

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

December 14, 2015

To: Mr. Benji Sanders, GDC1140527, Wheeler Correctional Facility, Post Office Box 466,
Alamo, Georgia 30411

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 the name of Benji Sanders.**
- 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.

Kello,

12-4-15

I am writing to you, in dire need of your help/aid within these legal matters. As you can see, I am providing letters to you from both judges, both telling different information.

I went to jury trial and was found "guilty", however, my (paid) trial attorney stated that I was "overcharged", and that an appeal for "Sentence Reduction/Modification" would be filed. Also, the multiple appellate attorneys on my case has stated the same, "you were overcharged, you suppose to have voluntary manslaughter, 1 to 30 years." However, I was found guilty of Felony Murder, Murder, and aggravated battery; with no lesser included offense being mentioned.

Prior to my incarceration, I have not had any criminal endeavors whatsoever (no boot camp, Y.D.C. or Jail time), I was 21 yrs. of age when I got locked up; young, immature, and not focused. However, I am now going on 35 yrs. old, VERY RESPONSIBLE, mature and focused.

I truly apologize from the bottom of my heart and soul for the crime that lead up to my incarceration, and if I had just one chance, one wish, one ability or power, it would be used to bring back the life that was lost, so that she could live her life on out.

As I have stated to the judges, I am not trying to attack nor fight the conviction, it is the sentence that is wrong and needs corrected. However, I keep getting the run around from my appellate attorneys (past and present) and the judges, therefore, I had to

go over the superior courts head, because I am truly seeking relief from this "Life" sentence that I don't suppose to have.

As you can see, time has been expiring for motion to be filed and there is no fault on my behalf, transcripts and paper work hasn't been filed, and in process of that, I cannot work on my case. Furthermore, the hearing for MOTION FOR NEW TRIAL, was denied without explanation, also, within this order denying MOTION FOR NEW TRIAL, there is no explanation of denying it. Also, how am I not "entitled" to a new trial, when I went to jury trial? I did not take a plea.

Please help correct this matter, and I truly thank you all for your help and consideration.

Respectfully,
Benji Sanders

OFFICE OF SUPERIOR COURTS

JUDGE
W. JAMES SIZEMORE, JR.



COUNTIES SERVED:
LEE STEWART
MACON SUMTER
SCHLEY WEBSTER

TELEPHONE 229-924-2269

SOUTHWESTERN JUDICIAL CIRCUIT
POST OFFICE DRAWER 784
AMERICUS, GEORGIA 31709

FACSIMILE 229-924-1614

October 28, 2015

Mr. Sam Merritt
Office of the Circuit Public Defender
416 W Lamar Street
Americus, Georgia 31709

RE: State v. Benji Cortez Sanders
Superior Court of Sumter County
Case No.: 02CR324

Dear Sam:

I enclose correspondence I received from the defendant in this matter. It appears that he was convicted in 2003 of several offenses including felony murder. A motion for new trial has been pending since at least 2010, along with a motion for permission to file an amended out of time motion for new trial. I cannot discern whether or not any of these matters have ever been brought for hearing. I would ask that you review this file and let me know its status. Mr. Lamberth handled the matter for your office prior to joining the District Attorney's office. The defendant indicates that David Winheim is now handling the case on appeal.

I would appreciate you responding to me as quickly as possible so that I will know how the Public Defendant's office expects to proceed with this matter.

I send best regards,

Sincerely yours,

W. James Sizemore, Jr.

WJSjr/sww

enclosure

cc: Benji Sanders
Plez Hardin, District Attorney (w/enclosure)

IN THE SUPERIOR COURT OF SUMTER COUNTY
STATE OF GEORGIA

Georgia, Sumter County,
Filed in office _____ day of
NOV 02 2015 20

THE STATE OF GEORGIA, :
 :
 V :
 :
 BENJI CORTEZ SANDERS, :
 DEFENDANT :

Midway
Clerk
CASE NO.: 2002R3241

ORDER DENYING MOTION FOR NEW TRIAL

Defendant having been indicted by the Sumter County Grand Jury for the offences of Murder, Felony Murder, and Aggravated Battery. The Defendant having come to trial in the May Term of 2003 before Judge John Harper. The Defendant represented by William Murray and the State by Cecilia Cooper and David Perry of the Southwestern Judicial Circuit District Attorney's Office, the Jury having found the Defendant guilty of all charges. Judge Harper then sentenced the Defendant to serve a life sentence on the 29th day of May 2003.

Judge John Harper died in office in 2004, an Out of Time Motion for New Trial was filed and granted. Subsequently, the case came before Chief Judge R. Rucker Smith for hearing on the Motion For New Trial on October 7, 2010. Defendant was represented by Don Lamberth of the Office of Circuit Public Defender and the State by Dan Bibler.

The Court after reviewing the record, law, and hearing argument of counsel denied the Motion for New Trial at the hearing from the bench. Soon after the hearing Don Lamberth left the Office of the Public Defender and Dan Bibler left the Office of the District Attorney. It appears the Order denying the Motion for New Trial, while denied in open court and on the record on October 7, 2010, was never reduced to writing or filed with the Clerk of the Superior Court. It being brought to the Court's attention that the Final Order was never filed, the Court enters this Order as follows:

Based on the within and foregoing, the Trial Court has determined that Defendant is not entitled to a new trial. Therefore, Defendant's Motion for a New Trial is hereby DENIED.

SO ORDERED this 2nd day of November, 2015.

R. Rucker Smith
CHIEF JUDGE R. RUCKER SMITH
SUMTER COUNTY SUPERIOR COURT

Prepared by:
R. Rucker Smith, Chief Judge
Southwestern Judicial Circuit
Bar No. 662662
P.O. Box 784
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(229) 928-4554
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