

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

March 2, 2015

To: Mr. Donald Ross, GDC528602 C-2, Central State Prison, 4600 Fulton Mill Road,
Macon, Georgia 31213

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: _____

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.
- 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.
- Your appeal was disposed by opinion (order) on _____.** The Court of Appeals divesting this Court of jurisdiction. The remittitur issued on _____
- 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.
- You may want to consider writing: The State Board of Pardons and Paroles, 2 Martin Luther King, Jr., Drive, 5th Floor, East Tower, Atlanta, Georgia 30334 and/or write: The Center for Prisoners Legal Assistance, Inc., Post Office Box 1268, Alpharetta, Georgia 30009.**

I am returning your documents to you.

TO: THE COURT OF APPEAL JUDGES

12 FEB 2015

BIRDSONG, J., BANKE PJ., AND COOPER, J.,

FROM: APPELLANT # A90A0591 195 GA. APP. 624
COURT OF APPEALS OF GEORGIA. 394 S.E. 2d 418
DONALD ERIC ROSS

RECEIVED

28 FEB 27 PM 1:33

HONORABLE SIR'S, ON MAY 14, 1990 YOU RULED ON MY APPEAL CASE # A90A0591, AND I NOW FIND MYSELF SEEKING YOUR JUSTICE TO CORRECT A OVERSIGHT THAT IS 20 YRS. DELAYED! HONORABLE SIR'S IN YOUR RULING OF MY CASE IN 1990 YOU FOUND THAT A "FATAL VARIANCE EXISTED BETWEEN ALLEGATIONS AND PROOF REGARDING OFFENSE OF AGGRAVATED SODOMY"; YOUR FINAL RULING STATE'S "FOR THE REASON STATED IN DIVISION 1 THE CONVICTION FOR AGGRAVATED SODOMY MUST BE REVERSED AND APPELLANT RESENTENCED".

YOUR "JUDGMENT OF CONVICTION OF RAPE AFFIRMED; JUDGMENT OF CONVICTION OF AGGRAVATED SODOMY REVERSED; SENTENCE REVERSED AND CASE REMITTED WITH DIRECTIONS".

HONORABLE SIR'S I CLAIM NO KNOWLEDGE OF LAW AT ALL BUT, UPON SEEING MY CASE IN LAW BOOKS, I KNOW WHAT I READ - IN 1990 YOU ORDERED THIS VERY CASE BE RESENTENCED + I BE BROUGHT BACK BEFORE JUDGE J. SMITH OF THE SUPERIOR COURT OF MUSCOGEE.

I WROTE TO JUDGE SMITH NEVER TO BE RESPONDED BACK TO, I TRIED TO CONTACT DIST. ATTY ASST. JAMES C. BERNARD NO RESPONSE - I THEN TRIED TO CONTACT ARTHUR A. MUNDENHALL JR. ALSO NO RESPONSE! I HAVE BEEN INFORMED THAT JAMES BERNARD & ARTHUR A. MUNDENHALL JR. HAVE BEEN DISBARRED.

195 Ga.App. 624
Court of Appeals of Georgia.

ROSS
v.
The STATE.

No. A90A0591. | May 14, 1990.

Defendant was convicted of rape and aggravated sodomy in the Muscogee Superior Court, Smith, J., and defendant appealed. ~~The Court of Appeals, Birdso, held that a fatal variance existed between allegations and proof regarding offense of aggravated sodomy.~~ (2) issues of inadequacy of trial defense counsel were waived; and (3) assuming error of constitutional magnitude occurred as result of admission of rape kit, such error was harmless.

→ ~~Affirmed in part, reversed in part and remanded with decision.~~

West Headnotes (7)

[1] **Indictment and Information**

↔ Matters to Be Proved

Indictment and Information

↔ Surplusage and unnecessary allegations

While unnecessary description of unnecessary fact averred in indictment need not be proved, in criminal law even an unnecessarily minute description of a necessary fact must be proved as charged.

7 Cases that cite this headnote

[2] **Sodomy**

↔ Indictment or information

→ ~~Fatal variance existed between allegations and proof presented as to charge of aggravated sodomy, and thus evidence was insufficient to sustain conviction on that charge, though indictment averred that defendant committed aggravated sodomy by performing oral sex upon~~

~~victim, victim testified that defendant forced her to perform oral sex upon him and thereafter committed act of anal intercourse upon her.~~

14 Cases that cite this headnote

[3] **Criminal Law**

↔ Matters appearing otherwise than by record

Criminal Law

↔ Evidence presented to appellate court

Appellate court cannot consider factual representations contained in appellate briefs when such evidence does not appear on record, and brief or attachment thereto cannot be used in lieu of record or transcript for adding evidence to record.

4 Cases that cite this headnote

[4] **Criminal Law**

↔ Proceedings at trial in general

Issues of inadequacy of trial defense counsel were waived for purposes of appellate review; after obtaining appearance and appointment of new counsel on his behalf, defendant failed to timely file either motion for new trial or amended motion for new trial asserting ineffectiveness of trial defense counsel. U.S.C.A. Const.Amend. 6.

1 Cases that cite this headnote

[5] **Criminal Law**

↔ Documentary and demonstrative evidence

Even if error of constitutional magnitude occurred as result of admission of rape kit used in examining victim, such error would be harmless; defendant's conviction of aggravated sodomy was reversed based upon fatal variance between allegations and proof, and given defendant's in-court admissions and overwhelming evidence of his guilt of rape, no fair risk existed that he was deprived of right of fair trial.

4 Cases that cite this headnote

TO: LINDA PIERCE
CLERK OF SUPERIOR COURT

FROM: DONALD E. ROSS
PETITIONER

MS. PIERCE ON OCT 24 2014 I filed with your office
a motion to "Correct sentence By a person in state
custody" # 09CR570245 - Ross v. State 195 GA. 624, 394
S.E. 2nd 419, 1990. All other parties being duly notified
in accordance with GA. LAW and am writing to you in
hope of a update to this motion's status and or
placement for docket # for appearance before a Honorable
Judge for disposition of said motion, Any information
will be of help to me and truly appreciated.
my mailing address is listed below.

Donald Ross # 528602
Central State Prison C2
4600 Fulton Mill Rd
Macon, Georgia 31028

Respectfully
Donald Ross

Happy Holiday