

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

April 17, 2015

To: Ms. Clareth Ross, GDC176413 D-H3, 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)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5. Your Certificate of Service did not include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
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)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
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 do not have permission to file a second Motion for Reconsideration. See Rule 37(d). The amended Motion for Reconsideration is being returned to you.**

IN THE COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

CLARETHA ROSS,
Appellant,

Case No. A15AD0785

RECEIVED IN OFFICE
2016 APR 11 PM 1:40
CLERK OF SUPERIOR COURT
COURT HOUSE
CORDEIRO BLDG
COLUMBIA ST
ATLANTA, GA 30334

vs.

STATE OF GEORGIA,
Appellee.

AMENDED MOTION FOR RECONSIDERATION

COMES NOW Clarethia Ross, appearing Pro Se, and file this amended motion for reconsideration pursuant to this Court's Rule 37. Additionally, for good cause and providential, in support of, the following:

Under existing "analogy" should attend the law filed "timely." See, Je Does not have by a motion for reconsideration for certiorari only if it is v. State, 2014 Ga. LEXIS 553 reconsideration filed in Case late, this hereby dismissed as untimely. The motion 314AD191 [Davis] hereby is granted, ... creation filed in Case Number Hardware Co. v. Lawson, 2014 Ga. LEXIS 839 remanded for reconsideration in light of LaFarge Building Materials, Inc. v. Thompson, 295 Ga. 637 (2014) (petition for a writ of certiorari is granted).

On October 30, 2014, Ross filed a "timely" Motion for Reconsideration for Manifest Injustice Error "[sic] via COIT Plott — the original motion denied October 27, 2014. The motion for reconsideration, etc., was denied December 8, 2014.

1. Motion to Reconsider tolls Filing Notice of Appeals

In 1999, the Eleventh Circuit Court of Appeals held that a government's timely motion to reconsider tolls period for filing notice of appeal. See, U.S. v. Corcoran, 172 F.3d 806, 811 n. 3 (11th Cir. 1999); see also, U.S. v. Thara, 502 U.S. 1, 6-7 (1991) (government's motion to reconsider suppression ruling tolled period for filing notice of appeal).

2. Notice Of Appeal confers Appellate Jurisdiction

An absolute requirement to confer jurisdiction upon an appellate court is a properly and timely filed notice of appeal.² See, Couch v. United Paperworkers Intl. Union, 224 Ga. App. 721 (1997).

3. Premature Filing of Notice of Appeal is Valid

A notice of appeal is filed before the entry of a written order denying a motion for new trial, the appeal³ is valid. See, Lovingsdon v. State, 221 Ga. App. 563(1) (1996).

² See, O.C.G.A. 35-6-38(a) (mandatory that a notice of appeal must be filed within 30 days after entry of the decision or judgment sought to be appealed).

³ On November 16, 2014, Ross "hand delivered" to COTI Barrett (PM) [COTI Mathew (AM)] a notice of appeal, inter alia. The supreme court clerk returned the documents, inter alia, on 11/19/14. Ross did not receive the documents until 11/20/14 — returned the same day denoted "NONE POSTED" [11/16/14].

4. Judgment on the Merits to avoid Dismissal

In O.C.B.A. 85-6-30, Appellate Practice Act, proposes liberal construction of the rules of procedure — a decision on the merits of every case appealed and to avoid dismissal. See, Gillen v. Bostick, 234 Ga. 308 (1975); see also, Steele v. Concentrate Ins. Co., 252 Ga. 58 (1984).

In a 1966 Fifth Circuit Court of Appeals decision, that court held that the rule requiring judgment and entry of judgment before an appeal can be taken is better interpreted to prevent loss of the right of appeal than to facilitate loss. See, Markham v. Holt, 319 F. 2d 940 (5th Cir. 1966); see also, 9 Moore's Federal Practice 119, § 110.08[2] (1974).

In a similar other case, the Supreme Court of the United States explicitly expressed that in keeping the spirit of the law takes the approach as to reviewing criminal appeals "on the merits" whenever possible. See, Evitts v. Lucey, 419 U.S. 387 (1975).

5. Sentence [20 years] Void under O.C.B.A. 816-8-12 et seq. (2008)

A crime is to be construed and punished according to the provisions of the law existing at the time of its commission. See, Jones v. State, 325 Ga. App. 845 (2014).

"2012 amendments.

'The second 2012 amendment, effective July 1, 2012, in

subsection (a) designated the existing provisions of paragraph (a)(1) as subparagraph (a)(1)(A) and, in subparagraph (a)(1)(A), substituted "24,999.99 in value, by imprisonment for not less than two nor more than 20 years" for "\$500.00 in value, by imprisonment for not less than one nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor"; added subparagraphs (a)(1)(B) through (a)(1)(D); "

See, D.C.G.A. § 16-8-12 (2012).

The Final Disposition reads:

"The said defendant is hereby sentenced to '20 years' — 'restitution' in amount of '\$16,150.34'...." (TR. p. 9 [Written Order]) (TR. p. 311, L. 1-2 [Oral Order]); See, Sharp v. State, 183 Ga. App. 641 (1987); D.C.G.A. § 5-6-31.

In 1987 the Court held that an "[o]ral order is not final and not appealable until and unless the order is reduced to writing, signed by the judge, and filed with the clerk. See, Sharp at 641.

Count 2, "10 years probation to run consecutive to Ob. 1 [10 years to serve to run consecutive to sentence now serving in case #07R145]".

According to Black's Law Dictionary (9th Ed.) at 1485 "consecutive sentences" e.g., "if a convicted criminal receives "consecutive" sentences"

of 20 years and 5 years, the total amount of jail time is 25 years."

A sentence or portion thereof that is unauthorized by law is a "void and void." See, Hall v. State, 291 Ga. App. 649 (2008).

A sentence in which part of the time is served in confinement and the rest on probation is called a "split sentence." See, Black's Law Dictionary (9th Ed.) at 1486.

A void-sentence is 10 years — Count 1 — 10 years and Count 2 — ~~10~~ ^{CONCURRENT} years, NOT 20 years, if a sentence is required at all.

A variance as to the amount of Restitution — as to Count 1 — \$14,847.87 and as to Count 2 — \$1,202.27 for a Total of \$16,050.14 not \$16,150.34.

The Recodified Statute O.C.G.A. #17-10-7(a) and (c) as applied to a void sentence is "illegal and void." See, Phillip v. State, 313 Ga. App. 302 (2011).

WHEREFORE, Ross prays her "motion for reconsideration" be granted, "on the merits" pursuant to D.C.G.A. 85-6-30.

Respectfully submitted, this 31st day of March, 2015.

Chartha Ross
Chartha Ross, Pro Se
BDC. NO. 176413/D-43/PC
Lee Merendale State Prison
P.O. Box 709
Alto, Georgia 30510-0709

CERTIFICATE OF SERVICE

This is to certify that I have, on this day, submitted complete and correct copies of the foregoing "document(s)" upon the parties listed below, by placing same in the United States mail, with sufficient postage affixed thereto.

* This 30th day of March, 2015.

Charlton Ross
Appellant
Defendant/ Pro Se

Parties served:

Stephen E. Carthen, Clerk
Suite 501
47 Trinity Avenue
Atlanta, GA 30331

Richard R. Read, Dist Atty.
Rockdale City DA Office
P.O. Box 289
Conyers, GA 30012

Roberta Fraenberth, ADA
Rockdale City DA Office
P.O. Box 289
Conyers, GA 30012

March 31, 2015

Case No. A15AD0785

Stephen E. Castle, Clerk
Court of Appeals of Georgia
Suite 501
47 Trinity Avenue
Atlanta, Georgia 30334

Re: Documents to be Filed; "Amended Motion for Reconsideration"

Dear Mr. Castle, Law Clerk for Case No. A15AD0785:

Here is enclosed the following documents to be filed and disbursed to the following listed addressees listed on the Certificate of Service.

- 1) Amended Motion for Reconsideration - Pages 1-5
- 2) Certificate of Service
- 3) Cover letter

RECEIVED
2015 APR 14 PM 1:40
CLERK OF SUPERIOR COURT
COURT OF APPEALS OF GEORGIA

Thank you in advance.

Sincerely,
Doretha Ross
2100. 70. 176413