

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

September 3, 2015

To: Mr. Eugene Marlin, GDC778886, Autry State Prison, Post Office Box 648, Pelham, Georgia 31779

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: _____

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

- There is no current 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. The mailing address for the Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.
- 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.

COURT OF APPEALS OF GEORGIA

EUGENE MARLIN
GDC# 778886
PETITIONER
V.
STATE OF GEORGIA

| REQUEST TO FILE OUT OF TIME
* RECONSIDERATION TO STOP
| AND
* AVOID THIS MISZARRAGE OF
| JUSTICE
* AND AMEND GROUND'S RAISED
|

MOTION REQUESTING TO FILE OUT OF TIME
RECONSIDERATION TO STOP AND AVOID THIS
MISZARRAGE OF JUSTICE AND AMEND GROUND'S RAISE

RECEIVED IN OFFICE
2015 AUG 31 PM 4:23
COURT OF APPEALS OF GEORGIA

EUGENE MARLIN
AUTAY STATE PRISON
P.O. BOX 648
PEHAM GEORGIA
31779-0648

PREPARED BY:
15 Eugene Marlin
EUGENE MARLIN GDC# 778886
PRO-SE

COURT OF APPEALS OF GEORGIA

EUGENE MARLIN
GDC# 778886
PETITIONER

V.

STATE OF GEORGIA

| REQUEST TO FILE OUT OF TIME
* REQUEST FOR RECONSIDERATION
TO STOP AND AVOID THIS
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|

MOTION REQUESTING TO FILE OUT OF TIME RECONSIDERATION
TO STOP AND AVOID THIS MISARRAGE OF JUSTICE
AND AMEND THE GROUNDS RAISED

COMES NOW PETITIONER EUGENE MARLIN PRO-SE IN THE
ABOVE-STYLED MOTION RESPECTFULLY ASK AND SUBMITE
THIS MOTION AND ASK THE HONORABLE COURT TO REZ-
ONSIDER AND ALLOW ME TO AMEND PETITIONER OUT
OF TIME REQUEST FOR RECONSIDERATION PURSUANT
TO APPLICABLE LAWS AND IN SUPPORT THEREOF THE PET-
ITIONER WILL SHOW THE COURT AS FOLLOWS:

PROCEDURAL HISTORY

PETITIONER ASK THE HONORABLE COURT TO SEE
MARLIN V. THE STATE 273 GA. APP 856, 616 SE.2d 176 (2005)
COUNSEL LON P. KEMENESS RAISED THREE (3) GROUNDS
(1) ONE: FAILING TO FILE DEMURRER TO INDICTMENT
(2) TWO: FAILURE TO INTERVIEW TELLER FROM WHOM THE
DEFENDANT WAS ALLEGED TO HAVE TAKEN MONEY

(3) THREE: EVIDENCE WAS INSUFFICIENT TO PROVE GUILT BEYOND A REASONABLE DOUBT

WEREIN APPELLANT COUNSEL NEVER RAISED A SINGLE CLAIM WITH MERITS OR PERTAIN TO THE CASE AT HAND. NEVER THE LESS COUNSEL NEVER RAISED GROUNDS THAT WAS OBJECTED TOO AND/OR PRESERVED ON THE RECORD TO WIT:

OBJECTION ON THE RECORD AS TO PROSECUTORIAL MISCONDUCT IN READING THE CHARGE TO THE JURY DURING CLOSING ARGUMENT

THE FATAL VARIANCE IN THE INDICTMENT OF THE ALLEGATION AND EVIDENCE ADMITTED AT TRIAL SEE STIRONE V. U.S. 361 U.S. 212, 217-19 (1960)

U.S. V. MISTEIN 401 F.3d 53, 65 (2d CIR 2005)

OBJECTION ON THE RECORD SEE

SMITH V. STATE 281 GA. 237, 637, SE2d 400 (2006)

PETTIS V. STATE 224 GA. APP 77, 479 SE2d 460 (1996)

RIZARTE V. STATE 249 GA. APP 50, 547 SE2d 703 (2001)

INCOMPETENCE, BIAS, INFLUENCE DEFENDANT WAS NOT PRESENT DURING ALL CRITICAL PHASES OF TRIAL IN CHAMBER HEARING OF VOIR OF WITNESSES SEE CURRY V. STATE 243 GA. APP 712, 534 SE2d 168 (2000)

HAYNES V. STATE 180 GA. APP 202, 349, SE2d 208 (1986)

ADMISSION & CONFESSIONS PETITIONER GAVE A
VIEDO, AUIDO, WRITTEN STATEMENT OF WHAT AND
WHY THIS HAPPEN SEE

VERGARA V. STATE 283 GA. 175, 177, 659 SE2d 863 (2008)

JOHNSON V. STATE 242 GA. 822, 251 SE 2d 563 (1979)

FAILURE BY APPELLANT COUNSEL ON DIREZT APPEAL
APPELLANT COUNSEL NEVER RAISED ANY OF THESE
GROUND'S AS WELL AS BEING ASKED BY DEFENAMNT
TO RAISE THERE EXSISTED A FATAL VARIANZE
IN THE ALLEGATION OF THE INDICTMENT AND EVIDENCE
ADDMITED AT TRIAL NOR ASK FOR THE INTIRE
REZORD TO BE INZIUED OMITTING NOTHING
SEE:

MARTIN V. STATE 281 GA 778, 780, 642 SE2d 837 (2007)

TURBEVILLE V. STATE 268 GA. APP 88, 91, 601 SE2d 461 (2004)

MARYLAND V. STAZER 130 S. C. T 1213, 1224-1225 (2010)

SEE:

FLOYD V. STATE 553, SE 2d 658 GA APP (2001)

U.S. V. BAGLEY 473 U.S. 667 (1995)

IMPROPERLY READING CHARGE TO JURY BY D.A.

SEE:

BOLDEN V. STATE 272 GA. L. 2, 525 SE2d 690 (2000)

STATE V. CRAPP CASE# A12A1344 (2012)

PERSONAL BELIEF STATED TO JURY SEE:

DAVIE V. STATE 265 GA. 800, 802, 463 SE2d 1121 (1995)

IMPROPER JURY INSTRUCTION IN WHICH THE COURT ALLOWED D.A. TO DELETE FROM AND ADD TO THE CHARGE WHICH IS PRESERVE ON THE RECORD FOR REVIEW SEE:

HALL V. WHEELING 282 GA. 86, 646 SE2d 236 (2007)

WALTER V. JOHNSON 282 GA. 168, 646 SE2 236 (2007)

BRUCE V. SMITH 274 GA. 432, 553 SE2d 808 (2001)

DIRECT VERDICT OF ACQUITTIE THE DA NEVER PROVED BEYOND A REASONABLE DOUBT ARMED ROBBERY OR PRODUCE EVIDENCE OF A ARMED ROBBERY SEE:

JOHNSON V. STATE 69 GA. APP 440, 26. SE2d 121 (1943)

CONFLICTING TESTIMONY PROSEZUTOR USE KNOWN PERJURY TESTIMONY AS WELL AS LEADING WITNESS TO PERSON HERSELF SEE:

HAMMONDS V. STATE 157 GA. APP 393, 277 SE2d 762 (1981)

WHEREIN ALL IS PROVED AND SUBSTANZATED IN THE TRAIL RECORD PLEASE SEE COMPLETE RECORD AND AMENDED GROUNDS IN WHICH WAS NEVER RAISED BY APPEAHANT COUNSEL SEE ALSO:

MADDY V. STATE 258 GA. 818, 375 SE2d 269 (1981)

WRIGHT V. STATE 166 GA. APP 295, 304 SE2d 105 (1983)

CONCLUSION

WHEREFORE ALL THE AFOREMENTIONED REASONS AND EVIDENCE IN THE RECORD PETITIONER CONCLUDES AND PRAYS THAT THIS HONORABLE COURT IN THE INTEREST OF DUE-PROCESS ALLOW ME TO AMEND THE GROUNDS RAISED IN THIS OUT OF TIME MOTION TO RECONSIDER. TO CORRECT THIS GROSS MISJARRAGE OF JUSTICE WHICH HAVE DENIED AND DEPRIVE ME OF LIFE AND LIBERTY FOR (14) FOURTEEN YEARS WITHOUT DUE-PROCESS ISSUE AN ORDER TO WIT:

- 1): GRANT PETITIONER MOTION FOR OUT OF TIME RECONSIDERATION IN PETITIONER FAVOR.
- 2): LOOK AT PETITIONER AMENDED GROUNDS THAT WERE NEVER RAISED TO BE REVIEW BY APPELLANT COURT ON DIREKT APPEAL
- 3): ORDER PETITIONER RELEASED OR NEW TRIAL GRANTED WITHIN A TIME DESIGNED BY THIS COURT DUE TO SAID UNLAWFUL CONVICTION AND SENTENZE
- 4): GRANT OTHER AND FUTHER RELIEF THAT THIS COURT DEEMS JUST AND APPROPRIATE THIS THE PETITIONER WILL FOREVER PRAY THIS 26 DAY OF AUGUST 2015

Eugene Marin
EUGENE MARIN # 798886
PRO-SE

CERTIFICATE OF SERVICE

THIS DO CERTIFY THAT I HAVE THIS DAY SERVED
THE WITHIN MOTION FOR OUT OF TIME RECONSIDERATION
WITH AMENDED GROUNDS TO THE COURT OF
APPEALS OF GEORGIA IN THE U.S. MAIL IN A PROPERLY
ADDRESSED ENVELOPE WITH ADEQUATE POSTAGE TO ENSURE
DELIVERY AS FOLLOWS:

GEORGIA COURT OF APPEALS
SUITE 501
47 TRINITY AVENUE
ATLANTA GEORGIA
30304

RESPECTFULLY SUBMITTED

19 Eugene Marin

EUGENE MARIN # 778886

PRO-SE