

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

Date: March 23, 2015

To: Skyler Polk, GDC#1000213617, Calhoun State Prison, P.O. Box 249, Morgan, GA 39866

Docket Number: A15A1271

Style: Skyler Polk 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 **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)
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

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

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

To: *Skylar Polk*

Docket Number: *A15A1271*

Style: *Skylar Polk 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.**
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Date 3.17.15

IN THE COURT OF APPEALS

STATE OF GEORGIA

SKYLAR POIK

v.

STATE OF GEORGIA

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CASE NO. A15A1271

ORIGINAL Brief OF Appellee

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CLERK OF SUPERIOR COURT
JUDICIAL CIRCUIT OF GEORGIA

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OGEECHEE Judicial Circuit OF GEORGIA

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IN THE COURT OF Appeals STATE OF GEORGIA

SKYLAR POLK

VS.

STATE OF GEORGIA

CASE NO. A15A1271

Appellants Brief in Support OF His Appeal To
Judges ORDER DISMISSING Motion To correct VOID SENTENCE

Part I Procedural History

On February 23, 2010 appellant Skylar Polk was sentenced to a 15 year sentence with 10 to serve on a charge of Aggravated Assault, in the Superior Court of Bulloch County. Which the sentence that was imposed by the court was First OFFENDER Act. Appellant was never arraigned on charges in Superior Court, which jurisdiction of case resided in Juvenile courts being that Appellant was sixteen at the time of crime. I am arguing that the by me not being arraigned in the correct manner is an error of procedural Due Process, Indictment failed to allege the essential elements of crime, by Defendant being age sixteen during time of crime was coerced into confession, and that Jurisdiction of case from Juvenile courts to Superior courts was handle Incorrectly. Appellant filed a Motion TO CORRECT VOID SENTENCE on the grounds listed above, Judge signed of on ORDER Denying appellant relief, January 9, 2015.

PART II

Enumeration of Errors & Jurisdiction

Jurisdiction of this appeal lies within the Appeals Court OF GEORGIA

Rather than the Supreme Court pursuant to O.C.G.A. 15-6-34 Appeals from lower courts; finality of Judgments.

I.) Appellant was never arraigned on charges, which Court Imposed sentence 15 years, 10 to serve on First Offender Act. Appellant was never put on notice of charges to prepare himself. Appellant was not fairly treated under Due Process clause also referring to Equal Protection of Laws.

II.) Indictment which defendant was sentenced up under failed to allege essential elements of crime which he was charged.

III.) Lower court never look into confession of Appellant, whether to see was it or did is fall up under grounds of coercion, by Appellant being AGE sixteen at time offense.

IV.) Jurisdiction of Appellants case Transfer from Juvenile courts to Superior courts when defendant turned seventeen, was not in accordance with Juvenile code (15-11-5e1)

PART III

Argument and Citation of Authorities

Enumeration of Error I

On February 23, 2010 Appellant Skylar Polk was sentenced to 15 years and 10 to serve on an Aggravated Assault which, appellant was never arraigned on charges. Appellant was convicted in the Superior Court of Bulloch County which he never entered a Not Guilty Plea. (Hiatt v. State, 174 GA App. 298, 240 S.E.2d 894 (1977)) cites, The defendant has the right to arraignment - Generally a person indicted for or charged with an offense is entitled as a matter of course to be arraigned before pleading to indictment. Because, the sole purpose of an arraignment is to put defendant on notice of charges against him and give him opportunity to plead to indictment. The arraignment serves to inform the issues to be tried and to identify the person indicted. How could defendant properly prepare himself to face charges against him if he was never knowledgeable of the charges against him, by defendant not being informed is an exact misrepresentation of justice. In reference to the sixth amendment the defendant has the right to be informed of the charges and evidence against him.

Enumeration of Error II

Indictment Failed to Allege the essential elements of crime Aggravated Assault (16-5-20) The language of Indictment to wit a handgun, by brandishing said firearm and attempt to fire, does not *in* *spis* *verbis* allege either physical contact or physical harm, whereas it does so allege necessity of simple assault. Citing (State v. Hightower Jr., 252 GA 220, 312 S.W.2d 610 (1984)) In reference to O.C.G.A. (16-1-6) Conviction for lesser included offense, defendant should not have been convicted of Aggravated assault which crime had elements of Simple Assault (16-5-20). A person commits the offense of simple assault when he attempts to commit a violent injury to the person of another or commit an act which places another in reasonable apprehension of immediately receiving a violent injury Citing (Hogan v. State

261 GA App. 261, 262 (2) 582 S.E. 2d 210 (2003), There can be no conviction which Indictment fails to Alleged essential elements.) Lesser Included offense (O.C.G.A. § 16-1-6) A crime is a lesser Included crime as a matter of law if the lesser offense contains the same, but fewer elements as the greater offense, or if some conduct occurs with a less culpable state of mind. A crime may be a lesser included offense as a matter of fact if the facts shown at trial establish, that some lesser offense may have been all that was committed, regardless of whether the lesser offense contains certain elements that are not essential to greater offense. Simple Assault, pointing weapon at another, and Simple battery are all lesser Included offense which Appellee could have been tried without being charged with greater offense.

Enumeration of Error III

Appellant was age sixteen when crime occurred and was unlawfully coerced into self-incrimination. Citing (Gallegos v. Colorado 370 US 49, 9L Ed, 2d 325 ~~370 US 49 (1962)~~) Determination of whether the confession of an accused is involuntary so as to be inadmissible in a state court under due process clause of the fourteenth amendment, involves close scrutiny of the facts of individual cases; the length of questioning, the use of fear to break a suspect and the youth of the accused are relevant factors. ^{Citing:} ~~In re~~ to (Gallegos v. Colorado) 370 US 49, 9L Ed, 2d 325 () A juvenile would not be able to know let alone assert, such constitutional right as he had. He would have no way of knowing what the consequences of his confession without advice as to his rights - from someone concerned with securing him, those rights and without aid of more mature judgement as to the steps he should take in the predicament in which he found himself. A lawyer or adult relative or friend could have given the petitioner the protection which his own ~~maturity~~ ^{maturity} would not. Adult advice would have put him on a less unequal footing which his interrogators, without adult protection against this inequality a juvenile would not be able to know,

let alone assert, such constitutional rights as he had to. In reference to O.C.G. 15-11-76 (GA724A-107 provides in part that "An extrajudicial statement obtained in the course of violation of this article or one which would be constitutionally inadmissible in a criminal proceeding shall not be used against such child." The appellant was never brought before a judge to confirm confession, which appellant was age sixteen during the time crime occurred. Even though one may make oral confession or subsequent written confession violates the Due Process clause of the Fourteenth Amendment where appellant was age sixteen, prior to formal confession, obtained from juvenile, failed immediately to bring him before the judge of the juvenile court and see did he have advice of lawyer or friends.

Enumeration of Error IV

Juvenile Code 15-11-561 waiver of Juvenile Court hereby states that, at least three days prior to scheduled transfer hearing, written notice shall be given to child and his or her parent, guardian, or legal custodian. The notice shall contain a statement that the purpose of the hearing is to determine whether such child is to be tried in juvenile court or transferred for trial as an adult superior court. A Motion To Transfer custody of Appellant was filed October 14, 2009, by Assistant District Attorney Daphne H. Jarriel Barne 775059 and ordered October 15, 2009 by the Honorable Judge John R. Turner in Superior Court of Bulloch County, Ogeechee Judicial Circuit of Georgia. Also in reference to Juvenile Code 15-11-561 no child either before or after reaching seventeen years of age shall be prosecuted in superior court for offense committed before the child turned 17, unless case has been transferred provided in this part. The Procedural Due process on the Appellant behalf was exempt and was not exercised. Appellant nor parent was not present when motions were brought forth or hearing conducted, which falls up under not exercising The Procedural Due Process. Which in violation of Superior Court Rule 3.8 where defendant nor parent was put on Notice of Transfer of Juvenile case to Adult criminal court.

Conclusion

The Appellant has pointed to all material facts of this case and the Authorities that support his position. The sentencing court was not concerned with the Equal protection of laws, which Appellant convicted unlawfully of the offense, which the laws of the land was not used to protect Appellants.

The Appeals court now has the jurisdiction to reverse ruling of the Lower and remand the issue back to said some court with proper instructions as the Law May Allow.

SKYLAB ALLEN PO/K #1000213617

Calhoun State Prison

P.O. Box 249

Morgan GA 39866

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served this 17 day of March, 20 15, by U.S. mail, postage pre-paid to Court of Appeals of Georgia
Suite Sol 47 Trinity Avenue Atlanta GA 30334.

Stylar Paul
Signature

SKYLAR POIK #1000213617
Inmate Name and GDC Number

Calhoun State Prison

D-3 Bunk 11
Dorm

P.O. Box 249

Morgan, GA., 39866