

In The Court of Appeals
State of Georgia

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LEONARD T. BENTLEY
COURT OF APPEALS OF GEORGIA

JAMES E. Smith,

v.

State of Georgia
SCREENEN County Case
No. 1592CR140M

} Docket No.

Application For Discretionary Appeal

Jurisdiction

Jurisdiction of this criminal case for discretionary appeal is pursuant to O.C.G.A. § 42-12-8, and 5-6-35.

In The Court Below

During the October, 1992 TERM of Court, James Smith was indicted by the SCREENEN County Grand Jury for burglary, armed robbery, felony murder, and murder, on Indictment No. 1592CR140M.

On February 4, 1993, District Attorney amended the indictment by "blacking out" material elements in Counts Two and Four then Nolle Prossing the Indictment altogether with approval of Judge Faye S. Martin on the Nolle Pros order.

After the Nolle Pros Order was filed on the record, the Superior Court accepted a plea of guilty to all counts of indictment and a life sentence was imposed.

In May of 2013 James Smith filed a petition for

case records when he discovered on his Computation Sheet given to him by the Georgia Dept. of Corrections that his sentence did not show this Case No. but instead another case number.

The Clerk of Court of Superior Court of Screven County sent Case No. 1593 CR 023 M, a case that involved (ii) eleven burglary counts.

On May 3, 2013, James Smith filed a Motion To Vacate A Void Judgement attacking the issue of a defective indictment.

On May 30, 2013, said motion was denied by order of Judge F. Gates Peed.

On June 10, 2013 a timely notice of Appeal was filed and the case was Docketed by the Georgia Court of Appeals; Docket No. A114A0285.

Only at this time was James Smith made aware of the first case no. 1592 CR 140M when the Clerk of the Appeals Court informed him of this case number.

Under Case Number 1592CR 140M, James Smith filed a Motion To Set Aside A Void Judgement arguing that the indictment was null and void prior to the entry of a guilty plea, thus subject matter jurisdiction could not be conferred on a trial court that otherwise didn't have it when an indictment did not exist. This motion was filed with the Superior Court of Screven County on October 23, 2013.

On April 30, 2014, Asst. District Attorney filed the State's Response to Mr. Smith's motion, in it no mention is made of the nol pros order signed by Judge Faye Martin.

After repeated efforts in accordance with the Rules of Superior Court, State of Georgia, that include a Rule Nisi, Production order, Motion To Compel, Notice

of Hearing, and a writ of Mandamus, the Superior Court of Screven County refuses to make a Ruling and order on MR. Smith's Motion To Set Aside A void Judgement.

Argument And Citation of Law

The one constant in this criminal case on appeal is the fact that statutory law and mandates have been negated when the superior court fails to make a Ruling and order on a motion that shows clear and plain defects on the face of the indictment and in the body of the indictment. O.C.G.A. § 17-7-70.

Smith v. Hardwick, 266 Ga. 54, 55, 464 S.E. 2d. 198 (1995).

A manifest injustice occurred in 1993 when MR. Smith entered an unintelligent plea of guilty to a non-existent criminal indictment that charged him with capital felonies.

The O.C.G.A. § 17-7-70 provides in relevant part: Without an indictment, trial court has no subject matter jurisdiction to dispose of a capital felony case, and any judgement that court renders is void.

Mayo v. State, 277 Ga. 645, 594 S.E. 2d. 333 (2004).

To follow legislative intent and the record of this criminal case, the trial court has not lost the jurisdiction or the obligation to correct the proceeding that occurred in 1993 and reverse the judgement imposed that is nothing more than a mere nullity.

Crumbley v. State, 261 Ga. 610 (1991); Jackett v. State, 209 Ga. App. 112, 432 S.E. 2d. 586 (1993).

In this case at chief, the defendant entered a plea of guilty with assistance of counsel to avoid

the death penalty, a sentence that could not have been imposed when the alleged victim died due to pneumonia 8 months after being shot. No medical certainty placed his death because of the gunshot.

Relief Requested

James Smith respectfully requests a proper review of the procedure and a ruling on the conduct of the Superior Court of Screven County in hearing this case on appeal and producing a ruling and an order on Mr. Smith's Motion To Set Aside A void Judgement.

Respectfully submitted,

James E. Smith, Pro se

Certificate of Service

I hereby certify I have sent true copies of Discretionary Appeal to the Georgia Court of Appeals and the Screven County District Atty. by U.S. Postal Service, mailed to:

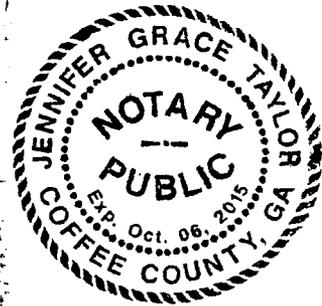
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James E. Smith

Notary Public Jennifer Grace Taylor
2-9-15



**COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS**

February 25, 2015

To: Mr. James E. Smith, GDC560429, Wheeler Correctional Facility, Post Office Box 466, Alamo, Georgia 30411

Docket Number: **Style:** **James E. Smith v. The State**

Your document(s) is (are) being returned for the following reason(s).

1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, 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. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. **A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)**
4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. No Certificate of Service accompanied your document(s). Rule 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.
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. Margins were too small or paper size was incorrect. Rules 1(c), 24(c), 30(e), 31(c) and 41(b).
15. Your document was submitted for filing more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration. Rules 30(j) and 31(j).
16. **Other:**

For Additional information, please go to the Court's website at: www.gaappeals.us