

(DUP)

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS

4/8/15

To: Robert Lee Rhodes

Docket Number: Style: Robert Lee Rhodes v. The State

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

1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, 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. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)
4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. No Certificate of Service accompanied your document(s). Rule 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.
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. Margins were too small or paper size was incorrect. Rules 1(c), 24(c), 30(e), 31(c) and 41(b).
15. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rules 1(c), 30 (e) and 31 (c)
16. Your document was submitted for filing more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration. Rules 30(j) and 31(j).

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

**COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS**

April 9, 2015

To: Mr. Robert Lee Rhodes, Macon State Prison, P.O. Box 426, Oglethorpe, GA 31068

Docket Number: **Style: Robert Lee Rhodes v. The State**

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1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, 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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16. Other:

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

IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

Robert Lee Rhodes, Defendant
STATE OF GEORGIA (WILKES COUNTY)

RE: WILKES CO. SUPERIOR COURT
Case No: 12CR0044

APPLICATION FOR DISCRETIONARY APPEAL

NOW COMES the Defendant Robert Rhodes (PRO-SE) and request this HONORABLE COURT to grant this application for discretionary appeal in compliance to OCGA § 5-6-35 To support this APPLICATION the Defendant shows:

(I.)

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2015 APR 7 PM 2:41

CLERK OF COURT
WILKES COUNTY
COURT OF APPEALS OF GA

On May 14, 2012 the Defendant went before Wilkes County Superior Court Judge Roger W Dunaway Jr. for a plea hearing in which his court appointed attorney informed him the State and Court agreed to give him a plea of 10 years to serve for the offense of Trafficking Cocaine.

During the hearings plea colloquy the Court sentenced the Defendant to 30 years, ten to serve in prison and the Defendant refused to sign Final Disposition plea agreement due to not agreeing with the states offer. SEE EXHIBIT "A"

Nowhere on this document bears the Defendant's signature but it has the Courts signature. This is a clear Baykin Violation and illegal sentence.

(II.)

The Defendant filed a Motion to Set Aside Judgement to the trial court and on March 12th, 2015 the Court denied his Motion falsely claiming the Defendant did sign the plea petition but Exhibit "A" clearly shows he never signed it. (SEE EXHIBIT "B")

(III.)

Additionally the Court stated the Motion to Set Aside Judgement was not an appropriate remedy and that the Motion was completely frivolous and a waste of judicial resources. In *Regopoulos v. State*, 116 Ga. 596 (1), 42 S.E. 1014 (1902) the older authority stated this is a remedy for defects on the face of record similar to a motion to arrest of judgement, the only difference is the time of filing.

(IV.)

The record shows that the Defendant did not sign any plea agreement and the Court nor state has any documentations to reflect they Defendant signed any documents accepting this plea of 30 years. In *Brown v. State*, 582 S.E. 2d 13, 261 Ga. App 115 (2003)

this very Court ruled that a plea agreement is a CONTRACT which the state, defendant and Court are bound by its provisions; and if not the proper remedy is to set aside a guilty plea.

In this case there was never even a contract signed, by the Defendant Robert Lee Rhodes who respectfully request this Court to grant his application for discretionary appeal.

Respectfully Submitted this _____ day of _____ 2014

Robert Rhodes

~~*~~
Defendant, PRO-DE

Robert Rhodes BDC# 175871

Macon State Prison

P.O. Box 426

Oglethorpe, Ga. 31068

IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

Robert Lee Rhodes, Defendant
STATE OF GEORGIA (WILKES COUNTY)

WILKES CO. SUPERIOR COURT
RE: Case No: 12CR0044

APPLICATION FOR DISCRETIONARY APPEAL

NOW COMES the Defendant Robert Rhodes (PRO-SE) and request this HONORABLE COURT to grant this application for discretionary appeal in compliance to OCGA § 5-6-35. To support this APPLICATION the Defendant shows:

(I.)

On May 14, 2012 the Defendant went before Wilkes County Superior Court Judge Roger W Dunaway Jr. for a plea hearing in which his court appointed attorney informed him the State and Court agreed to give him a plea of 10 years to serve for the offense of Trafficking Cocaine.

During the hearings plea colloquy the Court sentenced the Defendant to 30 years, ten to serve in prison and the Defendant refused to sign Final Disposition plea agreement due to not agreeing with the states offer. SEE EXHIBIT "A"

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this very Court ruled that a plea agreement is a CONTRACT which the state, defendant, and Court are bound by its provisions; and if not the proper remedy is to set aside a guilty plea.

In this case there was never even a contract signed, by the Defendant Robert Lee Rhodes who respectfully request this Court to grant his application for discretionary appeal.

Respectfully Submitted this 2nd day of April 2014

Robert Rhodes
~~X Robert Rhodes~~
Defendant, PRO-SE

Robert Rhodes GDC# 175871
Macon State Prison
P.O. Box 426
Oglethorpe, Ga. 31068

Certificate Of Service

I do solemnly swear under penalty of perjury, that I have served copies of the foregoing documents, Application for discretionary appeal (2) and Order denying petitioners motion to set aside judgment (1) and a copy of petitioners plea.

With the Clerk of the Georgia Court Of Appeals, by placing said documents in the United State mailing system with sufficient postage to ensure it's delivery.

X _____

X Robert Rhee

Marcus Wright



IN THE SUPERIOR COURT OF WILKES COUNTY, STATE OF GEORGIA

STATE OF GEORGIA
VERSUS

CRIMINAL ACTION #: 12CR0044

Robert Lee Rhodes

MAY Term of 2012

DOB: 10/05/1960

Ga. ID # GA0980627

OTN(s): 88381378260

FELONY SENTENCE
WITH PROBATION

PLEA:

VERDICT:

Negotiated Non-negotiated Jury Non-jury

The Court enters the following judgment:

Count	Charge (as indicted or accused)	Disposition (Guilty, Not Guilty, Nolo, Lesser Included, Nol Pros, Dead Docket)	Sentence	Fine	Concurrent/ Consecutive Merged
1	Trafficking in Cocaine	Guilty	30 Years	\$200,000	
2					
3					
4					

The Defendant is adjudged guilty of the above-stated offense(s); the Court sentences the Defendant to confinement in such institution as the Commissioner of the State Department of Corrections or the Court may direct, with the period of confinement to be computed as provided by law.

Total Sentence: The Defendant is sentenced for a total of 30 Years with the first 10 Years to be served in confinement and the remainder to be served on probation.

The Defendant is to receive credit for time served from _____.

1. The above sentence may be served on probation provided the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.

2. Upon service of 10 Years, the remainder of the sentence may be served on probation; PROVIDED, that the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.

3. The Court sentences the Defendant as a recidivist under O.C.G.A.:
 §17-10-7(a); §17-10-7(c); §16-7-1(b); §16-8-14(b); § _____.

GENERAL CONDITIONS OF PROBATION

The Defendant is subject to arrest for any violation of probation. If probation is revoked, the Court may order incarceration. The Defendant shall comply with the following General Conditions of Probation: 1) Do not violate the criminal laws of any governmental unit and be of general good behavior. 2) Avoid injurious and vicious habits. 3) Avoid persons or places of disreputable or harmful character. 4) Report to the Probation Officer as directed and permit the Probation Officer to visit you at home or elsewhere. 5) Work faithfully at suitable employment insofar as may be possible. 6) Do not change your place of abode, move outside the jurisdiction of the Court, or leave Georgia without permission of the Probation Officer. If permitted to move or travel to another state, you agree to waive extradition from any jurisdiction where you may be found and not contest any effort by any jurisdiction to return you to this State. 7) Support your legal dependents to the best of your ability. 8) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by the Probation Officer. 9) Make restitution as ordered by the Court.

FINE SURCHARGES or ADD-ONS: The Court assesses all fine surcharges or add-ons as required by the laws of the State of Georgia and as are applicable to offense(s) for which the Defendant has been convicted.

- 1) The Defendant shall pay a probation supervision fee of **\$32.00** per month to the Probation Office beginning as directed by State Probation.
- 2) If counsel was provided under the Georgia Indigent Defense Act: the Defendant shall pay the \$50 Public Defender Application Fee; the Defendant shall pay attorney's fees of **\$200.00**.

SPECIAL CONDITIONS OF PROBATION

The Defendant is advised that violation of any Special Condition of Probation may subject the Defendant to a revocation of probation and the Court may require the Defendant to serve up to the balance of the sentence in confinement. The Defendant shall comply with the following Special Conditions of Probation:

- 1) The Defendant shall pay restitution in the amount of \$_____ through the Probation Office for the benefit of the victim(s), _____, at a rate to be approved by the Court or the Probation Officer.
- 2) The Defendant shall report to the Probation Office at Washington, Georgia by no later than as directed by State Probation.
- 3) The Defendant shall perform _____ hours of community service at the direction of the Probation Officer, to be completed within _____ days of this date, with transportation to be provided by the Defendant.
- 4) The Defendant is sentenced under the provisions of Probation Options Management System (POMS) with maximum penalty of 90-120 days in a Probation Detention Center.
- 5) **Other special condition(s).** The Defendant shall abide by the following additional special condition(s):

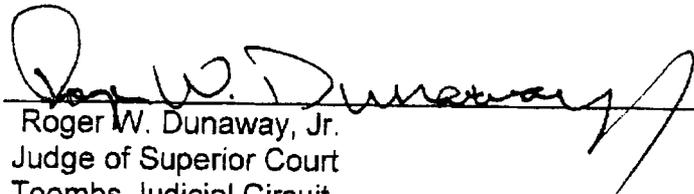
Fourth Amendment waiver. The Defendant shall submit to a search of person, residence, papers, vehicle, and/or effects at any time of day or night without a search warrant, whenever requested to do so by a Probation Officer or other law enforcement officer upon reasonable

cause to believe that the Defendant is in violation of probation or otherwise acting in violation of the law, and the Defendant shall specifically consent to the use of anything seized as evidence in any judicial proceedings or trial.

Specimen; admissibility. The Defendant shall produce from time to time upon oral or written request by a Probation Officer, a law enforcement officer, or official of a Georgia DHS-approved substance abuse or mental health provider personnel a breath, spittle, urine and/or blood specimen for analysis for the presence of drugs including alcohol. The Defendant shall waive evidentiary foundation for admissibility of the laboratory results.

The Hon. Sara E. Meyers, Attorney at Law, of McDuffie County, represented the Defendant, by
 Employment Appointment.

SO ORDERED this 14th day of May, 2012.



Roger W. Dunaway, Jr.
Judge of Superior Court
Toombs Judicial Circuit

FIREARMS – If you are convicted of a crime punishable by imprisonment for a term exceeding one year, or of a misdemeanor crime of domestic violence where you are or were a spouse, intimate partner, parent, or guardian of the victim, or are or were involved in another similar relationship with the victim, it is unlawful for you to possess or purchase a firearm including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. § 922(g)(9) and/or applicable state law.

Acknowledgment: I have been provided with a copy of the sentence. I have read the terms of this sentence or had them read and explained to me. If all or any part of this sentence is probated I certify that I understand the meaning of the order of probation and the conditions of probation. I understand that violation of a special condition of probation could result in revocation of all time remaining on the period of probation.

Defendant

ADDENDUM TO SENTENCE SHEET REFLECTING SURCHARGES, ADD-ONS, AND FEES REQUIRED BY LAW

	COUNT 1	COUNT 2	COUNT 3	COUNT 4	COUNT 5	COUNT 6
COURT COST						
FINE	\$200,000.00					
POPIDF-A FUND (10% TO MAX)	50.00	0.00	0.00	0.00	0.00	0.00
POPIDF-B FUND (10%)	20000.00	0.00	0.00	0.00	0.00	0.00
JAIL FEE (10%)	20000.00	0.00	0.00	0.00	0.00	0.00
DUI SURCHARGE (10%/\$26 MAX)						
DRUG SURCHARGE (50%)	100000.00					
CRIME VICTIM ASSISTANCE (5%)	10000.00	0.00	0.00	0.00	0.00	0.00
LAW LIBRARY						
BSIT FUND (10%) DUI'S ONLY						
DETF (5%)						
OTHER						
TOTAL: COURT COSTS AND FINES	\$350,050.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PLUS CRIME LAB FEE	50.00					50.00
 plus PUBLIC DEF APPLICATION FEE	50.00					
 plus ATTORNEY RESTITUTION	200.00					
TOTAL	\$350,350.00					

Plus a monthly PROBATION FEE of **\$32.00**



Roger W. Dunaway, Jr.

Chief Judge, Superior Courts

Toombs Judicial Circuit

P.O. BOX 480
THOMSON, GEORGIA 30824
706-595-2126
FAX 706-595-8930

GLASCOCK, LINCOLN
McDUFFIE, TALIAFERRO
WARREN AND WILKES
COUNTIES

March 11, 2015

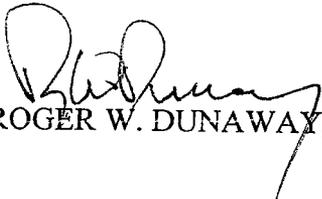
Mrs. Mildred Peeler
Clerk of Superior Court
23 Court Street, Room 205
Washington, GA 30673

Re: State of Georgia v. Robert Lee Rhodes
Criminal Action No. 12CR0044
Wilkes County Superior Court

Dear Mildred:

Enclosed herewith please find an Order with reference to the above matter which I would appreciate your filing. Thank you very much for your cooperation.

Very truly yours,


ROGER W. DUNAWAY, JR.

RWD/cb
Enclosure

CC: William Doupe'
Robert Lee Rhodes ✓

RECEIVED
MAR 18 2015
Mailroom
Macon S.P.

IN THE SUPERIOR COURT OF WILKES COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, :
v. : Criminal Action No. 12CR0044
ROBERT LEE RHODES, :
Defendant. :

ORDER

The above named Defendant pled guilty to the offense of trafficking cocaine on May 14, 2012. He was sentenced to a total of thirty years with the first ten years to be served in confinement as required by law, and fined the mandatory \$200,000.00. He now files a motion to set aside judgment asking that his plea be set aside. He claims he is being held in prison without being afforded a trial, nor did he sign a plea agreement. No matter what he calls it the Defendant did sign a petition to enter a plea of guilty to trafficking cocaine. That plea petition contains a provision that the state will recommend ten years to serve followed by probation. The probationary period was to allow him time to pay the mandatory \$200,000.00 fine.

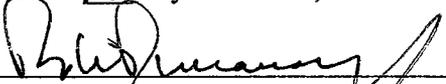
Next he says that his attorney told him that if he would plead guilty he would receive a ten year sentence. As stated above the twenty years probation was to allow him time to pay the \$200,000.00 fine. He never indicated to the Court he was in a position to pay that at that time. Further, the plea petition and the transcript both reflect that he stated to the Court that he had been promised nothing in exchange for his plea.

The Defendant further contends that he was never given a plea colloquy in compliance with his Boykin rights. The transcript of the Defendant's plea shows that is a blatant untruth. He was clearly given his Boykin rights and indicated that he understood each of them.

Further, the law is clear that a motion to set aside a verdict is not an appropriate remedy in a criminal case. (Molly) 277 Ga. 810. Williams v. State, S08A0014. (Molly get both of these cases and their cite.

The Defendant's motion is completely frivolous and a waste of judicial resources. The motion is DENIED.

SO ORDERED this the 11th day of March, 2015.



ROGER W. DUNAWAY, JR.
Chief Judge of Superior Court
Wilkes County, Georgia

CC: William Doupe'
District Attorney's Office
P.O. Drawer 966
Washington, GA 30673

Robert Lee Rhodes #175871
MSP
P.O. Box 426
Oglethorpe, GA 31068

**Page 2 – Order – State v. Robert Lee Rhodes
Criminal Action No. 12CR0044
Wilkes County Superior Court**

Certificate Of Service

I do solemnly swear under penalty of perjury, that I have served a copy of the Order dated 3-11-2015 denying petitioners motion to set aside judgment and a copy of petitioners plea agreement date 5-14-2012. With the Clerk of the Georgia Court Of Appeals, by placing said documents in the United States mailing system with sufficient postage to ensure delivery.

*

*



Roger W. Dunaway, Jr.
Chief Judge, Superior Courts
Coombs Judicial Circuit

P.O. BOX 480
THOMSON, GEORGIA 30824
706-595-2126
FAX 706-595-8930

GLASCOCK, LINCOLN
McDUFFIE, TALIAFERRO
WARREN AND WILKES
COUNTIES

March 11, 2015

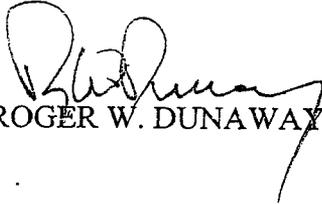
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Criminal Action No. 12CR0044
Wilkes County Superior Court

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Very truly yours,


ROGER W. DUNAWAY, JR.

RWD/cb
Enclosure

CC: William Doupe ✓
Robert Lee Rhodes ✓

RECEIVED
MAR 18 2015
Mailroom
Macon S.P.

IN THE SUPERIOR COURT OF WILKES COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, :
v. : Criminal Action No. 12CR0044
ROBERT LEE RHODES, :
Defendant. :

ORDER

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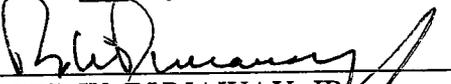
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ROGER W. DUNAWAY, JR.
Chief Judge of Superior Court
Wilkes County, Georgia

CC: William Doupe'
District Attorney's Office
P.O. Drawer 966
Washington, GA 30673

Robert Lee Rhodes #175871
MSP
P.O. Box 426
Oglethorpe, GA 31068

**Page 2 – Order – State v. Robert Lee Rhodes
Criminal Action No. 12CR0044
Wilkes County Superior Court**

In The Georgia Court Of Appeals

STATE Of Georgia

Robert Lee Rhodes,
Petitioner

CASE NO: 12CR0044

vs.

The STATE Of Georgia,
Respondents.

Re: Wilkes Co. Superior
Court, Case NO: 12-CR-0044

AFFIDAVIT

I do solemnly swear under OATH, that the following documents ATTACHED, Court Order dated 3_11_2015 and plea agreement dated 5_14_2012 are true and correct copies of the record.