

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

July 10, 2015

To: Mr. James Edward Lott, Jr., GDC429792 14-A-2, Augusta State Medical Prison, 3001 Gordon Highway,
Grovetown, Georgia 31803

Docket Number: **Style:**

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
7. **You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service. Rule 6**
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)
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.
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: Your correspondence was addressed to Clerk Martin. Mr. William L. Martin, III, Clerk/Court Administrator retired in 2010. The new Clerk/Court Administrator of the Court of Appeals of Georgia is Stephen E. Castlen.**

For Additional information, please go to the Court's website at: www.gaappeals.us

JAMES E. LOTT JR
GDC#429792
ASMP 14A2
3001 Gordon Hwy.
GROVETOWN, GA. 31803

TO CLERK OF COURT OF APPEAL
47 TRINITY AVE SW
SUITE 501
ATLANTA, GA 30334

Re: NOTICE OF APPEAL

DEAR CLERK MARTIN A COPY OF THE NOTICE
OF APPEAL HAS ALREADY BEEN FILED IN SUPERIOR
COURT WHICH DENIED MY MOTION FOR EXTRA-
ORDINARY REASONS AND OUT-OF-TIME APPEAL
I INCLOSING A COPY OF THIS ORDER WITH
THE APPLICATION FOR DISCRETIONARY APPEAL
ACCORDING TO OCGA § 5-6-35 (a). WITH
A INDIGENT MOTION THE STATE
HAS A COPY AS WELL.

Respectfully,
James Lott

IN THE COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

STATE OF GEORGIA,
PLAINTIFF,

CASE NO. 2006-CR-01102-5

V.

JAMES EDWARD LOTT JR., (DISCRETIONARY APPEAL)

DEFENDANT.

MOTION FOR A DISCRETIONARY APPEAL

COMES NOW JAMES EDWARD LOTT JR.
FILES THIS HIS APPEAL SEEKING A DISCRETION-
ARY APPEAL AND DECISION IN THE TRIAL
COURT DENIAL OF HIS MOTION FOR OUT-OF-
TIME APPEAL AND EXTRAORDINARY MOTION
FOR NEW TRIAL. MOTION WAS FILED ON
MAY 22, 2015. AND DENIED ON JUNE 3,
2015

STATEMENT OF FACTS IN CASE

1

THE MOTION FILED SEEK EXTRAORDINARY
CIRCUMSTANCE FROM AN INVOLUNTARY
UNKNOWINGLY GUILTY PLEA WHICH WAS
COERCE BY TRIAL ATTORNEY AND WHERE
THE STATE WITHHELD EVIDENCE OF DEFEN-
DANT'S LOW IQ OF ABOUT 62 AND THAT
NO MENTAL HEALTH ASSISTANCE WAS PROVIDED.

(1)

RECEIVED IN OFFICE

2015 JUL -9

AMT: 35

CLERK OF SUPERIOR COURT
JAMES EARL RAY, JR.
COURT OF APPEALS, 505 S.W. 2ND

TO ASSURANCE THAT BY ENTERING A GUILTY PLEA DEFENDANT WERE DOING SO COMPETENTLY AGAINST A COLPOSELY ADVERSE KNOWN WAIVER OF RIGHTS OF STATE AND FEDERAL CONSTITUTIONAL 6, 14 DUE PROCESS AND EQUAL PROTECTION AMENDMENTS.

2.

TO HAVE A COMPETENT ENTERED GUILTY PLEA. AN SUBSTANTIAL AND PROCEDURAL ASPECT MUST OCCURED. A SUBSTANTIAL RIGHT REQUIRES APPOINTED ATTORNEY TO BE EFFECTIVE AS TO ASSURED HIS CLIENT WAIVER OF THE THREE BOYKINS RIGHTS ARE DONE AS KNOWINGLY AND VOLUNTARILY WITH A COMPLETE INFORMATION TO THE COURT ON THE RECORDS AND NOT SILENTLY WHERE THE COURT WAS NOT EXAMINING THE RECORDS OF COMPETENCY HEARLY BY A JULY INQUIRY PAT V. ROBINSON, 383 U.S. 375 (1966); BOYKINS, SUPRA 395 U.S. 238 (1969); PURVIS V. COWELL, 227 Ga. 764 (1971).

ERROR OF THE COURT

THE SUBSTANTIAL ASPECTS IS FOR THE COURT TO ASSURE PETITIONER'S PLEAD IS PROTECTED ...

(2)

... AS THE CONSTITUTION DUE PROCESS. AND THIS FACTOR WAS NOT APPLIED BY THE RULE OF THE COURT AS PROVIDED BY OCGA § 16-3-26 (6) (A) § 26-906) WHICH STATES THAT "A PERSON IS NOT GUILTY OF A CRIME EXCEPT MURDER, IF THE ACT UPON WHICH THE SUPPOSED CRIMINAL LIABILITY IS BASED IS PERFORMED UNDER SUCH COERCION THAT THE PERSON REASONABLY BELIEVES THAT PERFORMING THE ACT IS THE ONLY WAY TO PREVENT HIS IMPAIRMED DEATH OR GREAT BODILY INJURY.

NOW THE PROCEDURAL ASPECT IS TO ASSURED PETITIONER ENTER SUCH PLEA GUILTY VALIDLY SECURED TO WAIVER OF RIGHT AS REQUIRED BY ONE OR TWO WAYS. REQUIRED BY THE CONSTITUTION OF DUE PROCESS. (1) A FEDERAL CONSTITUTION STANDPOINT, UNLESS IT AFFIRMATIVELY APPEARS THAT THE DEFENDANT INTELLIGENTLY AND VOLUNTARILY ENTERED HIS GUILTY PLEA, HE MAY AS A MATTER OF RIGHT WITHDRAW HIS GUILTY PLEA EVEN IF REPRESENTED BY COUNSEL WHEN IT WAS ENTERED. HAMM V. STATE, 123 Ga. App. 10, 12-14, 179 S.E. 2d 272 (1970).

(2) ALSO, THE BURDEN IS ON THE STATE TO SHOW THAT THE PLEA WAS INTELLIGENTLY AND VOLUNTARILY ENTERED. CONLOGUE V. STATE, 243 G.C. 141, 253 S.R.2d 168 (1979). THE FACT IS THAT DEFENDANT ARGUES THAT HE IS PREJUDICED OF THE MISINFORMATION HIS ATTORNEY PROVIDED BECAUSE THE STATE DID NOT SUPPLY HIM WITH THE INFORMATION OF A SUPPRESSED MEDICAL RECORDS WHICH HOLD INFORMATION CONCERNING HIS LOW IQ IN ORDER AS REQUIRED 31.1 FOR FURTHER MENTAL EXAMINATION OF THE ACCUSED, ANY FURTHER NON-JURY HEARING RELATIVE TO THIS SPECIAL ISSUE, OR ANY SPECIALLY EMPANELLED JURY TO DETERMINE THE ISSUE ON THE SPECIAL PLEA OF INSANITY AHEAD OF TRIAL OF THE CASE ON THE MERITS.

3.

TO CLARIFY THE ABOVE STATED CONSTITUTIONAL FACTOR WHICH WAS NOT APPLIED BY THE TRIAL IN THIS CASE THIS HONORABLE COURT MUST LOOK AND DECIDE ACCORDING TO DEFENDANT'S RIGHTS PROTECTED AS IN JOHNSON V. STATE, AS THE DUE PROCESS DELIVERED THE GEORGIA SUPREME COURT REVEALED A...

(4)

... CONVICTION WHERE "THE TRIAL JUDGE REFUSED TO PERMIT" THE DEFENDANT TO PRESENT ANY MENTAL ISSUE OR EVIDENCE AT THE BUILT PHASE OF THE TRIAL" WHERE THE STATE HAD AMPLE NOTICE THAT DEFENDANT'S MENTAL CONDITION MIGHT BE A FACTOR IN THE CASE AND THE NOTICE, ALTHOUGH LATE, WAS FILED TWO DAYS BEFORE THE PRESENTATION OF ANY EVIDENCE.

4.

A DEFENDANT IS NOT ENTITLED TO FILE A PLEA OF INCOMPETENCY TO STAND TRIAL UNTIL HE IS INDICTED. CHENAULT V. STATE, 234 Ga. 216, 218, 215 S.R. 2d 223 (1975). STRICKLAND V. STATE, 247 Ga. 219, 220(1), 275 S.R. 2d 29 (1981); 7 A. L. R. 3d 1458, (1966). See also BERRY V. STATE, THE COURT HELD THAT "[C]ONFESSIONS ARE ADMISSIBLE THOUGH OBTAINED BY ARTIFICE, TRICK, OR DECEPTION, SO LONG AS THE MEANS EMPLOYED TO PROCURE THEM ARE NOT CALCULATED TO ELICIT AN UNTRUE STATEMENT.... THAT A CONFESSION IS OBTAINED BY SUCH MEANS DOES NOT PRECLUDE A FINDING THAT THE CONFESSION WAS FREELY AND VOLUNTARILY GIVEN."

(5)

DISCRETION OF THE COURT; TO DECIDE ON CORRECTIVENESS OF THE TRIAL COURT IN THIS CASE. HOWEVER WHEN THE COURT WAS AUTHORIZED TO FOLLOW THE PROCEDURAL LAW TO PROVIDE DEFENDANT WITH SUBSTANTIAL RIGHTS AS TO 6, 14 AMENDMENTS FAIR TRIAL AS TO HIS SANITY BY ENTERING A PLEA OF GUILTY WITHOUT AN ADVICANT WHO CAN GIVE PROPER ADVICE OF AN INTELLIGENT, KNOWINGLY AND VOLUNTARILY PLEA.

FACTOR PRIOR RULING BY OTHER COURTS:

BASED ON THE UNITED STATES SUPREME COURT DISCISION IN AKE V. OKLAHOMA, 470 U.S. 68, 105 AND THE SUPREME COURT OF GEORGIA IN HARRIS V. STATE 181 Ga. App. 358, 352 S.E. 2d 226 (1986).

RULED AS FOLLOWS: THE TRIAL COURT IS AUTHORIZED TO ORDER A PSYCHIATRIST, OR PERHAPS SOME OTHER COMPETENT MENTAL HEALTH EXPERT, TO THE ASSISTANT WERE TO PROVIDE DEFENDANT WITH AN UNDERSTANDING OF THE WAIVER OF RIGHTS AND KNOWING OF THE CONSEQUENCE OF THE GUILTY PLEA WITH DEFENDANT LOW IQ OF 62 AND AN UNDERSTANDING OF SANITY AT THE TIME OF CHARGE, TO CONDUCT A THRESHOLD EXAMINATION.

(6)

THIS APPLICATION FOR DISCRETIONARY APPEAL
IS GOVERNED BY THE JURISDICTIONAL
PROVISIONAL RULE OF 31 AS A DISCRETIONARY
APPLICATION, FOR LEAVE TO APPEAL A FINAL
JUDGMENT IN CASES SUBJECT TO APPEAL
UNDER OCGA § 5-6-35 SHALL BE GRANTED
ONLY WHEN:

ALSO IN LINDSEY V. STATE, 254 Ga. 444, 449,
330 S.R. 2d 563 (1985) THE EXAMINATION WAS
PROPERLY PROVIDED. CONSEQUENTLY DEFENDANT
LOTT DID NOT HAVE PROFESSIONAL ADVICE
OF A KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY
ENTERED GUILTY PLEA. BOYKINS V. ALABAMA SUPRA,
395 U.S. 238 (1969) ALSO SEE JOHNSON V. STATE,
AS TO COMPETENT ASSISTANCE. IN THIS
THE COURT IS NOT TO DECIDE AS TO THE GUILT
OR INNOCENCE OF THE DEFENDANT UNTIL
HE HAS BEEN PROVIDED A KNOWINGLY
VOLUNTARILY AND INTELLIGENTLY ENTERED
GUILTY PLEA BY COMPETENT ADVICE AS
TO HIS MENTAL CONDITION AT THE TIME
OF HIS TRIAL TO BE PROVIDED A FAIR
TRIAL. AS THE LAW PROVIDE IN THE
CONSTITUTION: NO PERSON SHALL BE FOUND
GUILTY OR TO INCRIMINATE HIMSELF IN A
CRIMINAL CASE EXCEPT BY DUE PROCESS OF
THE LAW U.S.C.A. CONST. AMEND. 6, 14.
THIS CASE MUST BE REVERSED BASED ON
FAIR TRIAL OF A MENTAL HEALTH EXPERT
TO GIVE DEFENDANT ADEQUATE ADVICE
IN A CRIMINAL TRIAL OCGA 3317-7-130 AND
17-7-131.

DEFENDANT PRAYS THAT THIS COURT WOULD PROVIDE HIS WITH A DISCRETION AS TO A KNOWINGLY VOLUNTARILY AND INTELLIGENT GUILTY PLEA BY ALLOWING ~~HIM~~ A REVERSAL AS TO HIS APPELLATE FACTOR.

NOTARY SWORN BEFORE ME (THIS DISCRETIONARY MOTION)
THIS 16TH DAY OF JUNE 2015.

Munirah Neeb RESPECTFULLY,
SI. James Lott

Notary Public, Richmond County, Georgia
My Commission Expires Nov. 20, 2018

CERTIFICATE OF SERVICE

I JAMES LOTT HAVE AND DO HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS MOTION FOR DISCRETIONARY APPEAL TO THE COURT OF APPEALS CLERK OF COURT BY PLACING SAME IN THE UNITED STATES MAIL WITH SUFFICIENT POSTAGE TO THE ADDRESSED BELOW:

Georgia Court of Appeals, Clerk
47 TRINITY AVE. S.W.,
SUITE 501
ATLANTA, GA 30334

RESPECTFULLY,
James E. Lott Jr.
GDC #429292 HF-A
Augusta State
Medical Prison
3001 Gordon HWY
Grovetown Ga

(9)

3/1803

COPY

IN THE SUPERIOR COURT OF CLAYTON COUNTY, GA
STATE OF GEORGIA

FILED
CLAYTON CO., GA
2015 JUN -3 AM 9:43
JACQUILINE D. WILLS
CLERK SUPERIOR COURT

STATE OF GEORGIA,

Plaintiff,

vs.

JAMES EDWARD LOTT, JR.,

Defendant.

§
§
§
§
§
§
§
§
§

Case No. 2006-CR-01102-5

ORDER

In the above-styled case, on May 22, 2015, the Defendant filed a *pro se* Motion For An Out-Of-Time Appeal, Extraordinary Motion for New Trial/Motion for Out of time Appeal Due To Ineffective Counsel Newly Found Evidence, and Motion for Taking Deposition of a Person Confined in Prison for the court's consideration. The Defendant entered a negotiated plea to the offense of Murder on March 27, 2009 and received a sentence of life in the state penitentiary with the possibility of parole. An additional count of Murder and two counts of Aggravated Assault were nolle prossed, pursuant to the guilty plea agreement.

As to the motion for new trial and request for out-of time appeal, the Defendant raises the issue of ineffective assistance of counsel and the failure to have a competency hearing by jury. The Court has examined the record in this case and cannot determine from the record the issues raised by the Defendant, as to any alleged ineffective assistance of counsel. Further, it appears from the record that there was no basis for the Court to conduct a competency hearing with a jury. The issues raised by the Defendant may be resolved through habeas corpus. See Birch v State, 293 Ga. 816; 750 SE2d 141 (2013).

IT IS HEREBY ORDERED that the Defendant's Motion For Out-Of-Time Appeal is DENIED. Based upon the denial of the Motion For Out-Of-Time Appeal, IT IS FURTHER ORDERED that the Defendant's Motion for Taking Deposition of a Person Confined in Prison is DENIED.

SO ORDERED THIS 2nd DAY OF JUNE, 2015.



Albert B. Collier
Chief Judge Superior Court
Clayton Judicial Circuit, Division 5

CERTIFICATE OF SERVICE

I, LuAnn West, Judicial Assistant to Chief Judge Albert B. Collier, do hereby certify that I have this day served the enclosed pleading or document entitled ORDER, Case No. 2006-CR-01102-5, by mailing a copy of same with adequate postage affixed thereto to:

CLAYTON COUNTY DISTRICT ATTORNEY'S OFFICE
9151 Tara Boulevard - 4TH Floor
Jonesboro, GA 30236
(Via Inter-Office Mail)

James Edward Lott, Jr.
GDC# 429792 - Dorm 14-A-2
AUGUSTA STATE MEDICAL PRISON
3001 Gordon Hwy.
Grovetown, GA 31803

This 3rd day of June, 2015.



LuAnn West
Judicial Assistant To
Chief Judge Albert B. Collier

The Harold R. Banke Justice Center
9151 Tara Boulevard - Room 4JC401
Jonesboro, GA 30236
770.477.3495