

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

May 27, 2015

To: Mr. Kevin Rose, GDC563571, Autry State Prison, Post Office Box 648, Pelham, Georgia 31779

Docket Number: Style: Kevin Rose 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. **You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service. Rule 6**
8. **Your Certificate of Service must include the complete name and /or mailing address of each opposing counsel and/or 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 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).
16. **Other:**

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

COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

FILED IN OFFICE

MAY 18 2015

CLERK COURT OF APPEALS OF GEORGIA

CASE NO: 11-CR-00080-B

RECEIVED IN OFFICE
MAY 26 PM 3:30
CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

KEVIN ROSE
APPELLANT,
- VS -
STATE OF GEORGIA
APPELLEE.

APPLICATION FOR DISCRETIONARY APPEAL

AS PER RULE 31 THIS IS AN APPLICATION FOR leave to appeal a MOTION TO MODIFY SENTENCE in Case no. 11-CR-00080-B in WHITFIELD COUNTY GEORGIA which was dismissed as UNTIMELY.

MR. ROSE IS PROVIDING PROOF HERE THAT HIS motion was filed w/in 1 yr of the June 24, 2014 Probation Revocation, and that the sentence is VOID, as it is in EXCESS OF STATUTORY LAW.

BECAUSE THE TRIAL COURT DID NOT FOLLOW THE dictates of O.C.G.A. 42-8-34.1 (a)(2). THEREFORE MR. ROSE'S SENTENCE IS VOID, AS IT IS IN EXCESS OF THAT ALLOWED BY LAW AND THEREFORE FALLS UNDER A VOID SENTENCE WHICH CAN BE CORRECTED AT ANYTIME.

MR. ROSE ALSO IS PROVIDING PROOF THAT HE

INDEX

- 1.) APPLICATION FOR DISCRETIONARY APPEAL
- 2.) STATEMENT OF FACTS
- 3.) STATEMENT OF CASE / GROUNDS
- 4.) JUDICIAL CASES IN SUPPORT
- 5.) CONCLUSION
- 6.) MOTION TO MODIFY SENTENCE
- 7.) LETTER FROM PAROLE BOARD
- 8.) COURTS OFFICIAL TRANSCRIPT
(NOT RETURNED w/ STAMP FILE COPY)
- 9.) TRIAL COURTS ORIGINAL SENTENCING DOCUMENTS
- 10.) TRIAL COURTS ORDER REVOKING SUSPENDED SENTENCE
- 11.) ORDER DISMISSING MOTION
- 12.) COPY OF ENVELOPE RECEIVED DATE and TIMELINESS
- 13.) CERTIFICATE OF SERVICE
- 14.) FORMA PAUPERIS

STATEMENT OF FACTS

ON FEBRUARY 2, 2011 MR. ROSE WAS SENTENCED TO 10 YEARS SUSPENDED UPON SERVICE OF 2 YRS PURSUANT TO 17-10-7(C) AND REMAINING OUTSIDE WHITFIELD, CO. AND MURRAY, CO. GA.

ON JUNE 24, 2014 THE COURT REVOKED THE REMAINDER OF MR. ROSE'S SENTENCE (79 MONTHS) FOR BEING CAUGHT IN MURRAY CO. GA.

THE TRIAL COURT DID NOT FOLLOW THE MANDATES OF O.C.G.A. 42-8-34.1 (A)(2) AND IMPROPERLY SENTENCE MR. ROSE TO MORE THAN 2 YRS.

TRIAL COURT ALSO NEVER CONSIDERED ANY OTHER ALTERNATIVES TO PRISON AS PER O.C.G.A. 42-8-34.1 (B) MR. ROSE WILL ALSO PROVE HIS PAPERWORK IS BEING MISHANDLED.

REVOCATION IS BEING HANDLED AS 17-10-7(C). MR. ROSE WILL PROVE THAT WAS NEVER THE INTENT, SO MR. ROSE IS SERVING A 79 MONTH MANDATORY SENTENCE FOR A 1 TIME GENERAL SUSPENDED SENTENCE VIOLATION.

MR. ROSE WILL ALSO PROVE THAT HIS REVOCATION START DATE IS APRIL 20, 2014 AND NOT JUNE 24, 2014 AS THE DEPT OF CORRECTIONS HAS.

is timely w/ this Court, by providing a copy of envelope stamped the date received it April 21, 2014.

Therefore is timely with this Court.

MR. ROSE is appealing his 79 month mandatory suspended sentence violation for a one (1) time general condition violation.

MR. ROSE IS APPEALING the DISMISSAL of his motion to modify sentence as untimely.

(SEE INDEX #11) BECAUSE AS HE WILL SHOW SENTENCE WAS VOID, AND WAS WITHIN THE 1 YR OF JUNE 24, 2014 REVOCATION.

MR. ROSE WOULD ALSO ASK THAT THIS APPEAL BE CONSIDERED WITHOUT THE TRANSCRIPT. MR. ROSE'S STAMP FILE COPY CAME BACK WITHOUT COURTS TRANSCRIPT, BUT CASE CAN STILL BE DECIDED. BUT FOR REASONS OF TIME, MUST SEND. DON'T REALLY NEED TO WIN ON MERITS OF CASE.

GROUND 1

MR. ROSE'S MOTION TO MODIFY A SENTENCE WAS DISMISSED AS UNTIMELY, THE TRIAL COURT CLAIMS THEY HAD NO JURISDICTION TO ENTERTAIN THE MOTION.

MR. ROSE WILL PROVE THAT THE TRIAL COURT NOT ONLY COULD HAVE ENTERTAINED THE MOTION BUT ONCE THEY LEARNED OF THE VOID SENTENCE WERE OBLIGATED TO. FIRST THE COURT QUOTES O.C.G.A. 17-10-1(F) (SEE ORDER DISMISSING MOTION TO MODIFY INDEX #11) STATING, "A SENTENCE CAN BE MODIFIED WITHIN 1 YEAR OF THE DATE ON WHICH THE SENTENCE WAS IMPOSED."

CLAIMING OUT OF TIME BECAUSE IT IS ON A FEB 2, 2011 SENTENCE. MR. ROSE

IS ASKING FOR A JUNE 24, 2014 SUSPENDED SENTENCE VIOLATION TO BE MODIFIED, SO IT IS STILL WITHIN THE ONE YEAR, AND EVEN SO THE REST OF O.C.G.A. 17-10-1(F) STATES, "A TRIAL COURT'S JURISDICTION TO MODIFY A SENTENCE EXTENDS BEYOND THIS STATUTORY LIMITATION ONLY WHEN THE SENTENCE IS VOID; GENERALLY A SENTENCE IS VOID IF THE COURT IMPOSES PUNISHMENT THAT THE LAW DOES NOT ALLOW. GREEN V STATE, 273 GA. APP. 654, 615 S.E. 2D 818 (2005) COLEMAN V STATE, 305 GA. APP. 680

700 S.E.2d 668 (2010).

ALSO FOUND IN PHILLIP V STATE, 313 GA. APP. 302, 721 S.E.2d 214 (2011) "WHERE A SENTENCE IS VOID, HOWEVER, THE COURT MAY RESENTENCE THE DEFENDANT AT ANYTIME; A SENTENCE IS VOID IF THE COURT IMPOSES PUNISHMENT THAT THE LAW DOES NOT ALLOW; A DEFENDENT'S AGUIESCENCE TO AN ILLEGAL SENTENCE, EITHER THROUGH PLEA NEGOTIATIONS OR A FAILURE TO OBJECT TO THE SENTENCE, CANNOT RENDER AN OTHERWISE ILLEGAL SENTENCE VALID THROUGH WAIVER BECAUSE A VOID SENTENCE IN LAW AMOUNTS TO NO SENTENCE AT ALL; VOID SENTENCE MAY BE HELD IN ANY COURT WHERE IT BECOMES MATERIAL TO THE INTEREST OF PARTIES TO CONSIDER IT, REGARDLESS OF A LACK OF OBJECTION IN THE TRIAL COURT."

BASED ON THIS, ONCE THE MOTION WAS READ THE COURT THEN HAD JURISDICTION TO MODIFY THIS 79 MONTH SENTENCE BECAUSE AS PROVEN BY THIS MOTION, STATUE AND DOCUMENTS, THE SENTENCE WAS BOTH VOID, AND ILLEGAL BECAUSE IT WAS IN EXCESS OF THAT ALLOWED BY O.C.G.A 42-8-34.1 (b).

NOT ONLY THEIR JURISDICTION BUT AT THAT POINT IT WAS THEIR OBLIGATION TO FIX THIS

ILLEGAL SENTENCE.

MR. ROSE'S WHOLE MOTION WAS BASED ON THE WHOLE PREMISE THAT THE SUSPENDED SENTENCE VIOLATION WAS VOID AS IT IS IN EXCESS OF WHAT STATUTORY LAW ALLOWS.

IN WILLIAMS V. STATE, 271 GA at 686 (1), 523 S.E.2d 857 (1999) THE COURT STATES, "THE DENIAL OF A PETITION TO CORRECT A SENTENCE ON THE GROUNDS THAT THE ORIGINAL SENTENCE WAS VOID IS APPEALABLE AS A MATTER OF RIGHT."

MR. ROSE'S UNDERLYING ISSUE WAS A VOID SENTENCE, WHICH MAKES ~~HIS~~ SENTENCE "NULL AND VOID!" AND AS SUCH THE COURT HAD JURISDICTION TO CORRECT THE VOID SENTENCE.

IN WILLIAMS V STATE,³¹¹ Ga. at 689 (1), 523 S.E.2d 857 (1999) THE APPELLATE COURT STATED, "A SENTENCING COURT RETAINS JURISDICTION TO CORRECT A VOID SENTENCE AT ANYTIME."

O.C.G.A. 17-9-4 SUPPORTS THIS PROPOSITION.

"THE JUDGMENT OF A COURT....., 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."

WHEN MR. ROSE'S MOTION WAS FILED THE INVALIDITY OF THE SENTENCE BECAME MATERIAL

and gave them jurisdiction to "ENTERTAIN this motion. Therefore the trial court simply is trying to dodge its responsibility to correct this illegal sentence.

O.C.G.A 17-10-1 states, "There is Authority when there is an error or irregularity in failing to inform the defendant of conditions which his sentence to confinement was imposed for correction by the court by recalling the defendant and sentencing him as allowed by HOW, Hinton v. State, 127 GA. APP. 853, 195 S.E. 2d 472 (1973) (FORMER CODE 1933 § 27-2502)

GRIGGS V. STATE, 314 GA. APP. 158, 732 S.E. 2d 480 (2012) allows that, "A sentencing court possesses INHERENT power to correct its records at anytime to show the true intent of the sentencing court at the time the original sentence was imposed."

DAVIS V. STATE, 219 GA. APP. 252, 661 S.E. 2d 872 (2008) held that, "MOTION COURT had JURISDICTION to entertain Criminal defendants motion for reduction of sentence despite expiration of term of court. IN which sentence was imposed."

BASED on this Argument MR. ROSE would ask that this motion BE SENT BACK TO THE

TRIAL COURT WITH DIRECTION AND AUTHORITY to entertain this motion on its MERITS.

CASES IN SUPPORT:

GREEN V STATE, 273 GA. APP. 654, 615 S.E.2d 818 (2005);

Coleman V STATE, 305 GA. APP. 680, 700 S.E.2d 668 (2010);

Phillip V STATE, 313 GA. APP. 302, 721 S.E.2d 214 (2011);

Williams V STATE, 271 GA. at 686, (1), 523 S.E.2d 857 (1999);

Williams V STATE, 271 GA. at 689 (1) 523 S.E.2d 857 (1999);

Hinton V STATE, 127 GA. APP. 853, 195 S.E.2d 472 (1973); (FORMER Code 1933 § 27-2502);

GRIGGS V STATE, 314 GA. APP. 158, 732 S.E.2d 480 (2012);

DAVIS V STATE, 219 GA. APP. 252, 661 S.E.2d 872 (2008).

GROUND 2

MR. ROSE CONTENDS that his Case is being mishandled by the DEPT. OF. CORRECTIONS and the GA. PAROLE BOARD, and they both have advised MR. ROSE that the Courts must fix this ISSUE.

ON DEC 8, 2014 MR. ROSE received a letter from the PARDONS and PAROLE BOARD that MR. ROSES Case #11-CR-0080-B is being handled as a 17-10-7(c) NON-PAROLABLE RECIDIVIST SENTENCE.

(SEE PAROLE BOARD LETTER INDEX #7)

MR. ROSE ARGUES and will prove that this is incorrect. ON FEB 2, 2011 MR. ROSE WAS SENTENCED to a 10 do 2 with the 2 yrs under 17-10-7(c) following 8 suspended upon remaining outside of Whittfield and Murray Counties.

MR. ROSE served the 2 year Sentence to Completion in OCT. 2012.

IT is Clear from the Wording on MR. ROSE' Final DISPOSITION that the Sentence states, "10 yrs suspended upon the defendant serving 2 years in Confinement pursuant to 17-10-7(c) and remaining outside Whittfield and Murray County GA." (see Final Disposition INDEX #9) at MR. ROSES Suspended Sentence Violation hearing ON JUNE 24, 2014 the Courts OWN TRANSCRIPT shows A CONVERSATION between JUDGE MORRIS, and D. A., MINTER. (SEE COURT TRANSCRIPT pg. 7 L- 8-25)

Where D.A. MINTER states only the 2 yrs were under 17-10-7(c) and JUDGE agrees. (INDEX #7)

MR. ROSE would ask that the trial court be directed to contact the DEPT. OF CORRECTIONS and PARDONS and PAROLE BOARD so that MR. ROSE may become PAROLE ELIGIBLE, and other early release programs.

INSTEAD OF a MANDATORY 79 month sentence for a 1 time suspended sentence violation and MR. ROSE will suffer NO FURTHER INJURY BECAUSE OF THIS ERROR.

O.C.G.A. § 17-1-3 states "MISTAKE OR MISPRISION OF a CLERK or other MINISTERIAL OFFICER shall in no case work to the injury of a party where by amendment justice may be promoted."

GROUND 3

MR. ROSE Contents that the trial Court failed to Comply with the mandates of O.C.G.A. § 42-8-34.1 (a)(2)

THE GA. Legislature, GA Supreme Court and the GA. Appellate Court have studied this statute and Concluded that O.C.G.A. § 42-8-34.1's Wording, "MUST be strictly Construed."

O.C.G.A. § 42-8-34.1 (a)(2) Clearly states that, "THE SUBSTANTIVE OR ESSENTIAL REQUIREMENTS OF § 42-8-34.1 (a) are," that the trial Court warn of the CONSEQUENCES OF VIOLATING A SPECIAL CONDITION. that the Warning be in Writing; and that the Writing be in the trial Courts Sentence."

ALSO the GA. Court of Appeals ruled in GAMBIE V. STATE, 290 GA. APP. 37; 658 S.E.2d 785 (2008) "That the Sentencing document must Contain the Words 'SPECIAL CONDITION' so that it is Clear which Conditions are 'SPECIAL' and which are 'GENERAL'."

BASED on these Clear mandates and the evidence on the trial Courts ORIGINAL SENTENCE, (See Final Disposition INDEX #9) MR. ROSE Shows that; nowhere on the Courts Sentence does it state that remaining outside of Whitfield, and Murry Counties is a "SPECIAL CONDITION."

There is nothing in the Sentencing document anywhere to instruct MR. ROSE that this is a "SPECIAL CONDITION." AND NOT JUST A GENERAL Condition, therefore it should have been treated as a general Condition Violation, and Sentenced to 2 years or less as per O.C.G.A 42-8-34.1.

IN SUPPORT OF O.C.G.A § 42-8-34.1 (a)(2),
O.C.G.A. § 42-8-34.1 (B).

CASES IN SUPPORT

GAMBLE V STATE, 290 GA. APP. 37; 658 S.E.2d 285 (2008);

HARVEY V MEADOWS, 280 GA. 166, 169-170 (3) 626 S.E.2d 92 (2006);

SHEPPARD V STATE, 319 GA. APP. 813; 738 S.E.2d 662 (2013);

GARDNER V STATE, 259 GA. APP. 375; 577 S.E.2d 69 (2003);

BERGEN V STATE, 300 GA. APP. 837; 686 S.E.2d 410 (2004).

GROUND 4

MR. ROSE WAS VIOLATED FOR BEING INSIDE MURRAY CO. GA. HE ASSERTS THE COURT NEVER PROPERLY NOTIFIED HIM THAT REMAINING OUTSIDE OF THE COUNTY WAS A "SPECIAL CONDITION", AND NO ONE EVER WARNED HIM OF ANY CONSEQUENCES VERBALLY OR OTHERWISE AS PER 42-8-34.1 (a) (2).

MR. ROSE STATES HE WAS NEVER EVER TOLD THIS WAS A "SPECIAL CONDITION." "TO CONSTITUTE A SPECIAL CONDITION, THE SENTENCING DOCUMENT MUST REFLECT IN WRITING THAT FAILURE TO SUCCESSFULLY COMPLETE THE CONDITION AUTHORIZES THE COURT TO 'REQUIRE THE DEFENDANT TO SERVE UP TO THE BALANCE OF THE SENTENCE IN CONFINEMENT.'"

GARDNER V STATE, 259. GA. APP. 357; 577 S.E. 2d 69 (2003) AND ALSO SHEPPARD V STATE, 319. GA. APP. 813, 738 S.E. 2d 662 (2013) STATES, "THE WARNING OF THE SPECIAL CONDITION VIOLATION CONSEQUENCES HAD TO BE IN WRITING AND IN THE TRIAL COURT'S SENTENCE."

AS SHOWN BY THE TRIAL COURT'S SENTENCE THERE IS NO WARNING OF ANY KIND ABOUT ANY VIOLATION! (SEE COURT SENTENCE INDEX #9)

THEREFORE VIOLATION SHOULD HAVE BEEN TREATED AS A GENERAL VIOLATION, AND SENTENCED AS PER O.C.G.A. 42-8-34.1 (b) TO 2 YRS OR LESS. O.C.G.A. 42-8-34.1 (a) (2) IS VERY WELL ESTABLISHED AND VERSED.

GROUND 4

IN SUPPORT OF O.C.G.A 42-8-34.1 (a)(2);
O.C.G.A 42-8-34.1 (13).

CASES IN SUPPORT:

GAMBLE V STATE, 290 GA. APP. 37; 658 S.E.2d
785 (2008);

HARVEY V MEADOWS, 280 GA. 166; 169-170 (3)
626 S.E.2d 92 (2006);

SHEPPARD V STATE, 319 GA. APP. 813; 738 S.E.
2d 662 (2013);

GARDNER V STATE, 259 GA. APP. 375; 577 S.E.
2d 69 (2003);

BERGEN V STATE, 300 GA. APP. 837; 686 S.E.
2d 410 (2009).

GROUND 5

MR. ROSE also states that since the mandates of O.C.G.A 42-8-34.1 (a) (2) weren't followed, he should have been sentenced under O.C.G.A 42-8-34.1 (b) which states, ". . . . the Court shall consider the use of alternatives to include Community Service, intensive Probation, diversion Centers, Probation detention Centers, special alternative incarceration, or any other alternative to Confinement. if defendant does not meet the Criteria for said alternatives, the Court may revoke the balance of probation or not more than two years in Confinement, whichever is less."

The Court never entertained any alternatives to Prison, He went from a suspended sentence to prison after revoking all 79 months of said sentence, for a ~~1~~ time violation.

(BEING IN MURRAY CO.)

As shown by the Courts own transcript pages 4 and 5 (see Courts transcript INDEX 8) MR. ROSE'S Attorney offered several alternatives, since it was a SUSPENDED sentence; Probation, fine, Community Service, anything to let him keep his job, and as the record reflects the Court completely ignored her comment; never even acknowledged she spoke.

Therefore the Court didn't adhere to the statute here either, even though Mr. Rose would have been a perfect candidate been on his job 2 yrs. and had been in absolutely no trouble. Therefore the criteria wasn't met; as the APPELLATE Court has ruled the Court must follow this statute on the record.

MR. ROSE contends he should have received some form of alternative sentencing, or at the most 2 yrs as per O.C.G.A 42-8-34.1(b)

IN SUPPORT OF O.C.G.A 42-8-34.1 (a)(2);
O.C.G.A 42-8-34.1 (b).

CASES IN SUPPORT:

GAMBLE V STATE, 290 GA. APP. 37; 658 S.E.2d
785 (2008);

HARVEY V MEADOWS, 280 GA. 166, 169-170 (3) 626 S.E.
2d 42 (2006);

SHEPPARD V STATE, 319 GA. APP. 813; 738 S.E. 2d
662 (2013);

GARDNER V STATE, 259 GA. APP. 357; 577 S.E.2d
69 (2003);

BERGEN V STATE, 300 GA. APP. 837; 686 S.E.2d
410 (2009).

GROUND 6

MR. ROSE also states that the Dept. of Corrections has his sentence start-date as JUNE 25, 2014.

AS SHOWN BY THE REVOCATION ORDER (REVOCATION ORDER INDEX#10) MR. ROSE arrest date was April 20, 2014 and as shown in the Court's transcript pg 8-4, 20 and 21 was granted time served.

(SEE TRANSCRIPT INDEX# 8). MR. ROSE WOULD ASK the Court to direct the trial Court to correct paperwork to the dept. of Corrections.

JUDICIAL CASES IN SUPPORT

OCGA § 42-8-34.1 (A) (2) ; OCGA § 42-8-34.1(B)

CASES IN SUPPORT

Gamble v. State, 290 GA. APP. 37; 658 S.E. 2d 785 (2008)

HARVEY v MEADOWS, 280 GA. 166, 169-170(3) 626 S.E. 2d 92 (2006)

Sheppard v State, 319 GA. APP. 813; 738 S.E. 2d 462 (2013)

GARDNER v STATE, 259 GA. APP. 375; 577 S.E. 2d 69 (2003)

BERGEN v. STATE, 300 GA. APP. 837; 686 S.E. 2d 410 (2009)

Jurisdiction of MOTION / VOID SENTENCE

OCGA § 17-10-1 ; OCGA § 17-10-1(F); OCGA § 17-9-4

Williams v State, 271 GA. at 686(1), 523 S.E. 2d 857 (1999)

Williams v State, 271. GA at 688-689, 523 S.E. 2d 857 (1999)

Shields v State, 276 GA. 669, 581 S.E. 2d 536 (2003)

HARVEY v Meadows, 280 GA. 166, 626 S.E. 2d 92 (2006)

TERRY v HAMRICK, 284 GA. 24, 663 S.E. 2d 256 (2008)

PRICE v STATE, 281 GA. APP 844; 637 S.E. 2d 468 (2006)

Phillip v. State, 313 GA. APP. 302; 721 S.E. 2d 214 (2011)

Green v. State, 273 GA. APP. 654; 615 S.E. 2d 818 (2005)

Kaiser v State, 285 GA. APP. 63; 646 S.E. 2d 857 (2007)

OCGA § 17-10-1 (F) OCGA § 17-10-3

Hinton v. State, 127 GA. APP. 853; 195 S.E. 2d 472 (1973)

Griggs v State, 314 GA. APP. 158; 732 S.E. 2d 480 (2012)

DAVIS v State, 219 GA. APP 252; 661 S.E. 2d 872 (2008)

CONCLUSION

MR ROSE HAS MORE THAN PROVEN HIS CASE BY STATUTORY LAW, AND MORE THAN ENOUGH ESTABLISHED CASE, THE TRIAL COURT WANTS TO SKIRT THE ISSUE.

THIS ALL BOILS DOWN TO THE TRIAL COURT OVER SENTENCED MR ROSE ON HIS VIOLATION, AND THE COURTS ARE SIMPLY PLAYING GAMES.

PLEASE REMAND THIS BACK TO THE TRIAL COURT FOR SENTENCING WITHIN STATUTORY ACCORD.