

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

June 5, 2015

To: Mr. Randy L. Nickles, GDC1289059, Johnson State Prison, Post Office Box 344,
Wrightsville, Georgia 31096

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).

- There is no case pending in the Court of Appeals of Georgia under your name. Your Motion to Enforce Compliance is being returned to you.**
- 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.

IN THE COURT OF APPEALS
STATE OF GEORGIA

RANDY L. NICKLES
APPELLANT

. VS.

JUDGE DEBORAH C. BENEFIELD
APPELLEE

CRIMINAL CASE NO.

2011-CR-DD142

O.C.G.A. § 15-6-21(c)

MOTION TO ENFORCE COMPLIANCE
PURSUANT TO O.C.G.A. § 15-6-21(c)

COMES NOW RANDY L. NICKLES AND MOVES THIS
HONORABLE COURT, PURSUANT TO GEORGIA STATUTE,
O.C.G.A. § 15-6-21(c) TO ENFORCE COMPLIANCE
AGAINST, JUDGE DEBORAH C. BENEFIELD OF THE
CLAYTON COUNTY SUPERIOR COURT TO RULE ON THE
APPELLANTS MOTION TO VACATE A VOID SENTENCE.
APPELLANT AVERS AS FOLLOWS FOR IMMEDIATE RE-
LIEF:

(1)

APPELLANT FILED A TIMELY MOTION PURSUANT TO
O.C.G.A. § 9-11-60 (b), TO VACATE HIS VOID SENT-
ENCE IN THE SUPERIOR COURT OF CLAYTON COUNTY.

SEE: (ATTACHED EXHIBIT - A)

(2)

JUDGE DEBORAH C. BENEFIELD PURSUANT TO O.C.G.A. § 15-6-21(a), has not complied in ADDRESSING AN ORDER TO THIS MOTION WITHIN 90 days AS PRESCRIBED BY LAW.

(3)

THEREFORE THIS COURT WHO HAS JURISDICTION TO ENFORCE O.C.G.A. § 15-6-21(c), IS BEING COMPELLED BY THE APPELLANT TO ENFORCE COMPLIANCE TO OBTAIN A HEARING OR RULING ON THIS TIMELY FILED MOTION.

THEREFORE APPELLANT PRAYS THIS COURT HONOR'S AND ENFORCE LEGISLATION RULES AND STATE LAW, TO IT'S ENTIRETY.

THIS 23rd DAY OF MAY 2015.

RESPECTFULLY SUBMITTED

Randy L. Nickles

RANDY L. NICKLES
JOHNSON STATE PRISON
P.O. BOX 344
WRIGHTSVILLE, GA. 31096

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I RANDY L. NICKLES
HAVE THIS DAY SERVED UPON THE APPELLEE IN THIS
MATTER A TRUE AND CORRECT COPY OF THE FOREGOING
MOTION TO ENFORCE BY US. MAIL WITH PROPER POSTAGE
AFFIXED TO:

JUDGE DEBORAH C. BENEFIELD
C/O DISTRICT ATTORNEY JASON GREEN
CLAYTON COUNTY SUPERIOR COURT
9151 TARA BLVD.
SUITE 4JL 202
JONESBORO, GA. 30236

THIS 23RD DAY OF MAY 2015

Randy L. Nickles

Randy L. Nickles 1289059
JOHNSON STATE PRISON
PO BOX 344
WRIGHTSVILLE, GA. 31096

APPELLANT

EXHIBIT

-A-

SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

RANDY LORENZO NICKLES
PETITIONER

CASE NO.:
2011-LR-DD142-6

.VS.
THE STATE OF GEORGIA
RESPONDENT

VOID SENTENCE

MOTION TO VACATE VOID SENTENCE
O.C.G.A. § 9-11-60(b)

COMES NOW RANDY LORENZO NICKLES,
PRO-SE PURSUANT TO O.C.G.A. 9-11-60(b)
AND FILES THIS SECOND MOTION TO VACATE
HIS SENTENCE AS BEING VOID BY MISREPRESEN-
TATION OF FACTS AND LAW THROUGH IN-
EFFECTIVE ASSISTANCE OF COUNSEL. PETITI-
ONER AVER'S FROM THE RECORD AND AS
A MATTER OF FACTS TO THE FOLLOWING:

I. STATEMENT OF FACTS

ON November 28, 2011, in the CLAYTON COUNTY SUPERIOR COURT ROOM, in Front OF THE Honorable DEBORAH C. BENEFIELD (THE Presiding JUDGE). DEFENDANT RANDY LORENZO NICKLES INDICTMENT NO. 2011-CR-142-6, which the ACCUSATION ACCUSED him OF (3cts OF AGGRAVATED ASSAULT, ARMED ROBBERY, MALICE MURDER, FELONY MURDER AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME. BY FRAUD THROUGH INEFFECTIVE ASSISTANCE OF COUNSEL. ENTERED INTO A NEGOTIATED PLEA, THAT STATUTORILY BY LAW IS VOID BY THE 5th Amendment DOUBLE JEOPARDY CLAUSE.

II. LEGAL ARGUMENT Citation of Authority

NO PLEA SHOULD BE ACCEPTED BY COUNSEL OR THE COURTS IF THE PLEA IS STATUTORILY BY LAW^{IS} IN VIOLATION OF THE PRINCIPLES SET FORTH BY THE UNITED STATES CONSTITUTION.

THE STATE CONTRACTED PLEA, WAS THE DEFENDANT TO PLEA TO A LESSER INCLUDED OFFENSE FROM MALICE MURDER TO VOLUNTARY MANSLAUGHTER ALL STEMMING FROM A JULY 30, 2010, ARMED ROBBERY OF ADRIAN GAMBLE (PT. 3-4).

SINCE PURSUANT TO D.C.G.A 16-1-6 (a) MALICE MURDER IS AN INCLUDED OFFENSE OF THE ARMED ROBBERY AND BECAUSE THE ROBBERY WAS ALL OF ONE CONSPIRACY.

PROOF OF THE ARMED IS ESSENTIAL A MALICE MURDER CONVICTION FOR THIS WAS THE PROBABLE CONSEQUENCES TO THE ORIGINAL CONSPIRACY TO COMMIT THE ARMED ROBBERY. THIS MEANS IF ONE CRIME IS INCLUDED IN THE OTHER HE MAY NOT BE CONVICTED OF MORE THAN ONE CRIME.

BERRY HILL VS. RICKETT 242 GA. 447 EDWARD VS. STATE 233 GA. 625 LORE VS. STATE 162 GA.

(1) NOTE (PT. - PLEA TRANSCRIPT PAGE.)

267 1(a) 134 SE. 36, BURK VS. STATE 234
BA. 512, 216 SE2d 812 (1975). SWANSON VS.
STATE 216 GA. APP. 1, 453 SE2d 78 (1995).

THEREFORE UNDER THE DOUBLE JEOPARDY
CLAUSE TO THE UNITED STATES CONSTITUTION
THE SENTENCE OF 10 YRS. FOR ARMED ROBBERY
IS STATUTORILY VOID AS A MATTER OF LAW
AND FACT.

THIS 21ST DAY OF FEBRUARY 2015

RESPECTFULLY SUBMITTED

Randy L. Nickles

RANDY L. NICKLES PRO-SE
JOHNSON STATE PRISON 11-1

P.O. BOX 344

WRIGHTSVILLE, GA. 31096

CC: JASON GREEN
ASSISTANT D.A.

CERTIFICATE OF SERVICE

I do hereby certify that I have served the within and foregoing Motion to Vacate Judgment by Depositing a Copy of the same to be delivered via United States Mail Addressed as follows:

~~Deborah L. Kelly~~
CLERK OF THE SUPERIOR COURT
9151 TARA BOULEVARD
JONESBORO, GA. 30236

&

DISTRICT ATTORNEY'S OFFICE
CLAYTON JUDICIAL CIRCUIT
9151 TARA BOULEVARD
JONESBORO GA. 30236

This 2nd day of August 2014

Kumudhara S. Reddy