

**COURT OF APPEALS OF GEORGIA**  
**DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS**

October 8, 2015

**To:** Mr. Lamont White, GDC486193 D-2, Telfair State Prison, Post Office Box 549, Helena, Georgia 31037

**Docket Number:** A16A0155 **Style:** Lamont White v. The State

Your document(s) is (are) being returned for the following reason(s).

1.  Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal \*Effective July 1, 2009) 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.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4.  **An improper Certificate of Service accompanied your document(s). Rule 6**
5.  **The Certificate of Service must include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.**
6.  There were an insufficient number of copies of your document. Rule 6.
7.  Your document exceeds page limits. Rules 24 (f) and 27 (a)
8.  Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9.  Letter briefs and letter cites are not permitted. Rule 27 (b)
10.  Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11.  Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12.  Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13.  The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14.  Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15.  Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16.  Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17.  The Motion to Supplement has not been granted.
18.  Other: \_\_\_\_\_

COURT OF APPEALS OF GEORGIA  
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: *Lamont White*  
Docket Number: *A16A0155*

Style: *Lamont White v. The State*

Your document(s) is (are) being returned for the following reason(s).

1.  Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal \*Effective July 1, 2009) 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.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4.  No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5.  Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6.  There were an insufficient number of copies of your document. Rule 6.
7.  Your document exceeds page limits. Rules 24 (f) and 27 (a)
8.  Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9.  Letter briefs and letter cites are not permitted. Rule 27 (b)
10.  Your request for court action must be submitted in motion form. Rule 41 (a)
11.  Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12.  Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13.  The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14.  Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15.  Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16.  Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17.  The Motion to Supplement has not been granted.
18.  Other: \_\_\_\_\_

For Additional information, please go to the Court's website at: [www.gaappeals.us](http://www.gaappeals.us)

IN THE GEORGIA COURT OF APPEALS  
STATE OF GEORGIA

LAMONT C. WHITE, \*  
APPELLANT, \* CASE NO. A13A0155  
VS. \*  
STATE OF GEORGIA, \*  
APPELLEE. \*

RECEIVED IN OFFICE  
2016 OCT - 7 PM 3:28  
CLERK OF APPEALS OF GA

FILED IN OFFICE  
OCT - 5 2015  
COURT CLERK  
CLERK COURT OF APPEALS OF GA

PART I

STATEMENT OF JURISDICTION

PURSUANT TO ARTICLE VI, SECTION V, PARAGRAPH III OF THE 1983 GEORGIA CONSTITUTION, THIS COURT, RATHER THAN THE SUPREME COURT OF GEORGIA, HAS JURISDICTION OVER THIS CASE ON APPEAL AS CONCERNS THE DENIAL OF A MOTION TO VACATE SENTENCE AS THE APPELLANT WAS ORIGINALLY CONVICTED OF BURGLARY, AGGRAVATED ASSAULT, AND KIDNAPPING, SUCH THAT THIS CASE IS NOT RESERVED TO THE SUPREME COURT OF GEORGIA, OR CONFERRED ON ANY OTHER COURT BY LAW.

PART II  
STATEMENT OF CASE

THE RECORD SHOWS IN THE CASE AT BAR THE APPELLANT ON 10 OCTOBER, 2002 WAS CONVICTED IN A TRIAL BY JURY IN THE SUPERIOR COURT OF CHAYTON COUNTY FOR THE OFFENSES OF BURGLARY, AGGRAVATED ASSAULT, AND KIDNAPPING. SUBSEQUENTLY, THE APPELLANT WAS SENTENCED TO LIFE WITHOUT PAROLE FOR THE KIDNAPPING COUNT AND 20 YEARS FOR EACH OF THE OTHER TWO (2) COUNTS. ACCORDINGLY, AN APPEAL WAS FILED WITH THIS COURT WHICH WAS DENIED IN 2004.

THE RECORD WILL THEN INDICATE THAT THE APPELLANT FILED A MOTION TO VACATE SENTENCE IN SEPTEMBER, 2014. ON 8 OCTOBER, 2014 THE TRIAL COURT DENIED THE MOTION TO VACATE AND ON 21 OCTOBER, 2014 THE APPELLANT FILED A TIMELY NOTICE OF APPEAL. ON 16 JANUARY, 2015 THE COURT DENIED THE APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS ON HIS NOTICE. AS A RESULT OF THIS DENIAL THE APPELLANT FILED A SECOND NOTICE OF APPEAL IN A TIMELY MANNER CHALLENGING THE IN

FORMA PAUPERIS DECISION. ON 15 JUNE, 2015  
IN A COURT ORDER THE TRIAL JUDGE RE-  
VERSED HIS ORIGINAL DECISION IN DENYING  
THE IN FORMA PAUPERIS MOTION AND GRANTED  
SAME. THE RECORD WAS THEN TRANSMITTED  
TO THIS COURT ON 3 SEPTEMBER, 2015, NO.  
2014AFO4905.

### ENUMERATION OF ERRORS

NO. 1: THE ESSENTIAL ELEMENT OF AS-  
PORTATION WAS NOT PRESENT AS CON-  
CERNS THE KIDNAPPING COUNT, IN PARTICULAR GIVEN THE CRITERIA AS ENUNCIATED  
IN GARZA V. STATE, 284 GA. 696 (2008).

NO. 2: THE TRIAL COURT FAILED TO MERGE  
OFFENSES FOR SENTENCING PURPOSES.

### PART III

#### ARGUMENT AND CITATION OF AUTHORITIES

AS SHOWN IN PART II, "STATEMENT OF CASE", THE APPELLANT WAS SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR THE OFFENSE OF KIDNAPPING. THE TRIAL RECORD IS CLEAR IN THE CASE AT PART THAT THE ALLEGED KIDNAPPING WAS INCIDENTAL TO THE BURGLARY, PART AND PARCEL TO THE OFFENSE OF BURGLARY AS IT WERE.

SUBSEQUENTLY, IN GARZA V. STATE, 284 GA. 696 (2008), THE GEORGIA SUPREME COURT ESSENTIALLY DISCARDED THE CRITERIA OF THE KIDNAPPING STATUTE IN O.C.G.A. SEC. 16-5-40, IN PARTICULAR THE ESSENTIAL ELEMENT OF ASPORTATION WHICH ONLY NECESSITATED SLIGHT MOVEMENT TO SUPPORT A CONVICTION FOR KIDNAPPING. IN THE ALTERNATIVE, THE COURT ADOPTED THE FOUR-PART TEST AS ENUNCIATED IN GOVT. OF VIRGIN ISLANDS V. BERRY, 604 F.2ND 221 (3RD CIR. 1979) AND ALSO ADOPTED BY THE 11TH CIRCUIT IN U.S. V. HOWARD, 918 F.2ND 29 (11TH CIR. 1990), WHICH IS AS FOLLOWS:

i) THE DURATION OF THE MOVEMENT;

ii) WHETHER THE MOVEMENT OCCURRED DURING THE COMMISSION OF A SEPERATE OFFENSE;

iii) WHETHER SUCH MOVEMENT WAS AN INHERENT PART OF THAT SEPERATE<sup>OFFENSE</sup>, AND

iv) WHETHER THE MOVEMENT ITSELF PRESENTED A SIGNIFICANT DANGER TO THE VICTIM INDEPENDENT TO THE DANGER POSED BY THE SEPERATE OFFENSE.

THE RECORD SHOWS IN THE CASE AT BAR THAT THE APPELLANT WAS CONVICTED OF BURGLARY, AGGRAVATED ASSAULT AND THE KIDNAPPING COUNT WHICH HE RECEIVED A LIFE-SENTENCE WITHOUT THE POSSIBILITY OF PAROLE FOR. AS CONCERNS THE KIDNAPPING ALLEGATION, THE RECORD INDICATES THAT THE MOVEMENT (AS PORTATION) OF THE VICTIM OCCURRED DURING THE COURSE OF THE BURGLARY AND AGGRAVATED ASSAULT, I.E. THE ACTUAL MOVEMENT WAS VOLUNTARILY CREATED BY

THE VICTIM IN AN ATTEMPT TO ELUDE THE APPELLANT AT WHICH TIME HE SIMPLY MADE HER REMAIN IN PLACE WHICH IN TURN DID NOT PROVIDE THE NECESSARY EVIDENCE TO PROVE THE ESSENTIAL ELEMENT OF ABDUCTION, THUS THE KIDNAPPING COUNT COULD NOT STAND. IN ADDITION, THE RECORD IS CLEAR IN THAT THE DURATION OF THE ACTUAL MOVEMENT WAS SHORT AND IT TOOK PLACE DURING THE MINOR INCIDENT OF AGGRAVATED ASSAULT, IT TOOK PLACE DURING THE COMMISSION OF A SEPERATE OFFENSE WHERE THE MOVEMENT WAS AN INHERENT PART, PART AND PARCEL AS IT WERE, GALZA AND BERRY, SUPRAS.

THE LOGIC IN GALZA OR THE LINCHPIN OF THE REASONING IS THAT BRINGS TO THE SURFACE THE ACTUAL FACT OF CUMULATIVE PENALTIES OR SANCTIONS FOR KIDNAPPING, I.E., THAT THE REMOVAL OR MOVEMENT OF A VICTIM TO ANOTHER AREA DURING THE COURSE OF A ROBBERY IS SIMPLY PART AND PARCEL OF THAT CRIME AND NOT AN INDEPENDENT WRONG OR OTHERWISE. IN SHORT, THE PROSECUTION'S ADDENDUM OF A KIDNAPPING

COURT HELD THE REAL POTENTIAL THAT A DEFENDANT COULD AND WOULD BE SUBJECTED TO A SEVERELY AND UNWARRANTED ENHANCED PUNISHMENT WHICH IN THIS CASE WAS LIFE WITHOUT PAROLE WHICH WAS DUE TO SLIGHT MOVEMENT WHICH TOOK PLACE AS PART AND PARCEL OF THE ACTUAL OFFENSE, DRACONIAN PUNISHMENT IN OTHER WORDS. THE LEGAL LANDSCAPE AT THE TIME OF THE CASE AT BAR INDICATED THAT PRACTICALLY ANY CRIME WHERE THE VICTIM IS MOVED FROM ONE POINT TO ANOTHER, WHERE THE DEFENDANT WAS ATTEMPTING TO FACILITATE THE CONCLUSION OF THE OFFENSE, WOULD AUTHORIZE A KIDNAPPING CONVICTION; THE EXPANSIVE CONSTRUCTION OF A STATUTE AT THE TIME CLEARLY DISTORTED THE ACTUAL PURPOSE OF THE KIDNAPPING STATUTE WHICH NOW RAISES SERIOUS CONSTITUTIONAL ISSUES UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS. (PETERSON V. STATE, 212 GA. APP. 31 (1994)).

AS A RESULT OF THE ABOVE STATED, IN GARZA THE COURT ENUNCIATED THE FOLLOWING THAT, "TO THE EXTENT PRIOR CASE LAW AND, SPECIFICALLY, THE

SLIGHT MOVEMENT STANDARD ARE IN-  
CONSISTENT WITH THIS APPROACH, THOSE  
CASES AND THAT STANDARD ARE HEREBY  
OVERRULED.<sup>11</sup> PELOWSKI V. STATE, 701 S.E.2D  
529 (2010); ROBINSON V. STATE, 719 S.E.2D  
601 (2011) AND QUIROZ V. STATE, 662 S.E.  
2D 235 (2008). IN ADDITION, THE FINAL  
ORDER OF THE TRIAL COURT ON THIS IS-  
SUE OFFERED NO OPINION OR OTHERWISE,  
THUS THIS COURT SHOULD GRANT THE IN-  
STANT APPEAL.

CONCLUSION

WHEREFORE, THE APPELLANT  
PRAYS THAT THIS HONORABLE COURT GRANT  
SAID APPEAL.

RESPECTFULLY SUBMITTED,  
THIS 5TH DAY OF OCTOBER, 2015  
/s/ Lamont White  
LAMONT WHITE  
APPELLANT PROSE

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE  
THIS DAY CAUSED A COPY OF FOREGOING  
APPEAL AND SERVED SAID COPY ON THE IN-  
DIVIDUAL LISTED BELOW BY U.S. MAIL:

OFFICE OF THE CLERK  
GA. COURT OF APPEALS  
SUITE 501  
47 TRINITY AVE.  
ATLANTA, GA 30334

THIS 5TH DAY OF OCT. 2015  
By Lamont White  
LAMONT WHITE  
APPELLANT PRO SE