

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

March 31, 2015

To: Mr. Gregory L. Ware, 1168650, Wheeler Correctional Facility, Post Office Box 466,
Alamo, Georgia 30411

Case Number: _____ Lower Court: _____ County Superior Court _____

Court of Appeals Case Number and Style: A15A1213. Gregory Ware v. The State

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: _____
- 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. You will need to speak with your attorney (Tanya Jeffords, Esq.) regarding adding the enclosed documents to your file.**
- 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.

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

Wednesday
March 18th, 2015

RECEIVED

2015 MAR 30 PM 2:52

CLERK OF COURT

Re: Case No. 2003-RCCR-775
On Appeal from the Superior Court
of Richmond County.

Clerk of Court
Court of Appeals of Georgia
47 Trinity Avenue - Suite 501
Atlanta, GA. 30334

Dear Clerk of Court,

Please file the enclosed letter to my attorney
with the record of my case. Thank you.

sincerely,

Gregory L. Ware

Gregory L. Ware #1168650
Wheeler Correctional Facility
P.O. Box 466
Adams, GA.
30411

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2015 MAR 30 PM 2:52
COURT REPORTERS OF GA

Wednesday
March 18th, 2015

Mrs. Tanya Jeffords
Attorney at Law
437 Walker Street
Augusta, Georgia

3090)

Dear Ms. Jeffords,

Today was my last day in the law library before my brief is due on the 23rd which is Monday. I know that you said that you read my brief that I sent to you, but it kind of bothers me that you don't see my point or the statute pertaining to kidnapping as I do, so please indulge me as I present what I want you to argue for me in a nutshell. (Again) The statute

Kidnapping § O.C.G.A. 16-5-40, states: A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will. The distance over which the victim is carried is not material. Any asportation of the victim, no matter how slight is sufficient to convict. Only the slightest movement of the victim is required to establish the element of asportation.

This is what the indictment says:

Second Count

The Grand Jurors aforesaid, chosen and sworn for the County of Richmond in the name and on behalf of the citizens of Georgia, further charge

AND ACCUSE Gregory LASAWN WARE with Kidnapping (§16-5-40) For that the SAID ACCUSED, in the County of RICHMOND AND STATE OF Georgia, on the 25th day of April, 2003, did Abduct Angelina Tate, a HUMAN being, WITHOUT LAWFUL AUTHORITY AND HOLD SAID PERSON AGAINST her WILL, AND SAID PERSON did receive bodily injury, to-wit: Lacerations to her neck, CONTRARY TO THE LAWS OF SAID STATE, the good order, peace AND dignity thereof.

The state would have the Court of Appeals to believe that the mere word abduct is sufficient to meet the asportation element which is required by the statute to prove the crime of kidnapping.

However Georgia law says different, and in every case that I have researched, I mean every one of them, they are always talking about the types of movement, but first let me point out the definition of abduct as defined by current Georgia jurisprudence.

GARZA v. State, 284 GA. 696 S.E. 2d 73 (2008): Under current Georgia jurisprudence, the element of abducting or stealing away the victim, known in legal parlance as asportation, may be established by proof of movement, however slight.

From all of my research and the current law as I understand it, I just don't believe that the Court of Appeals will let my kidnapping charge stand, because the state cannot present evidence sufficient to sustain my conviction on kidnapping because they cannot show the court of Appeals proof of movement in the indictment, something the law and the

statute requires. Their only rebuttal in the last brief that was filed in the Court of Appeals, was that the mere word abduct was sufficient to prove asportation, but in GARZA (supra) we know that to prove the element of abducting or stealing away the victim, known in legal parlance as asportation, that the only way to establish abduction is by proof of movement.

So this is how I want you to present it to the Court of Appeals, because if my lawyer Mr. Boone allowed me to plead guilty to this crime of kidnapping which did NOT contain the essential element of asportation, doesn't this constitute ineffective assistance of counsel as defined by the 6th Amendment. It's clearly deficient performance for him to allow me to plead guilty to a void count on a indictment, this is a decision that I don't think any competent attorney with his clients best interest would have made, of course it meets the second prong of Strickland, because it prejudiced the defense because I was denied the effective assistance of counsel guaranteed by the 6th Amendment of the U.S. constitution.

I know that you have the issues that pertain to my relationship with Mr. Boone, if you want to call it that, anyway the state will vigorously argue against those arguments, but I have full confidence in you, what I am saying is, they can't argue against the kidnapping

Court, because the indictment clearly doesn't have any proof of movement of the victim, which is required by the statute to convict for the crime of kidnapping. Well I want you to read this excerpt written by Justice Blackwell in

LEVIN V. MORALES, 295 GA. 781: October 6, 2014, : From time to time, the appellate courts may perceive that the judicial understanding of a principle of law has gone off course, and they may undertake a course correction, upending an understanding of the law that previously had been settled in the minds of judges, lawyers, and ordinary citizens alike. Most often, these course corrections concerns points of procedural law. But on occasion, the appellate courts may correct course as to substantive law, including the elements of a crime. Recently this court did that in Scott v. State, 295 GA. 39 (757 S.E. 2d. 106) (2014)

Another such course correction was GARZA V. STATE (supra), the case on which we rely today. Before Garza, it seems settled in Georgia that virtually any movement at all of the victim would suffice as asportation for the purposes of former O.C.G.A. §16-5-40, See, e.g. Peterson v. State, 212 GA. App. 31, 33-34 (441 S.E. 2d. 267) (1994) (Blackburn, J. concurring specially) (Under the present holdings, almost any crime in which a victim moves from the point of initial contact with the defendant would authorize a kidnapping charge. Hetton v. State, 166 GA. App. 662, 663 (1)

(305 S.E.2d.592) (1983) Only the slightest movement of the victim is required to constitute the necessary element of asportation. (citation omitted) Chambleny v. State, 103 GA. App. 502, 504 (1) (295 S.E. 2d. 166) (1982) Any unlawful asportation however slight, is sufficient to support a kidnapping conviction." But in Hanya, this court said that this judicial understanding of asportation had gone too far off course, and we held that asportation required movement that was more meaningful and consequential, indentifying four factors to which the court looks today. 284 GA at 702 (1) When the State tried Levin for kidnapping - fourteen years before our decision in Hanya - the prosecuting attorneys of course, had NO reason to think that anything more than proof of a slight movement would be necessary to prove asportation. Nonetheless, under Hanya, the state failed to present evidence sufficient to sustain the conviction in this case and Levin is entitled to have his conviction for kidnapping set aside.

In closing I would like to add, it is my belief that if you argue this point first, the court of Appeals will find every other error moot, but its your brief to write, I look forward to receiving it from you, I have alot of faith in the blessings that God has given me, but I want to be sure that I have put in enough works. Thank you for assisting me in this appeal, God bless.

sincerely,
Gregory Ware

Gregory L. Ware #1169150
Wheeler Correctional Facility
P.O. Box 464
Almond, GA. 30411

∴ Clerk
Court of Appeals of Georgia