

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

January 8, 2015

To: Mr. Jermaine Moody, GDC617817, Baldwin State Prison, Post Office Box 218, Hardwick, Georgia 31034

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: A15A0656. Jermaine Moody 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. **An improper 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)
- 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)

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

COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA

APPELLANT No. A15A 0656

vs.

JERMAINE MOODY, Sr.

Appellant

RECEIVED IN OFFICE
2015 JAN -6 AM 11:15
CLERK OF THE COURT
OFFICE OF APPEALS OF GA

APPELLANT'S BRIEF IN SUPPORT
OF APPELLANT'S MOTION TO SET ASIDE
AND / OR CORRECT ILLEGAL SENTENCE

Comes Now, the Appellant Jermaine Moody in his Pro-Se capacity respectfully moves this Court for an Order granting Appellant's Motion to set aside / Correct his illegal sentence and in further support thereof, Appellant's shows the following:

- 1) Appellant submitted a Motion in the Clayton County Superior Court for review of his sentence, see enclosed motion

II. ENUMERATION OF ERRORS

Appellant hereby submits this appeal pursuant to section 5-6-40 of Georgia Ann. and hereby re-allege all allegations stated within his initial Motion as though the same were fully set forth HEREIN.

Appellant further states that the Court affords appellant the right to amend said Motion as this appeal is being submitted that Appellant's motion would not be dismissed as untimely. As verified by Jail Personnel, Appellant received this Courts response Dec-02, 2014.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing Party(ies) to this action with a true and correct copy of the within and foregoing (Appeal) Motion To set aside and/ or correct illegal sentence Pursuant To O.C.G.A. § 17-9-4 by placing a copy of same in the United States Mail, with adequate postage thereon to ensure prompt delivery, and

addressing it to: Court of Appeals of GA.
47 Trinity Ave., SW Ste 501
Atlanta, GA. 30334

Clayton County Superior Court
9151 Tara Blvd.
Jonesboro, GA. 30236

This 20th day of December, 2014.



ProSe

Baldwin State Prison PO, Box 218
Hardwick, Georgia 31034

Jm: AKW
cc: file

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

State of Georgia

v.

Jermaine Moody,
Defendant

Criminal Action No.

2003-CR-017-49-7

MOTION TO SET ASIDE AND/OR CORRECT ILLEGAL SENTENCE PURSUANT TO
O.C.G.A. 17-9-4

Comes now the defendant, named herein and above and moves this honorable court pursuant to O.C.G.A. 17-9-4 to set aside Illegal Sentence and Conviction. For the following reasons defendant brings this motion at bar:

1. CASE HISTORY

Defendant was found guilty, by jury, of Kidnapping with bodily injury, Aggravated Assault, Battery and Tampering with Evidence in the Clayton County Superior Court on May 13, 2005 and he thereafter timely appealed to the Court Of Appeals Of Georgia: The sentence he had received from the Clayton County Superior Court, which was Life Without Parole. The Court Of Appeals found: (1) sufficient supporting evidence for kidnapping with bodily injury; (2) sufficient evidence to support the conviction for Aggravated Assault; (3) sufficient evidence supported the fact that the defendant intended to murder the victim; (4) the Court did not abuse it's discretion by admitting photographs of the victim taken two days after the incident; (5) the trial court did not abuse it's discretion by excluding testimony from the defendants expert witness; (6) that any error in the trial courts admission into evidence of the victims heresay testimony was harmless; (7) the court did not abuse it's discretion in cross examining the victim as to the details of her work history; (8) the trial court could exclude from evidence the documents allegedly showing that the victims employer referred her to a drug treatment program; (9) the trial court could exclude from evidence, a case plan from the Department Of Family and Children Services (DFACS) requiring the victim to seek drug treatment.

2. ARGUMENT AND CITATION OF AUTHORITY

The Court of Appeals has held that "where a valid sentence is not imposed at the term of court in which a defendant was convicted, a valid sentence may be imposed at a later term." Sherman v. State, 142 Ga. App. 691, 692; 237 S.E.2d 5 (1977); Mauldin v. State, 139 Ga. App. 13; 227 S.E.2d 862 (1976)

If a sentence is imposed which the law does not allow, the trial court has the authority to vacate or modify after the term in which the sentence was imposed if it falls within the ambit of O.C.G.A. 17-9-4, holding that; the judgment of a court having no jurisdiction of a person or subject matter, or void for any other reason is a mere nullity and may be held so in any other court when it becomes material to the interest of the parties to consider it. Eddleman v. State, 247 Ga. App. 753, 545 S.E.2d 122 (2001)

In this case at bar the defendant was not given prior notice that the state intended to seek the death penalty in a capital case for kidnapping with bodily injury. Although the state did give notice of intent

to seek life without parole.

The unavoidable result of the legislative enactment was to bar the state from seeking life without parole unless the state filed a notice of intent to seek the death penalty. **State v. Ingram et al.**, 266 Ga. 324; 467 S.E.2d 523 (1996); **Velazquez v. State**, 283 Ga. App. 863; 643 S.E.2d 291 (2007)

Wherefore the trial court did not have authority to impose a sentence of life without parole because the state did not seek the death penalty. Therefor this court must find for the defendant, that because the state did not supply any notice under the Uniform Rules of Superior Courts that it intended to seek the death penalty nor did the Superior Court make any finding of aggravating circumstances under **O.C.G.A. 17-10-30**; under **O.C.G.A. 17-10-32.1**, the trial court was not authorized to sentence the defendant to life without parole as a punishment for the crime of kidnapping with bodily injury.

In this defendants case the state never gave notice that it was seeking the death penalty. SEE **State v. Velazquez**, 283 Ga. 206; 657 S.E.2d 838 (2008) & **State v. Ingram**, 266 Ga. 324, 326, n.7; 467 S.E.2d 523 (holding that a sentence of life without parole is authorized only in cases where state first sought the death penalty, and gave a required notice of such.)

In short, life without parole can not be the proper sentence unless the state gives notice of it's intent to seek the death penalty.

Moreover, the sentence of the court was a result of mechanical sentencing procedures. **Cook v. State**, 256 Ga. App. 353; 568 S.E.2d 136 (2002) & **Jones v. State**, 208 Ga. App. 472; 431 S.E.2d 136 (1993). The trial judge abused his discretion when he failed to consider other sentencing options available to the defendant at sentencing. (See sentence hearing transcript)

Furthermore, the defendant believes that the trial court erred in sentencing him to life without parole as a recidivist. Because the trial judge mistakenly believed that a sentence of life without parole was mandatory. That error was not harmless. **Blevins v. State**, 270 Ga. App. 388; 606 S.E.2d 624 (2004)

CONCLUSION

Defendant prays that this honorable court grant the relief requested herein and any other relief the court may deem just.

O.C.G.A
17-10-31


Jermaine Moody, Pro Se

COURT OF APPEALS OF GEORGIA

47 Trinity Avenue, S.W., Suite 501

Atlanta, Georgia 30334

(404)656-3450

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

NOTICE OF DOCKETING - DIRECT APPEAL

APPEAL CASE NUMBER: A15A0656

DATE OF DOCKETING: November 24, 2014

STYLE: JERMAINE MOODY v. THE STATE

IMPORTANT RULE REQUIREMENTS AND INFORMATION

Briefs: Appellant's brief (including an Enumeration of Errors as Part II) shall be filed within 20 days of the date on this docketing notice. **No appellant's brief shall be received for filing without the \$80.00 filing fee or sufficient pauper's affidavit.** Appellee's brief shall be filed within 40 days after the docketing date or 20 days after the filing of the appellant's brief whichever is later.

Requests for extensions of time to file briefs should be made by motion. Failure to timely file briefs or to follow any Court rules or orders may cause the appeal to be dismissed or may cause non-consideration of a brief and may subject the offender to contempt.

Filing by US Postal Mail or Delivery Service: The contents of a properly addressed mailing other than a motion for reconsideration shall be deemed filed on the date of the U.S. Postal Service postmark date if it is stamped on the envelope or container. A filing received from an overnight delivery service is deemed filed on the date shown on the envelope or container. If no date appears on the container or envelope of a mailing or delivery, the contents shall be deemed filed on the date of receipt by the court. **Motions for reconsideration are deemed filed on the date the motion is physically received in the Clerk's office.**

Oral Argument: A Request for Oral Argument shall be filed within 20 days of the date on this docketing notice. If oral argument is requested and granted by this Court, the argument is tentatively scheduled for Mar 04 2015 before the Second Division: P. J., Andrews, J., Miller, J., Branch. A calendar will be sent to counsel of record confirming the exact date of oral argument. If the calendar has not been received at least ten days prior to the tentative oral argument date, please contact the Clerk's office.

Communications: For information, contact the Clerk's office or visit www.gaappeals.us. There shall be no communications relating to pending appeals to any judge or member of the judge's staff.

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

December 31, 2014

To: Mr. Jermaine Moody, GDC617817, Baldwin State Prison, Post Office Box 218,
Hardwick, Georgia 31034

Case Number: _____ Lower Court: _____ County Superior Court _____

Court of Appeals Case Number and Style: A15A0656. Jermaine Moody v. The State

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

- There is no 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.
- 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.
- The Court of Appeals of Georgia cannot make service of your filings to "interested parties" in your appeal. You must attach a Certificate of Service and actually serve the opposing counsel or district attorney regardless to your indigent status.**