

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

October 27, 2015

To: Mr. Bryan K. Sims, GDC1000762491, Baldwin State Prison, Post Office Box 218,  
Hardwick, Georgia 31034

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. 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 \_\_\_\_\_  
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.
- 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.

IN THE COURT OF APPEALS  
OF THE STATE OF GEORGIA

STATE OF GEORGIA  
Appellee

v.

BRYAN KAWAND SIMS  
Appellant

RECEIVED IN OFFICE  
2015 OCT 27 AM 11:45  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS  
STATE OF GEORGIA

MOTION OF MANDAMUS

Now Comes BRYAN KAWAND SIMS with Motion of Mandamus against Douglas County Superior Court Judge William H. McClain and Clerk Tammy M. Howard of the Douglas Judicial Circuit. Appellant brings this Motion pursuant to Ga. Const. Art VI Sec. I par. IV Stating "Each Court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the Superior and appellate courts shall have the power to issue process in the nature of Mandamus.

Motion of Mandamus has been filed with the Douglas County Superior Court to provide the Court with discretion to correct its own mistake, However Douglas County Superior Court has failed to provide response to Mandamus within time perscribed by law.

PROCEEDURAL HISTORY

February 12, 2012 Defendant Sims was convicted and sentenced by way of plea agreement for Armed

Robbery, Agg. Assault and further included charges. On October 2<sup>nd</sup>, 2014 Sims filed motion for Out of Time appeal against sentence/plea agreement. October 9<sup>th</sup>, 2014 order was released by Judge William H. McClain denying the Motion for Out of Time Appeal. Sims immediately filed a notice of appeal with the Superior Court in order to appeal to the Court of Appeals, where Afterwards Defendant received bill from the Douglas County Court for the transfer of the transcript and record. Sims filed an Affidavit of Indigency in response to the fee, where it was granted per order of Douglas County Superior Court Judge William H. McClain that Defendant may proceed forward with the appeal as indigent, and pursuant to O.C.G.A. 42-12-4 ordered to freeze Defendant Sims inmate account until due fees are paid. Still to this day transcript and record has yet to be sent to the Court of Appeals. Through letter correspondence it was uncovered from the Clerk of Court that the transcript and record will not be forwarded until the fee of the transfer of transcript and record is paid in full, which fall as direct objection to the granted Order to proceed indigent.

### MANDAMUS NECESSARY TO BE ISSUED

As identified earlier, fee is applied pursuant to O.C.G.A. 42-12-4. Title 42 chapter 12 immediately concerns the Prisoner Litigation Reform Act (PLRA) which applies to "action" of a Civil lawsuit. As encompassed in 42-12-3 of PLRA it is

Stated the Definitions of texts as used in this chapter, which clearly exclaims 42-12-3(1) "Action" mean any civil lawsuit, action or proceeding, including an appeal, filed by a prisoner but shall not include an appeal of a criminal procedure. Defendant Sims has filed appeal against a criminal proceeding which accordingly creates the appeal to remain as a criminal proceeding. Douglas County Superior Court is clearly attempting to conduct a criminal proceeding as if it is a civil action and fraudulently attaching incorrect statute to withhold the appeal from proceeding forward.

This Court is granted jurisdiction pursuant to O.C.G.A. 9-6-20 to grant Mandamus due to Superior Court Judge William H. McClain as well as Clerk Tammi M. Howard application of Constructive Fraud as defined in O.C.G.A. 23-2-51 (a)(b) in their failure to successfully carryout legal procedure of a Pro Se litigant and knowingly apply civil procedure to a criminal proceeding. A defect of legal justice will ensue from a failure to perform or from improper performance where as the Clerk of Court in this matter with a failure to forward the transcript and record of an indigent Defendant for reason of payment of fees.

Further this Court is Authorized and requested to exercise equitable jurisdiction with law (O.C.G.A. 23-2-50) in that the acts and omissions of the clerk identifies this matter fall within the descriptions of the fraud statutes, see O.C.G.A. § 23-2-51 et.al, 23-2-52 and 23-2-53

## CONCLUSION

In Conclusion the Douglas County Superior Court has ~~cont~~inued on with its fraudulent actions and deliberately withheld the criminal procedure from carrying on and left the case at an unnecessary stand still for nearly a year. Where a possible defect may exist in the Defendants appeal where Defendant may be left at fault for not completing appeal to appellate court in a timely fashion due to Douglas County Actions of fraud, the conviction should be immediately reversed in recognizance of penalty for Douglas County's knowingly fraudulent actions if the law may perscribe for such equitable relief. Or Either Mandamus be issued to Douglas County Courts to compel Superior Court Judge William H. McClain and Clerk Tammy Howard to abide by proper procedure of law and forward indigent Pro Se litigant Bryan K. Sims Transcript and Record of Criminal proceeding to the Court of Appeals with explanation of its lateness at fault of the Douglas County Courts Fraudulent Actions.

Respectfully Submitted this \_\_\_\_\_ day of \_\_\_\_\_ 2015

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Pro Se