO PLAINLY THE NATURE OF THE OFFENSE CHARGED MAY BE EASILY UNDERSTOOD BY THE JURY.

5. PETITIONER CONTENTS THE CRIME CHARGED WAS ARMED ROBBERY AND THE FAILURE TO ATTRIBUTE ANY VALUE TO THE PHONES LEAVES THE INDICTMENT VALUE.

6. PETITIONER CONTENTS THAT THE COURT BASED THEIR CONVICTION ON THE TESTIMONY OF CO-DEFENDANT WHO WAS MORE CULPABLE AND PROVIDED PERJURED TESTIMONY.

7. PETITIONER ALLEGES THE COURT ERRED FOR OVERLOOKING MATTER OF INEFFECTIVE ASSISTANCE OF COUNSEL AND CONFLICT OF INTEREST COMPLAINT. WHERE PETITIONER ALLEGES THAT BAR COMPLAINT ON ATTORNEY KEVIN SCHUMAKER LAWYER TROWN A THORNEY.

8. PETITIONER CONTENTS THE DESCRIPTION GIVEN BY VICTIMS WAS NOT ACCURATE BY NO MEANS ACCORDING TO STATEMENTS MADE IN DISCOVERY. THE ONLY DESCRIPTION GIVEN WAS OF SOMEONE DRESSED IN ALL BLACK LEHOM THEY NEEDED CALIBRE. BUT COURT SHOW UP DUE PROCESS VIOLATION WHERE COUNSEL IS ASSISTANT. UNITED STATES V. WARD. 388 US. 218. 87 S. CT 1926. 18 L. ED 2D 1149 AND GILBERT V. STATE OF CALIFORNIA 388 US. 263. 87 S. CT. 1951 18 L. ED 2D 1178

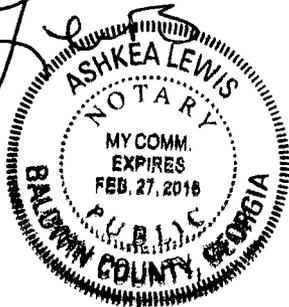
CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE THIS DATE SERVED A COPY OF THE WRIT AND FORDONS BY PLACING A COPY OF THE SAME IN THE UNITED STATES MAIL PROPERLY ADDRESSED AND WITH ADEQUATE POSTAGE AFFIXED THEREON.

RESPECTFULLY SUBMITTED
Kevin Mario Lee
KEVIN MARIO LEE
GDC# 692007
HANCOCK STATE PRISON
P.O. BOX 339
SPARTA, GA 31087

Signed before me this 8th of July 2014

Ashkea Lewis
NOTARY



AUTOGRAPH SEE: Kevin Mario Lee
ALL RIGHTS RESERVED WITHOUT
PREJUDICE UCC-1-207

COURT OF APPEALS OF GEORGIA

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KEVIN MARZIO LEE
APPELLANT
v.
STATE OF GEORGIA
APPELEE

INDITMENT NO: 07SL58528

AMENDED SUPPLEMENT OF APPELLANT'S ENUMERATION OF ERRORS

I. STATEMENT OF THE CASE & STATEMENT OF FACTS

STATEMENT OF THE CASE: THIS IS DIRECT APPEAL FROM A FINAL ORDER OF THE FULTON COUNTY SUPERIOR COURT DENYING APPELLANT KEVIN MARZIO LEE'S MOTION FOR NEW TRIAL IN AN ALLEGED ARMS AND DANGEROUS WEAPONS ROBBERY CASE THAT AROSE FROM A SUSPECTED BURGLARY AT THE RESIDENCE OF RICHARD MC DANIEL AND CHRISTOPHER MC LAIN AT 918 OAK STREET IN ATLANTA, GA JULY 13 2007.

II. JURISDICTION AND ENUMERATION OF ERRORS.

A. JURISDICTION: THIS COURT HAS JURISDICTION OVER THIS MATTER UNDER ARTICLE VII, SECTION III AND APPEALS OF SUCH CASES PRE-RESERVED TO THE SUPREME COURT OF GEORGIA.

B. ENUMERATION OF ERRORS.

1. INEFFECTIVE ASSISTANCE OF COUNSEL. IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CORRELATIVE PROVISIONS OF GEORGIA'S CONSTITUTION OF 1985.

FACT: COUNSEL FOR APPELLANT FAILED TO MAKE PROPER OBJECTION OF PRIOR CONVICTIONS PRESENTED AS A FACTOR IN AGGRAVATION OF SENTENCE WHEN THE STATUTORY REQUIREMENT OF "CLEAR NOTICE" TO THE ACCUSED WAS NOT GIVEN PURSUANT TO GEORGIA LAW O.C.G.A. § 17-10-2 (G.C.A. § 27-2503) SEE 17-10-4 (a)(5).

2. APPELLANT CLAIMS A VIOLATION OF STATE STATUTORY CREATED RIGHTS AS WELL AS; VIOLATION OF DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND CORRELATIVE PROVISIONS OF GEORGIA CONSTITUTION OF 1985.

FACT: TRIAL COURT FAILED TO CONDUCT PRE-SENTENCE HEARING AS MANDATED BY GEORGIA STATUTORY LAW. APPELLANT'S CONVICTIONS WAS BASED ON AN IMPROPERLY ENHANCED SENTENCE WITHOUT PROPER NOTICE UNDER O.C.G.A. § 17-10-4 (a)(5) ALSO THE PRIOR CONVICTIONS USED DOES NOT CONSTITUTE THE SERIOUS VIOLENT FELONY OFFENSES PURSUANT TO O.C.G.A. § 17-10-6.1 G.C.A. § 27-2511.2) (O.C.G.A. 17-10-7(b).

II. ENUMERATION OF ERRORS

3. APPELLANT CLAIMS VIOLATION OF DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND CORRELATIVE PROVISIONS OF GEORGIA'S CONSTITUTION OF 1983.

FACT: STATE FAILED TO PRESENT "SERIOUS VIOLENT FELONY CONVICTIONS" OF APPELLANT PAST RECORD TO AUTHORIZE THE IMPOSITION OF THE SENTENCE OF LIFE WITHOUT PAROLE UPON THE APPELLANT IN VIOLATION OF GEORGIA'S RECIDIVISM STATUTORY LAW, O.C.G.A § 17-10-6.1, O.C.G.A § 17-10-7(b)(1) REQUIRES IMPRISONMENT FOR LIFE WITHOUT PAROLE FOR THE CONVICTION OF TWO SERIOUS VIOLENT FELONIES, PURSUANT TO O.C.G.A § 17-10-7(b)(1) G.C.A § 27-2511.

4. APPELLANT CLAIMS CRUEL AND UNUSUAL PUNISHMENT WHICH IS A VIOLATION OF THE 8TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CORRELATIVE PROVISIONS OF GEORGIA'S CONSTITUTION OF 1983

FACT: THE TRIAL COURT IMPOSED AN ILLEGALLY ENHANCED SENTENCE UPON THE APPELLANT UNAUTHORIZED BY GEORGIA'S LAW TO LIFE WITHOUT PAROLE WHICH WAS GREATER THAN THAT PRESCRIBED BY GEORGIA'S LAW FOR THE OFFENSES OF WHICH HE WAS CONVICTED, AND EVIDENCE WHICH WAS PRESENTED, WHICH WAS NONE.

5. APPELLANT CLAIMS TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT DUE TO HIS FAILURE TO OBJECT TO THE STATES USE OF APPELLANT'S PRIOR CONVICTION AT THE SENTENCING STAGE AS AN AGGRAVATING FACTOR WHEN PRIOR CONVICTIONS DONT CONSTITUTE "SERIOUS VIOLENT FELONY." TRIAL COUNSEL'S PERFORMANCE PREJUDICED APPELLANT ENTITLING HIM TO RELIEF. (WEST V WATERS, 272 GA, 591, 533 S.E. 2d 88 (2000 GA LEXIS 545, 2000. FULTON COUNTY D, REP 2583, SODAO059 JULY 10 2000 DECIDED.)

WHEREFORE, THE APPELLANT PRAYS THAT THESE GROUNDS BE CONSIDERED OF BY THE COURT FOR NEW TRIAL, AND THAT A NEW TRIAL BE GRANTED.

RESPECTFULLY SUBMITTED THIS _____ DAY OF NOV 2013

Bennie R. Solomon
11/20/13

NOTARY

Bennie R. Solomon
Notary Public
Peach County, State of Georgia
Comm. Expires 07-14-2014

Kevin Mario Lee
KEVIN MARIO LEE
GDC# 692007
MACON STATE PRISON
P.O. BOX 426
OGLETHORPE, GA 31068

AUTOGRAPH: Kevin Mario Lee
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CERTIFICATE OF DEKULLS

I DO HEREBY CERTIFY THAT I HAVE THIS DATE SERVED A TRUE COPY OF THE
WRITEN AND FORGONE BY PLACE A COPY OF THE SAME IN THE UNITED STATES MAIL AFFIXED
AND PROPERLY ADDRESSED THEREON.

RESPECTFULLY SUBMITTED

Kevin Marino Lee
KEVIN MARINO LEE
GDC # 602007
HANCOCK STATE PRISON
P.O. BOX 339
SPARTAN, GA 31087

Signed before me this 8th of July 2014
Ashkea Lewis,
NOTARY



AUTOGRAPH SIGNATURE Kevin Marino Lee
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