

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

February 20, 2015

To: Mr. Cornelius A. Spencer, GDC1083322, Macon State Prison, Post Office Box 426,
Oglethorpe, Georgia 31068

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 _____
_____ 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 Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334**
- 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.

2/16/15

To whom this may concern:

Enclosed inside is my Motion to appeal that i Filed on November, 26, 2014. The prison (Macon Stat Prison) workers sent this to the sentencing courts and not to The Supreme Court of Georgia even though i sent it certified mail. Not only did the prison send it to the wrong court, they also waited six(6) days to do so. I have filed a Grievance about this matter and have enclosed a copy of it along with the letter from the Long County Superior court. I am asking this Supreme Court to please consider the enclosed info and allow me to enter this motion.

Thank You,
Cornelius Spencer
#1083322

~~RECEIVED
2015 FEB 19 PM 2:50
CLERK OF SUPERIOR COURT
LONG COUNTY, GEORGIA~~

IN THE SUPREME COURT
STATE OF GEORGIA

RECEIVED IN CLERK
2015 FEB 19 PM 2:50
LEWIS & CLARK
COURT OF APPEALS OF GA

CORNELIUS SPENCER,
Appellate

CASE NO. 2001-R-14

v

ON Appeal From THE
SUPERIOR COURT OF
LONG COUNTY

STATE OF GEORGIA,
Appellee

Appeal denovo / VOID JUDGMENT (O.C.G.A 17-9-4)

Comes Appellant, Cornelius Spencer, re-address jurisdiction matter(s) that were submitted in brief support of void judgment of (O.C.G.A 17-9-4) in violation of 14th Amendment and 5th Amendment of U.S Constitution, within Long County Superior Court.

The Superior Court improperly wighted fact(s) presented and exhibit(s). Appellant a denovo review to rectify error of Appellant substantial "due process" as well procedural standpoint.

cont. Appeal DE NOVO (VOID JUDGMENT O.C.G.A 17-9-4)

The Appellant was represented by TRIAL Counsel Mr. GENE GEARY IN ENTERING A UNLAWFUL PLEA OF GUILTY TO CHARGE OF MURDER. The appellant was charged and sentenced by the Superior COURT OF LONG COUNTY ON AUG 19, 2000.

FOR RECEIVED LIFE IMPRISONMENT and sentenced May 2, 2001. There after, appellant sought post conviction relief thru Habeas Corpus that was denied due state's affirmative defense.

where appellate found a error in the lawfulness involving jurisdiction violation being filed on Oct, 1, 2014. No time expiration could prevent or prohibit relief upon such finding. Appellant presented evidence, court(s) gave no ground upon the motion denial.

II ARGUMENT and citation

Finding of appellant case revealed a inadequate investigation regarding probable cause supporting (felony murder charge) presented to magistrate. Where no identification could have warrant that appellant was the "actual perpetrator." Thereafter, a coerced statement was illegally obtained and misused to support the state's CASE.

Cont. Appeal DE NOVO AVOID JUDGMENT (17-9-4)

This error first, occurred when affiant (Special Agent Tommy Stavley) was enclosed information which was misleading. Only mention of appellant as "possibility" in vehicle SEE: Exhibit # (enclosed as evidence within motion for void judgment.) As results of his conclusive findings, a improper assessment to magistrate judge (Marie H. Middleton) such finding resulted in arrest warrant for said ~~the~~ appellant (Spencer).

A sequence of statements were obtained; First (1) (Missing person/Incident Report) On 08-21-00 received a missing person call from dispatch Ludowick about 7:23 pm around 8:00 pm of "Allen Beneke" and Crystal had last seen victim. Second, each individual was interviewed where in each statement "no identification" was established, For it to be reliable or independent source of state case. SEE:

Federal R. Criminal p. 41(d) STATING "A sworn affidavit, usually completed by an investigating police officer, must establish ground for issuance of search warrant or arrest warrant"

Cent. Appeal De Novo / VOID JUDGMENT (D.C.G.A 17-9-4)

SEE: Aguilar v Texas 378 U.S 108, 84 Sct

Courts: held that where an affiant relies on information obtained from an informer, the affidavit must (1) state the underlying circumstance to support the conclusion that the informer had observed criminal activity. (Special Agent Tommy Stavley) had no basis to support the conclusion upon possibility a legal justification. Had trial counsel ~~conducted~~ make a minimal inquire of arrest and it's procedure.

which would have revealed that predicated substantial basis was supported upon latter information. Presenting question of Constitutional stand point guaranteed thru 4th Amendment.

STATING: " 4th Amendment " The right of people to be secured in their person, house(s), paper(s) and effect against unreasonable search and seizures. SHALL not be violated, and no warrant shall issue, but upon probable cause. "

Cont.. Appeal De Novo / VOID JUDGMENT (O.C.G.A 17-9-4)

SEE: Supportive to Exhibit #1 (Information of appellant would least been mentioned if there was possibility)

This failed to collaborate with affidavit of neighbor(s) of incident report given or interviewed by (LARRY WOOD COOK) ^{DAVID} reporting officer of events and unfolding. Had truth of identity been establish thru testimony of neighbor(s) both affidavit and incident report would have named appellant. Or been supportive of upholding such finding pertaining to State's case.

Wiegthing upon the factor(s) nothing could legal confer to appellant being "actual perpetrator"

SEE: Beck v OHIO, 379 U.S 89, 85
Sct 223, 13 L.Ed STATING:

" Probable cause to arrest exist when law enforcement officer have facts and circumstance within their knowledge sufficient to warrant a reasonable belief."

Cont. Appeal DE NOVO / VOID JUDGMENT (O.C.G.A 17-9-4)

As a result of illegal arrest; confession was made the effect of illegal interrogation. Resulting from police misconduct (lacking sufficient cause to name appellant) constituting "Fruit of the poisonous tree" doctrine.

Appellant substantive "due process" of 14th Amendment was not supported by competent substantial evidence. By court(s) failing to uphold the conduct further violat(e)s procedural standpoint (1) The issue of voluntariness came forth at Habeas Corpus proceeding and counsel deficiency (2) post-conviction matter then Void Judgment (of O.C.G.A 17-9-4) which shed further Factor(s) of Trial counsel investigation.

(1) Whether the statement was preceded by Miranda warning (2) whether appellant was detained in a congenial atmosphere (3) the spontaneity of statement (4) the voluntariness of statement (5) the presence or absence of purposeful and flagrant misconduct on part of detaining officer. SEE: Houser v State 173 GA App. 378, 326 S.E.2d 513

Cont. Appeal DE NOVO / VOID JUDGMENT (O.C.G.A 17-9-4)

TRIAL counsel (Mr. Gene Geary) Failed to challenge any of these set circumstance that could question (custodial interrogation) following the illegal arrest. Had a thorough investigation performed (Suppression of testimony) involving Jackson v Denno issue. Which was critical had Trial counsel investigation performed from "sound judgment".

SEE:

(GA. Criminal trial practice) at 14.1 "General consideration". The role of defense counsel is to represent his client to best of their ability. Also reference (Attorney Cannon) Diligence [Rule 1.3] "Lawyer should pursue a matter on behalf of a client despite opposition."

Counsel performance became a issue when appellate addressed claim of ineffective assistance of counsel at Habeas Corpus.

"violation 14th Amendment require the state to provide fair procedure and impartial decision making"

Cont. Appeal DE NOVO / VOID Judgment (O.C.G.A. 17-9-4)

This was questionable; First, at Habeas Corpus Proceeding. Second, post-conviction challenging the lawfulness of jurisdiction matter, both issue became present in view of court's a clear violation improperly viewed.

Appellant questioned trial counsel in reference to such desire and pleading at (Habeas Corpus) SEE: Appellant (Habeas Corpus evidentiary hearing / Exhibit 3rd page 4; Line 16-19).

Petitioner statement or willfulness of entering the plea was resulting from prosecution TRIAL counsel acknowledged Fact(s) and shed new light on that district attorney sought illegal means of obtaining conviction. Enhancing severity of punishment where aggravating circumstance could NOT support such finding. Properly informing appellant a plea should be knowingly, intelligently, voluntarily. SEE: Foskey v Battle 591 SE 2d. 802 was reversed due these circumstances.

Cont. Appeal DE NOVO / VOID JUDGMENT (O.C.G.A 17-9-4)

These factor(s) establish counsel deficient conduct : SEE STRICKLAND v Washington 466 U.S 668, 694, 104 Sct 2052 ; Miller v State 283 GA . 412, 415 658 S.E 2d 765

there was reasonable probability that outcome would have been different.

Either at Appellant Habeas Corpus or post-motion on similar ground(s) were properly by sentencing court and basis of knowledge are still major consideration in probable cause and jurisdiction matter to justify the ~~prob~~ appellant : SEE :

Illinois v Gates , 462 U.S 213, 103 S.Ct 2317

Conclusion

The petitioner pray(s) these Factor shed further sufficiency of warrant. THE Fourth Amendment requirement of probable cause had this been applied to fixed rigid formula , in totality of circumstance which the Superior Court failed to uphold , and lack of substantial evidence to support magistrate decision to issue the warrant.



LONG COUNTY CLERK OF COURTS
SHERRY M. LONG
P.O. BOX 458
LUDOWICI, GA 31316
(912) 545-2123

February 3, 2015

CORNELIUS A SPENCER
108332
Macon State Prison
PO Box 426
Oglethorpe, GA 31068

RE: State of Georgia v. Cornelius A Spencer
Long County Superior Court No. 2001-R-14

Dear Mr. Spencer:

This letter is in response to your letter dated November 26th 2014, a stamp file copy is enclosed. In order to file your Appeal you will have to either pay for the file to be sent or file a Informa Paupers application. Once we receive either type of payment we will be glad to start this process. If you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink that reads "Lynn Simmons". The signature is written in a cursive style.

Lynn Simmons
Deputy Clerk

1/22/15

CONFIDENTIAL
Offender GRIEVANCE FORM (Facsimile)

Attachment 1
SOP IIB05-0001

INSTITUTIONAL STAFF USE ONLY

OFFENDER NAME Cornelius Spencer OFFENDER NUMBER 1083322
 INSTITUTION Macon State Prison GRIEVANCE NUMBER 189518
 DATE COMPLETED FORM RECEIVED FROM OFFENDER 1/22/15 BY Eddie Walker
 DATE APPEAL RECEIVED _____ BY _____

THIS FORM MUST BE COMPLETED IN INK. YOU MUST INCLUDE SPECIFIC INFORMATION CONCERNING YOUR GRIEVANCE TO INCLUDE DATES, NAMES OF PERSONS INVOLVED, AND WITNESSES.

DATE & DESCRIPTION OF INCIDENT: 14th Amendment violation / DUE PROCESS

Upon conferring about important legal issue to my family, I discovered a excessive delay due to improper handling of legal document (certified mail) which caused a interference within the prescribed 30 days of Denovo Appeal.

RESOLUTION REQUESTED: FOR institution to do a through review and rectify matter within the (Appeal/GA courts) to be allowed a ample opportunity to be heard

Cornelius Spencer 1-15-15
OFFENDER Signature Date

Is this grievance being filed within 10 day time limit? Please answer O Yes or O No. If the answer is No, please explain why.

| | | |
|--|---|--------------------------|
| EXHIBIT | INITIALS OF PERSON MAKING STATEMENT <u>WDC</u> | PAGE 1 OF <u>1</u> PAGES |
| ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE ____ OF ____ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE _____ OF ANOTHER COPY OF THIS FORM | | |