

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

**March 3, 2015**

**To:** Spencer Milton, Esq., 11 Judicial Lane • Suite 111, Brunswick, Georgia 31520

**Docket Number: Style: Kewarn James v. The State**

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, Appointment of Counsel or affidavit of counsel. 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.  No Certificate of Service accompanied your document(s). Rule 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.
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.  **Electronic filing is mandatory in this Court. The following Rule 46 became effective January 1, 2015.**

**XXII. ELECTRONIC FILING OF DOCUMENTS**

**Rule 46. Electronic Filing of Documents.**

**Counsel is required to use the Court's electronic filing system and to follow the policies and procedures governing electronic filing as set forth in the Court's electronic filing instructions. The Clerk of Court may grant a request for exemption from mandatory electronic filing for good cause shown. An adverse decision by the Clerk of Court may be appealed by motion to the Court via a paper filing.**

**Rule passed October 21, 2014 - effective January 1, 2015**

COURT OF APPEALS  
OF THE STATE OF GEORGIA

RECEIVED MAIL FILE  
2015 MAR -2 PM 4:13  
CLERK OF SUPERIOR COURT  
COURT OF APPEALS

STATE OF GEORGIA, Respondent,

v.

KEWARN JAMES, Petitioner,

---

MOTION FOR DISCRETIONARY REVIEW

---

SPENCER MILTON & MEREDYTH YOON

Attorneys for KEWARN JAMES

11 Judicial Lane, Suite 111

Brunswick, Georgia 31520

Telephone 912-554-7072

State Bar No: 239456

## Table of Contents

Motion for Discretionary Review	3-5
Petition for Modification/Revocation of Probation and Order	6
Certification of Service	7

**A. Identity of Petitioner**

Kewarn James asks this court to accept review of the decision designated in Part B of this motion. This court has discretion to review a probation revocation order under 5-6-35(a)(5).

**B. Decision**

Please consider review of the probation revocation orders for Kewarn James which took place on Wednesday, January 28, 2015 at 1:30 under docket number CR-0600861-063.

**C. Issues Presented for Review**

The issue is whether hearsay testimony and testimony of a non-expert about matters of expert opinion were improperly admitted into evidence creating reversible error.

**D. Statement of the Case**

During the probation revocation hearing, several occasions of hearsay testimony were admitted despite objection by defense counsel.

Also during the hearing, an officer, despite no facts being given to ground the officer as an expert of house piping, testified that, according to the officer's opinion about the length of copper piping the investigated houses should have been equipped with, the length of copper sold by Kewarn James matched the length of copper burgled from one or more houses involved in the officer's investigations; despite the officer not giving facts sufficient to justify his expert opinion and despite objection to the testimony, the evidence was admitted.

#### **E. Argument Why Review Should Be Accepted**

Petitioner asks you review the opinion for the following reasons:

(1) As to the hearsay admitted, "[I]n this jurisdiction hearsay evidence is inadmissible in a probation revocation proceeding." Barnett v. State, 194 Ga. App. 892, 892-93, 392 S.E.2d 322, 322-23 (1990)

(2) As to the non-expert giving expert testimony, "If he was a non-expert, the facts upon which his opinion or conclusion was based were not stated, and thus his opinion... was not admissible." Hicks v. State, 157 Ga. App. 79, 79-80, 276 S.E.2d 129, 130 (1981)

(3) If hearsay and the non-expert testimony were excluded, the petitioner's probation would not be revoked because the remaining evidence did not amount to preponderance of the evidence.

**F. Conclusion**

This court should please accept review for the reasons indicated in part E and reverse the probation revocation order. Also please allow extension for time to supplement this petition with transcripts.

Respectfully submitted, this 26<sup>th</sup> day of February, 2015.



Spencer Milton

Bar No: 239456 (to be sworn in at Court of Appeals on 3/3/2015)

11 Judicial Lane, Suite 111

Brunswick, Georgia 31520

Telephone 912-554-7072

**Attorneys for Kewarn James**



Meredyth L. Yoon

Bar No: 204566

PETITION FOR MODIFICATION/REVOCAION OF PROBATION  
DEPARTMENT OF CORRECTIONS/PROBATION DIVISION

THE STATE

DOCKET NO. CR-0600861-063

VS

FILED  
GLYNN CO. CLERK'S OFFICE

KEWARN JAMES

2015 JAN 28 PM 7 50

Now comes ALECIA D. OGIR, Probation Officer, in the name and behalf of the State of Georgia, and bring this action against KEWARN JAMES, hereinafter called the Defendant, and shows:

CLERK SUPERIOR COURT

That the defendant was entered a guilty plea to the offense (s) of:  
ROBBERY BY INTIMIDATION, 4 COUNTS.

II

That this Court on the 21ST day of DECEMBER 2007 did sentence the Defendant to serve as follows:  
TEN (10) YEARS, SERVE SIX (6) YEARS, FOUR (4) YEARS PROBATED (EACH COUNT CONCURRENT).

III

That this Court, by proper order, however, permitted the Defendant to serve said sentence on probation, the terms and conditions of which are fully set forth in the copy of said sentence which is attached hereto, marked as Exhibit "A", and specifically incorporated herein.

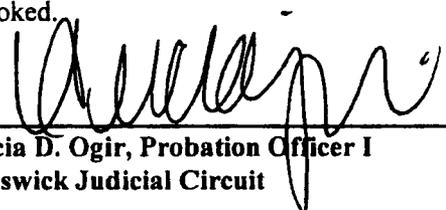
IV

That the Defendant has violated the terms and conditions of probation in the following particulars:  
VIOLATION OF CONDITION #1: IN THAT THE DEFENDANT DID COMMIT THE OFFENSE(S) OF BURGLARY IN THE SECOND (2<sup>ND</sup>) DEGREE ON OR ABOUT, NOVEMBER 4, 2014 IN GLYNN COUNTY, GA AND BURGLARY IN THE FIRST (1<sup>ST</sup>) DEGREE (7 COUNTS) ON OR ABOUT NOVEMBER 9, 2014, IN GLYNN COUNTY, GA.

V

WHEREFORE, the State of Georgia prays that the citation for modification/revocation of probation be served on the Defendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at that time to show cause why probation should not be modified/revoked.

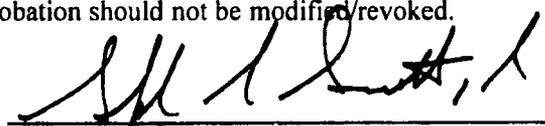
This 14<sup>th</sup> day of JANUARY 2015

  
Alecia D. Ogir, Probation Officer I  
Brunswick Judicial Circuit

ORDER

Having read and considered the foregoing petition, it is hereby ordered that the Defendant be served with a copy of same and that the Defendant show cause before the presiding Judge the 28<sup>TH</sup> day of JANUARY 2015, at the Courthouse in BRUNSWICK, GEORGIA at 1:30 P.M. why said probation should not be modified/revoked.

This 20<sup>th</sup> day of JANUARY 2015

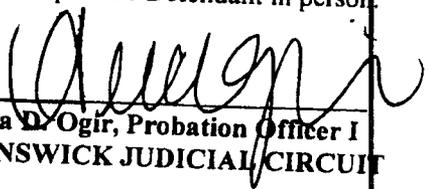
  
THE HONORABLE: Stephen G. Scarlett  
SUPERIOR COURT JUDGE, BRUNSWICK JUDICIAL CIRCUIT

*Handwritten mark*

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing petition upon the Defendant in person.

This 14<sup>th</sup> day of JANUARY 2015.

  
Alecia D. Ogir, Probation Officer I  
BRUNSWICK JUDICIAL CIRCUIT

**ACKNOWLEDGMENT**

I hereby acknowledge service of the foregoing petition and that I am aware that I may employ legal representation at said hearing or be represented otherwise as the Court may direct.

This 14<sup>th</sup> day of JANUARY 2015.

Refused to sign  
DEFENDANT: Kewarn James

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid in accordance with O.C.G.A. § 42-8-38, § 17-10-1(a)(3)(A) and the Court has adjudged that the terms of probation have been violated as set forth in the following particulars:

in that the defendant committed the offenses of  
Burglary 1<sup>st</sup> degree x 7

- Technical violation of probation conditions
- New non-violent misdemeanor offense

And Revocation/Modification is therefore limited in accordance with O.C.G.A. § 17-10-1(a)(3)(A) to a Probation Division Alternative or County Jail.

--OR--

- New Violent Misdemeanor Offense
- Serious Infraction of Rules/Regulations in a Community Corrections facility
- New Felony Offense
- Violation of Special Condition of Probation so worded and ordered at initial sentencing.
- Violation of Special Condition of Probation ordered at a Revocation Hearing or by Waiver/Consent

And the Defendant is therefore eligible in accordance with O.C.G.A. § 17-10-1(a)(3)(A) for Revocation/Modification of sentence to Prison, or a Probation Division Alternative, or County Jail.

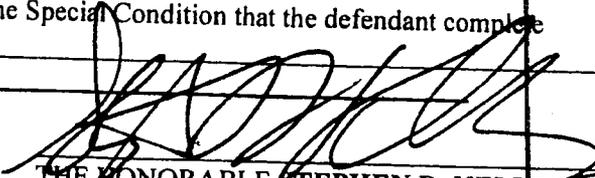
NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that the probation provisions in said original sentence be: REVOKED in accordance with O.C.G.A. § 42-8-38, § 17-10-1(A) and the Defendant is hereby required to serve balance in full in the state prison (County Jail, County Correctional Institution, State Penal System) or such other place as the Commissioner of Corrections may direct;

---OR---

CONTINUED under supervision subject to the further provision that: The original Order of Probation shall be amended to include the Special Condition that the defendant complete

This 28<sup>th</sup> day of January, 2015.

\$ \_\_\_\_\_ Restitution Owed

  
THE HONORABLE STEPHEN D. KELLEY  
JUDGE, SUPERIOR COURTS  
BRUNSWICK JUDICIAL CIRCUIT

**THE COURT OF APPEALS  
STATE OF GEORGIA**

<b>STATE OF GEORGIA</b>	)	
	:	
	)	
<b>VS.</b>	:	<b>CRIMINAL ACTION NO.:</b>
	)	<b>CR-0600861-063</b>
<b>KEWARN JAMES,</b>	:	
	)	
<b>DEFENDANT.</b>	:	

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing Motion for Discretionary Appeal upon Jackie Johnson, District Attorney, Brunswick Judicial Circuit, Glynn County Courthouse, 701 "H" Street, Brunswick, Georgia 31520 by depositing same in the United States Mail to the addresses indicated above with adequate postage affixed thereon.

11 Judicial Lane  
Suite 111  
Brunswick, GA 31520  
Telephone 912-554-7072  
Facsimile: 912-269-2964

  
\_\_\_\_\_  
Spencer Milton  
Assistant Public Defender  
Brunswick Judicial Circuit Defender  
State Bar No. 239456  
Attorney for Kewarn James