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

October 5, 2015

To: Mr. Corey D. Richardson, GDC1296769 H-2, Dooly State Prison, Post Office Box 750, Unadilla, Georgia 31091

Docket Number: A15A2113 **Style**: Corey Richardson 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.**

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 Supplemental Brief was submitted without permission to file. 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

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GEORGIA COURT OF APPEALS

COREY DEAN RICHARDSON,
Appellant

v

CASE NO. A15A2113

THE STATE OF GEORGIA,
Appellee

"SUPPLEMENTAL BRIEF"

COMES NOW, Appellant Corey Richardson, and files this "Supplemental Brief" showing this Court as Follows:

PART ONE

December 8, 2008, the above-named appellant was found guilty of the offense of Aggrevated Child Molestation before the Honorable Judge Wallace Cato in Grady County and sentenced to life with a possibility of parole at 25 years. Upon remand from the Court of Appeals, the appellant was resentenced to 20 years without parole.

STATEMENT OF FACTS

PART TWO

ENUMERATION OF ERRORS

The trial court erred in placing the defendant on trial without jurisdiction from the juvenile court.

The trial court erred in failing to establish a more precise time the offense was committed in reference to the defendant's age.

The trial court erred in proving the element of the intent to commit aggrevated child molestation in reference to the defendant's age and state of mind at the time the crime was committed.

The appellant was not provided effective assistance of counsel garaunteed by the Sixth Amendment of the United States Constitution.

PART THREE

STANDARD OF REVIEW

The appellant contends that his right to due process of law garaunteed by the Fifth Amendment of the United States Constitution were violated when the trial court robbed the juvenile court of jurisdiction and placed the appellant on trial.

For this reason, the appellant contends that his conviction is void and a nullity. See laches is no bar. De Jarnette Supply Co. v. F.P. Plaza, Inc., 229 Ga. 625, 193 S.E. 2d 854 (1972). Gieger Fin. Co. v. Travis, 146 Ga. App. 224, 246 S.E. 2d 132 (1978); and Benton v. Mordern Fin. & Inc. Co., 244 Ga. 533, 261 S.E. 2d 359 (1979) provide a void conviction is subject to being set aside and/or attacked at any time. Also see Dupree v. Blankenship, 83 Ga. App. 664 S.E. 2d 457 (1957). Such a judgment may be attacked in any court even if an execution has been issued upon it according to Rick v. Liberty Loan Corp., 146 Ga. App. 594, 247 S.E. 2d 133 (1978).

The appellant being of ordinary intelligence and ignorant of the law and rules of criminal procedures contends that his attorney was ineffective. If the right to counsel garaunteed by our constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel. See McBryar v. McElroy, 510 F. Supp. 706 (N.D. Ga. 1981). An attorney cannot render reasonable effective assistance unless counsel has acquainted himself with the law and the facts of the case. See United States v. Woods, 487 F.2d 1218 (5th Cir. 1973).

The appellant was left to the mercy of incompetent counsel (Harrell v. State, 139 Ga. App. 556, 228 S.E. 2d 723 (1976) when his attorney failed to acquaint himself with the law and the facts of the case (United States v. Woods, 487 F.2d 1218 (5th Cir. 1973) concerning jurisdiction and the appellant's age and state of mind at the time the offense was committed. For this reason, the appellant contends that his attorney could not have rendered reasonable effective assistance.

Being of ordinary intelligence and ignorant of the law and rules of criminal procedure, the questions that the appellant has in this case are as follows:

Did the trial court have jurisdiction to place the appellant on trial in a superior court without recieving jurisdiction from the juvenile court when the appellant was a juvenile at the time the offense was committed;

Do the law apply to the offense committed in the indictment at the time the offense was committed or at the time of the appellant's arrest or at the time the appellant was found guilty;.

Could the trial court try the appellant as an adult when he was a juvenile when the crime was committed and how could the trial court determine the appellant's frame of mind at the time of his conviction when he was between the ages of 12 and 13 at the time the offense was committed;

Could the victim at 11 or 12 years of age testimony be reliable when she was 3 or 4 years of age at the time the offense occured.

Based on the above questions, the appellant contends that he was left to the mercy of incompetent and ineffective counsel when counsel failed to acquaint himself with the law and the facts of the case and for this reason counsel could not have rendered reasonable effective assistance. See U.S. Const. Sixth Amend.; McBryar v. McElroy, 510 F. Supp. 706 (N.D. Ga. 1981); and United States v. Woods, 487 F.2d 1218 (5th Cir. 1973).

Conclusively, this shows:

Counsel failed to acquaint himself with the law and the facts of the case (United States v. Woods, 487 F.2d 1218 (5th Cir. 1973);

Counsel failed to conduct pretrial investigations (McClesky v. Zant, 580 F. Supp. 338 (N.D. Ga. 1984);

Counsel failed to investigate plausible defenses (United States v. Badolato, 701 F.2d 915 (11th Cir. 1983);

Counsel failed to research mitigating evidence (Johnson v. Kemp, 615 F. Supp. 355 (S.D. Ga. 1985),

when his attorney failed to establish if the trial court had jurisdiction to place him on trial when he was a juvenile at the time the offense occured, but an adult at the time of his incarceration.
when his attorney failed to establish his state of mind in reference to the intent of the offense setforth in the indictment when the appellant was 12 years of age at the time of the offense, but 20 years of age at the time of his incarceration.
and when his attorney failed to challenge the testimony of a 12 or 13 year old victim when the victim was 3 or 4 years of age at the time the offense occurred.

Even though the rules laid down in Strickland (466 U.S. 668, 104 S.Ct. 2052, 80L.Ed 2d 674 (1984) provide the appropriate framework for evaluating a claim of ineffective assistance . . . the Court must review counsel's performance in the light of the particular type of proceeding. See United States v. Wren, 682 F.Supp. 1237 (S.D.Ga. 1988). Therefore, a determination whether reasonably effective assistance was rendered must be based on the totality of the circumstances and the entire record. Mitchell v. Hopper, 538 F.Supp. 77 (S.D.Ga.1982).

Counsel failed establish if the trial court had jurisdiction to place the appellant on trial when he was a juvenile when the offense was committed, but an adult when he was arrested. Counsel failed to establish the appellants state of mind in reference to his intent to commit the crime set forth. Counsel failed to challenge the validity and reliability of the victim's testimony when the victim was 3 or 4 years of age at the time the offense occurred, but 11 or 12 years old when the offense was reported. In lieu of the fact no precise date the offense was committed was ever established. The offense supposedly occurred between January 1, 2001 and January 31, 2003.

Finally, the trial court erred when it placed the appellant on trial as an adult when the appellant was a juvenile when the offense occurred and the trial court did not properly reciere jurisdiction from the juvenile court [do the law apply to a defendant at the time

the crime was committed or at the time of arrest or at the time of conviction ?]. A void conviction for lack of jurisdiction is subject to being set aside or attacked at any time. See Dupree v. Blankenship, 83 Ga. App. 664 S.E.2d 457 (1957); and Rick v. Liberty Loan Corp., 146 Ga. App. 594, 247 S.E.2d 133 (1978) even if an execution has been issued upon it.

The state failed to meet its burden of proof concerning the jurisdiction the trial court had to place the appellant on trial when he was a juvenile at the time of the offense and the state of mind of the appellant at trial in reference to intent to commit the offense when the appellant was a juvenile at the time the offense occurred, but an adult at the time of his conviction. For this reason, as well as all of the above and forementioned, the appellant must be *aquitted* if the government failed to meet its burden of proof. See Winship, 397 U.S. at 363; and e.g. U.S. v. Carucci, 364 F.3d 339, 343 (1st Cir. 2004).

O.C.G.A. 16-6-4(c) provide a defendant must be 13 to 17 years of age to be placed on trial in a superior court for the offense of aggrevated child molestation. O.C.G.A. 16-3-1 by it's plain language establishes that children who commit criminal offenses at the time they are under the age of 13 are categorically ineligible to be prosecuted for or convicted of those offenses. A person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, ommission, or negligence constituting the crime. For this article ~~to~~ and the law to serve its purpose, a crime must be construed according to the provisions of the law existing at the time of its commission. See Riley v. State, 243 Ga. App. 697, 698 (534 S.E.2d 437) (2000); also see 15-11-28(6)(2)(a).

Had defense counsel or the trial court have established a more precise date at the time the offense occurred in reference to the appellate's age concerning the jurisdiction of the trial court to place a juvenile on trial, the appellant would not be convicted of the charges set forth in the indictment

When an appellant challenges the sufficiency of the evidence to support a conviction, after reviewing the evidence to support a conviction, the

relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See 310 Ga. App. 183:: Nunnally v. State;: June 20, 2011.

According to the indictment, the offense occurred between January 1, 2001 and January 31, 2003 where the appellant could have been between the ages of 12 and 14 years old. If this had been a multiple question test: was the defendant (A) 12, (B) 13, (C) 14, or (D) not enough information. The correct answer would be (D) not enough information.

Under O.C.G.A. 17-10-1, criminal statutes must be strictly construed against the state and liberally in favor of human liberty. If a statute increasing a penalty is capable of two constructions, it should be construed so as to operate in favor of life and liberty. See Knight v. State, 243 Ga. 770, 257 S.E.2d 182 (1979). It is no fault of the appellant that his attorney as well as the state failed to establish a more precise and accurate date the offense was committed in reference to his age concerning jurisdiction.

CONCLUSION AND PRAYER

IN CONCLUSION, the appellant contends that his attorney and the trial court failed to establish a more precise date the offense occured in reference to jurisdiction concerning his age. The Fifth and Sixth Amendments of the United States Constitution was designed to protect a person from unlawful prosecution. For the constitution to serve its proper purpose, based on all of the forementioned, the appellant herein pray that this Court acquit him of the charges set forth in the indictment or grant him a new trial to correct a manifest injustice and as a matter of fact or law.

RESPECTFULLY SUBMITTED this 23 day of September 2015.

23rd day of September 2015

Corey Richardson
pro se

Corey Dean Richardson H-2
Dooly State Prison P.O. Box 750
Unadilla, Ga. 31091-0750

Robert Gill Jr.

NOTARY PUBLIC FULTON COUNTY GEORGIA SEAL
ROBERT GILL, JR.
Notary Public
My Comm. Exp.
09/20/2016

CERTIFICATE OF SERVICE

This is to certify that I have this day served of copy of the foregoing Supplemental Brief by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage affixed thereon, to:

Georgia Court of Appeals
47 Trinity Ave. SW
Suite 501
Atlanta, Ga. 30344

&

Decatur County Superior Court
District Attorneys Office
P.O. Box 1870
Brainbridge, Ga. 39818

This 23 day of September 2015.

Corey Richardson
pro se

23rd day of September 2015

Robert Gill Jr

ROBERT GILL, JR.
Notary Public
My Comm. Exp.
09/20/2016

NOTARY PUBLIC SEAL HOUSTON COUNTY, GEORGIA

Corey Dean Richardson.
H-2
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