

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

December 7, 2015

To: Mr. Timothy L. Roberts, GDC1070550, Georgia State Prison, 300 First Avenue,  
Reidsville, Georgia 30453

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Court of Appeals Case Number and Style: Timothy Roberts v. The State

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

- There is no case pending in the Court of Appeals of Georgia under your name.**
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court. We do not have a file to append your copy.
- The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals. The mailing address for the Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_.** The Court of Appeals \_\_\_\_\_  
\_\_\_\_\_ The remittitur issued on \_\_\_\_\_  
divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the \_\_\_\_\_ is: \_\_\_\_\_
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing.** If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

# Court OF Appeals of Georgia

Case No: \_\_\_\_\_

Timothy Roberts vs. STATE OF Georgia

RECEIVED IN THE  
COURT OF APPEALS OF GEORGIA  
NOV 26 3 PM 4:25

## APPELLANT'S BRIEF IN SUPPORT OF DIRECT APPEAL

Comes Now, Timothy Roberts, United States Citizen, Pro-se litigant, Appellant with this "Appellant's Brief" in support of "Direct Appeal" of order entered on the 13th day of November, 2015 in Doolley County Superior Courts. Respectfully filed by Timothy Roberts GOC# 1070550 Georgia State Prison 300 1st Ave Reidsville Ga 30453. On this 26th day of November, 2015.

### \* Declaration \*

I declare under the penalty of perjury that the foregoing is to the best of knowledge true and correct.

11/26/20  
Timothy Roberts  
Timothy Roberts

### \* Certificate of Service \*

I certify that a true and correct copy has been mailed to ① Court of Appeals, ② Denise Fachini with adequate postage affix.

11/26/2015 Timothy Roberts  
Timothy Roberts

① Court of Appeals of Georgia  
47 Trinity Ave, S.W., Suite 501  
Atlanta, Georgia 30334

② Denise Fachini  
District Attorney  
Condele Judicial Circuit  
P.O. Box 5510  
Condele, Georgia 31010

### \* APPELLANT \*

Timothy Roberts was born a American Citizen on American soil. As a American Citizen the Appellant holds all Inherent rights of the State and United States Constitution.

## \* FACTUAL BACKGROUND OF PROCEEDINGS \*

Appellant filed a extraordinary motion for New trial Challenging his conviction on Constitutional violations of the trial court. On November the Trial Court Judge Denied motion and Appellant filed a "notice of Appeal" on 11/19/2015 To the Court of Appeals of Georgia followed by a Appellants brief on 11/26/2015 In support of Direct Appeal of Judgment.

## \* Legal Issues with Trial Court's Order \*

On November 13<sup>th</sup> 2015 Superior Court Judge T. Christopher Hughes of Dooly County Superior Court entered a " Order Denying Extraordinary Motion for New Trial" not Supported by law are Case law to justify denying the motion. This renders the Judgement / order Insufficient to Support the denial Judgement.

## \* Defective Policy \*

The Georgia Department of Corrections operated by the State of Georgia has a Unconstitutional and defected policy that is being applied to State prisoners of Georgia. The State is charging inmates \$100.00 processing fees for Cell phones and giving Store, Visitation, and phone punishments for possession of cell phone in a State prison. The State is the prosecuting offenders in State Courts for Violation of O.C.G.A. 42-~~5~~-18 possession of cell phone by inmate. This policy is clearly a violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendment of the Constitution State and federal. See Attached Exhibit "C"

## \* INEFFECTIVE ASSISTANCE OF COUNSEL \*

The appointed trial Counsel for Timothy Roberts "failed to file notice of appeal" on the behalf of the Appellant after a verdict of Guilty was rendered. Appellant and appointed Counsel had several disagreements on issues before Trial and these issues was advised to the Courts. Appellant requested Counsel to file notice of appeal and advised Counsel that he need to know what his rights were after trial.

(Case law for Ineffective Assistance of Counsel)

Haynes v. State, 227 Ga. App. 64, 65, 488 S.E. 2d 119 (1997). the Georgia Court of Appeals considered a case in which the defendant contended his trial Counsel had been ineffective in refusing his request to appeal his conviction.

However, in the 2000 case of Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed. 2d 985 (2000), 66 Cr. L. 1492. the United States Supreme Court extended application of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) to include claims that "Counsel was constitutionally ineffective for failing to ~~to~~ file a notice of appeal

Because of the Ineffectiveness of Counsel this has hindered Appellant for 5 years from a entitled appeal of his conviction. This has violated the due process of law.

## \* O.C.G.A. 13-8-2 \*

This conviction is clearly against the policy of law on multiple levels of law. The Criminal Justice System is suppose to operate with in the bounds of the law. Cited in Nazario vs. State, 293 Ga 480 293 Ga. 480; 746 S.E. 2d 109 (2013) A conviction that goes against the policy of law cannot be enforced.

## \* SENTENCE EXCESSIVE \*

Appellant was sentenced to 5 years Serve 3 years recidivist to be ran consecutive to prior sentence. This sentence is "extremely harsh" and violates the eighth constitutional Amendment of the State of Georgia and the United States Constitutions. All prison sentences generally start from day of arrest. Incident to place 2010 warrant was issued and served in 2010 Appellant should have been given credit for time served on this conviction from 2010 til 2015.

## \* TAINTED EVIDENCE \*

Prison officials lost original phone alleged to be the phone confiscated by officials. The description of the cell phone confiscated did not match the cell phone produced as evidence at trial of Appellant. The phone was never properly investigated by the GBI investigators even after this issue was brought up at trial by the appellant.

It appears that it was a break in at the Storage area of the prison and several cell phones were stolen from the Storage evidence area. The prison officials apparently purchased another phone similar but different in color. Prison officials or the prosecution used a different phone as evidence in order to get a verdict of guilty. This clearly becomes "Tainted Evidence"

Definition of Tainted Evidence - Evidence that is inadmissible because it was directly or ~~indirectly~~ indirectly obtained by illegal means. See Fruit-of-the-poisonous-tree-Doctrine.

### \* Insufficient Evidence \*

Because of the "Evidence be Illegally Obtained"

this makes the evidence insufficient to support any conviction or any indictment under the law.

### \* Ineffective Assistance of Counsel - Failure to investigate \*

Timothy Roberts appointed counsel failed to investigate case properly and this has violated the Sixth Amendment of the Constitution. The ~~prosecution~~

Illegally presented evidence was brought to the attention of the trial counsel before trial and during trial the attorney failed to investigate phone and there is no record of any investigation of phone because of this Ineffective~~ness~~ this is grounds for reversal of this conviction and sentence. See Case

# AUTHORIZATION

The O.C.G.A. 42-5-18 law is clearly a unconstitutional law in the State of Georgia. Inmates have no control over what comes in and out of a prison when no incarcerated inmate can leave and go as he or she pleases. This law states that an inmate possess contraband not authorized by the warden. It is the warden's responsibility to secure contraband from entering a prison. Rules and Regulations change everyday inside the prison system. The warden gives everyone authorization that enters in and out a prison so that clearly gives an inmate authorization to obtain anything issued by anyone authorized to enter the prison.

## \* Equal Protection LAW \*

O.C.G.A. 42-5-18 this law is not applied even handedly over the State of Georgia. Thousands of inmates are found in possession of cell phones and receiving misdemeanor sentences, prison restrictions, some not even being charged at all and has multiple counts of O.C.G.A. 42-5-18. See Case Fredrick v. State  
In Monroe Superior County Court Case Number 10CR00110. In this case it was the same exact issue but this inmate received a misdemeanor ~~sentence~~ sentence and a fine. This is a clear violation of the Fourteenth Amendments of the United States and State of Georgia Constitutions.

In Amos V. SCOTT, 61 F.3d 333, 339 (5th Cir. 1995)

"This Circuit has held that the Texas Contemporaneous Objection rule is strictly or regularly applied even handedly to the vast majority of similar claims and is therefore an adequate procedural bar" Also See Corwin V. Johnson, 150 F.3d 467, 473 (5th Cir. 1998)

## \* LEGAL INNOCENCE \*

Because of Insufficient evidence, Tainted evidence, Conviction against the policy of law, Violations of State and Federal Constitutions, Ineffective Assistance of Counsel, Amongst all other things, This leaves no alternative but for Timothy Roberts to be presumed legally Innocent.

## \* Conclusion \*

Timothy Roberts prays that this Court acts in the interest of Justice and Cease Irreparable Injury of loss of life and liberty and Release Appellant from all unlawful Restraint of liberty, and life.

Timothy L. Roberts  
# 107 0550  
Georgia State Prison  
300 1st Ave  
Reidsville GA 30453

# Count of Appeals of Georgia

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## NOTICE OF FILING

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Exhibit A - Court order

Exhibit B - Notice of Appeal

Exhibit C - Showing of 100.00 charge for  
Cell phone by D.O.C. Business office  
Dena Smith at Smith State Prison  
Business Office Inmate Account Staff  
For Inmate Dante G. Fredrick ~~et al~~

### Affidavit

I Dante G. Fredrick # 114121 gives Timothy  
Roberts permission to use documents and case as legal  
documents in his appeal of conviction.

  
Dante Fredrick  
# 114121

11/26/2015

IN THE SUPERIOR COURT OF DOOLY COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

(

vs.

(

CASE NO. 09DR-0051

TIMOTHY ROBERTS,

(

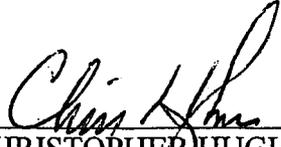
Defendant

**ORDER DENYING EXTRAORDINARY MOTION FOR NEW TRIAL**

The Defendant in the above matter having filed an Extraordinary Motion for New Trial in which he complains that he has not been treated equally because others across the state are either not prosecuted for the crime he was convicted of when they could have been or were given lesser sentences than the Defendant, and the Court having considered said motion, the same is hereby denied.

The Court has discretion to sentence each defendant individually and without regard to the sentences other Courts have handed down and without regard to whether or not other inmates have been prosecuted for the same crime, provided that the sentence is within the lawful range, which is the case here. There are many variables in each case, and it would be impossible for each case across the state to be handled exactly the same; nor should each case necessarily be handled exactly the same.

SO ORDERED, this 13<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
T. CHRISTOPHER HUGHES  
JUDGE OF SUPERIOR COURTS  
CORDELE JUDICIAL CIRCUIT



GDC ID: 1141121

Paid Status: P = Partially paid; Y = Paid in full; R = Reversed; W = Written off

Date	Location Incurred	Obligation Type	Payable To	Obligation Detail	Amount	Paid
06/03/2015	CENTRAL ACCT-OFFENDER TRUST	MEDICAL CO-PAY	GEORGIA DEPARTMENT OF CORRECTIONS	RECORD ID = 19387418. 6/3/15	\$5.00	Y
06/01/2015	CENTRAL ACCT-OFFENDER TRUST	MONTHLY PROCESSING FEE	GEORGIA DEPARTMENT OF CORRECTIONS	Monthly Processing Fee for 06/2015	\$1.00	Y
05/07/2015	CENTRAL ACCT-OFFENDER TRUST	WIRELESS DEVICE/CELL PHONE	GEORGIA DEPARTMENT OF CORRECTIONS	RECORD ID = 19234843. DR#554411 CELL PHONE	\$100.00	Y
05/01/2015	CENTRAL ACCT-OFFENDER TRUST	MONTHLY PROCESSING FEE	GEORGIA DEPARTMENT OF CORRECTIONS	Monthly Processing Fee for 05/2015	\$1.00	Y
04/30/2015	CENTRAL ACCT-OFFENDER TRUST	DISCIPLINARY REPORT FEE	GEORGIA DEPARTMENT OF CORRECTIONS	RECORD ID = 19120594. DISCIPLINARY NO : 554411	\$4.00	Y
04/16/2015	CENTRAL ACCT-OFFENDER TRUST	RX-COPAY	GEORGIA DEPARTMENT OF CORRECTIONS	RECORD ID = 19092333. 11/12/2014 RX COPAY	\$5.00	Y
04/16/2015	CENTRAL ACCT-OFFENDER TRUST	MEDICAL CO-PAY	GEORGIA DEPARTMENT OF CORRECTIONS	RECORD ID = 19092332. 11/12/2015 MEDICAL	\$5.00	Y

**COURT CHARGES**

No court charges for this offender in the past 60 days.

**COURT CHARGE MODIFICATIONS**

No court charges modifications for this offender in the past 60 days.

Exhibit C

"Defective Policy"

This Shows that the Georgia Dept of Corrections is charging Inmates 100.00 for cellphones, and giving the inmates restrictions, of store, phone and visitation and then taking warrants out on Inmates this is clearly Unconstitutional and violates the 5<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments.