

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

August 7, 2015

To: Mr. Michael Darnell Parson, GDC1001084756, Baldwin Correctional Institution, Post Office Box 218, Hardwick, Georgia 31034

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.**
- 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.
- I am in receipt of your communication. I am not sure what you are trying to file with the Court of Appeals of Georgia. There is no case docketed in this Court in your name or the lower court case number.**

If you are trying to file a Discretionary Application, you will need to follow the procedures set out in OCGA §5-6-35 and the rules of this Court.

If you are attempting to file a Direct Appeal, that would be initiated by filing a Notice of Appeal with the trial court.

I am returning your documents to you. Additionally, I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.



8.2.15

No case

Not sure what
they intend to file
(EAT)

2015

Georgia Court of Appeals

RULES

Last Update: January 21, 2015



STATE BAR OF GEORGIA GRIEVANCE CONFIDENTIAL

Please type or print legibly.

YOUR NAME: (Mr./Mrs./Ms.) Mr. Michael Darnell Parson

MAILING ADDRESS: P.O. Box 218 Hardwick GA 31034
Street or P. O. Box City State Zip

YOUR PHONE NUMBERS: (W) N/A (H) N/A

NAME OF THE ATTORNEY: Kenneth Kondritzer

Fill out a separate form for each attorney. Do not list law firms.
ADDRESS OF THE ATTORNEY: Atlanta Circuit, 55 Park Place NE., Suite 1600
Atlanta, GA 30303

DATE OF FIRST CONTACT WITH ATTORNEY: April 29, 2015 DATE OF LAST CONTACT WITH ATTORNEY: April 29, 2015

DOES THIS ATTORNEY CURRENTLY REPRESENT YOU? Not sure

STATE WHAT THE ATTORNEY HAS DONE OR HAS NOT DONE THAT CAUSES YOU TO SUBMIT THIS REPORT.

Mr. Kondritzer was notified in Jan. 2015, by my then appellate attorney Stephen Scarborough of my case flowing back to the purview of his office. I never received a notification of intent to represent from Mr. Kondritzer nor had I, the Defendant, communicated with him or anyone from his office before my hearing. Mr. Kondritzer mis-spoke for me in Court without ever speaking to me in person or reviewing the issues. His lack of preparation and communication plus his failure to act as a responsible attorney has greatly reduced my chances to successfully obtain a new trial and has also robbed me of the ability to amend that motion in order to retain rights on appeal for additional grounds, as the Court dismissed my motion for new trial on the faulty word of Mr. Kondritzer (out of my presence). If he is listed as my attorney, he is

If more space is needed, please attach other pages. Please do not write on the back.

"I affirm that the information I have provided here is true to the best of my knowledge."

Return to: State Bar of Georgia
Office of the General Counsel
104 Marietta Street, NW
Suite 100
Atlanta, Georgia 30303

SIGNATURE: [Signature]
Michael D. Parson
DATE: 07-14-2015

OPTIONAL: PLEASE PROVIDE THE NAME AND PHONE NUMBER OF SOMEONE WE CAN CONTACT IF WE HAVE DIFFICULTY CONTACTING YOU:

NAME OF CONTACT PERSON: Margaret Parson

PHONE NUMBERS OF CONTACT PERSON: (W) 803-324-2107 (H) 803-327-4228

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

*

V.

*

CASE NO. 12SC112492

*

MICHAEL DARNELL PARSON

*

RECEIVED IN OFFICE
2015 JUL 31 PM 1:08
COURT OF APPEALS OF GA

MOTION TO VACATE JUDGMENT

COMES NOW, the Defendant, pro se and In Forma Pauperis and prays this Honorable Court grants the Defendant's Motion and Declaration to Vacate Judgment arising from the April 29, 2015 Motion for New Trial Hearing for the following reasons:

1. Statement of facts and issues

- a. Attorney Stephen R. Scarborough filed an Entry of Special Appearance Motion to this Honorable Court on October 1, 2014 for the purpose of presenting and arguing a Motion for Leave to Proceed In Forma Pauperis for the Defendant. **(see attached)**
- b. On November 12, 2014 Attorney Scarborough, acting in a limited appearance capacity for the purpose of handling Defendant's Motion to Proceed In Forma Pauperis, which remained pending at that time, had cause to file a Motion For Out-Of-Time Appeal before the November 13, 2014 status hearing before this Court. **(see attached)**
- c. This Honorable Court, at the aforementioned status hearing, granted the Defendant's Motion For Out-Of-Time Appeal as well as the Motion For Leave To Proceed In Forma Pauperis and therefore obtain a copy of the trial transcripts pertaining to the Defendant's May, 2013 conviction for attempted murder and related offenses. This Honorable Court stated at that status hearing the trial transcripts requested would be prepared and available within 45 days of the November 13, 2014 hearing.
- d. Attorney Scarborough, after notifying the Defendant of his intent and the required advisals by certified mail, submitted a request to this Court to withdraw as the Defendant's counsel on January 21, 2015. Attorney Scarborough noted in that Motion to Withdraw as Counsel that "Because the trial transcript in this case has not yet been prepared, I respectfully suggest that my withdrawal will prejudice neither Mr. Parson nor the State". January 21,

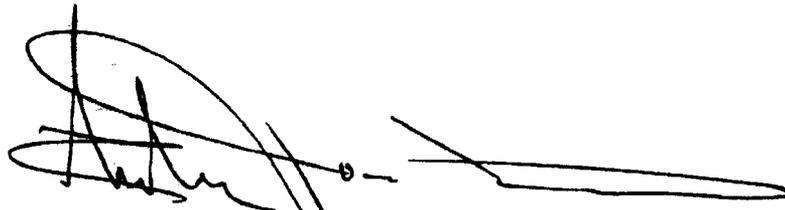
2015 was well past the 45 day deadline for the trial transcripts to be prepared and available as Ordered by this Honorable Court at the November 13, 2014 status hearing. (*see attached*)

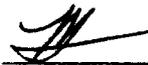
- e. Attorney Scarborough, within the same Motion to Withdraw as Counsel submitted to this Honorable Court on January 21, 2015, stated "I have advised Appeals Supervisor Kenneth Knodritzer of the Atlanta Circuit Defender's Office about the likely return of Mr. Parson's case to his office and am serving a copy of this Motion on Mr. Kondritzer.
- f. The March 16, 2015 deadline to file an amended Motion For New Trial had come and gone without any communication from this Court in reference to Attorney Scarborough's request to withdraw or from the Public Defender's office in reference to filing an intent to represent the Defendant.
- g. Sensing that his case had been abandoned and for the above mentioned reasons, Mr. Parson filed, through the U.S. Postal Service on or about April 13, 2015, a notarized, pro se and In Forma Pauperis Motion For Continuance (albeit late) expressing his desire to amend his Motion For New Trial to include ineffective assistance of counsel as well as other grounds. The Defendant noted, as grounds for the Motion for Continuance that "any issues pertaining to the possibility of a claim of ineffective assistance of trial counsel must be raised prior to appeal, or the same is deemed to be waived on appeal. *Glover v. State*, 266 Ga. 183, 465 S.E. 2d 659 (1996)" and that "If the Defendant is required to go forward with the hearing as currently scheduled, He will be unable to determine whether any potential claim for ineffective assistance of counsel properly lies in this matter". (*see attached*)
- h. On April 22, 2015 Mr. Parson, still acting in good faith as a pro se Defendant, submitted a request, in letter form, to this Honorable Court asking the Court's permission and help to obtain "the assistance of the Public Defender's Office for purposes of investigation and preparation for the Motion for New Trial Hearing". Pro Se Defendant was confused at the time as to the proper procedure to obtain such help, by making application with the Public Defender's Office for investigative and pre-hearing preparation purposes, but prays that this Honorable Court looks upon his request in the same manner as it was in *Jackson v. State*; "pleadings of an inmate proceeding pro se are treated with considerable indulgence....". (*see attached*)
- i. On April 29, 2015, the Defendant was present, in the holding cell outside of this Honorable Court, but was not allowed to be present inside the courtroom as Kenneth Kondritzer, a public defender whom the Defendant had not made proper application for, communicated with in any way or received an intent to represent from, spoke for him (outside of his presence). The Defendant was prepared, even without the requested trial transcripts, to argue and defend the original grounds set forth in the Motion for New Trial filed by trial attorney Robert Booker. The Defendant did not and does not consider Mr. Kondritzer as a competent (knowledgeable of the case and issues associated therein) or motivated lead counsel for the above stated reasons and asserts that the Defendant's absence, as pro se attorney, greatly injured his goal to obtain a new trial as the matter was decided without him (the Defendant) having a full opportunity, under the constitution and laws of this State, to defend his case.

2. Relief requested: In light of the above stated facts, the Defendant requests this Honorable Court for the following:
- a. Honor this Court's previous Order to provide the Defendant a copy of his trial transcripts and related documents,
 - b. Instruct the Public Defender, if it was the Honorable Court's intention to accede to the Defendant's request for investigative and preparation assistance, to provide such assistance leading up to his new trial hearing and sit at the defense table to provide support during the hearing as the pro se Defendant might desire,
 - c. Vacate the judgment to deny the Defendant's Motion For New Trial without a hearing,
 - d. Schedule a Motion for New Trial hearing on such a date as to allow the Defendant ample time to receive and review trial transcripts, amend the Motion for New Trial, if necessary, and properly prepare to argue ALL grounds.

WHEREFORE, Defendant respectfully requests that this Court grant his Motion to Vacate Judgment and any additional relief that is in its power to award.

Respectfully submitted this 14th day of July, 2015.


Case - 06-00001 06/04/2015



Michael D. Parson, Pro Se
1001084756

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

*

V.

* CASE NO. 12SC112492

*

MICHAEL DARNELL PARSON

*

DECLARATION

I, Michael D. Parson, DECLARE AS FOLLOWS:

1. I am the Defendant in the above styled case (12SC112492),
2. I certify, under penalty of perjury, under the laws of the State of G.A., that the preceding information contained on the Motion and Declaration to Vacate Judgment is true and accurate to the best of my knowledge and understanding.



Michael D. Parson, Pro Se

1001084756

This 17th day of July, 2015



com @pa 06/04/16

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

*

V.

* CASE NO. 12SC112492

*

MICHAEL DARNELL PARSON

*

Certificate of Service

I hereby certify that I have served the foregoing Motion to Vacate Judgment and Declaration upon the State of Georgia by depositing a true, correct and certified copy of the same in the United States mail, with sufficient postage affixed thereto to ensure delivery, addressed as follows:

1. Clerk of Superior Court, c/o Judge Kelly L. Ellerbe, Fulton County Courthouse, 136 Pryor St. S.W., Atlanta, GA 30303
2. Fulton County District Attorney's Office, 136 Pryor St., S.W., 3RD Floor, Atlanta, GA 30303

This 14th day of July, 2015



Michael D. Parson, Pro se

1001084756



Comm. Expires 06/04/16

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FILED IN OFFICE
OCT 01 2014
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

STATE OF GEORGIA)
)
 v.)
)
 MICHAEL DARNELL PARSON)
)
 Defendant.)

No. 12SC112492

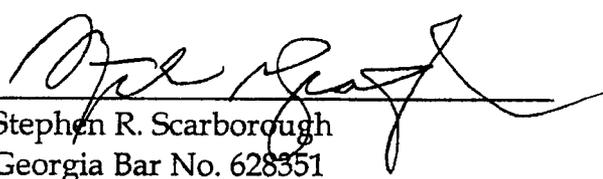
Judge Ellerbe

RECEIVED
FULTON CO. DISTRICT ATTORNEY
OCT 01 2014

ENTRY OF SPECIAL APPEARANCE

Notice is provided pursuant to Uniform Superior Court Rule 4.2 of the entry of the undersigned as an attorney for the DEFENDANT in the above-styled action. This appearance is solely for the purpose of presenting and arguing a Motion for Leave to Proceed *In Forma Pauperis*, but the undersigned expects to enter a general appearance as appellate counsel for the Defendant as soon as financial arrangements are concluded.

This 15th day of October, 2014.



Stephen R. Scarborough
Georgia Bar No. 628351

STEPHEN R. SCARBOROUGH, P.C.
The Candler Building
127 Peachtree Street, Suite 905
Atlanta, GA 30303
(404) 523-2044
srsdefender@gmail.com

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FILED IN OFFICE
OCT 01 2014
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

STATE OF GEORGIA)
)
 v.)
)
 MICHAEL DARNELL PARSON)
)
 Defendant.)

No. 12SC112492

Hon. Kelly Lee Ellerbee

OCT 01 2014

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Comes now Michael Darnell Parson, through undersigned counsel, and moves the Court for an order granting him leave to proceed *in forma pauperis* in his Motion for New Trial and appeal. In support of the Motion he states as follows:

1

Mr. Parson was tried, convicted, and sentenced for attempted murder and related offenses in May, 2013. He was represented at trial and sentencing by Robert L. Booker, Esq., whom he retained.

2

Mr. Parson has been incarcerated since (and even before) his sentencing in this matter and today remains in the custody of the Georgia

Department of Corrections.

3

Mr. Parson incorporates by reference the attached Affidavit of Indigency that he recently filed, *pro se*, with the Clerk of Superior Court. The affidavit shows that he is without sufficient assets to pay for the transcripts that will be necessary to prosecute his appeal.¹ This is so despite his expectation that family members will provide the funds to retain appellate counsel for him.

4

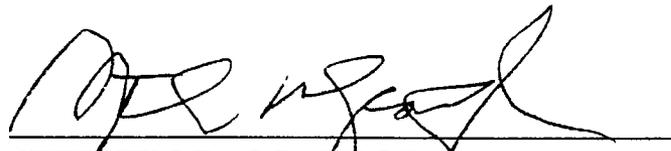
An indigent appellant, or an indigent defendant moving for a new trial, is entitled to a free copy of his transcripts so that he can pursue an appeal. *See Mitchell v. State*, 280 Ga. 802(1) (2006); *see also* accompanying Brief in Support of Motion. Mr. Parson enjoys this right and the right to the effective assistance of counsel on appeal, which would be frustrated if no transcript were made available to him.

¹Because the original of the accompanying Affidavit has already been filed, only a copy is submitted herewith. Should the Court deem the Affidavit insufficient in any respect, the undersigned respectfully requests an opportunity to supplement it and to provide a duly executed original.

2

WHEREFORE, for the reasons stated herein, Michael Darnell Parson respectfully moves the Court for an order granting him *in forma pauperis* status and directing that a transcript of his pretrial, trial, and sentencing proceedings be prepared at no cost to him.

Respectfully submitted this 15th day of October, 2014.



STEPHEN R. SCARBOROUGH
Georgia Bar No. 628351

STEPHEN R. SCARBOROUGH, P.C.
The Candler Building
127 Peachtree Street, Suite 905
Atlanta, GA 30303
(404) 523-2044
(404) 921-9683 fax
srsdefender@gmail.com

Affidavit of Indigency

I, Parson Michael, depose and say that I am the petitioner in the above-styled case. That in support of my request to obtain case record without being required to pay for such request I state that because of my poverty, I am unable to pay the costs of said record or to give security thereof; that I believe I am entitled to redress; I further swear that the following are true:

- 1) I am not presently employed.
- 2) I do not own any cash, a checking, or savings accounts, or have any money in the prison account.
- 3) I do not own real estate, stocks, bonds, or other valuable property.
- 4) I have not received within the past twelve months any money from any business, pensions, gifts or inheritance.

I, Parson Michael, do swear and affirm under penalty of law that the statements contained in this affidavit are true.

Sworn to and subscribed before me [Signature] this 20th day of

August 2014 Notary Public Commission Expires 03/01/15

[Signature]
Petitioner: Par Se

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA)	
)	
v.)	No. 12SC112492
)	
MICHAEL DARNELL PARSON)	Hon. Kelly Lee Ellerbee
)	
Defendant.)	

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN*
FORMA PAUPERIS

Michael Darnell Parson, sentenced to a term of thirty years' imprisonment, seeks relief from this Court's judgment but has no resources with which to purchase the transcripts that are necessary to his appeal. His sworn statement establishes that he is indigent and so, despite his family's willingness to retain appellate counsel on his behalf, he is entitled to preparation of his transcripts at public expense. He now respectfully requests that the Court grant him *in forma pauperis* status and direct that his proceedings be transcribed at no cost to him.

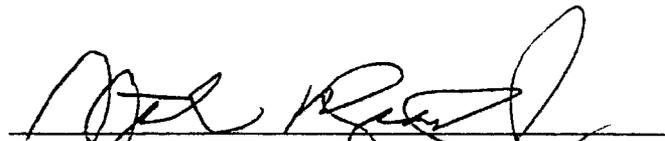
While in the past, some courts have followed the practice of disallowing *in forma pauperis* status for defendants who are represented by

retained counsel, the Court of Appeals has recently held that this is error. *Singleton v. State*, 326 Ga. App. 609 (2014), involved a man convicted of armed robbery, aggravated assault, and weapons offenses. Singleton was represented at trial by a public defender, and he received a copy of his trial transcript at public expense. But when he retained counsel for purposes of appeal, the trial court, despite his submission of a timely motion and further affidavits of poverty, refused to continue his pauper status or to provide him with a free transcript of the hearing on his Motion for New Trial. 326 Ga. App. at 615.

Though it declined to reverse Singleton's convictions because he ultimately obtained a transcript at his own expense, the Court of Appeals held that the trial judge had erred. Citing *Mitchell v. State*, 280 Ga. 802(1) (2006), which holds defendants to be entitled to pauper status "regardless of whether the [he or she] was represented by retained counsel at the time of the trial court proceeding for which the transcript is sought," the unanimous panel stated simply that, "[a]s an indigent defendant, Singleton was entitled to a free transcript of his new trial hearing. Therefore, the trial court erred in denying his motion." 326 Ga. App. at 615.

Similarly here, Mr. Parson plainly qualifies for pauper status in the preparation and arguing of his Motion for New Trial and his appeal. The only wrinkle - that members of his family are willing to use their own funds to hire appellate counsel - turns out not to be a wrinkle at all under *Mitchell* and *Singleton*, since all that is necessary under the reasoning of those cases is that the defendant be personally indigent. Mr. Parson is eager to begin the process of attacking his conviction and sentence. He asks only that this Court recognize his need for public funds to make his appeals possible.

Respectfully submitted this 15th day of October, 2014.


STEPHEN R. SCARBOROUGH
Georgia Bar No. 628351

STEPHEN R. SCARBOROUGH, P.C.
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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA)
)
 v.) No. 12SC112492
)
 MICHAEL DARNELL PARSON) Judge Lee
)
 Defendant.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within **MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* with BRIEF IN SUPPORT** has been served on Office of the District Attorney, 136 Pryor Street, SW, Third Floor, Atlanta, GA 30303, attn: Appellate Section, by the method indicated:

Hand Delivery U. S. Mail

This 18th day of October, 2014.



Stephen R. Scarborough
Georgia Bar No. 628351