

COURT OF APPEALS OF GEORGIA
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November 30, 2015

To: Mr. Javon A. Truss, GDC1000431118, Ware State Prison, 3620 Harris Road, Waycross, Georgia 31503

Docket Number: A16A0487 **Style:** Javon Anthony Truss v. The State

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IN THE GEORGIA COURT OF APPEALS FILED IN OFFICE
STATE OF GEORGIA

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JAYON ANTHONY TRUSS

v.

THE STATE OF GEORGIA

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A0487

BRIEF

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By: Jayon A. Truss #1000431118
WARE STATE PRISON
3620 HARRIS RD.
WAYCROSS, GA 31503

IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

JAVON ANTHONY TRUSS		COURT OF APPEAL
VS.		DOCKET NO. A16A0487
THE STATE OF GEORGIA		

APPELLANT BRIEF
PART ONE

Comes Now; Jaron Anthony Truss, Appellant,
Defendant below, who now respectfully files this
brief on direct appeal from A judgment order
denying his motion to Correct or Vacate a Void
Sentence. This brief is being presented to correct
an error of law in his sentence that violates the
United States Constitutions Fourteenth Amendments
Due Process and Equal Protection Clause and
Must be vacated and Set aside as the Law
and Justice so requires.

STATEMENT OF JURISDICTION

The Georgia Court of Appeals retains subject matter jurisdiction over this case rather than the Georgia Supreme Court for reasons this case is not reserved for the Georgia Supreme Court by virtue of the Ga 1983 Const Art VI Sec VI Para III.

STANDARD OF REVIEW

By Statute in Georgia (+) the Judgment of a court having no jurisdiction of the person or subject matter a void for any.... Cause, is a mere nullity and may be held in any court when it becomes material to the the interest of the parties to consider it [O.C.G.A § 17-9-1].

Moreover, "A defendant's acquiescence to an illegal sentence either through plea negotiations or a failure to object to the sentence, cannot render an otherwise illegal sentence valid through waiver, that is because a void sentence in law amounts to no sentence at all. Thus, a void sentence argument may be so held in any court where it becomes material to the interest of the parties to consider it regardless of lack of objection in the trial court. See eg Phillip v. State A11A 2148 (Dec. 14th 2011)

INTRODUCTION

Javon Anthony Truss was on first time offender probation for residential burglary and theft by taking in Clayton County. On February 10, 2014, He was wrongly Accused and arrested in Clayton County for the charges of: Arm Robbery, Kidnapping, Aggravated Assault, Participation in Criminal Street Gang Activity, and Convicted Felony with firearm by A first time offender. Awaiting His trial, the Appellant Had his probation revocation hearing on April 08, 2014 based on the above allegations before the Honorable Judge Deborah C. Bennetfield. Following this hearing, the trial court believed the Appellant violated his first Offender's Probation and revoked the entirety of his probation and wrongly resentenceed the Appellant to 18 years to serve to confinement. The Appellant was represented by a private attorney who advised the Appellant that he would Appeal the eight-teen (18) years, which he never did. On October 29-30, 2014, The Appellant was taken before the above mentioned Honorable Judge for the above allegations, where A ~~Jury~~ found the Appellant Not Guilty of all charges. The Appellant filled every motion to His knowledge possible to the trial court to correct

their error, but the trial court denied all motions. Finally, the Appellant filed A motion to correct or vacate A void sentence on January 05, 2015, where the Appellant never recieved a response. On January 29, 2015, The Appellant timely filed A Notice of Appeal for the denial of the motion to correct or vacate a void sentence. This Brief will address grounds on How the trial court erred in resentencing the Appellant.

PART TWO
ENUMERATION OF ERRORS

GROUND ONE: The Trial Court Was Wholly Without Jurisdiction Or Authority To Revoke Appellants' Sentence Because It Did Not Warn Him In The Sentencing Form That A Possible Consequence Of Violating His Special Conditions Of His Probation Would Result In The Trial Court Entering An Adjudication Of Guilt And Resentence The Appellant To A Higher Sentence. This is Contary to 42-8-34. 1 (a).

GROUND TWO: The Trial Court Erred by Revoking the Appellants' First Offender Probation For A Period Exceeding That Authorized by O.C.G.A § 42-8-60 (b)

GROUND THREE: The Trial Court Erred By Not Giving The First Offender Probationer Credit For The Time He Served On Probation After His Probation Was revoked. This is Contary to GA. Code Ann. 27-2713.

FACTS

On November 29, 2010, the Appellant plead guilty to residential Burglary and theft by taking in the superior court of Clayton County before the Honorable Judge Deborah C. Bennetfield. The Appellant recieved a sentence of five (5) years to serve two (2) to serve in confinement and the balance to served on probation. On February, 10, 2014, the Appellant was arrested and charged with Arim Robbery, Kidnapping, Aggravated Assault, Participation in Criminal Street Gang Activity, and convicted felony with A firearm by a First Offender. Awaiting Trial, on April 08, 2014, The Appellant had a probation Revocation Hearing on the above allegations before the Honorable Judge Deborah C. Bennetfield. At this hearing A man by the name of Carlos Memon testified that he wanted to buy some marijuana, So he decided to call an ex-coworker by the name "Mark" to see if he could purchase marijuana. "Mark" advised Mr. Memon that he didnt sell Marijuana anymore but knew someone who did by the name of "Loc". "Mark" advised Mr. Memon that he would give "Loc" his number to call so they could meet up to make the

deal. Mr. Morman testified that he received an unknown caller Id number who he believed was "Loc". Mr. Morman too testified he met "Loc" at a check cashing place where "Loc" gave him a cigarette on two (2) different occasions a couple months back. Mr. Morman didn't have "Loc" number but knew his voice from their earlier meet. Mr. Morman and "Loc" agreed to meet at a gas station, where Mr. Morman observed a silver in color pontiac approach him with Three (3) males in the car. Two (2) of the males in the car had hoodies tied tightly over their face with baseball caps. The other male had only a baseball cap on who Mr. Morman testified was an "Alphonso Starr". Mr. Morman testified he knew "Alphonso Starr" because they too were ex-coworkers at a Wendy's. Mr. Morman testified that "Loc" was in the passenger seat, and "Alphonso Starr" was in the backseat with him. Mr. Morman testified that he couldn't identify the driver. Inside the car Mr. Morman testified that "Loc" and "Alphonso Starr" pulled out guns and demanded money. Mr. Morman was then driven down the street where "Alphonso Starr" took his money and

phone and threw him out the car. (SEE ENTIRE TRANSCRIPT OF PROBATION REVOCATION)

At This exact Probation Revocation hearing Clayton County Investigator Derek Leader too testified that on February 10, 2014 while driving on TARA Blvd. He Seen a car traveling that match the description Mr. Mowmen described in An Arm Robbery. While making a traffic stop on the vehicle, Investigator Leader along with 4 other Clayton County officers threw the Appellant out of the car placing him in handcuffs. While Apprehended, one of the Unknown officers search the Appellant car he was driving and observed A pistol-grip barely hanging out of a blanket. After the blanket was removed, the officers found a saw-off Shotgun. The Appellant was arrested and booked in Clayton County Jail. (SEE ENTIRE TRANSCRIPTS OF PROBATION REVOCATION)

PART THREE

AUTHORITY * CITATION OF AUTHORITY

GROUND ONE: The Trial Court Was Wholly Without Jurisdiction Or Authority To Revoke Appellants' Sentence Because It Did Not Warn Him In The Sentencing Form That A Possible Consequence Of Violating His Special Conditions Of His Probation Would Result In The Trial Court Entering An Adjudication Of Guilt And Resentence The Appellant To A Higher Sentence. This Is Contrary To O.C.G.A § 42-8-34. 1(a).

The substantive or essential requirements of O.C.G.A § 42-8-34. 1(a) are that the warning be in the Court's sentence. *Harrey V. Meadows*, 280 Ga. 166, 169-170 (3) (626 S.E. 2d 92) (2006). The Appellants' written sentence contains a section for general condition and a section for special conditions of his first offender probation. The special condition section says "In accordance with O.C.G.A § 42-8-34 1. The Court hereby imposes the following special condition of probation. The violation of any of these

condition could result in the Trial Court revoking the probation and requiring the Appellant to serve the balance of the sentence in confinement." Nowhere in this special condition section does it say that upon violation of this special conditions, the Trial Court may enter an adjudication of guilt and resentence the Appellant to a higher sentence. *Zillard v. State Court of Appeals of Georgia* 156 Ga. App. 54; 274 S.E. 2d 96 (1980) The sentencing form failed to specify that a possible consequence of the violating any of the special conditions probation would be that an adjudication of guilt be entered and a sentence greater than the original could be imposed. The Trial Court erred in entering an adjudication of guilt upon the Appellant and resentencing him to a greater sentence of eighteen (18) years of confinement for the violation of a special condition.

GROUND TWO: The Trial Court Erred In Revoking
The Defendant's First Offender Probation For A Period
Exceeding That Authorized by O.C.G.A § 42-8-60 (b)

On November 29, 2010, The Appellant entered into A contractual agreement with the State of Georgia for A sentence of five (5) years to serve two (2) years in confinement and the remainder to be served on probation under the First Offender Act. O.C.G.A § 42-8-60 (b) states that "Upon violation of the terms of probation, upon conviction for another crime during the period of probation, or upon the court determination that the defendant is or was not eligible for sentencing under the first offender act, The Court may enter an adjudication of guilt and sentence the defendant to the maximum sentence provided by law." Consequently on February 10, 2014, the Appellant was accused of committing the offense of Arm Robbery, Kidnapping, Aggravated Assault, Participation in Criminal Street Gang Activity, and convicted felony with Fire-arm by a first Offender. On April 08, 2014, The Appellant had his probation Revocation Hearing biased of the criminal case No. 2014CR01177,

where the trial court believed they found a preponderance of evidence. The trial court then revoke the Appellant's probations and then entered an adjudication of guilt and resentence the Appellant to eight-teen (18) years. The Appellant was later acquitted of all charges.

See Verdict and Final Disposition From Case No. 2014CR-01177. The Appellant was never convicted of another crime, nor did the court find determination that the Appellant was never eligible for sentencing under the first offender act as stated in O.C.G.A § 42-8-60 (b). However, the

Appellant was in violation of his first offender Probation due to the allegations of the criminal case No. 2014CR01177. In the defendant's written sentence under the general condition section, several pertinent items are checked, such as the provision that the Appellant shall not violate the criminal laws of any governmental unit. See First Offender Sentence p. 2. Regardless that the defendant was acquitted of all charges, at the April 08, 2014 Probation Revocation hearing, it was not yet proven that the defendant was ever guilty of such crimes. These

Allegations does indeed put the defendant in violation of His General Conditions. Therefore, allowing the trial court to enter an adjudication of guilt and proceed to sentence the defendant to the maximum sentence as provided by law. There's nothing in the record to indicate that the Appellant was told that he could receive a higher sentence than 5 years. Therefore, the maximum time for the Appellant of the offense of Burglary is five (5) years. *Stephen V. The State Supreme Court of Georgia 245 Ga. 835; 268 S.E. 2d. 330. (1980)*. The trial court erred in sentencing the defendant to eight-teen (18) years to confinement for the violation of his general condition of his first offender probation. This sentence was in fact a period exceeding that authorized by O.C.G.A § 42-8-60 (b), since the maximum sentence the trial court could impose was 5 years.

GROUND THREE: The Trial Court Erred By Not Giving The First Offender Probationer Credit for the time He Served On Probation. This Is Contary to Ga. Code Ann. 27-2713.

Ga. Code Ann. 27-2713 plainly says "Under the Statewide Probation act, which is incorporated by reference into the first offender law, time served on probation is credited to the sentence imposed at revocation." Before the February 10, 2014 arrest of Appellant, he served six-teen (16) months on probation, which the trial court refused to give him credit for. When first offender probation under section (b) of O.C.G.A. § 42-8-60 is revoked, credit must be given for time served on probation. *Yallant v. State*, 187 Ga. App. 138, 369 S.E. 2d 789 (1988). When A probationer is sentenced to serve time in a penal institution for the offense for which the probationer has spent time on probation, that probationer time must be credited to any sentence recieved, including cases involving first offender pro-

bation. *Stephens v. State*, 245 Ga. 835, 268 S.E. 2d 330 (1980). In addition to that the written sentence plainly states "IT IS FURTHER ORDER OF THE COURT, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation here in granted. If such probation is revoked, the court may enter an adjudication of guilt and proceed to sentence the defendant up to the maximum sentence authorized by law. The defendant shall receive credit for time served on probation to be applied toward the maximum sentence." See First Offender Sentence p. 1-2. The Trial court erred in refusing to give the defendant credit for the time he served on probation prior to his arrest.

CONCLUSION

The Procedural mistakes made by the state in the April 08, 2014 Probation Revocation of Javon Anthony Truss are perhaps not surprising since the maximum sentence of Burglary is (20) twenty years. The trial court imposed a punishment upon the Appellant that the law does not allow, when it revoked his first offender agreement, which violates the USCA 14 and the respective Georgia law O.C.G.A § 42-8-60. The Appellant was never guilty of the allegations set out in the criminal case No. 2014CR01177, and the perpendance of evidence that the State heard was false, since this was a case of Mistaken Identity that was revealed in the Appellant October 29-30, 2014 jury trial.

The Appellant was in violation of his general condition for being arrested. The Appellant was too in violation of his special condition for not obtaining his "GED" in 30 days after release. However, the trial court was without authority to impose a greater sentence of eight-teen (18) years, since the

Appellant was never warned of that possible consequence which is contrary to O.C.G.A § 42-8-34 1(a). The maximum sentence the trial court could impose was five (5) years for any violation of His general conditions of probation. The Appellant written sentence plainly says, "upon violation of special conditions the trial court can revoke the balance of His probation was revoked. He should of receive credit for the time he served on probation which was sixteen (16) months, which was too in the written sentence. The trial court was prohibited from resentencing the Appellant to a greater sentence than five (5) years and refusing to give the defendant credit for the time he was on probation. This Judgement has been a manifest abuse of discretion on the part of the trial court. The Appellant wishes for this Judgement to be reversed and remanding for resentencing.

CERTIFICATE OF SERVICE

This is to Certify that I have
This date served a copy of the foregoing
pleading to:

GEORGIA Court Of Appeals
47 trinity Avenue, S.W., Suite 501
Atlanta, Georgia 30334

By depositing the same in the
U.S. Mail with adequate postage and address
to ensure delivery.

Respectfully Submitted this November
day of 18, 2015

JAVON A. TRUUS #1000431118
WARE STATE PRISON
3600 HARRIS ROAD
WAYCROSS, GA 31503