

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

July 7, 2015

To: Mr. Damien Wells, F-3, Oconee County Jail, Post Office Box 563, Watkinsville, Georgia 30677

Docket Number: Style: Damien Wells 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. **You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service. Rule 6**
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)
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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

IN THE COURT OF APPEALS STATE OF GEORGIA

Damein Wells
Appellant

v.

STATE OF GEORGIA
Appellee

CASE NO. 2009CB0030

RECEIVED IN OFFICE OF
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COURT OF APPEALS OF GEORGIA

APPLICATION FOR APPELLATE REVIEW

Damein Wells, applicant, applies to this court as follows:

(1) To issue an order granting the applicant an appeal from the order of the Superior Court of Oconee County, Honorable Judge Patrick H. Haggard, presiding, in the case styled State of Georgia, Plaintiff v. Damein Wells, Defendant, case No. 2009CB0030, this order having held: A probation violation for new felony offense, of assault and battery with a dangerous weapon and shooting with the intent to kill. Defendant's probation was revoked, sentenced to serve 2 years in state penal system, with credit for time served from 31311. Return to probation with all conditions to remain intact. Must pay \$1658.46 in extradition cost to Oconee Co. Sheriff's Dept.

(2) Applicant shows that the jurisdiction is properly in this court because the Court of Appeals of Georgia reviews all appeals from trial courts in which jurisdiction is not exclusively reserved to the Supreme Court. The Constitution of the State of Georgia, Article VI, Section VI, Para. I et seq., provides that the Supreme Court has exclusive jurisdiction over election contests, the construction of treaties or the Constitution of the STATE of Georgia and the United States and challenges to the constitutionality of a law, ordinance or constitutional provision. The Supreme Court has general appellate jurisdiction over cases involving title to land; equity; wills; habeas corpus; extraordinary remedies; divorce and alimony; all cases certified to it by the Court of Appeals and all cases

in which a sentence of death was or could be imposed.

(3) Record will show that the defendant triggered a cause for violation of probation, the 26th day of January, 2009, when he was arrested in Choctaw Co., Oklahoma for new felony offenses. Defendant pled guilty to a count of assault and battery with a dangerous weapon, sentenced to a term of 15 years with all but the first 7 years suspended. And a count of shooting with the intent to kill, sentenced to a term of 15 years with all but the first 5 years suspended. Both counts are to run concurrently with each other, and with Oconee Co., Georgia Case No. 03-11-111, of probation violation, as shown and marked "Exhibit C." The record will show that the defendant served his time in Oklahoma, completing behavior classes and was pre-released after serving over 6 years, and after Georgia stating that they were not going to extradite the defendant, as shown and marked "Exhibit E," and "Exhibit F." It was stated in court, on record, that the defendant turned himself in after his release when Georgia changed their mind and decided to extradite defendant. A show of records, and marked "Exhibit B," that the defendant was sentenced by the court, revoking 2 years, credit for time served from the 3rd of March, 2015, not being run concurrent with Oklahoma Case No. CF-01-18A.

(4) Ga. Proc. Criminal Procedure § 31:46 states, It is not necessary that the court stay a probation revocation proceeding until after the disposition of the underlying criminal charges. And, Ga. Proc. Criminal Procedure § 28:18 states, Because of the broad discretion in sentencing vested in trial courts, it is the duty of the courts to exercise that discretion as to all aspects of sentences they impose. These procedures were not exercised. Defendant's case no. CF-04-18A, in the State of Oklahoma was to run concurrent with Oconee Co., Georgia case no. 03-11-111, as shown in "Exhibit C," of the pending probation violation. The Oconee Co. Court failed to exercise that discretion to run the revocation concurrent with defendant's Oklahoma case no. CF-01-18A. Defendant is seeking to have the probated sentence revoked run concurrent with Oklahoma case no. CF-01-18A. As shown

in "Exhibit B", the revoked sentence showing reversible error.

(5) This application of appeal is filed within 30 days of the entry of the order complained of.

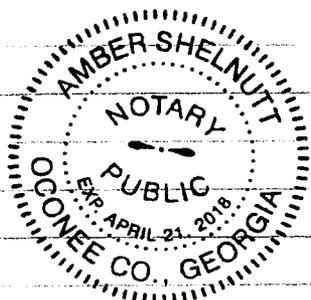
(6) Copies of all pertinent documents have been attached to this application as exhibits including a copy of the order being appealed, as well as a copy of the petition which led direct to the order being appealed, and copies of the reason for such petition.

(7) Applicant submits that an appeal should be granted because of the existence of the reversible error.

Applicant respectfully shows that if this honorable court declines the appeal of this matter and the trial court's ruling will be permitted to stand, such would be a miscarriage of justice because this error goes against Georgia's own procedure of law, Ga. Proc. Criminal Procedure §28:18. Thank you and God bless.

Respectfully submitted,
Damein Wells - Pro-se
Oconee Co. Jail
P.O. Box 563
Watkinsville, Ga 30677

Note: Please send me a stamped "Filed" copy of this Application upon receipt.



Amber Shelnutz

IN THE COURT OF APPEALS STATE OF GEORGIA

Damein Wells
Appellant
✓

Case no. 2009CR0030

State of Georgia
Appellee

CERTIFICATE OF SERVICE

This is to certify that this day I served opposing party, the Oconee County Superior Court, with a copy of this Application for Appellate Review by mailing a copy to, Oconee County Superior Court, P.O. Box 1099, Watkinsville, Ga 30677.

This the 25th day of June, 2015

Damein Wells



Oconee Co. Jail

P.O. Box 563

Watkinsville, Ga 30677

Note: Please send me a stamped "Filed" copy of this upon receipt.

