

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

May 18, 2015

To: Mr. Ray Rogers Rivers, GDC94935 D4#26, Calhoun State Prison, Post Office Box 249, Morgan, Georgia 39866

Docket Number: A15A1325 **Style:** Ray Rivers v. The State

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

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In THE COURT OF APPEALS
STATE OF GEORGIA

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RAY ROGER RIVERS
Appellant; pro-se.

VS.

STATE OF GEORGIA
Appellee.

Docket No:

A15A1325

L3CR370

Appellant's Brief

GDC # 94935
CALHOUN STATE PRISON
P.O. Box 249
MORGAN, GA 39866

RAY ROGER RIVERS
Appellant;
PRO - SE

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In THE Court of Appeals
state of Georgia

RAY ROGER RIVERS
Appellant; pro-se.

vs.

STATE OF GEORGIA
Appellee.

Docket No:

AISA1325

13CR-370

Appellants' Brief

Part ONE (1):

Statement of Facts

A. On May 22, 2014, at a scheduled hearing, the Appellant entered a negotiated plea of guilty to the offense of trafficking Methamphetamine OR Amphetamine under criminal action No: 13CR-370 in the Superior Court of Jones County, State of Georgia.

The sentence of the Court was for a total of (30) thirty years, with (15) fifteen years to be served in confinement and the remainder (15) fifteen years on probation. SEE (Copy of the final disposition along with complete record of all proceedings, forwarded to the court of appeals by the clerk of the sentencing court.)

This case is one in which there was an undercover sting against the Appellant that did unlawfully cross over from Monroe County into Jones County. This was all a part of the same transaction, to which Jones County never legally had jurisdiction at any point. The law enforcement officers involved with this case induced the Appellant to commit a crime by means of fraud and undue persuasion, in order to bring a criminal prosecution against him once he was illegally coerced into the other County. There would not have been a crime committed in this case had it not been for the fraud and undue persuasion, nor the trial court's error in imposing judgment and sentencing with no lawful documented disclosure of "probable cause" which violates both "Due process" and "Liberty clause".

United States Constitution Amendment V(5); Plea T. pg. 1, lines 16-17; Plea T. pg 2, lines 12-18; and a copy of the complete record of all proceedings forwarded to the court of appeals by the clerk of sentencing court.

The officers in this case unlawfully used an inmate incarcerated in the Jones County Jail on probation and/or parole to contact the Appellant in another County for the purpose of obtaining and having him obtain drugs in the form of methamphetamine for a certain amount of money.

Once this was arranged, the officers illegally, without permission or order from the Court (probate or otherwise), transported the confidential informant/source, "Clyde Thomas" to Monroe County and had him purchase the Methamphetamine from the Appellant. At the time only part of the transaction was obtained by the "confidential source," Clyde Thomas, and arranged to have the Appellant bring the remainder over to Jones County with the express purpose of arresting him there, depriving Appellant of "liberty" and "Due Process of Law," neither provided documented evidence or prior "probable cause" for opening an investigation against Appellant prior to this "sting operation" beginning May 24, 2013. Georgia law and statute bars Clyde Thomas, or anyone on probation and or parole to perform any undercover work with police agencies without permission from the Court, it is also a general condition of probation that no one on probation shall be permitted to do this without court order or permission failure to the prosecution to disclose evidence prejudiced Appellant's case. (SEE Motion to correct void sentence along with complete record forwarded to Court of Appeals by Clerk of sentencing Court; Exhibit (A) Attached hereto).

Part one (1)

Statement of Facts continued.

B. In Supplemental Report, Jones County Investigator Gerry Nelson, in case # 1305-4151 states "on Tuesday, May 28, 2013," He "participated" in a "Methamphetamine investigation." where He "came into contact with confidential informant (Clyde Thomas).

In Supplemental Report, Jones County Investigator Robert C. Reese, in case # 1305-4151 states "Before leaving the Jones County L-EC the source had been searched and did not possess any contraband." Therefore CS, Clyde Thomas was taken from the County Jail and was on probation as well, which is a violation of state Probation System General Conditions of Probation Number Eleven (11) "Do not perform any undercover work for police agencies without permission of the court."

Investigators did not nor did trial court disclose or furnish a court order establishing this document granting permission for the defense. (SEE Indictment p. 17, Criminal Action Number 13CR-370 Consolidated PRE-trial Motions sections E Notice to produce; SEE Indictment Criminal Action Number 13CR-370, p. 30, Notice of Election and filing of Motions for Application of Provision of Discovery Article (signed by Keri Thompson) p. 34, Motion to compel Disclosure of Confidential Informant.)

(5)

Part one (1)

STATEMENT of facts continued.

C. THE PROSECUTION IN THIS CASE OBTAINED AN INDICTMENT TO WHICH WAS BASED SOLELY ON EVIDENCE OBTAINED ILLEGALLY AND WITHOUT THE REQUIRED JURISDICTION. THE INDICTMENT IS PREDICATED UPON MATTERS THAT WERE OBTAINED AS THE CONSEQUENCE OF THE ILLEGAL ACTIONS OF THE JONES COUNTY TASK FORCE, AND SAID MATTERS WERE ALL ILLEGALLY AND IMPROPERLY PRESENTED TO THE GRAND JURY. ACCORDINGLY, THE GRAND JURY RETURNED SAID INDICTMENT WITHOUT HAVING ANY LEGAL EVIDENCE PRESENTED ON, NOR "PROBABLE CAUSE" DOCUMENTED, WHICH TO VALIDLY RETURN AN INDICTMENT, AND ALL OF THE ACTIONS OF THE PROSECUTION ALONG WITH THE JONES COUNTY TASK FORCE WITH THEIR USE OF THIS INFORMANT RENDER THIS SENTENCE AND CONVICTION VOID TO WHICH IMPOSES PUNISHMENT THE LAW DOES NOT ALLOW AND THIS FATALY DEFECTIVE INDICTMENT CANNOT SUPPORT A CONVICTION. (A COPY OF THE COMPLETE RECORD OF ALL PROCEEDINGS WAS FORWARDED BY THE CLERK OF THE TRIAL COURT TO THE COURT OF APPEALS).

On July 21, 2014, the Appellant properly filed his Motion To correct void sentence with the trial Court, properly setting forth how and why his current sentence is in fact void. THE TRIAL COURT, AFTER HAVING HELD A VERY BRIEF HEARING ON SAID MOTION, ENTERED ITS ORDER DENYING APPELLANTS MOTION TO HAVE HIS SENTENCE VACATED

(6)

PART ONE (1)

STATEMENT OF FACTS CONTINUED/CONCLUDED.

AS BEING VOID ON THE 13TH DAY OF NOVEMBER, 2014. THE APPELLANT PROPERLY FILED HIS NOTICE OF APPEAL WITH THE CLERK OF THE TRIAL COURT WITHIN PROPER TIME ALLOWED BY LAW.

PART TWO (2):

ENUMERATION OF ERRORS

JURISDICTION OF THIS APPEAL LIES WITHIN THE APPEALS COURT OF GEORGIA RATHER THAN THE SUPERIOR COURT PURSUANT TO GEORGIA STATUTE. APPEALS FROM LOWER COURTS; FINALITY OF JUDGEMENTS.

(1) TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY ACCEPTING A PLEA, IMPOSING JUDGEMENT AND SENTENCE IN CASE: 13CR-3 TO RAY ROGER RIVERS VS. STATE OF GEORGIA, WITHOUT HAVING EVER ESTABLISHING OR FURNISHING DOCUMENTED "PROBABLE CAUSE" FOR JONES COUNTY INV. GERRY NELSON'S NOR INV. MONROE COUNTY MIKE OGLETREE'S OPENING AN INVESTIGATION AGAINST APPELLANT PRIOR MAY 28, 2013, GIVING THE DEFENSE/APPELLANT AN OPPORTUNITY TO CHALLENGE SUCH IN TRIAL, THEREFORE, DENYING THE APPELLANT "DUE PROCESS OF LAW", THEREFORE, THE TRIAL COURT STANDS IN VIOLATION OF US CONST. AMEND V

(7)

(5) "Due process";

(2) Trial Court ERASED AND ABUSED its discretion by accepting a plea, imposing judgement and sentence in case: 13CR-370 Ray Roger Rivers vs. STATE of Georgia, absent of supplemental witness's (Jones County INV. GERRY NELSON AND Monroe County INV. MIKE OGLETREE) reports documenting and disclosing "probable cause" in their "chain of events" that led to Appellants deprivation of "Liberty" prior to MAY 28 2013, "Sting operation" and ARREST, prejudicing the outcome of the trial and "Due process" rights to challenge such "probable cause", therefore trial court stands in violation of United States Const. Amendment V (5) "Liberty Clause";

(3) Trial Court abused its discretion by passing judgement and imposing a sentence pursuant to a fatally defective and flawed indictment passed down absent of complete disclosure of documents/reports lawfully establishing "probable cause" for opening an "investigation" prior to MAY 24 2013, "Sting operation" and "Chain of events" in violation of Amendment V (5) U.S. Const., rights to "proper presentment";

(A) This Court abused its discretion by failing to rule

on the merits of Appellant's motion to correct void sentence, as the judgment and sentence are in fact void which imposes punishment the law does not allow, and failing to secure Appellant's "Due Process" and Constitutional Rights;

(5) The Trial Court Abused its discretion by accepting a plea of guilty to which was unlawfully induced or not made voluntarily with understanding of matters nature of charge and the consequences of the plea, and the use of illegally obtained evidence pursuant to the unconstitutional actions of the Jones County task force, and said evidence was used to coerce the defendant/Appellant into the plea;

(6) The Court Abused its discretion by accepting a plea, imposing judgment and sentence, when proper and legal jurisdiction of the case had not been established; And

(7) The Court Abused its discretion by passing judgment and imposing a sentence pursuant to a fatally defective and flawed indictment to which cannot support a conviction.

Part Three (3):

Argument And Citation of Authorities

Enumeration of errors 1, 2, 3, 4, 5, 6, 7.

The inmate/informant, Clyde Thomas, utilized in this case, was convicted and sentenced June 9, 2008 to eight (8) years for manufacturing of methamphetamines. Having factually been on probation/parole and incarcerated, on May 24 2013 during which he was unlawfully and illegally used by Jones County Investigators in a "sting operation" against Appellant with no properly documented permission on record from the Courts to do "undercover work for police agencies", conspired with the authorities to have Appellant "entraped" to purchase drugs for him for the purpose of having the Appellant arrested for the purchase in order to have the charges dropped against him, and be released from Jail. There would not have been a crime committed in this case, had it not been for the fraud and undue persuasion of this informant and authorities.

The conviction in this case was obtained by the unconstitutional failure of the prosecution to disclose to the Appellant evidence favorable to him as the informant in this case was used illegally in that he was actually barred under Georgia law and statute

from performing any undercover work for any police Agency without permission from the appropriate court and documented evidence of that permission to which they did not have, and further they completely lacked jurisdiction in this case as the record will clearly show.

This conviction was clearly obtained by a plea of guilty to which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

Further, the indictment was based solely on evidence obtained illegally. The indictment is predicated upon matters that were obtained as the consequence of the matter's illegal actions of the Jones County task force, and said matters were all illegally and improperly presented to the Grand Jury. Accordingly, the Grand Jury returned said indictment without having any legal evidence presented on which to validate return of an indictment and it cannot support the conviction.

D.C.G. A § 17-9-4 provides as follows: "the judgement of a court having no jurisdiction of the person or subject matter or void for any other cause is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it."

Since the sentence and judgement is void and

Appellant filed his motion to vacate that sentence, the court "now" has prerequisite jurisdiction to act.

Appellant by and through his motion to correct void sentence has shown the illegal use of the informant and lack of jurisdiction and "probable cause" prior to the entrapment of the "Sting Operation" against defendant/appellant denying him "Due Process" of law and "Liberty Clause" rights by the authorities. United States Constitution Amendment v(5) "Due Process" And Liberty Clauses."

And that the judgement of court is both material to the appellant and the state since no part of the plea agreement can be legally enforced. A sentence is void if the court imposes punishment that the law does not allow. Crumbley v. State, 261 GA. 610, 611 (1) 409 S.E. 2d 517 (1991).

"A void judgement is in reality no judgement at all. It is mere nullity. If the judgement is nullity and void, the right to attack it is not lost by laches, nor is it waived by the failure to attack it before since it is void, and not voidable in that the abatement absolutely extinguishes the prosecution, and by definition amounts to the entire overthrow or destruction of the action.

O.C.G. A § 17-9-4; Barrett vs. State 183 GA. App 229, 230, 360 S.E. 2d 400 (1987); Gonzalez v. Abbott 262 GA 671, 425 S.E. 2d 272 (1993).

Conclusion

The Appellant has pointed to a material facts of this case and authorities that support his position.

The Appellant properly filed his motion to correct void sentence. The Court failed to rule on the merits of said, even though Appellants motion was in fact meritorious, rather the Court denied his motion.

The Appeals Court now has the jurisdiction to REVERSE the ruling of the lower Court and remand the issue back to said same Court with proper instructions as the law may allow.

This 11th day of May, 2015.

Prepared by:
Ray Roger Rivers
GDC # 94935
Cathoun State Prison
P.O. Box 249
MORGAN, GA 39866

Respectfully Submitted
Ray Roger Rivers
Appellant; pro-se.

May 8th 2015

Certificate of Service

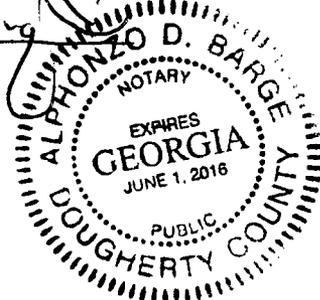
I Ray Roger Rivers, do hereby certify that this an original copy of Appellant brief and enumeration of errors of case: AISA 1325/13CR-370 has been sent to the Appeals Clerk: Clerk of Appeals of Georgia, 47 Trinity Avenue, S.W., Suite 501 Atlanta Georgia 30334. And certify that two (2) additional copies included herein to be served upon both and all parties to be furnished by the Clerk to opposing party.

THIS 11th day of MAY, 2015.
Ray Roger Rivers

Ray Roger Rivers
Appellant, pro-se.

Notary: Witness in truth and fact that the above signator is so before me in truth before the law.

THIS 11 day of MAY, 2015.
Alfonzo D. Barge
Notary.



"Exhibit A"

FIRST OFFENDER PROBATION TREATMENT (if applicable)

Defendant has not previously been convicted of a felony and has not availed himself/herself of the provision of (28-60), and the Defendant consenting hereto, it is the judgment of the Court that no judgment of guilt be imposed. Proceedings are deferred provided that said Defendant complies with the general and special conditions of probation as set forth by the Court as part of the sentence.

It is further ordered that upon violation of any term or condition of probation, the Court may enter an adjudication of guilt and proceed to the maximum sentence provided by law. Upon fulfillment of the terms of probation or upon release of the Defendant by the Court at the termination of the period thereof, the Defendant shall stand discharged of said offense charged and shall be completely absolved of guilt of said offense charged.

A copy of this Order be forwarded to the Office of the State Probation System of Georgia and the Identification Division of the Georgia Department of Investigation.

GENERAL CONDITIONS OF PROBATION

Defendant having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

1. Do not violate the criminal laws of any governmental unit.
2. Avoid injurious and vicious habits - especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed.
3. Avoid persons or places of disreputable or harmful character.
4. Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him/her at home or elsewhere.
5. Work faithfully at suitable employment insofar as may be possible.
6. Do not change his/her present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.
7. Support his/her legal dependents to the best of his/her ability.
8. Probationer shall, from time to time upon oral or written request by any Probation Officer, produce a breath, urine, and/or blood specimen for analysis for the possible presence of a substance prohibited or controlled by any law of the State of Georgia or of the United States.
9. Do not purchase or consume beer, wine or any substance containing alcohol at any private or public facility or residence.
10. Permit to search of his/her person, house, papers, automobile and/or effects at any time of the day or night without a search warrant whenever requested to do so by a Probation Officer and to consent to the use of anything seized as the result of said search as evidence in a proceeding to revoke this Sentence of Probation.
11. Do not perform any undercover work for police agencies without permission of the Court.
12. Shall not receive, possess, or transport any firearm or other offensive weapon.
13. Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by the department.
14. Shall abide by curfews as directed by Probation Officer.
15. Must report to your Probation Officer any arrest during your sentence of probation within 24 hours of your arrest.
16. Pay a probation maintenance fee of \$ _____ per month beginning _____ to the assigned Probation Office for the term of probation. Pay a crime lab fee of \$ _____ to the assigned Probation Office.
17. Pay as directed by the Court a fine of \$ _____; Indigent Defense Attorney Fee: \$ _____; Jail-10%: \$ _____; VAP-5%: \$ _____; POPIDEF-a (10%-\$50 Cap): \$ _____; POPIDEF-B (10%): \$ _____; CVEF (DUI) - (\$26/11% GROSSER): \$ _____; BSITF-10%: \$ _____; DATE-50%: \$ _____; DETF-5%: \$ _____; Restitution: \$ _____; Photo Fee: \$ _____; per month, beginning _____ to the Floyd Superior Court Receiver and Jury Management Office, Floyd County Courthouse, P.O. Box 6193, Rome, Georgia 30152-6193.
18. Do waive extradition to the State of Georgia from any jurisdiction in or outside the United States where I may be found and also agree that I will not contest any effort by any jurisdiction to return me to the State of Georgia.

SPECIAL NOTE: "If you are convicted of a crime involving 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 may be 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 state law]."

There may be Additional and/or other Special conditions of probation imposed by the Court under the terms of a negotiated plea, or on the defendant's own volition, or by operation of law or required by any sentence whether the same be by negotiated plea, imposition of the sentence, or by operation of law which may be specific to such offense, inclusive of but not limited to those special conditions of probation set forth by O.C.G.A. 42-1-2 for Sex Offenders (attach sex offender's supplement if applicable) and as well for REDUCTION PROGRAMS (for sex offenders), clinical evaluation and complete substance abuse treatment program as directed by Probation Office. As to second offenders, in addition to the requirements of probation set out above, Defendant shall also be required at his/her own expense to equip his/her motor vehicle with an ignition interlock device approved by the Probation Supervisor for the first six months of the sentence.

Programs, Orders and Directives applicable on the front side shall be explained fully to the Probationer by the Probation Officer. The notation on the front side indicates a full understanding of applicable programs, orders and directives.