

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

December 10, 2015

To: Mr. Beaupre Montford, GDC1000586065, Dooly State Prison, Post Office Box 750, Unadilla, Georgia 31091

Docket Number: A16A0203 **Style:** Beaupre Montford 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 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 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 case was dismissed on December 9, 2015.**

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

To: *Beaupre Montford*
Docket Number: *A16AD203*

Style: *Beaupre Montford 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 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.
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)
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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 case was dismissed 12.9.15*

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IN THE COURT OF APPEALS
STATE OF GEORGIA

No. A16A0203

BEAUPRE MONTFORD,
Appellant,

v.

STATE OF GEORGIA
Appellee.

REPLY AND RESPONSE TO
BRIEF OF APPELLEE

Beaupre Montford
1000586005, F2-133-T
Dooly State Prison
P.O. Box 750
1421 Plunkett Rd
Unadilla, Ga 31091

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COURT OF APPEALS
STATE OF GEORGIA

STATEMENT OF FACTS

The argument the Appellee made regarding the April 22, 2015 and March 30 2015, has no forward value, the Appellee argument is moot. See Beeks v. State, 169 Ga.App. 499, 313 S.E.2d 760 (1984) "Unappealed sentence may not be later attacked, where a sentence is not appealed of its rendition, it may not be later appealed (Attacked). According to O.C.G. § 5-6-38 (A) which "requires that a notice of appeal be filed within thirty (30) days after the entry of the order finally disposing of a motion to vacate. The failure to timely notice a notice of appeal subjects the appeal at bar to dismissal." Bocha v. State, 287 Ga.App. 466 (1) 651 S.E.2d 421 (2000). ("The proper and timely filing of the notice of appeal is an absolute requirement to confer jurisdiction upon the appellate court.") The Appellee acknowledged that "the Appellant filed a notice of appeal within the thirty (30) days of the trial court's July 13, 2015 order dismissing his May 27 2015 Motion to Vacate."

The Appellee stated that the motion to vacate is simply a "motion to reconsider." The Appellant never file any motions for the trial Court to reconsider it's ruling, making that statement false.

The Appellant is within the avenue of direct appeal because he did in fact file a notice of appeal within thirty (30) days from the denial of the July 13, 2015 Court order. The April 22, 2015 and March 30 2015 dated motions to vacated are "barred to dismissal", according to O.C.G.A § 5-6-38 (A) and is not what this current appeal is based upon

and should not be held against the Appellant.

There are no laws nor statutes that state that the Appellant cannot argue a void sentence, nor double jeopardy grounds when there visibly seen.

O.C.G.A § 17-9-4 - A judgement which is void for any cause is a mere nullity and it maybe so held in any court where it becomes material to the interest of the parties to consider it.

O.C.G.A § 16-1-6 - A crime is included when: (1) It is established by proof of the same or less than all the facts or less culpable mental state than is required to establish the commission of the crime charged. (2) It differs from the crime charged in the respect that a less serious or risk of injury to the same person, property or public interest or less kind of culpability suffices to establish its commission.

O.C.G.A § 16-1-7(A) An accused may be prosecuted for each crime arising out the accused conduct, but an accused may not be convicted of more than one crime, if one is included in each other.

APPELLANT'S SENTENCE IS VOID, AND MERGE
AS A MATTER OF FACT AND LAW

The Appellee argues that the Appellant's sentence is not void. Under O.C.G.A. § 16-5-3(b) A person commits the crime of involuntary manslaughter when he caused the death of another without any intention to do so, by committing a lawful act in an unlawful manner likely to cause death or great bodily harm. A person commits the offense of cruelty to child with in the means of O.C.G.A. § 16-5-70(b) when he maliciously causes a child cruel or excessive physical or mental pain.

The Appellee states on page nine (9) that "the act of scalding the infant victim in hot water both killed him, and caused him to suffer excessive physical and mental pain."

It is a logical conclusion that the cruelty to child count was the (unlawful act that did both cause great bodily harm and death), which proves that cruelty to child is a included crime as a matter of law and facts to involuntary manslaughter. Therefore under O.C.G.A. § 16-5-70, the cruelty to child is included, it's the "same person", as for the involuntary manslaughter, also proving that the consecutive fifteen (15) year sentence is void. "The judgement and the conviction and sentence imposed for offenses included as a matter of law which the defendant has been found guilty and been sentenced are vacated by operation of law. Since one may not be convicted legally of a crime which is included as a matter of law or fact in

another crime for which the defendant stands convicted, the conviction and the included crime must be vacated by the appellate court, even if not enumerated as error." Nazario v. State 293 Ga. 480, 487 746 S.E.2d 109 (2013).

Appellant also show according to O.C.G.A. § 16-5-24 and O.C.G.A. § 16-5-1, aggravated battery and aggravated assault do merge according to Benn v. State 309 Ga. App. 373 710 S.E.2d 587 (2011) "Because Benn Fired two shots at a peace officer in quick succession without any "deliberate interval" between shots, this constituted only one act of assault, not two acts. Coleman v. State, 286 Ga. 291 294-295 (687 S.E.2d 427) (2009). Accordingly, the same conduct by Benn provided the evidence sufficient to support the guilty verdicts on Count 1 and 3;" Brown v. State 246 Ga. App. 60 539 S.E.2d 545 (2000) and Mills v. State 187 Ga. App. 79, 369 S.E.2d 283 (1977).

TRIAL COURT ORDER WAS NOT SUFFICIENT

The Appellee contends that the trial court order was "sufficient" However according to O.C.G.A. § 9-14-49, which provides "After reviewing the pleadings and evidence offered at the trial of the case, the judge of the Superior Court hearing the case shall make written findings and conclusion of law which the judgment is based. The findings of facts and conclusion

Should be recorded as part of the records of the case. See Day v. Mills Ga 741 164 S.E.2d 828 (1968). The trial Court's Order simply reads "After review the sentence, indictment, and plea of guilty, the Court finds no error. Accordingly the motions are DENIED."

The order was not "sufficient," the order was based on opinion, not law or facts. "Judgment denying an appellant's request for habeas Corpus relief was vacated and the case was remanded because the order denying relief contained no indication of facts or law which the trial Court based the Court's decision and therefore failed to meet the requirement of 9-14-49." See Crosson v. Conway 291 Ga 220 728 S.E.2d 613 (2013); and Thomas v. State 284 Ga 327, 667 S.E.2d 375 (2008).

The Appellee argues that "the Appellant presented this Court with no basis for reversal." The Appellant shows that the above explicit statutes and cases are basis for a reversal, which the Appellant did show. Appellant also shows according to Georgia law and statutes that he was only to have a ten (10) year sentence for involuntary manslaughter since cruelty to child is a included crime, as a matter of law and facts. Appellant shows why the consecutive fifteen (15) year sentence should vacated. Moores v. State 293 Ga 293 705, 706 (1) 749 S.E.2d 660 (2013) "A defendant who knowingly enters a plea bargain (agreement) and

accept the benefit of that bargain does not waive or bargain away the right to challenge an illegal and void sentence."

CONCLUSION

The Appellant submits this Court is within jurisdiction to consider the merits of the current appeal, and therefore request that case A16A0203 be GRANTED. Further more, the Appellant has established that his current appeal is on time, and the prior motions hold no value, and is not a motion to reconsider. The Appellant also established his sentence is unlawful.



Beauvre Montford

1000580005, F2-133-7

Dooly State Prison

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Unadilla, Ga 31091

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Respondent(s) with a copy of the forgoing, by placing the same in the United States mail in a proper envelope with adequate postage attached, properly addressed to :

Court OF Appeals of Georgia
47 Trinity Avenue, S.W., Suite 501
Atlanta, Ga 30334

This 4th Day of December 2015



Petitioner, Pro Se

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