



Court of Appeals of Georgia

June 18, 2015

TO: Mr. Darrell Simpson, GDC303240, Baldwin State Prison, Post Office Box 218,
Hardwick, Georgia 31034

RE: **A15A1635. Darrell Simpson v. The State**

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Appellant's Brief	Pages 5-6	\$3.00
Appellant Overcomes Default for Delay of Appeal		Unknown

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REQUEST FOR FORMS

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COURT RULES

- At your request, a copy of the Rules of the Court of Appeals of Georgia has been enclosed for your review.

APPOINTMENT OF COUNSEL

- You should direct an inquiry concerning appointment of counsel to the trial court from which you are appealing. This Court cannot appoint counsel for you.

(2). 17-10-7. Punishment of repeat offenders; punishment and eligibility for parole of persons convicted of fourth felony offence.

(a) Except as otherwise provided in subsection (b) or (b.1) of this Code Section, any person who, after having been convicted of a felony offense in this state or having been convicted under the laws of any other state or of the United States of a crime which if committed within this state would be a felony and sentenced to confinement in a penal institution, commits a felony punishable by confinement in a penal institution shall be sentenced to undergo the longest period of time prescribed for the punishment of the subsequent offense of which he or she stands convicted, provided that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend the maximum sentence prescribed for the offense.

(b) (1) As used in this subsection, the term "serious violent felony" means a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1.

(c) Except as otherwise provided in subsection (b) or (b.1) of this Code Section, any person who, after having been convicted under the laws of this state for three felonies or having been convicted under the laws of any other state or of the United States of three crimes which if committed within this state would be felonies, commits a felony within this state shall, upon conviction for such fourth offense or for subsequent offense, serve the maximum time provided in the sentence of the judge based upon such conviction and shall not be eligible for parole until the maximum sentence has been served.

(d) For the purpose of this Code section, conviction of two or more crimes charged on separate counts of one indictment or accusation, or two or more indictments or accusations consolidated for trial, "shall be deemed to be only one conviction.

(3). Hunter v. The State, 228 Ga. App. 846; 493 S.E. 2d 44; 1997 Ga. app. Lexis 1297; 97 Fulton County D. rep. 3883 A97A1260.

CITES;

On appeal, defendant argues that the trial court erred in failing to instruct the jury that bodily injury is an essential element of kidnapping with bodily injury, and that absent such instruction, defendant's convictions and sentence for Kidnapping with bodily injury cannot stand. We agree.

Subsection (a) of O.C.G.A. 16-5-40 defines Kidnapping, and then subsection (b) of that same Code section provides that “[a] person convicted of the offense of Kidnapping shall be punished by imprisonment for not less than ten no more than 20 years, provided...that, if the person Kidnapped shall have received bodily injury, the person convicted shall be punished by life imprisonment or by death. “ while it is not explicit in the above statute, the courts of this state have treated Kidnapping with bodily injury as a distinct offense separate from and greater than Kidnapping. Patrick v. State, 247 Ga. 168, 170 (274 S.E. 2d 570) (1981); Hester v. State, 216 Ga. App. 400, 401 (454 S.E. 2d 604) (1995). Specifically, (Kidnapping is a lesser-included offense) of kidnapping with bodily injury, lacking only the “element of bodily injury.”

“It is the duty of the [trial court], with or without request, to give {228 Ga. app. 847} the jury an appropriate instruction as to the law on each substantial point of issue involved in a case so as to judicially decide the guilt or innocence of a defendant.” (Citation and punctuation omitted). Phelps v. State, 193 Ga. App. 193, 195 (1) (384 S.E. 2d 260) (1989).

Accordingly, in this case, it was incumbent upon the trial court to at least instruct the jury that bodily injury was an essential element of the offense of kidnapping with bodily injury. This is so even though the trial court read the indictment to the jury at the beginning of the trial, because the indictment merely accused defendant of “kidnapping” while referencing bodily injury to the victims during the kidnapping. As such, the indictment itself did not inform the jury that an essential element of the kidnapping charges against defendant.

CONCLUSION

The appellant has made a clear showing by his enumerations of errors why his MOTION TO CORRECT NULL AND VOID SENTENCE PURSUANT TO O.C.G.A. 17-9-4, should not have been denied.

Therefore, the appellant respectfully pray’s that this Honorable Court Of Appeals Of Georgia [remand] his motion under this courts review back to the trial court of Cobb County State Of Georgia with its decision and instruction’s to correct a grave miscarriage of justice.

This 9th day of December, 2014.

Respectfully Submitted,



IN RE:

CAUSE NO: A15A1635

DARRELL SIMPSON
#303240
BARDWIN STATE PRISON
P.O. Box 218
Hardwick, GA. 31044

RE:

Missing pages "Brief & Motion";

ATTN: Clerk of Court
[COURT OF APPEALS OF GEORGIA];

THE (Appellant's Brief) is missing pages (5) & (6); And
the "Appellant Overcomes Default For Delay of Appeal" is
missing page (2 of 3).

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Respectfully,



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1 of 2.

end of letter.