



Court of Appeals of Georgia

September 21, 2015

TO: Mr. David Roberson, GDC310363 J-4, Central State Prison, 4600 Fulton Mill Road,
Macon, Georgia 31208

RE: **A15A2306. David Roberson v. The State**

CHECK RETURN

- Your check number _____ in the amount of _____ written on the account of your firm for the filing fee in _____ is enclosed. Please be advised that this Court is returning your check since the filing fee was already paid by _____.

CASE STATUS - DISPOSED

- The referenced appeal was dismissed on August 21, 2015. I am enclosing a copy of the order in the above referenced appeal for your review.**

CASE STATUS - PENDING

- The above referenced appeal is pending in your name before this Court. The appeal was docketed in the _____ Term and a decision must be rendered by the Court by the end of the _____ Term which ends on or about _____.

APPLICATION FOR PERMISSION TO APPEAL A PROBATION REVOCATION

- To appeal a probation revocation, you will need to file a Discretionary Application with this Court. Rule 31 of the Rules of the Court of Appeals of Georgia describes a Discretionary Application and the items you would need to include with your application.

A Discretionary Application must be filed within 30 days of the stamped filed date on the order that you are appealing and the application must be accompanied by a proper Certificate of Service and a pauper's affidavit or the \$80.00 filing fee. You must also comply with all the other applicable rules of Court regarding filing with the Court of Appeals of Georgia.

Enclosed, please find a copy of the Rules of the Court of Appeals for your review.

9-0115

RECEIVED
2015 SEP 8
COURT

Appeals Court Administrator,

I MADE THE MISTAKE IN MY FILING TO THE APPEALS COURT, ASSUMING, BECAUSE THE DOCUMENT RETURN NOTICE FOR APPLICATIONS I RECEIVED ON THE 17TH OF JULY, 2015. THE RETURN NOTICE DID NOT STATE THE STYLE OF APPEAL I WAS APPEALING.

THE 7TH BOX WAS CHECKED AND I SENT A COPY OF THE STAMPED FILED DOCUMENT TO THE DISTRICT ATTY. WITH CERT. OF SERVICE AS INSTRUCTED TO DO.

WHEN I RECEIVED THE NOTICE OF DOCKETING STYLED DIRECT APPEAL I ASSUMED MY FILING OF THE DISCRETIONARY APPEAL HAD BEEN ASSIGNED A DIRECT APPEAL STATUS

(NOT THE OUT-OF-TIME APPEAL) I WROTE A LETTER LAST YEAR TO WITHDRAW MY APPEAL ON. I ASSUMED THE OUT-OF-TIME APPEAL HAD BEEN TAKEN CARE OF BEFORE I FILED AGAIN IN TRIAL COURT.

I MAILED 3 COPIES OF A "BRIEF" WITH THE WRONG DOCKET NUMBER TO THE COURT OF APPEALS.

I'M TRYING TO FIGURE THIS ALL OUT AND GET MY CASE ON THE RIGHT TRACK.

PLEASE FORGIVE MY ERROR IN MY NOT UNDERSTANDING THE NOTICE WAS ASSIGNED TO THE OUT-OF-TIME APPEAL.

I THOUGHT IT WAS FOR THE NEW
DISCRETIONARY APPEAL APPLICATION I FILED
ON.

PLEASE "DISREGARD" THE MOTION
FOR RECONSIDERATION ON THE OUT-OF-TIME
APPEAL

THE BRIEFS I MAILED HAVE THE
WRONG DOCKET NUMBER WHICH DOES NOT
PERTAIN TO AN OUT-OF-TIME APPEAL. YOU
CAN STAMP FILED VOID ON THEM OR YOU
CAN MAIL THEM BACK TO ME, JUST LET
ME KNOW, SO I DON'T DO ANYMORE OF
THIS ASSUMING.

PLEASE CORRECT ME IF IM WRONG
MY APPLICATION FOR DISCRETIONARY APPEAL
IS STILL UNDER CONSIDERATION AND HAS
NOT BEEN GRANTED. AM I CORRECT

I HAVE GIVEN NOTICE THAT I HAVE
APPEALED TO THE COURT OF APPEALS WHICH
ACCORDING TO COURT RULES IS APPEALED
10 DAYS AFTER THE GRANTING OF AN
DISCRETIONARY APPEAL. I DID THIS THINKING
MY APPEAL APPLICATION HAD BEEN GRANTED,
TO SUPERIOR COURT AND DISTRICT ATTY

I ALSO MAILED HALL CO. A BRIEF
WITH THE WRONG DOCKET NUMBER ATTACHED
IT WAS FOR A DISCRETIONARY APPEAL.

SO AS OF THIS LETTER THE OUT-OF-TIME APPEAL IS OVER WITH AND DISMISSED, I HAVE NO DOCKET NUMBER YET ON THE DISCRETIONARY APPEAL APPLICATION, I WAIT TO BE DENIED OR GRANTED

I SEE NOW WHERE I STAND WITH THIS MESS^{ED} UP FILING OUT OF THE WAY

PLEASE FORGIVE ME, I'M HUMANE I DIDN'T RECEIVE ANYTHING AFTER MY LETTER TO WITHDRAW MY APPEAL OF THE OUT-OF-TIME APPEAL, AN THOUGHT NOTHING ABOUT IT, WHEN I RECEIVED THE DOCKET NUMBER.

IT WAS SO CLOSE TO MY FILING THE DISCRETIONARY APPLICATION, I THOUGHT IT WAS TO IT, THE NEW DOCKET NUMBER, SO I TOOK OFF AND STARTED MY FILING BRIEFS ACCORDING TO THE NOTICE OF DOCKETING RULES.

I HOPE THIS LETTER CLEARS UP THIS MISUNDERSTANDING ON MY FILING

RESPECTFULLY

DAVID ROBERSON

310363

CENTRAL S.P. J-4

4600 FULTON MILL Rd.

MACON, GA 31208

(3)

Court of Appeals of the State of Georgia

ATLANTA, August 21, 2015

The Court of Appeals hereby passes the following order:

A15A2306. DAVID ROBERSON v. THE STATE.

David Roberson was convicted of rape and kidnapping with bodily injury in 1994. We affirmed his convictions on appeal. *Roberson v. State*, 219 Ga. App. 160 (464 SE2d 262) (1995). Years later, Roberson filed a pro se motion for an out-of-time appeal, which the trial court denied on February 5, 2014. Roberson filed a notice of appeal from the trial court's order on June 27, 2014. We lack jurisdiction for two reasons.

First, “[a]n out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal.” *Kilgore v. State*, 325 Ga. App. 874, 875 (1) (756 SE2d 9) (2014) (punctuation omitted). Because Roberson has already had a direct appeal, he is not entitled to an out-of-time appeal. See *Simmons v. State*, 276 Ga. 525, 525, n. 2 (579 SE2d 735) (2003) (“The denial of a motion for out-of-time appeal is directly appealable when the criminal conviction at issue has not been the subject of direct appeal.”); *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001) (defendant “not entitled to another bite at the apple by way of a second appeal”).

In addition, even if the order denying Roberson's motion for an out-of-time appeal is directly appealable, Roberson's notice of appeal is untimely. Under OCGA § 5-6-38 (a), a notice of appeal must be filed within 30 days after entry of the appealable order. The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction on this Court. *Rocha v. State*, 287 Ga. App. 446

(1) (a) (651 SE2d 781) (2007). Here, Roberson filed his notice of appeal 142 days after the order was entered.

For these reasons, we lack jurisdiction over this appeal, which is hereby DISMISSED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 08/21/2015

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Castles

, Clerk.