

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

December 30, 2015

To: Mr. Octavious Williams, GDC853766, Wilcox State Prison, 470 South Broad Street,  
Abbeville, Georgia 31001

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 current case pending in the Court of Appeals of Georgia under the name of Octavious Williams.**
- 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. We do not have a file to append your copy.
- 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. The mailing address for the Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.
- 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 Appeals  
State of Georgia

Detavious Williams,  
Petitioner, Prose

Case no: A050-337

RECEIVED IN OFFICE  
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COURT OF APPEALS OF GA

vs.

State of Georgia,  
Respondant.

Petitioner brief In Support of  
his motion to vacate, Set aside,  
or correct Sentence by a  
Person In State Custody.  
(Page(s) 1 of 24)

  
Detavious Williams,  
G.S.C.#853766  
Wilcox State Prison  
470 South Broad St.  
Abbeville, Georgia-31001

PROCEEDUAL HISTORY

THE PETITIONER IN THE FOREMENTIONED STYLED CASE, SHOWS THAT THE SUPERIOR COURT OF DOUGHERTY COUNTY IN THE JULY TERM OF 2001 THE STATE V. OCTAVIOUS WILLIAMS INDICTED THE DEFENDANT WHEREIN A TRUE BILL WAS ENTERED AGAINST THE ACCUSED THE STATE ALLEGED IN THE INDICTMENT CASE NO (01-R-838) THAT OCTAVIOUS WILLIAMS IN (COUNT 1) CHARGED AND ACCUSED THAT THE DEFENDANT COMMITTED THE OFFENSE OF ARMED ROBBERY ON/OR ABOUT MAY 15 OF 2001 DID, WITH INTENT TO COMMIT THEFT, UNLAWFULLY TAKE, UNITED STATES CURRENCY, THE PROPERTY OF TRABEL MOORE FROM HIS PERSON BY USE OF AN OFFENSIVE WEAPON, TO WIT: A CERTAIN HANDGUN CONTRARY TO THE LAWS OF SAID STATE, THE GOOD ORDER, PEACE AND DIGNITY THEREOF.

(COUNT 2) ARMED ROBBERY, FOR THAT THE SAID ACCUSED, IN THE COUNTY AFORESAID, ON OR ABOUT MAY 15, 2001 DID, WITH INTENT TO COMMIT THEFT, UNLAWFULLY TAKE UNITED STATES CURRENCY, THE PROPERTY OF RODRIGUEZ KEGLER, FROM HIS PERSON BY USE OF AN OFFENSIVE WEAPON, TO WIT: A CERTAIN HANDGUN, CONTRARY TO THE LAWS OF SAID STATE, THE GOOD ORDER, PEACE AND DIGNITY THEROF.

(COUNT 3) THE SAID ACCUSED IS CHARGED WHEREIN IS ACCUSED THAT OCTAVIOUS WILLIAMS IS SAID TO HAVE POSSESSION OF A FIREARM.

(Attachments)

BY A CONVICTED FELON, FOR THAT THE SAID ACCUSED, IN THE COUNTY AFORESAID, ON/OR ABOUT MAY 15 OF 2001, DID UNLAWFULLY POSSESS A FIREARM, AFTER HAVING BEEN CONVICTED ON/OR ABOUT THE 14TH DAY OF SEPTEMBER, 1995, BY A COURT OF THIS STATE, OF THE FELONY OFFENSE OF AGGRAVATED ASSAULT, CONTRARY TO THE LAWS OF SAID STATE, THE GOOD ORDER, PEACE AND DIGNITY THEREOF.

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THE PETITIONER SHOWS THAT THE DEFENDANT IN THIS PARTICULAR CASE WAS ORIGINALLY ARRESTED ON MAY 15, OF 2001. THE PETITIONER SHOWS THAT HE WAS INDICTED BY A DOUGHERTY COUNTY GRAND JURY FOR TWO COUNTS OF A FIREARM BY A CONVICTED FELON, FILED IN DOUGHERTY COUNTY SUPERIOR COURT CLERK'S OFFICE ON AUGUST 8, 2001. THE PETITIONER SHOWS THAT ON OCTOBER 12 OF 2001, THE STATE FILED A NOTICE OF ITS INTENT TO IMPOSE THE MAXIMUM, SENTENCE, AS PROVIDED IN (O.C.G.A. 17-10-7 (A) AND (C.) THE PETITIONER FURTHER SHOWS THAT ON OCTOBER 22, OF 2001, A MOTION WAS FILED FOR THE PURPOSE TO PRESENT SIMILAR TRANSACTIONS. THE PETITIONER SHOWS THAT ON OCTOBER 25 OF 2001 THE COURT ENTERED AN ORDER ALLOWING (THREE) TRANSACTIONS TO BE INTRODUCED, AND HEARD AT TRIAL. THE PETITIONER SHOWS THAT THIS CASE WAS TRIED BEFORE A JURY ON NOVEMBER 5TH THROUGH 7TH OF 2001. THE PETITIONER CONTENDS THAT THE JURY FOUND THE DEFENDANT GUILTY OF THE TWO COUNTS OF ARMED ROBBERY, BUT COULD NOT REACH A

VERDICT ON THE POSSESSION OF A FIREARM. BY A CONVICTED FELON.  
THE PETITIONER SHOWS, THAT THE HONORABLE LORING A. GRAY JR.  
SENTENCED THE DEFENDANT TO TWO CONCURRENT LIFE SENTENCES ON  
NOVEMBER 7 OF 2001. THERE WAS "NO RULING HANDED DOWN OR  
RETURNED ON COUNT (3). HOWEVER THE STATE ISSUED A NOLLE-  
PROSEQUI ON SAID COUNT ON NOVEMBER 9<sup>TH</sup> OF 2001.

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THE PETITIONER WILL SHOW FROM THE RECORD THAT ON/OR  
ABOUT OCTOBER (12) OF 2001, THE STATE PROSECUTION, FILED IT'S  
NOTICE OF IT'S INTENT TO IMPOSE RECIDIVIST PUNISHMENT IN  
ACCORDANCE TO (O.C.G.A. 17-10-7-A-C.) THE PETITIONER SHOWS THAT  
THE INTRODUCING OF SUCH EVIDENCE OR INFORMATION DURING TRIAL,  
AND THE DEFENDANT ULTIMATELY BEING CONVICTED RECIEVED TWO  
CONCURRENT LIFE SENTENCES AS A RECIDIVIST. THE PETITIONER  
CONTENDS THAT BECAUSE COUNT #3 OF THE INITIAL INDICTMENT SHOWS  
A DEFECT ON THE FACE OF THE RECORD, AND BECAUSE THE STATE  
COULD NOT PROVE THREE VALID PRIOR CONVICTIONS WHICH WOULD  
AUTHORIZE PUNISHMENT UNDER (O.C.G.A. 17-10-7-C) WHEREIN (A)  
SENTENCE IS VOID IF THE COUNT IMPOSES PUNISHMENT THAT THE LAW  
DOES NOT ALLOW CRUMBLEY V. STATE 261 GA. 610 611 (1) (409 S.E. 2D 517)  
(1991.) ALSO IN LIGHT THAT WAS USED FOR THE PURPOSE OF IMPOSING  
O.C.G.A. 17-10-7-C (RECIDIVISM.) THE PETITIONER, FURTHER SHOWS THAT  
THE STATE USED COUNT #3 IMPROPELY TO ENHANCE PUNISHMENT,

WHEREIN THIS ALLEGED CONVICTION WAS "USED UP" WHEN THE STATE FURTHER REUSED COUNTS #3 TO ESTABLISH AN ELEMENT OF THE FIREARM POSSESSION BY A CONVICTED FELON CHARGE, THAT RESULTED IN THE JURY NOT BEING ABLE TO REACH A VERDICT. THE PETITIONER CONTENDS, AS IT IS PROVIDED IN (CAVER V. STATE, 215 GA. APP. 711, 713 (4) (452 S.E. 2D 515) (1994.) WHEREIN IT PROVIDES THAT WHEN " THE STATE (HAS TO PROVE A DEFENDANTS PRIOR FELONY CONVICTIONS FOR THE PURPOSES OF CONVICTING THE DEFENDANTS OF BEING A CONVICTED FELON IN POSSESSION OF (294 GA. APP. 769) A FIREARM IT MAY NOT ALSO USE THOSE PRIOR CONVICTIONS IN AGGRAVATION OF PUNISHMENT. (CITATION OMITTED.) THE COURT THEREFORE DETERMINED THAT THE LEGISLATURE, DID NOT INTEND THAT THE ALLEGATION AND EVIDENCE, OF A PRIOR FELONY NECESSARY FOR A CONVICTION OF POSSESSION OF A FIREARM BY A CONVICTED FELON COULD ALSO BE USED TO PUNISH THE DEFENDANT AS A REPEATED OFFENDER UNDER (O.C.G.A. 17-10-7. KING V. STATE 169 GA. APP. 444, 445 (313 S.E. 2D 144) (1984).(THEREFORE THE STATE MUST ELECT) WHETHER IT INTENDS TO USE SUCH EVIDENCE TO SUPPORT A CONVICTION FOR POSSESSION OF A FIREARM BY A CONVICTED FELON OR FOR RECIDIVIST SENTENCING. CAVER V. STATE 215 GA. APP. AT 713 (4); STATE V. FREEMAN, 198 GA. APP. 553 555-556 (2) ( 402 S.E. 2D. 529 (1991) ALLEN V. STATE 268 GA. APP. 519, 534.(6) (602 S.E. 2D. 250. (2004.) THE PETITIONER SHOWS WHEREIN THE STATE USED COUNT #3. FOR THE PURPOSE OF SUPPORTING A CONVICTION FOR POSSESSION OF A FIREARM

BY A CONVICTED FELON, (ALSO) FOR THE PURPOSES TO USE SUCH EVIDENCE TO ALSO SUPPORT A CONVICTION (FOR POSSESSION OF A FIREARM BY A CONVICTED FELON FOR RECIDIVIST IN AGGRAVATION, AND TO IMPOSE ENHANCE PUNISHMENT. THE PETITIONER CONTENTS THAT BECAUSE COUNT 3, #1 WAS REMANDED BY A HABEAS COURT, WHEREIN THE COURT IMPOSED A SENTENCE THAT THE LAW DOES NOT ALLOW; IN REFERENCE TO COUNT #3 WHERE THE STATE. COULD NOT FURTHER USE THE SEPTEMBER 14TH 1995 CONVICTION, WHEREIN IT WAS FOUND TO BE CONSTITUTIONALLY INFIRM. #2 THE STATE COULD NOT FURTHER USE THE SAME CONVICTION TO SUPPORT THE POSSESSION OF A FIREARM BY A CONVICTED FELON (ALSO) TO SUPPORT IN AGGRAVATION TO IMPOSE AN ENHANCED SENTENCE FOR RECIDIVIST PURPOSES. #3 BECAUSE THE JURY DID NOT RETURN A GUILTY VERDICT ON COUNT (#3) FURTHER SHOWS THAT THE CONVICTION AND THE SENTENCE IS THEREFORE NULL AND VOID. (ALSO) BECAUSE THE JURY COULD NOT REACH A VERDICT DEMONSTRATES THE LACK AND THE INSUFFICIENCY OF THE EVIDENCE TO SUPPORT A VERDICT OF GUILTY FOR ARMED ROBBERY HAVING NO UNDERLYING FELONY TO SUPPORT ITS COMMISSION OF ARMED ROBBERY WITH THE USE OF A DEADLY WEAPON, BEING IN POSSESSION OF A FIREARM BY A CONVICTED FELON VIEWING AND CONSIDERING THAT COUNT (#3) COULD NOT SUPPORT COUNT (1) AND COUNT (2) OF THE INITIAL INDICTMENT. (SEE) JACKSON V. VIRGINIA 99S.

CT. 2781, 443 U.S. 307 (U.S. VA. 1979) (ALSO) (VIEWING) THOMPSON V. LOUISVILLE WHEREIN THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMMENDMENT PROTECT A DEFENDANT IN A CRIMINAL CASE AGAINST CONVICTION "EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME, WITH WHICH HE IS CHARGED 397. U.S. AT 90 S. CT. AT 1073. THE PETITIONER CONTENDS THAT THESE CLEAR VIOLATIONS CAUSED COLLATTERIAL DAMAGE THROUGHOUT THE CRIMINAL PROCEEDINGS AND, CONSTITUTES (PLAIN ERROR) THE PETITIONER CONTENDS WHEREIN, COUNT (3) AS IT IS STYLED IN THE INITIAL INDICTMENT, (01-CR-838) (ALSO) USES THESE CHARGES IN AGGRAVATION (95-CR-671)(95-CR-625)(95-CR-626) ALL THESE CHARGES (INDICTED IN THE MAY TERM, 1995) THIS WAS A SINGLE INDICTMENT, WHEREIN THE STATE USED, NOT ONLY FOR THE PURPOSES OF SHOWING SIMILAR TRANSACTIONS BUT WAS ALSO USED FOR CHARGING RECIDIVISM EVEN THOUGH (THERE IS NO RECIDIVIST COUNT(S). DRAWN OUT IN THE INITIAL INDICTMENT NOR ANY PROPER NOTICE GIVEN. THE PETITIONER RECIEVED (NO EVIDENTIARY HEARING(S) IN REFERENCE TO THE ADMISSIBILITY OF THIS INFORMATION, OR EVIDENCE, THERE IS NO RECORDED TRANSCRIPT WHEREIN ANY AFFIRMATIVE SHOWING COULD BE DETERMINED; COUNT (3) RAISES A CONSTITUTIONAL QUESTION; EVEN VIEWING THE WAY IN WHICH THE JURY WAS CHARGED, SHOWS PLAIN ERROR, THE PETITIONER SEEKS AN AVAILABLE, CORRECTIVE PROCESS, RAISES THESE ISSUES SHOWING MERIT IN THE DEFENDANTS

CONTENTIONS (THEREFORE SEEKS A REMEDY SHOWING CLEAR DUE-  
PROCESS VIOLATIONS (AN SEEKS TO SET ASIDE HIS CONVICTION AS NULL  
AND VOID, OR THAT THIS CASE BE REMANDED WITH INSTRUCTIONS. THE  
PETITIONER WILL SHOW THAT THE STATE FURTHER USED THIS SAME  
ARMED ROBBERY CHARGE, DATED ON/OR ABOUT MARCH THE 30, 1995 IN  
THE SUPERIOR COURT OF DOUGHERTY COUNTY STYLED IN A MOTION,  
AN/OR NOTICE OF THE STATES INTENT TO PRESENT EVIDENCE OF SIMILAR  
TRANSACTIONS. THIS PARTICULAR STYLE NOTICE WAS FILED OCTOBER  
THE 22ND OF 2001. THE STATE REQUESTED THAT THIS EVIDENCE IN  
REFERENCE TO THE ARMED ROBBERY BE PRESENTED FOR THE PURPOSE  
OF SIMILAR, TRANSACTION TO SHOW THE DEFENDANT'S COURSE OF  
CONDUCT, SCHEME, AND INTENT. THE PETITIONER WILL SHOW THAT  
THIS EVIDENCE IS INADMISSIBLE AND LACKS PROBATIVE VALUE AND  
WAS NOT RELEVANT TO THE CHARGE(S) FOR WHICH THE DEFENDANT  
STOOD TRIAL. THE SIMILAR TRANSACTION EVIDENCE, ALSO-DID NOT  
FORM PART OF THE RES-GESTAE. THE PETITIONER "CONTENDS" THAT  
DUE-PROCESS RIGHTS WERE TRAMPLED AS WELL AS THE DEFENDANTS,  
CONSTITUTIONAL RIGHTS BEING ULTIMATELY EFFECTED, DURING THIS  
ADVERSARIAL PREOCESS.

THE PETITIONER FURTHER SHOWS THAT THE DEFENDANT WAS  
DEPRIVED OF ANY HEARING, EVIDENTIARY HEARING IN ACCORDANCE  
WITH THE UNIFORM SUPERIOR, COURT RULE 31.3 AS IT PROVIDES THAT  
THE JUDGE SHALL HOLD A HEARING AT SUCH TIME AS MAY BE

APPROPRIATE, AND MAY RECEIVE EVIDENCE ON ANY (ISSUE OF FACT) NECESSARY TO DETERMINE THE REQUEST, OUT OF THE PRESENCE OF THE JURY. THE PETITIONER FURTHER SHOWS THAT THE BURDEN OF PROVING THAT THE EVIDENCE OF SIMILAR TRANSACTION OR OCCURRENCES SHOULD BE ADMITTED, AND SHALL REST UPON THE PROSECUTION. THE PETITIONER WILL SHOW THAT THE UNIFORM SUPERIOR COURT RULE, RULE 31.3. WAS VIOLATED, VIEWING SECTION B OF THIS CODE SECTION. THE ISSUES OF FACT, WERE NOT TENDERED BY THE STATE, AS THIS BURDEN IS CAST UPON THE STATE TO APPROPRIATE THESE RULES. RULE 31.3. C ("FURTHER" PROVIDES THAT EVIDENCE OF SIMILAR TRANSACTIONS NOT APPROVED SHALL BE INADMISSIBLE. RULE 31.3 E PROVIDES THAT THIS EVIDENCE HAS ("TO BE RELATED IN (TIME) AND (PLACE) TO THE CHARGE BEING TRIED, AS PART OF A SINGLE, CONTINUOUS TRANSACTION. THE PETITIONER WILL SHOW THAT THE EVIDENCE INTRODUCED BY THE STATE DID NOT APPROPRIATE THIS RULE, RULE 31.3. (E)AS THIS ALLEGED SIMILAR TRANSACTION INTRODUCED WAS SIX YEARS OLD AND DEFINATELY UNRELATED AND WAS NOT PART OF A SINGLE, CONTINUOUS TRANSACTION. NEITHER WAS IT RELATED IN REFERENCE TO "TIME" AND THEREFORE COULD NOT BE CONSIDERED SIMILAR IN THE MEANING SET FORTH UNDER THIS SUBSECTION.

ARGUMENT AND CITATIONS OF AUTHORITY

THE PETITIONER SHOWS THAT THE WINSHIP DOCTRINE REQUIRES MORE THAN SIMPLE A TRIAL RITUAL. THE PETITIONER SHOWS THAT THIS

DOCTRINE ESTABLISES A FUNDAMENTAL AND SUBSTANTIVE CONSTITUTIONAL STANDARD THAT MUST ALSO REQUIRE THAT THE FACTFINDER WILL RATIONALLY APPLY THAT STANDARD TO THE FACTS IN EVIDENCE. THE PETITIONER SHOWS THAT A REASONABLE DOUBT, " AT A MINIMUM, IS ONE BASED UPON "REASON." THE PETITIONER SHOWS THAT YET A PROPERLY INSTRUCTED JURY MAY OCCASIONALLY CONVICT EVEN WHEN IT CAN BE SAID THAT NO RATIONAL TRIER OF FACT COULD FIND GUILT BEYOND A REASONABLE DOUBT, AND THE SAME MAY BE SAID OF A TRIAL JUDGE SITTING AS A JURY. IN A FEDERAL TRIAL, SUCH AN OCCURENCE HAS TRADITIONALLY BEEN DEEMED TO "REQUIRED REVERSAL OF THE CONVICTION." THE PETITIONER SHOWS THAT UNDER WINSHIP, WHICH ESTABLISHED PROOF BEYOND A REASONABLE DOUBT AS AN ESSENTIAL OF FOURTEENTH AMENDMENT DUE-PROCESS, IT FOLLOWS THAT WHEN SUCH A CONVICTION OCCURS IN A STATE TRIAL, IT CANNOT CONSTITUTIONALLY STAND. WINSHIP (443 U.S. 317) GLASSER V. UNITED STATES 315 U.S. 60,80,62, S. CT. 457, 469, 86 L. ED: 680; BRUNSTON B. UNITED STATES, 409 U.S. 352,93 S. CT. 595, 34 L.ED. 2D 568. (SEE) (ALSO), E.G., CURLEY V. UNITED STATES 81 U.S. APP. D.C. 389 392-393, 160 F. 2D 229, 232-233. THE PETITIONER FURTHER SHOWS THAT A PERSON CANNOT INCUR THE LOSS OF LIBERTY FOR A CRIMINAL OFFENSE WITHOUT (NOTICE) AND A (MEANINGFUL) OPPORTUNITY TO DEFEND, AND SUCH OPPORTUNITY, IF NOT THE RIGHT TO TRIAL ITSELF, PRESUMES AS WELL THAT A TOTAL WANT OF EVIDENCE TO SUPPORT A CHARGE WILL

CONCLUDE THE CASE IN FAVOR OF THE ACCUSED; ACCORDINGLY, A CRIMINAL CONVICTION BASED UPON A RECORD WHOLLY DEVOID OF ANY (RELEVANT) "EVIDENCE" OF A CRUCIAL ELEMENT OF AN OFFENSE IS CONSTITUTIONALLY INFIRM, THE MOST ELEMENTAL OF DUE-PROCESS RIGHTS BEING FREEDOM FROM A WHOLLY ARBITRARY DEPRIVATION OF LIBERTY. THE PETITIONER CONTENDS AS WELL AS SHOWS THAT A NOTICE WAS GIVEN ON/OR ABOUT THE 22ND, DAY OF OCTOBER, OF 2001, THE STATE PLACED THE SUPERIOR COURT OF DOUGHERTY COUNTY ON NOTICE AT SAID (TIME) OF ITS INTENT TO OFFER, EVIDENCE OF SIMILAR TRANSACTIONS OR OCCURRENCES, HOWEVER THERE WAS "NO" EVIDENTIARY HEARING TO DETERMINE THE SUFFICIRNCY OF THAT EVIDENCE BASED ON A SILENT RECORD, AS WELL AS NO EVIDENTIARY FINDING OF FACT TO SUPPORT THE STATES CONTENTIONS.

#### INSUFFICIENCY OF THE EVIDENCE

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THE PETITIONER SHOWS THAT THE BURDEN OF PROOF IS ENTIRELY ON THE STATE TO PROVE ITS CASE, TO PROVE, EVERY ESSENTIAL ELEMENT, OF THE CHARGES, ALLEGED AS DRAWN OUT IN THE INITIAL INDICTMENT, EVEN UP UNTIL THE TIME OF CONVICTION TO PROVE THAT THE DEFENDANT IS GUILTY AS CHARGED. THE PETITIONER SHOWS THAT THE STATE HAS FAILED TO MEET OR TO FULFILL ITS BURDEN IN THIS CASE. THE PETITIONER CONTENDS THAT THIS BURDEN SHOULD NEVER BE PLACED UPON THE DENFENDANT TO ESTABLISH HIS INNOCENCE, OR TO DISPROVE THE FACTS. THE PETITIONER CONTENDS THAT THE

DEFENDANT HAS NIETHER THE BURDEN OF PROOF NOR THE BURDEN OF PERSUASION. THE PETITIONER SHOWS THAT EVERY MATERIAL ALLEGATION SHOULD BE SHOWN BY THE EVIDENCE DEDUCED AT TRIAL AND TO ALLOW THE JURY THAT PERPONDERANCE OF SUCH EVIDENCE, IN ORDER THAT THE JURY MAY FIND THE DEFENDANT EITHER GUILTY OR INNOCENT OF THE CHARGES ALLEGED TO HAVE BEEN VIOLATED. THE PETITIONER CONTENDS THAT THE ACCUSED IN A CRIMINAL CASE NOT REQUIRED TO SATISFY THE JURY, OF THE EXISTENCE OF ANY FACT, AS IT COULD BE SEEN IN THE UNITED STATES SUPREME COURT, AS PROVIDED IN JACKSON V. VIRGINA, 443 U.S. 307, 99S. CT 2781, 61L ED. 2D 560 (1979). (HELD) THAT THE "ANY EVIDENCE" RULE UNCONSTITUTIONAL APPELLATE REVIEW, AND HELD THAT ON APPEAL A DEFENDANT IS ENTITLED TO A REVERSAL IF IT IS FOUND ON THE RECORD THAT "NO RATIONAL TRIER OF FACT COULD HAVE FOUND PROOF OF GUILT BEYOND A REASONABLE DOUBT. THE PETITIONER SHOWS THAT THE STATE CONTENDS THAT IT HAS SHOWN THAT THE DEFENDANT IS GUILTY.....ON THE OTHERHAND THE DENFENDANT MAINTAINS THAT HE IS "NOT GUILTY. THEREFORE SEEKS THAT THE CONVICTION BE SET ASIDE AS A NULL AND VOID CONVICTION AND SENTENCE. THE PETITIONER SHOWS THAT THE REQUIREMENT, TO PROVE GUILT OF A CRIMINAL, CHARGE BE ESTABLISHED BEYOND A REASONABLE DOUBT. THE PETITIONER WILL SHOW THAT THE, STATE FAILED, THEREFORE DID NOT MEET THE REQUIREMENT, TO SHOW THAT THE DEFENDANT WAS INFACIT GUILTY

BEYOND A REASONABLE DOUBT. THIS REQUIREMENT IS A  
CONSTITUTIONAL RIGHT GUARANTEED BY THE DUE PROCESS CLAUSE OF  
THE UNITED STATES CONSTITUTION. THE GEORGIA, STATUTES (ALSO)  
(PROVIDES THE NECESSITY OF PROOF BEYOND A REASONABLE DOUBT  
BEFORE A DEFENDANT MAY BE FOUND GUILTY. THE PETITIONER SHOWS  
THAT (#1) WHEN THE STATE PLACED THE COURT ON NOTICE, ON  
OCTOBER, 22 OF 2001, SOUGHT TO INTRODUCE SIMILAR ACTS OR  
OCCURENCES, HOWEVER THE EVIDENCE INTRODUCED CONCERNING,  
SIMILAR TRANSACTIONS OFFERED WAS INADMISSABLE. IT IS  
INADMISSABLE IN LIGHT THAT IT VIOLATED THE UNIFORM RULES OF  
SUPERIOR COURT(S) VIEWING RULE 31.3. THE SUFFICIENCY OF THAT  
EVIDENCE WAS NOT DETERMINED ABSENT AN EVIDENTIARY HEARING.  
(ALSO) CONSIDERING THAT THIS EVIDENCE WAS FURTHER USED TO  
SUPPORT A POSSESSION OF A FIREARM CHARGE WHICH BECAME AN  
ESSENTIAL, ELEMENT OF THE ARMED ROBBERY COUNT AS SEEN IN  
COUNT #1 AND AS SEEN IN COUNT #2 THE STATE FURTHER WOULD USE  
THESE SAME CHARGES DRAWN OUT IN COUNT #3 IN AGGRAVATION FOR  
RECIDIVIST PURPOSES. THE STATE FILED THIS NOTICE ON OCTOBER THE  
12 OF 2001 THE PETITIONER SHOWS THAT ON OCTOBER THE 25 OF 2001 THE  
COURT ALLOWED #3 SO-CALLED SIMILAR TRANSACTIONS THAT SHOULD  
DETERMINE WHETHER COUNT #3 COULD OF BEEN USED IN SUCH  
AGGRAVATION, EVEN AS IN ELEMENT OF THE INITIAL CRIME'S CHARGED,  
AND WHETHER ELECTION, WAS WARRANTED VIEWING THIS PARTICULAR

CASE IN QUESTION: (ALSO) CONSIDERING THAT THE SEPTEMBER 14TH 1995 CHARGE IN COUNT #3 WAS (VALID) VIEWING THE FACT THAT THESE CHARGES WERE CONSIDERING (VOID) BEING REMANDED BY A HABEAS CORPUS COURT, HOLDING THAT THE DEFENDANT DURING SUCH, TIME RECEIVED A CONVICTION AND SENTENCE THAT THE LAW DOES NOT ALLOW. "(ALSO)" NOTING, TO THE "PHRASES TO A MORAL AND REASONABLE CERTAINTY AND BEYOND A REASONABLE DOUBT, AS APPLIED TO THE QUALITY OF PROOF IN A CASE ARE IDENTICAL IN MEANING. THE PETITIONER CONTENDS AS PROVIDED IN GEORGIA LAW CODE AN IN, SECTION (38-110 (24-4-5) WHEREIN IT PROVIDES, THE TRUE QUESTION, IN CRIMINAL CASES, WHETHER THERE IS SUFFICIENT "EVIDENCE" TO SATISFY THE MIND AND CONSCIENCE BEYOND A REASONABLE DOUBT.

THE PETITIONER SHOWS FURTHER THAT A REASONABLE DOUBT MAY ARISE FROM THE PRESENCE OR LACK OF EVIDENCE AS WELL AS FROM OTHER FACTORS, IN THE FINAL ANALYSIS THE JURY MUST DETERMINE WHETHER A REASONABLE DOUBT EXIST, BUT GUILT "BEYOND A REASONABLE DOUBT MUST SOLELY BE DETERMINED ON ADMISSIBLE EVIDENCE OF, PROBATIVE VALUE. (ALSO) THE PRESUMPTION OF INNOCENCE SHOULD BE IN THE NATURE OF THE EVIDENCE AND SHOULD BE CONSIDERED, THE STATE HAS FAILED TO OVERCOME THE DEFENDANTS PRESUMPTION OF INNOCENCE BY PROOF, UNDER GEORGIA LAW CODE ANN., SECTION (38-102(24-1-1.) WHEREIN IT SHOWS THAT A

PRESUMPTION IS EVIDENCE; AND THIS EVIDENCE MUST BE EVIDENCE, CONSISTING OF INFERENCES DRAWN, AS WELL AS A CONNECTION OF CAUSE AND EFFECT. THE PETITIONER SHOWS WHEREIN A JUDICIAL OR STATUTORY PRESUMPTION IN GEORGIA IS THEREFORE VALID ONLY WHERE THERE IS A RATIONAL CONNECTION BETWEEN THE FACTS PROVED AND THE FACTS PRESUMED. IN GEORGIA A PRESUMPTION LACKING THIS RATIONAL CONNECTION VIOLATES THE DEFENDANTS DUE PROCESS RIGHTS.

EMPHASIS OMITTED HEREIN.....

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THE PETITIONER SHOWS THAT BECAUSE THE STATE USED AN ARMED ROBBERY AS EVIDENCE, WHEREIN THIS CHARGE USED, COULD NOT BE USED AS EVIDENCE OF A SIMILAR TRANSACTION, IN LIGHT THAT THIS PARTICULAR CHARGE OR COUNT, ALLEGED AGAINST THE DEFENDANT WAS REVERSED AS IT WAS REMANDED BY THE SUPERIOR COURT OF DOUGHERTY COUNTY. THE HABEAS COURT "FOUND THAT THIS CHARGE THAT WAS USED BY THE STATE WAS IN FACT ("ERRONEOUS") WILLIAMS V. THE STATE PROVIDES THAT WHEN THE STATE (SEEKS) TO INTRODUCE EVIDENCE OF INDEPENDANT OFFENSES OR ACTS ALLEGED TO HAVE BEEN COMMITTED BY AN ACCUSED, THE STATE MUST PRESENT THE TRIER OF FACT WITH EVIDENCE, ESTABLISHING BOTH THAT THE ACCUSED COMMITTED THAT OFFENSE OR ACT, AND THAT THE CONNECTION AND/OR SIMILARITY BETWEEN THAT OFFENSE OR ACT OR CRIME CHARGED IS SUCH THAT PROOF THAT THE ACCUSED COMMITTED

THE FORMER TENDS TO PROVE THAT THE ACCUSED ALSO COMMITTED THE LATTER 409 S.E. 2D649, 261 GA. 640 (1991). THEREFORE BEING ERRONEOUS AS WELL AS BEING ULTIMATELY REVERSED SHOULD NOT OF BEEN USED AS EVIDENCE, TO SUPPORT SIMILAR TRANSACTION, OCCURENCES..... THE PETITIONER FURTHER SHOWS AS IT IS SEEN IN WILLIAMS, THAT THERE IS ALSO "NO" REAL CONNECTION BETWEEN THE INITIAL OFFENSES CHARGED, AND THE ARMED ROBBERY (USED) TO ULTIMATELY SUPPORT THE CONVICTION. THE PETITIONER SHOWS THAT THERE IS "NO" AFFIRMATIVE SHOWING IN LIGHT THAT THERE WAS NEVER AN EVIDENTIARY HEARING TO DETERMINE THE ADMISSISIBILITY OR WEIGHT OF SUCH EVIDENCE THAT WAS USED AT TRIAL TO OBTAIN A CONVICTION. THE PETITIONER CONTENDS THAT THIS TYPE OF CONVICTION BECOMES NULL OR VOID, AS IT SEEN IN WILLIAMS. IN ORDER TO PROTECT AN ACCUSED AND TO INSURE HIM OF A FAIR AND IMPARTIAL TRIAL, BEFORE AN UNBIASED JURY, THE COURT HAS LONG EMBRACED THE FUNDAMENTAL PRINCIPLE THAT THE (GENERAL CHARACTER) OF AN ACCUSED IS INADMISSIBLE OF COURSE, UNLESS THE ACCUSED CHOOSSES TO PUT HIS CHARACTER IN ISSUE. BACON V. STATE, 209 GA. 261 71 S.E. 2D 615 (1952.) BECAUSE THE STATE USED INADMISSIBLE EVIDENCE, DURING THE DEFENDANT TRIAL PHASE "OF COURSE PLACED HIS CHARACTER IN ISSUE. (ALSO) PROOF OF A DISTINCT, INDEPENDANT, AND SEPARATE OFFENSE (IS) NEVER ADMISSIBLE, UNLESS THERE IS SOME LOGICAL CONNECTION BETWEEN THE TWO, FROM WHICH IT CAN BE SAID

THAT PROOF OF THE ONE TENDS TO ESTABLISHED THE OTHER (SEE) COX V. STATE 165 GA. 145 (139 SE 861) (1927) (ALSO) AN ACCUSED IS ENTITLED TO BE TRIED FOR THE OFFENSE CHARGED IN THE INDICTMENT, INDEPENDANTLY OF ANY OTHER OFFENSE NOT CONNECTED WITH THE TRANSCION UPON WHICH THE INDICTMENT WAS BASED. CAWTHON V. STATE, 119 GA. 395, 411 (46 SE 897) (1903) THEREFORE, BEFORE "ANY" EVIDENCE OF INDEPENDANT OFFENSES OR ACTS MAY BE ADMITTED INTO EVIDENCE, A HEARING MUST BE HELD PURSUANT TO UNIFORM SUPERIOR COURT RULE 31.3 (B). THE PETITIONER SHOWS THAT, AT THAT HEARING, THE STATE MUST MAKE THREE AFFIRMATIVE SHOWINGS AS TO EACH INDEPENDANT OFFENSE OR ACT IT SEEKS TO INTRODUCE. THE PETITIONER SHOWS: THE FIRST OF THESE AFFIRMATIVE SHOWINGS IS THAT HE SEEKS TO INTRODUCE EVIDENCE OF THE INDEPENDANT OFFENSE OR ACT, NOT TO RAISE AN IMPROPER INFERENCE AS TO THE ACCUSED-CHARACTER. THE SECOND AFFIRMATIVE SHOWING IS THAT THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE ACCUSED COMMITTED THE INDEPENDANT OFFENSE OR ACT. THE THIRD IS THAT THERE IS A SUFFICIENT CONNECTION OR SIMILARITY BETWEEN THE INDEPENDANT OFFENSE OR ACT AND THE CRIME CHARGED. (SEE) WILLIAMS V. STATE, 152 GA. 498, 521, 110 S.E. 286 296; CAWTHONE V. STATE, 119 GA. 395, 46 S.E. 897; FRANK V. STATE, 141 GA 243, 80 S.E. 1016. COX CASE, SUPRA, 165 GA. 145, 139 S.E. 861: BEFORE SUCH EVIDENCE WOULD BE ADMISSIBLE FOR THE PURPOSE OF SHOWING INTENT. (SEE) ALSO MIMS V.

STATE, 207 GA. 118, 60 S.E. 2D 373; HENDERSON V. STATE, 209 GA. 72, 76, (70 S.E. 2D, 713). THE PETITIONER IN THE FOREMENTIONED STYLED CASE; SHOWS THAT ON/OR ABOUT THE MONTH OF MAY THE 15TH OF 2001 THE DEFENDANT IN THIS PARICULAR CASE AT BAR SHOWS THAT THE DEFENDANT WAS ARRESTED AND CHARGED IN THE SUPERIOR COURT OF DOUGHERTY COUFY IN THE STATE OF GEORGIA WITH THE OFFENSIVE ACTS OF COUNT (1) ARMED ROBBERY. COUNT (2) ARMED ROBBERY. COUNT 3 POSSESSION OF A FIREARM BY A CONVICTED FELON, FOR THAT THE SAID ACCUSED, IN THE COUNTY AFORESAID, ON/OR ABOUT MAY 15, 2001 DID UNLAWFULLY POSSESS A FIREARM, AFTER HAVING BEEN CONVICTED ON/OR ABOUT THE 14TH DAY OF SEPTEMBER 1995. BY A COURT OF THIS STATE, OF THE FELONY OFFENSE OF AGGRAVATED ASSAULT CONTRARY TO THE LAWS OF SAID STATE, THE GOOD ORDER, PEACE AND DIGNITY THEREOF, INDICTMENT NO. 01-R-838.

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THE STATE FURTHER USED OR INTRODUCED CASE 95-R-625, AGGRAVATED ASSAULT; CASE 95-R-626, AGGRAVATED ASSAULT AS WELL AS, CASE 95-R-671 ARMED ROBBERY THESE CASES BEING OVERTURNED, WERE ADMITTED AND INTRODUCED AS SIMILAR TRANSACTIONS, BECOMES IRRELEVANT, THERE IS NO LOGICAL CONNECTION, AND COULD NOT ESTABLISH INTENT NOR FORM PART OF THE RES-GESTAE, AND COULD BE DETERMINED TO BE INSUFFICIENT TO SUPPORT A CONVICTION, UNDER, JACKSON V. VIRGINIA SUPRA. THE PETITIONER CONTENDS THAT THE STATE FAILED TO PROVE THE ELEMENT, ESSENTIAL

IN AN ARMED ROBBERY CHARGE; WHEREIN THE STATE FAILED AND  
COULD NOT PROVIDE OR INTRODUCE ANY EVIDENCE TO SHOW THAT THE  
ACCUSED IN FACT WAS, ACTUALLY IN THE "POSSESSION" OF A FIREARM  
DURING THE COMMISSION OF COUNT (1) ARMED ROBBERY, AS WELL AS  
COUNT (2) ARMED ROBBERY; AS ALLEGED IN THE INITIAL INDICTMENT.  
THE PETITIONER CONTENDS, EVEN THOUGH THE STATE RELIED ON  
CIRCUMSTANTIAL EVIDENCE, TENDING ON A STATEMENT MADE BY THE  
ALLEGED VICTIM ALLEGING THAT THE ACCUSED, DID, WITH THE INTENT  
TO COMMIT THEFT, UNLAWFULLY TAKE UNITED STATES CURRENCY, THE  
PROPERTY OF TRABEL MOORE FROM HIS PERSON BY USE OF AN  
OFFENSIVE WEAPON, TO WIT: A CERTAIN HANDGUN CONTRARY TO THE  
LAWS OF SAID STATE; ALTHOUGH THE STATE COULD NOT PROVIDE ANY  
CORROBORATING EVIDENCE TO FACTUALLY SUPPORT THE CHARGE OTHER  
THAN CHARGING THE ACCUSED WITH (ALLEGED) SIMILAR TRANSACTION  
OCCURRENCES. THE STATE WAS, LATER FOUND TO HAVE NO REAL PROOF  
OF SIMILAR ACTS OR OCCURRENCES OR ANY LOGICAL CONNECTION FOR  
THE PURPOSE OF SHOWING THIS SO-CALLED EVIDENCE WHEREIN IT COULD  
BE SAID THAT THE ACCUSED-COMMITTED THE COMMISSION OF THE  
OFFENSE CHARGED OR (PRESENTED) CREDITABLE EVIDENCE, WHEREIN IT  
TENDED TO SHOW HIS PARTICIPATION; EITHER IN ACT OR DESIGN IN  
COMMISSION OR PREPARATION, IN OTHER INDEPENDANT CRIMES, WHICH  
THEREFORE CANNOT BE RECEIVED. THE PETITIONER SHOWS THAT THE  
(RULE) BECOMES APPLICABLE WHEREIN PROOF IS OFFERED OF SUCH

INDEPENDANT AND DISTINCT SEPARATE OFFENSES, BECAUSE THE STATE DID NOT PROVIDED AN EVIDENTIARY HEARING TO DETERMINED THE ADMISSIBILITY OF SIMILAR TRANSACTION USED IN THE DEFENDANTS CASE TO OBTAIN AN CONVICTION VIOLATED THE DEFENDANTS RIGHTS TO A FAIR TRIAL. JACKSON V. VIRGINIA, 99 S. CT. 2781, 443 U.S. 307. PROVIDES THAT IT IS AXIOMATIC THAT A CONVICTION UPON A CHARGE NOT MADE OR UPON A CHARGE NOT TRIED CONSTITUES A DENIAL OF DUE-PROCESS. COLE V. ARKANSAS 333 U.S. 196, 201, 68 S. CT. 514 517, 92 L. ED. 644; (ALSO) (SEE) PRESNELL V. GEORGIA, 439 U.S. 14, 99 S. CT. 235 58 L. ED. 2D 207. BECAUSE THE STATE, USED AN ALLEGED ARMED, ROBBERY CHARGE THAT WAS SIX YEARS OLD (1) VIOLATED THE DEFENDANT'S FOURTEENTH AMENDMENT DUE-PROCESS RIGHTS (SEE) EXHIBIT (1-A) #2 BECAUSE THERE WAS NO HEARING TO DETERMINED THE ADMISSIBILITY OF THE INTRODUCTION OF THE SIMILAR TRANSACTION ADMITTED, AND INTRODUCED AT TRIAL, VIOLATES DUE-PROCESS AND THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL; AND ALSO COULD CAUSE PREJUDICE TOWARD THE DEFENSE. BECAUSE THE STATE USED (3) PRIOR, CONVICTIONS STEMING FROM MARCH OF 1995 THAT WERE ULTIMATELY REVERSED IN FEBRUARY OF 1998 SHOULD OF BEEN INSUFFICIENT AS WELL AS INADMISSABLE; 95R. 671, ARMED ROBBERY USED FOR SIMILAR TRANSACTION PURPOSES PREJUDICED THE DEFENSE, AND CAUSED THE JURY TO BE MISLEAD, IN BELIEVING THAT THIS EVIDENCE INTRODUCED, TO SUPPORT SIMILAR TRANSACTION OCCURRENCES WAS SUFFICIENT OR

RELIABLE TO SUSTAIN A COVICTION. THE PETITIONER FURTHER SHOWS THAT THE STATE ALSO USED (95R. 626) AN AGGRAVATED ASSAULT CASE; THAT WAS ALSO OVERTURNED; AS WELL AS (95R. 625) AN AGGRAVATED ASSAULT THAT WAS ALSO OVERTURNED WHEREIN, THE COURT "ABUSED" ITS DISCRETION BY ALLOWING THESE CHARGES TO BE TENDED AS "EVIDENCE", ALSO WHEREIN THESE CHARGES (4.5.6.) COULD NOT FACTUALLY SHOW EVEN A LOGICAL CONNECTION, NOR COULD, THESE CHARGES ESTABLISH ANY PROOF, OR RELEVANCY INREFERENCE TO THE CASE, FOR WHICH THE DEFENDANT STOOD TRIAL. EVEN VIEWING THE DATES, THE TIME, AND SPACE BETWEEN THE EXISTING CHARGES AND THOSE CHARGES "USED" AS SIMILAR TRANSACTION. THE PETITIONER SHOWS THAT THE BASIC REASON FOR THE, INADMISSIBILITY OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS THAT SUCH EVIDENCE IS IRRELEVANT TO PROVE THE CONDUCT IN QUESTION. THE PETITIONER SHOWS THAT THE CHARGES OF THE JURY ON COUNT (1) AND COUNT (2), ARMED ROBBERY OFFENSES, "THE COURT NEVER INSTRUCTED THE JURY IN REFERENCE TO COUNT (3) WHEREIN IT SHOWS POSSESSION OF A FIREARM BY A CONVICTED FELON WHEREIN IT PROVIDES A MAY 15 2001 DATE, THE SAME DATE STYLED IN COUNT(1) AND COUNT (2) EVEN CONSIDERING THAT THIS CHARGE IN COUNT (3) IS PART THE SAME INDICTMENT, (ALSO) CONSIDERING THAT THE CHARGING OF THE JURY WAS PLAIN ERROR. THE PETITIONER SHOWS THAT THIS CASE BEING, TRIED BEFORE A JURY ON NOVEMBER 5TH THROUGH THE 7TH OF 2001,

WHEREIN THE JURY FOUND THE DEFENDANT GUILTY OF THE (2) COUNTS OF ARMED ROBBERY BUT COULD NOT "REACH" A VERDICT ON COUNT (3) THE POSSESSION OF A FIREARM BY A CONVICTED FELON. THE PETITIONER SHOWS THAT JURY COULD NOT REACH, A VERDICT ON COUNT (3) IN LIGHT THAT THE JURY, WAS NEVER, "CHARGED" ON COUNT (3). EVEN THOUGH, COUNT(3) IS A CHARGE, CHARGING THE ACCUSED WITH POSSESSION OF A FIREARM BY A CONVICTED FELON. THE PETITIONER SHOWS, THAT THE JURY, WAS FURNISHED WITH THE INDICTMENT CHARGING THE DEFENDANT WITH A TOTAL OF (3) COUNTS, (2) COUNTS OF ARMED ROBBERY AND (1) COUNT OF POSSESSION OF A FIREARM BY A CONVICTED FELON. THE PETITIONER, SHOWS THAT ON NOVEMBER 5TH THROUGH THE 7TH THE "JURY" COULD NOT REACH A VERDICT ON COUNT (3) IN LIGHT THAT THE JURY WAS NEVER CHARGED ON COUNT (3). THE PETITIONER CONTENDS, THAT WHEN THE INDICTMENT CHARGES THAT A CRIME WAS COMMITTED BY A CERTAIN METHOD, THEN CHARGE THE JURY THAT "THEY MAY CONVICT THE DEFENDANT IF THEY FIND THAT THE DEFENDANT COMMITTED THE OFFENSE BY A METHOD OTHER THAN THE SPECIFIC TYPE CHARGED IN THE INDICTMENT IS REVERSIBLE ERROR. THE PETITIONER SHOWS THAT FAILING TO CHARGE THE JURY ON COUNT (3) SHOWS THAT ALL THE EVIDENCE DOES NOT SHOW AFFIRMATIVELY, WITHOUT DISPUTE THAT A CERTAIN EVENT HAD TAKEN PLACE, OR OCCURRED. JURY SHOULD BE TAILORED TO THE INDICTMENT AND ADJUSTED TO THE EVIDENCE; THE COURT ABUSED IT

DISCRETION NOT CHARGING THE JURY ON COUNT (3) (ALSO) VIEWING THE FACT THAT THE COURT, ALLOWED THE JURY TO ENTERTAIN THE INDICTMENT SHOWING COURTS(1) (2) AND (3).

(ALSO) VIEWING THE FACT THAT THE STATE INTRODUCED, COUNT (3) TO SHOW A CONVICTION OF A AGGRAVATED ASSAULT FROM SEPTEMBER OF 1995 THAT WAS DETERMINED TO BE NULL OR VOID BECAUSE IT WAS A SENTENCE THAT THE LAW DOES NOT ALLOW, AND DID NOT CONFORM TO STATUTORY DEMANDS NOR WAS IT CONFORMING TO THE CONVICTION THEREFORE WAS ILLEGAL AND VOID AND DID NOT SATISFY THE STAUTORY REQUIREMENTS OF (O.C.G.A. 17-10-6.1) (SEE) HARTMAN V. STATE 266 GA. 613, 469 S.E. 2D. 163, 165 (1996.) CRUMBY V. STATE 261 GA 610, 611 409 S.E. 2D. 517 (1991). THEREFORE THE CHARGE IN FAILING TO CHARGE THE JURY ON COUNT (3) AS WELL AS USING THAT (SEPTEMBER 14. 1995) FELONY OFFENSE OF AGGRAVATED ASSAULT, CLEARLY BECOMES PREJUDICIAL AS WELL AS VIOLATED THE FUNDAMENTALS OF DUE-PROCESS AND IS AN TRIAL COURT ERROR, WHEREIN IT BECOMES AN ERRONEOUS CHARGING OF THE JURY.

#### CONCLUSION

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THE PETITIONER SHOWS, THAT BECAUSE THE STATE USED, A SIX YEAR OLD ARMED ROBBERY CASE, STYLED IN CASE (NO) (95-R-671) THAT WAS ULTIMATELY REMANDED AND REVERSED; BUT CHALLENGING LEGALITY OF HIS CONVICTION THE HABEAS CORPUS, COURT IN FEBRUARY OF 1998 GRANTED PETITIONERS, APPLICATION REMANDED

SAID CASE WITH INSTRUCTIONS. THE PETITIONER CONTENDS, THAT THIS PARTICULAR CASE, COULD NOT BE USED, IN REFERENCE TO THE GENERAL RULE, CONSIDERING SIMILAR TRANSACTION, VIEWING THE ADMISSIBILITY OF THIS TYPE EVIDENCE, INTRODUCED, NOR COULD, THE EXCEPTION BE CONSIDERED IN LIGHT OF ITS LOGICAL CONNECTION, AN EXHIBIT (1-C) THE (COURT STATED ON P.316) THAT THIS PARTICULAR CHARGE AS SEEN IN CASE (95-R-671) WAS IRRELEVANT, AS WELL AS "INDICATED" THAT IT SHOULD NOT BE USED. THE PETITIONER CONTENDS, THAT THIS ARMED ROBBERY USED FOR SIMILAR TRANSACTION, OCCURRENCES BECOMES A QUESTION FOR THIS COURT TO DETERMINE WHETHER THIS PARTICULAR CHARGE USED FOR SIMILAR TRANSACTION OCCURRENCES IS WITHIN THE MEANING SET FORTH IN THE GENERAL RULE OR IT EXCEPTION. THE PETITIONER CONTENDS THAT THIS ARMED ROBBERY CHARGE IS WHOLLY INADMISSIBLE THEREFORE BEING INTRODUCED DURING THE TRIAL PHASE CAUSED A WRONGFUL CONVICTION TO OCCUR IN THE DEFENDANT CASE AT BAR. THE PETITIONER SEEKS REVERSAL, IF FOUND TO BE INADMISSIBLE USED, FOR SIMILAR TRANSACTION PURPOSES. THE PETITIONER FURTHER, SEEKS, REVERSAL, OR REMAND IF IT IS FOUND THAT THE STATE FAILED TO PROVIDE AN EVIDENTIARY HEARING AS IT IS PROVIDED IN THE UNIFORM RULES OF THE SUPERIOR COURT RULE 31.1.

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# CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing document(s) upon the parties listed below by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure that it reaches its destination.

Kenneth B. Hodges,  
III, district attorney  
Dougherty County,  
P.O. Box 1827  
Albany, Georgia 31702

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Octavious Williams  
G.I.C.# 853766  
Wilcox State Prison  
470 South Broad St.  
Abbeville, Georgia 31001

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This the 21<sup>st</sup> day of December, 2013.

  
Octavious Williams,  
G.I.C.# 853766  
Wilcox State Prison  
470 South Broad St.  
Abbeville, Georgia 31001