

COURT OF APPEALS OF GEORGIA

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RETURN NOTICE

November 3, 2015

To: Mr. Hernán Elias Morán, ID#99514101, Gwinnett County Jail, 2900 University Parkway, Lawrenceville, Georgia 30043

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).

- Again, there is no case pending in the Court of Appeals of Georgia under the name of Hernán Elias Morán. This Court cannot schedule oral argument if there is no appeal.**
- 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.

①

to: STATE OF GEORGIA  
Court of Appeals

QUASI # 14B-4105-2A  
# 14B-04840-2

FROM: HERNAN ELIAS MORAN

AKA: DANIEL GATICA VERGARAN

AKA: JOSE JUAN GARCIA-AVILA

AKA: JOSE TERAN-AGUIRRE

Bill of Indictment.

OFFENSE: O.C.G. A 16-13-

VIOLATION OF THE GEORG.

TRAFFICKING COCAINE.

⇒ RESUME OF THE EVENTS.

⇒ On September 16, 2014, the defendant Hernan Elias Moran was arrested after he accompanied and drove some two other persons to a residence in Gwinnett County. Although they were present when other person and other car arrived with some illegal narcotics. (JOSE TERAN AGUIRRE), (DIFFERENT CAR THAN THE OTHERS)

⇒ 5 minutes later the police showed up and we all were arrested and put into custody in Gwinnett County Sheriff Jail. We all were charged with trafficking in cocaine O.C.G. A 16-13-31 on indictment 14B-4105-2A, later changed to indictment # 14B-04840-2.

⇒ (2) two months later after being arrested, the District Attorney letted free to Daniel Gatica Vergaran and Jose Juan Avila Garcia. These two persons were in the car and same situation as the defendant Hernan Elias Moran. (VIOLATION OF DUE-PROCESS,

(2)

- ⇒ When MR. MORAN discovered that the others two co-defendants were left out of the case, the defendant asked the court why? The answer was that they were sent to Immigration.
- ⇒ The District Attorney thru my ex-attorney made me a oral offer of 15 years in prison, but was refused by me, because if they left free my two co-defendant why is the reason to send me to prison and hold me?
- ⇒ On April 3, 2015 I were found guilty of trafficking and sentenced to 30 years in prison, on September 28, 2015 the motion for new trial were denied, but ~~after~~ before that date I sent some others motions that were ignored by the court and my appeals attorney Angela Brown.
- ⇒ The attorney Angela Brown was appoint for appeal process not for any kind of motions submitted by pro-se defendant and she denied my rights to a hearing.
- ⇒ At beginning of September, 2015, the District Attorney arrested and brought back from North Carolina to Jose Juan Avila Garcia.
- ⇒ On September 19, 2015 I were brought from Calhoun State Prison to Gwinnett County where I suppose to have court, but never happen, I never got into the court room. Something happened on September 20, 2015.

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⇒ I still in Gwinnett, I don't know why, when I suppose to be making my time in prison, I am on the air.

⇒ WE WERE ARRESTED WITH NO WARRANT, THE D.E.A LEFTED THE CASE TO GWINNETT COUNTY, I don't know why. WE WERE ARRESTED WITH NOT DRUGS, NOT POSSESSION, AND ANY KNOWLEDGE OF NARCOTICS IN THE OTHER CAR THAT WAS JOSE TERAN AGUIRRE.

⇒ Gwinnett County Court / District Attorney, violated my Civil Rights And Rights to a fair trial, when in trial the District Attorney confused the Jury with illegal evidence and the Jury trial thoughts that the drugs were in my possession, also on my car.

### THE LAW

⇒ BASSETT V. LEMACKS: THERE WAS PROOF AT TRIAL OF SUFFICIENT AMOUNT OF PURE COCAINE IN THE "MIXTURE" TO VIOLATE § 16-13-31, THE COURT HELD THAT DEFENDANT CONVICTION FOR TRAFFICKING HAD TO BE SET ASIDE BECAUSE THE CONDUCT WITH WHICH HE WAS CHARGED AND CONVICTED POSSESSING "A MIXTURE CONTAINING COCAINE" WAS NO LONGER DEFINED AS A CRIME.

⇒ LOCKWOOD V. STATE, THE SUPREME COURT IN REVIEWING THE COURT OF APPEALS DECISION HELD THAT § 16-13-31 CLEARLY REQUIRED A FINDING OF "ACTUAL" POSSESSION AND NOT CONSTRUCTIVE POSSESSION.

(4)

## \* Criminal Offenses / Drug Related Crimes:

⇒ Indeed, where the central issue for the jury is whether the defendants had actual or constructive possession of the contraband, the trial court must charge the jury on the law of possession. However, when a indictment alleges only actual possession, it is reversible error for a trial court to charge the jury on actual or constructive possession.

⇒ Notwithstanding an indictment upon actual possession alone, when the evidence indisputably shows that the defendant knowingly had direct physical control over the contraband and not merely the power and intention to exercise dominion or control over it, a trial court charge to the jury is authorized to convict the defendant of trafficking.

⇒ A person can not be in constructive possession of an entire kilogram of cocaine when he conducts an inspection, because he indisputably lacks the intention to exercise dominion or control over it until he has tested the sample. Upon tendering the purchase price to the seller, a person clearly possesses the intent to exercise control over all of the cocaine, but unless he acquires the power of control over it, he does not constructively possess it. Without proof of this power control, the evidence would be insufficient to support a conviction for trafficking in cocaine.

(5)

This is Just the Resume of a case that could be result in couple months, but the Malice and bad Faith of Gwinnett County brought me to spend 13 months between Jail and Prison, Making Suffer my Kids and my Family.

⇒ NEGLIGENCE by the Attorneys AGAINST ME to do not Accepted their offer and A Discriminatory Conspiracy, to be in this False Imprisonment.

⇒ I Pray this Honorable Court of Appeals Review this case and Check All the lies, Hearsays, and we can finally closure this entire matter.

Sincerely, Hernán Elias Morán.

my ex-Attorney NEVER informed or mentioned About First Offender Act. Knowing that I don't have Any Prior Criminal Record.