

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

July 8, 2015

To: Mr. James Thomas, Jr., GDC 0001215019, Dooly State Prison, Post Office Box 750, Unadilla, Georgia 31091

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 _____ 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 APPEAL OF STATE GEORGIA

JAMES THOMAS • INDICTMENT No. 07CR1413
 VS. • No.
 STATE OF GEORGIA • Civil No.

RECEIVED
 2015 JUL 28 AM 2:42
 CLERK OF SUPERIOR COURT
 STATE OF GEORGIA

EMAND FOR withdrawal of guilty Plea.
 Comes now the defendant pursuant to O.C.G.A.
 on state law or federal constitutional ground
 on or under 1 AGGRAVATE ASSAULT - 2
 ARMED ROBBERY - 3 POSSESSION OF FIREARM
 & KNIFE DURING COMMISSION OF ORA -
 ATTEMPT TO COMMIT CERTAIN FELONIES
 4 RECEIPT POSSESSION OR TRANSFER OF
 FIREARM BY CONVICTED FELON OR FELONY

Withdrawal of guilty plea on federal con-
 stitutional grounds or state law. it is
 a matter of right to withdraw his
 guilty plea even if represented by
 Counsel when it was entered on the
 ground that it was not intelligently
 and voluntarily entered. there is no
 burden on the defendant to establish
 these facts, but the burden is on the
 State. Thus the defendant seek to
 withdraw his guilty plea on ground,

As provide on follow

On ground of withdrawal of guilty plea. In this case defendant did not intelligently and voluntarily enter his guilty plea. Defendant contend that counsel had misinformed him that he would be eligible for parole in a little time. Defendant alledge that he was prejudiced by the misinformation and that he would not have pled guilty had it not been for the misinformation and contend that the plea was not voluntarily and intelligent because the state did not supply him with the information.

On challenged or ground Strickland- because there is a reasonable probability if it had not been for counsel deficiency defendant would not have pled guilty, but would have insisted on going to trial.

On ineffective assistance of counsel out of time- and it was not defendant's decision to do so by entering the plea. In that his counsel had not informed ^{him} of the possible consequences of a guilty plea.

Defendant asserts that his guilty plea was not knowingly and voluntarily entered.

In The Court of Appeal of Georgia as provide as follow on not voluntarily entered. On ground of Cook v State 153 Ga. App. 362, 265 S.E.2d 323 (1980) in Roberts v. Greenway 233 Ga. 473, 476 (3), 211 S.E. 2d 764 (1975) and counsel had not informed defendant of the possible consequences of a guilty plea. Every relevant factor was not entered into the plea.

Hill v. Lockhart 474 U.S. 52 106 S Ct, 366 85 L. Ed. 2d 203 (1985) 38 Cr.L. 3014.

Murry v. State 216 Ga. App 593, 595(1) 455 S.E. 2d 79 (1995) Strickland v. Washington 466 U.S. 668 104 S Ct 2052 80 L. Ed. 2d 79 (1984) As the following on ground

Sufficiency evidence rule upon the record evidence ... (that) no rational trier of fact could have found proof of guilt beyond a reasonable doubt and to support a conviction of armed robbery or aggravated assault. The plea sought on all grounds the defendant seeks to withdraw on the ground Notice of Appeal.

However a motion for consideration of trial courts sentence. Defendant is seeking out of time appeal. Defendant was denied his right to appeal through counsel's negligence and ignorance. because he was

As provide on the following on the ground of guilty plea. Defendant is seeking to show good and sufficient reason for appeal. Showing that the question he is or would raise could be resolved by the facts of law.

Defendant did not get informed of his right to appeal, so he is entitled to a out of time appeal. Kreps v. Grey, 234 Ga. 745, 747, 218 S.E. 2d 1 (1975) and of Bailey v. State, 232 Ga. 873, 874 209 S.E. 2d 204 (1974)

However defendant is fully informed and knows that his counsel is not going to handle the appeal. That where retained Counsel failed to perfect an appeal of state court conviction after promising to do so after falsely stating to court or defendant that defendant have right to address the court on trial or in trial and to call courts attention to any factor he believes will be helpful to his defense ~~as~~ right defendant was not informed on right as his right to appeal; ② His right to appeal with^{out} cost if he is unable to pay the cost of appeal

③ as follow as provide his right to appointment of counsel for the appeal if he is unable to employ Counsel;

Court of Appeal of Georgia

as provide his right to appointment of counsel for the appeal if he is unable to employ counsel; (4) his right to have the sentence reviewed by a Panel of Superior Court judges if the sentence is for five years or more (5) the length of time within which an appeal must be filed; and (6) the length of time in which he may petition to have his sentence reviewed by a Panel of Superior Court judges.

defendant was just ~~19~~ years old at the time of sentence by the Court. defendant did not know his rights.

this is a case that can be modified, modified Motion for Reduction of Sentence in the case of a felony sentence which is to be served. defendant seeks to modify the sentence on ground of miscarriage of justice. Hearing evidence; depositions; affidavits; determination of compliance with procedural rules; disposition.

(A) The court may receive proof by depositions, oral testimony, sworn affidavits or other evidence. No other forms of discovery shall be allowed except upon leave of court and a showing of exceptional circumstances.

As provide on the following

The court shall review the trial record and transcript of proceedings otherwise complied with Georgia procedural rules at trial and on appeal. defendant's claim ineffective ~~assistance~~ ^{assistance} of trial Counsel

on ground or claim of ineffective of assistance Counsel.

Counsel failed to speak with many obvious potential witnesses. Even a rudimentary investigation would have involved contacting, as a function of the prejudice flowing from all of Counsel's deficient performance - as Strickland direct it to be. See Strickland, 444 U.S. at 694 96 104 S Ct 2032,

repeatedly stating prejudice inquiry in aggregate terms of "reasonable probability Counsel's errors affected outcome of proceeding"; see Fisher, 282 F 3d ~~at~~ at 1307-11 (assessing prejudice from Counsel's numerous shortcomings (and) omissions, and holding these errors had a devastating impact on the defense);

entrapment, The lack of predisposition of a defendant toward (the) crime is the key element.

Simply to make a bust on defendant. Nevertheless the most significant thing about the charge is that it has been included in the Patten Charge book prepared by the Council of Superior Court judges. In this, it was no marijuana sold by defendant to no one,

The evidence prior to the entrapment that is introduced with all reasonable deductions and inferences, demand a verdict of acquittal the trial judge must direct a verdict of acquittal.

However in the 1982 case of Gregoroff v. State, also under Mathews v. United States, However, the burden is not on the defendant to establish entrapment, but rather on the state to show that there was no entrapment.

The defendant challenges credibility of the officer to show entrapment occurred. on this the crime would not have been committed but for the agent conduct. Schaffer v. State Board of Veterinary Medicine, 143 Ga App 687 (2), 237 S. E. 2d 310 (1977).

as provide on the follow entrapment

The criminal act was induced by the agent undue persuasion, incitement or deceit, The defendant tried to avoid the issue and did not give in after a number of requests by the officer, Each time the defendant say no. on this ground that defendant had been entrapped as a matter of law. *Jacobson v. United State* 503 U.S. 540 112 S. Ct 1535, 118 L. Ed. 2d 174 (1992) 51 Cr 1. 2003.

the court said that entrapment means something more than the request to purchase. on# The ground of the entrapment the officer played a more significant role in enabling petitioner (defendant), to commit the crime because it was misconduct in this case by the officer, such as this case where the predisposition of the defendant to commit the crime was established.

Huskey v. State 139, App 752 753 (1), 229 S E 2d 847 (1976).

as on The follow

on The entrapment, Availability
defense of Entrapment by defendant
where Accused denies participating
at All in offense GA-LR 2d 677
C1938.

The act charged rule is contrary to the
general rule is that the entrapment offense
can not be successful unless the
defendant committed the act charged.

defendant Claims entrapment and
in to plea this is on the
Court of Appeal they must further
consider whether defendant was
entrapped into committing them.
Accord State v Knight, 230 S. E 2d
732 (W. Va App. 1976).

The defendant did not know his Right
at the time, on the entrapment
as a matter of law and now
defendant is raising the defense of
entrapment in this testimony.

And it is a prima facie that the
agent induced defendant to commit
the offense charged.

In The Court of Appeal
as provide on the following

It is a prima facie case that

the offense charged at the time
When the officer did not stop. When
The officer ^{is kept} defendant to sell
him some ^{methamphetamine} at that time Defendant
say to The officer, I do not
want to sell methamphetamine
to you let me out of the car.

at this time officer pull off
at this point it is prima facie be
cause the agent induced defendant
to commit that offense at that
time when the officer
refuse to let defendant out of the
car. on this ground defendant
told him he did not want to sell
him some methamphetamine and
I do not have methamphetamine
on me. and I am not a dealer I want
to get out of this car.

and it was no evidence and this is
on matter of fact and law

No person shall be convicted

of any crime unless and until each element
of the crime as charged is proved.

in this the offense intentionally causes defendant to commit the crime under such circumstances on that defendant - can not be guilty in fact or be cause of legal incapacity, or intentionally aid or abets in the commission of the crime.

Under Jackson v. Wainwright the Fifth Circuit is bound by the ethics of the legal profession, stated a weakness in the adversary system of administering justice is the possibility of unfairness arising (sometimes) from the prosecution's superior resources and special access to information to protect the innocent who might suffer from this. accordance with the rules of evidence and the laws of this state. The defendant has a right to appear, and the defendant is said to have the right to be present at every stage of a trial unless he is waived that right. and it has also been held that in a felony case if a recording device does not function during the testimony of a material witness and the transcript show only that he testified, ~~or there is~~ something -

on The fallow

improper took place or there is no transcript, the defendant is entitled to a new trial. However defendant Motion to quash subpoena. meaning of the Fifth Amendment.

in Buford v. State the court had that ~~#~~ the defendant his constitutional right to obtain witnesses in his favor or telephone calls between him and agents and production of documents from agents, and motion to quash a grand jury subpoena for production of documents, because it is a affirmatively showing that the guilty plea was not knowing and voluntary and intelligently waived his right to a jury trial.

Under Extraordinary Motion for new trial, The defendant is giving good reason for motion.

(1) that the evidence has come to the defendant knowledge since the trial (2) that it was not owing to the want of due-diligence that he did not acquire it sooner - as providing

(3) that it is so material that it would probably produce a different verdict (4) that it is not cumulative only. (5) that the affidavit of the witness himself should be procured or its absence accounted for, and (6) that a new trial will ~~be~~ be granted ~~to~~ the defendant on ground of the effect.

Under Hester v. State on the ground evidence which had not been available to him, and on motion in arrest of judgment or demurrer, ~~to~~ to test the legal sufficiency of the indictment on ground A motion in arrest of judgment will lie when there is a defect on the face of the record. In criminal cases the indictment becomes of a clerical error, and on ground indictment. There is also some older authority which state that if an indictment is based on a constitutional statute, the constitution of the state is being raised in motion -

United State of GEORGIA Court of Appeal
on providing defendant is requesting
in writing and reasonable period
of time before a copy of any statement
of the defendant or police pursuant to
the investigation giving rise to the
indictment under of pursuant to
O.C.G.A. section. 17-9-210 (GCA § 27
1302) in Byarsu. State motion - motion
establishing a violation in Rini v. State.

defendant is asking for an in camera
inspection by the judge of the State
file to determine if there was any
thing favorable to him.

Defendant have been prejudiced, it was
no statement from no witnesses and
defendant learned it was no taped of
statement by the State.

Plemon v. State on the grounds that
defendant did not have opportunity
to review no photocopy.

The Appeal court say the files shall
be prepared where up on original and
the photocopy together with - A -
or v 11 in 1000

as on providing by the Defendant it is necessary to the defense to have an expert to examine the case and that without such assistance the defendant's trial would be rendered fundamentally unfair.

in Brock v. State the court stated that when an indigent defendant moves for funds to employ a scientific expert he must disclose with a reasonable degree of precision, (1) why certain evidence is critical (2).

what type of scientific testimony is needed (3) what that expert propose to do regarding the evidence and (4) the anticipated costs for services.

on the ground of expert defendant will show cause and need of expert and the evidence are needed in case. on the part of the police failure and counsel failure to preserve potentially useful evidence in the case, and show bad faith on the part of the police and counsel, and of due process of law.

in The Court of The Appeal State of Georgia
 as providing on the Failure by all as
 counsel and police in this case.

The nature of the material need not
 be suppressed. absent some showing
 that the testing of the material
 by another expert would be reasonably
 likely to produce new evidence
 favorable to the defendant in such a
 case it is proper to look at
 culpability and the prejudice to
 the defendant.

as providing on failure of police to
 preserve potentially exculpatory
 evidence as violating criminal
 defendant right under the united
 State Constitution 40 A. L. 3th (13
 C1996).

on The right of defendant to obtain
 copys of scientific reports motions
 for scientific examinations **be**
 cause defendant was denied the opp-
 ortunity to have an expert of his
 own in the this case. because the
 defendant is showing that the evidence
 was critical to the conviction and is
 subject to ~~writing~~ expert opinion. White
 V. Maggio 356 F. 2d 1332 (5th Cir 1967)

as providing on indictment or accusation and on motion to examine physical objects was a matter completely within the discretion of the trial judge and in *Barnard v.*

Henderson and *Patterson v. State* the Georgia Supreme Court held that where a timely motion for an independent analysis of alleged ~~mat~~ ~~is~~ ~~is~~ ~~is~~ defendant may have an expert of his own choosing independently analyze the substance.

under *Sabel v. State* However on due process ground that a defendant in a criminal case is entitled on motion made to have an expert of his choosing bound by appropriate safeguard imposed by the court to examine critical evidence, on the ground (e) evidence that when developed by skilled counsel and experts, could induce a reasonable doubt in the mind of enough jurors to avoid a conviction -

as follows -

Court of Appeal of Georgia Page 18 - copy

As providing on The follow indigent appellants - right to counsel.

defendant is entitled to have counsel appointed for him to handle an appeal. indigent defendant is entitled to the assistance of appointed counsel only on the first level of appellate review. **Not only** is an indigent defendant entitled to have counsel appointed to represent him on appeal.

The record must show that he was made aware of his right to counsel on appeal and the dangers of proceeding without counsel. (1) Douglas v. California, 372 U.S. 333 835 Ct. 814, 9 L. Ed 2d 811 (1963) See Not The Right of Appeal: Appointed Counsel's Advice to indigent Client 30 Mercer L.R. 1059 (1979).

indigent appellants - right to transcripts
An indigent defendant is entitled to obtain free of charge a transcript of his trial for purposes of appeal of his conviction, the defendant is indigent and ask for all about. on copy page.

it has also been held that an indigent defendant is entitled to a free transcript of a preliminary hearing
Robert v. LaVallee 389 U.S. 408 85 Ct 194 19 L. Ed 2d 41 (1967).

149811 - copy
Court of Appeal of Georgia

as providing on the following on
defendant right to withdraw
his guilty plea on all ground or
or modify the sentence because it
will be a miscarriage of justice
if the courts do not do so. because
defendant is not guilty - and is seeking
ing to modify or withdraw his
guilty plea as need to be the court
may receives proof by depositions
oral testimony - sworn affidavits
or other evidence no other forms
of discovery shall be allowed
except upon leave of court and
a showing exceptional circum
stances. history and to insure that
The defendant will have a fair trial
in that court.

copy to all Clerk of Court of Appeal
This is to certify that I have on this
date served ~~date~~ ~~served~~ a copy of the within
and foregoing DEMAND for withdra-
wal of guilty plea by placing a
copy of same in the United State
mail in a properly addressed envelope
with sufficient postage thereon to en-
sure delivery This day of , 2015