

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

December 3, 2015

To: Mr. Sharese Lamarr McCowan, GDC1001105524, Rogers State Prison, 1978 Georgia Highway 147, Reidsville, Georgia 30453

Docket Number: A16A0451 **Style:** Sharese McCowan v. The State

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

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) 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. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. **No Certificate of Service accompanied your document(s). Rule 6**
5. **Your Certificate of Service must include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.**
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
10. Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11. Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13. The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14. Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15. Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17. The Motion to Supplement has not been granted.
18. **Other: Your Motion to Withdraw Guilty Plea was styled "In the United States Court of Appeals Eleventh Circuit" please style your motion in the "Court of Appeals of Georgia".**

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: *Sharee Mc Cowan*
Docket Number: *A16A0451*

SHAREESE McCowan
Style: *Sharee Mc Cowan v. The State*

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1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) 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.**
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3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5. Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
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18. Other: _____

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

IN THE UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

SHARESE MCCOWAN

V

STATE OF GEORGIA

MOTION TO WITHDRAW GUILTY
PLEA

APPEAL NO.: F16A0431

MOTION TO WITHDRAW GUILTY PLEA

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U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
TAMPA, FLORIDA

COMES NOW, THE PETITIONER, SHARESE MCCOWAN, PRO SE IN THE ABOVE STYLED CASE AND WOULD NOW SHOW UNTO THIS HONORABLE COURT WHY THE SUPERIOR COURT OF CHEROKEE COUNTY SHOULD HAVE COMPLIED WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES CONSTITUTION, AND THE CONSTITUTION OF THE STATE OF GEORGIA, AS THE PETITIONER HAS A RIGHT TO WITHDRAW HIS GUILTY PLEA, AS THE EVIDENCE PROPORTED IN THE PETITIONER'S MOTION TO WITHDRAW GUILTY PLEA SHOWS ON ITS FACE, AND THE PETITIONER NOW CONTENTS AS FOLLOWS:

STATEMENT OF CASE

THE PETITIONER WAS INDICTED IN THE ~~CHEROKEE COUNTY~~ SUPERIOR COURT OF CHEROKEE COUNTY FOR THE FOLLOWING: AGGRAVATED ASSAULT W/INTENT TO ROB, 5 COUNTS OF FALSE IMPRISONMENT, SIMPLE BATTERY, POSSESSION OF FIREARM BY FELON, BURGLARY, 5 COUNTS OF AGGRAVATED

ASSAULT, AND 3 COUNTS OF ARMED ROBBERY. THE PETITIONER WAS REPRESENTED BY PRIVATE COUNSEL, JEFFERY S. WILLIAMS.

THE PETITIONER ENTERED INTO PLEA NEGOTIATIONS, AND SUBSEQUENTLY PLEAD GUILTY ON JUNE 21, 2013, AND WITHIN TWO WEEKS OF PLEADING GUILTY, THE PETITIONER CONTACTED ATTORNEY WILLIAMS AND CONVAINED HIS DESIRE, AND STATED "I WANT TO WITHDRAW MY GUILTY PLEA" ATTORNEY WILLIAMS DID NOT STATE THAT THE TERM OF COURT HAD CONCLUDED, OR THAT THE PETITIONER WAS OUT-OF-TIME TO WITHDRAW HIS GUILTY PLEA. HOWEVER, THE ATTORNEY STATED, "HE WOULD NOT PUT IN SUCH A MOTION, AND FURTHER ASKED, "WHAT ARE YOUR GROUNDS?" (see exhibit in original motion filed in motion to withdraw). ATTORNEY WILLIAMS REFERRED THE PETITIONER TO THE CHEROKEE COUNTY OF INDIGENT DEFENSE.

ARGUMENT AND CITATIONS OF AUTHORITY

THE PETITIONER CONTENDS THAT IN MARTIN V. U.S. 81 F3d 1083 (11th Cir 1996) THAT FAILURE TO FILE NOTICE OF APPEAL WHEN REQUESTED BY DEFENDANT CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. UNDER THE GUIDELINES OF LAW, A DEFENDANT HAS THE RIGHT TO DIRECTLY APPEAL HIS SENTENCE EVEN THOUGH HE PLEAD GUILTY BECAUSE A DEFENDANT HAS THE RIGHT TO DIRECTLY APPEAL A SENTENCE PURSUANT TO THE SENTENCING GUIDELINES, AND THE DEFENDANT IS PREJUDICED FROM

FROM RAISING GUIDELINE ISSUES IN COLLATERAL PROCEEDINGS UNDER § 2255 THUS THIS PETITIONER UNDER THE GUIDELINES IS PREJUDICED WHERE HIS ATTORNEY FAILED TO FILE AN APPEAL AFTER BEING REQUESTED TO DO SO, EVEN WITHOUT SHOWING WHETHER OR NOT THERE ARE ANY VIABLE GROUNDS FOR SUCH AN APPEAL. MONTOMOINO V. U.S., 68 F3d 416, 417 (11th Cir 1995) see (Petitioner's Motion to Withdraw Guilty Plea, filed in Cherokee County). UNDER HENDERSON V. MORGAN, 426 U.S. 637 49 L.E.2d 108, 96 S.Ct 2253 (1976). WHEN A DEFENDANT, WHO WAS NOT INFORMED OF CRITICAL ELEMENTS OF THE OFFENSE TO WHICH HE IS PLEADING GUILTY TO, HIS PLEA BECOME INVOLUNTARY. AND IN U.S. V. HYDE 520 U.S. 670, 137 L.E.2d 935, 1175 Ct 1630 (1997). PROVIDES: THE DECISION TO ACCEPT OR DENY A WITHDRAWAL OF GUILTY PLEA RESTS WITH THE COURT'S NOT DEFENSE COUNSEL.

THIS PETITIONER WAS PREJUDICED BY HIS DEFENSE COUNSEL'S DECISION TO NOT FILE THE MOTION TO WITHDRAW HIS GUILTY PLEA WHEN REQUESTED TO DO SO, WITHIN THE TERM OF THE COURT'S JURISDICTION, EVEN IF COUNSEL DID NOT SEE A VIABLE GROUND FOR SUCH AN APPEAL. FURTHERMORE, HILL V. LOCKHART 474 U.S. 52 (1985) PROVIDES: A GUILTY PLEA BASED ON MISINFORMATION FROM COUNSEL, IS GROUNDS FOR REVERSAL. THE PETITIONER WILL PROVIDE TESTIMONY FROM SEVERAL WITNESSES THAT ATTORNEY WILLIAMS "PROMISED HE WOULD ONLY RECEIVE 5 YEARS, AND BASED ON COUNSEL'S ASSURANCE THIS INDUCED THE PETITIONER TO PLEAD GUILTY. WHEN A PLEA RESTS IN ANY SIGNIFICANT

DEGREE ON A PROMISE OR AGREEMENT OF THE PROSECUTOR, SO THAT IT CAN BE SAID TO BE A PART OF THE INDUCEMENT OR CONSIDERATION, SUCH A PROMISE MUST BE FULFILLED. SANTOBELLO V. NEW YORK, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).

THE PETITIONER CONTENDS THAT THE PROMISES OF HIS ATTORNEY, THE 5 YEARS IN CONFINEMENT, WAS THE ESSENCE OF THE PROMISE AND WAS WHAT THE PETITIONER BELIEVED THAT HIS ATTORNEY AND THE STATE'S PROSECUTOR HAD AGREED UPON, AND THE ESSENCE OF THOSE PROMISES MUST IN SOME WAY BE WHAT WAS REASONABLY DUE IN THE CIRCUMSTANCE NOW BEFORE THE COURT. THE STATE MAY NOT INDUCE GUILTY PLEA BY THREATENING DEFENDANT WITH PHYSICAL HARM OR MENTAL COERCION OVERBEARING THE DEFENDANT'S WILL. BOYKIN V. ALABAMA 395 U.S. 238 (1969) AND BRADY V. UNITED STATES 397 U.S. 747 (1970).

WHEREFORE, THE PETITIONER, HAVING ESTABLISHED VIABLE GROUNDS THAT ARE BASED IN THE SUBSTANTIVE LAWS OF THE CONSTITUTIONS OF BOTH THE UNITED STATES, AND THAT OF THE STATE OF GEORGIA, AND THE LEGISLATIVE INTENT OF THE GOVERNING LAWS OF CRIMINAL PROCEDURES, AND THE RULES OF THE SUPERIOR COURT'S PROCEDURES REQUIRE AND OBLIGATE THE COURTS TO VACATE THE PREVIOUSLY ENTERED JUDGEMENT, AND WITHDRAW THE PETITIONER'S GUILTY PLEA.

AS THE FACE OF THE RECORD WILL REVEAL THAT THE PETITIONER WAS PREJUDICED BY THE CONDUCT OF HIS PAID COUNSELOR, JEFFERY S. WILLIAMS, WHO FAILED TO FILE THE NOTICE OF WITHDRAWAL OF GUILTY PLEA AS REQUESTED BY THE DEFENDANT, AS NOW THE PETITIONER HAS HAD AND RETAINS HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND MAKES THIS MOTION TO WITHDRAW HIS GUILTY PLEA, AS HE HAS A CONSTITUTIONAL RIGHT TO FACE HIS ACCUSORS IN COURT.

RESPECTFULLY SUBMITTED THIS 20th DAY OF NOVEMBER 2015.

EC: FILE

Sharesse J. McCowan
SHARESE MCCOWAN 1001P5524
ROGERS STATE PRISON C-2-2-12
1978 GA HWY 147
REIDSVILLE, GA 30453