

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

February 10, 2015

To: Ms. Clareth Ross, GDC176413, Lee Arrendale State Prison, Post Office Box 709, Alto, Georgia 30510

Docket Number: A15A0785 **Style:** Clareth Ross 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)
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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)
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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: **You must "motion" the Court to file an Amended Brief. You must also send the complete Brief with all the pages, if the motion is granted.**

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IN THE COURT OF APPEALS OF GEORGIA

CLARETHA ROSS,
Appellant,

vs.

STATE OF GEORGIA,
Appellee.

Case No. A15A0785

AMENDED

BRIEF OF APPELLANT

Claretha Ross, Pro Se
QDC. NO. 176413
Lee Abernethy State Prison
P.O. Box 709
Alto, Georgia 30510-0709

and Ross Trucking Co., Inc.," (TR. 29, 244-247, 311-312).
See Appellant's Exhibit "3."

The last transactions on "5970" were cashier's checks cashed at 3:30 p.m. and 4:19 p.m., "[a]lthough one was cashed in Newton," on "April 26th." A debit card purchase was the last transaction on the "Claretha Ross' Family Reunion Account" - Account No. 2041105038 (hereinafter "5038"). (TR. 121).

At arraignment, September 4, 2007, pleaded "NOT GUILTY" to felony Indictment No. 2007-CR-1163 I (Watson, Judge) - "CLARETHA HAZLEY ROSS d/b/a ROSS AND ROSS TRUCKING CO.;" on the same day, Ms. Ross was arraigned by "STANBORN MUTE" plead to the felony Accusation No. 2007-CR-1471 I (Tewson, Judge) - Id. (Trial Record hereinafter "TR." 27, 39).

On March 27, 2008, the State "not pressed" Accusation No. 2007-CR-1471 I (Id.) - NO WAIVER OR CONSENT. (TR. 95).

"Sixteen Thousand One Hundred Fifty Dollars and Thirty-Four Cents (\$16,150.34)" ordered on March 28, 2008, in "Restitution" - without a hearing. (TR. 86-87, 274, 311-312) (TR. 9, 93) - See Appellant's Exhibit "4."

On October 9, 2007, the first "Demand For Speedy Trial" was filed. (TR. 27, 39). See Appellant's Exhibit "5".

A "Demand For Speedy Trial," Certificate For Immediate Review" among others was "Return[ed] [U]nfiled by the Clerk's Office on November 18, 2014—the one-sentence denial stated, "FURTHERED ORDERED that a "Demand For Speedy Trial" is not applicable to a post-judgment motion." See ORDER dated October 21, 2014; Appellant's Exhibit "6".

On March 19, 2008, the State filed its recidivist notice to include prior convictions "on appeal"—one "still pending" in Mitchell County, Georgia, to date. (TT. 307) (TR. 42-45). See Appellant's Exhibit "7".

PART II. ENUMERATION OF ERROR

THE TRIAL COURT VIOLATED ROSS' DUE PROCESS RIGHTS ENTERING A ONE-SENTENCE DENIAL OF THE MOTION BASED ON THE JUDGMENT ALONE.

(Enumeration of Error No. 1)

STATEMENT OF JURISDICTION

This Court, rather than the Supreme Court, has jurisdiction over this case because it involves a criminal offense for which the death penalty was not and could not have been imposed. Georgia Constitution of 1983, Article VI, §VI, ¶III. Additionally, this appeal does not raise a constitutional question. For these two reasons, this case is not within the exclusive appellate jurisdiction of the Supreme Court. Georgia Constitution of 1983, Article VI, §VI, ¶II.

The trial transcript in Ross v. State, 298 Ga. App. 525 (2009), reveals that the State knew or should have known that the indictment [Count 1] was defectively drawn. The colloquy is as follows:

TT. 251 pp., 23-25: (March 26, 2008, in open court, jury not present)

THE COURT: Okay, we're going to go through the charges here. We will start with the State and then go --

TT. 256 pp., 5-6: MR. STALCUP: Your Honor, I believe that request to charge is identical to the code.

23-25: MR. STALCUP: The evidence was that cashiers checks were obtained in Rockdale County. Although one was cashed in Newnan,

TT. 257 pp., 10-11: THE COURT: I'll give number nine out ^{of} the pattern charge.

12: MR. STALCUP: Your Honor -- I'm sorry.

14-16: MR. STALCUP: I think paragraph two, although a correct statement of law, I don't believe it is accused that way in the indictment.

TT. 257 pp., 19-23: MR. STALLUP: Although I believe that's what Ms. Ross did when she obtained the cashiers check, it is not in the indictment, I think might be such a preclusion of allowing the jury to convict her in a manner not accused, so I think that should probably be struck.

24-25: THE COURT: Okay, if that's what you want to do.

MR. STALLUP: I would like to leave it, but—

TT. 258 pp., 1-2: THE COURT: You asked for it to come out, I'll take it out. That was number nine.

See State's Request To Charge Number 9 (TR. 76); (GIVEN); O.C.B.A. § 16-8-3 - Theft by Deception.

2. Competent Jurisdiction not proven at trial.

Jurisdiction of a court depends on the state of fact existing at the time it is invoked. See, 22 C.J.S., Criminal Law §176.

Jurisdiction in criminal cases extends only to matters declared by law. In criminal cases, the jurisdiction of the court extends to such matters as the law has declared criminal and none other. See, Riley v. Garrett, 219 Ga. 345 (1963); St. Francis Hosp., Inc. v. Dow, 123 Ga. App. 360 (1971); Rock v. Ready Trucking, Inc., 218 Ga. App. 774 (1995).

Jurisdiction means the power of a court to render a binding judgment in the case, and venue means the place of trial. See, Webb v. Fuller, 244 Ga. 846 (1979).

Jurisdiction is different from any other grounds, simple because you can not correct the sentence, the sentence is voided. See, Brown v. State, 52 Ga. App. 536 (1935).

It was error to list in the indictment a previous conviction a case on appeal. See, Coker v. Smith, 225 Ga. 529 (1969); see also, Cartrell v. State, 141 Ga. 98, 104 (1913); U.S. v. Tucker, 404 U.S. 443, 447 (1972).

A trial court must hold a hearing to determine whether restitution is appropriate and, if so, the amount that should be paid. See, Lummas v. State, 274 Ga. App. 686 (2005); see also, Steele v. State, 270 Ga. App. 488 (2004); Tweezer v. State, 312 Ga. App. 799 (2011).

Once a case is indicted the time begins to run on a defendant's statutory right to a speedy trial. See, Jones v. State, 284 Ga. 320 (2002); United States v. Marston, 404 U.S. 307, 313, 320 (1971); see also, Dillingham v. U.S., 423 U.S. 64, 65 (1975); U.S. v. Knight, 562 F.3d 1314, 1323 (11th Cir. 2009).

PART IV. CONCLUSION

For the above and foregoing reasons, the rulings below should be reversed and the sentences vacated.

Dated, this 3rd day of February, 2015.

Respectfully submitted,
Claretha Ross
Claretha Ross, Pro Se
OBC. NO. 176413/D-H3-PC
Lee Acersdale State Prison
P.O. Box 709
Alto, GA 30510-0709

CERTIFICATE OF SERVICE

I, Claretha Ross hereby certify that I have caused to be served a copy of the foregoing Brief of Appellant - Pages 5-7 and 13-16 upon addressee(s) listed below sending United States Postal Service first class postage the same by United States mail in a proper envelope with adequate postage, properly addressed to:

Stephen E. Cashlow, Clerk
Suite 501
47 Trinity Avenue
Atlanta, GA 30334

Richard R. Read, Dist. Atty.
Rockdale County Dist. Atty. Off.
P.O. Box 289
Conyers, GA 30012

This the 3rd day of February, 2015.

Claretha Ross
Claretha Ross, Pro Se
176413/Lee Arrendale State Prison
P.O. Box 709
Alto, GA 30510

February 3, 2015

Stephen E. Castleberry, Clerk
Court Of Appeals Of Georgia
Suite 501

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Atlanta, GA 30334

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Re: Brief Of Appellant (Amended) - Pages 5-7, 13-16

Dear Mr. Castleberry:

Enclosed are the following documents to be filed and disbursed the following Pages 5-7, 13-16, and Appellant's Exhibits 4-7 (missing records) from the original trial records:

- 1) Amended Pages *5-7, 13-16* (Returned 02-05-15)
- 2) Appellant's Exhibits *4-7* (Returned 02-05-15.)

Thank you in advance.

P.S.

To include: PART II - ENUMERATION OF ERRORS
AND CITATION
PART III - ARGUMENTS OF AUTHORITY
PART IV - CONCLUSION

Sincerely,
Charlotta Ross
Charlotta Ross, Pro Se