



Court of Appeals of Georgia

March 24, 2015

TO: Mr. Alphonso Wooten , GDC408512 M-4, Macon State Prison, Post Office Box 426,
Oglethorpe, Georgia 31068

RE: **A15A1269. Alphonso Wooten v. The State**

CHECK RETURN

- ☐ Your check number _____ in the amount of _____ written on the account of your firm for the filing fee in _____ is enclosed. Please be advised that this Court is returning your check since the filing fee was already paid by _____.

CASE STATUS - DISPOSED

- ☐ The referenced appeal was _____ on _____. The remittitur issued on _____, divesting this Court of any further jurisdiction of your case. The case is therefore, final.

CASE STATUS - PENDING

- ☒ The above referenced appeal is pending in your name before this Court. Your letter, dated February 2, 2015, requesting an extension to file direct appeal is not needed. (The documents are being returned to you.)

The appeal was docketed on March 5, 2015. The appeal was docketed in the April 2015 Term and a decision must be rendered by the Court by the end of the September 2015 Term which ends on or about December 16, 2015.

I have enclosed a copy of the Docketing Notice.

APPLICATION FOR PERMISSION TO APPEAL A PROBATION REVOCATION

- ☐ To appeal a probation revocation, you will need to file a Discretionary Application with this Court. Rule 31 of the Rules of the Court of Appeals of Georgia describes a Discretionary Application and the items you would need to include with your application.

A Discretionary Application must be filed within 30 days of the stamped filed date on the order that you are appealing and the application must be accompanied by a proper Certificate of Service and a pauper's affidavit or the \$80.00 filing fee. You must also comply with all the other applicable rules of Court regarding filing with the Court of Appeals of Georgia.

Enclosed, please find a copy of the Rules of the Court of Appeals for your review.

COURT OF APPEALS OF GEORGIA

47 Trinity Avenue, SW, Suite 501
ATLANTA, GEORGIA 30334
(404) 656-3450

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

NOTICE OF DOCKETING

APPEAL CASE NUMBER: A15A1269 DATE OF DOCKETING: March 05, 2015

STYLE: ALPHONSO WOOTEN v. THE STATE

LOWER COURT COUNTY & CASE NUMBERS:

Bulloch County Superior Court

1B08CR368

WE HEREBY ACKNOWLEDGE RECEIPT AND FILING OF THE FOLLOWING:

RECORDS	DESCRIPTION	PARTS
2015-03-05	Records	1
2015-03-05	Transcripts	4

COURT OF APPEALS OF GEORGIA

47 Trinity Avenue, S.W., Suite 501

Atlanta, Georgia 30334

(404)656-3450

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

NOTICE OF DOCKETING - DIRECT APPEAL

APPEAL CASE NUMBER: A15A1269

DATE OF DOCKETING: March 05, 2015

STYLE: ALPHONSO WOOTEN v. THE STATE

IMPORTANT RULE REQUIREMENTS AND INFORMATION

Briefs: Appellant's brief (including an Enumeration of Errors as Part II) shall be filed within 20 days of the date on this docketing notice. Appellee's brief shall be filed within 40 days after the docketing date or 20 days after the filing of the appellant's brief whichever is later. Requests for extensions of time to file briefs must be made by motion. Failure to timely file briefs or to follow any Court rules or orders may cause the appeal to be dismissed or may cause non-consideration of a brief and may subject the offender to contempt.

Filing Fees: No appellant's brief shall be received for filing without the \$80.00 filing fee except for those Appellants who are: 1) incarcerated and pro se, 2) represented by appointed counsel/public defender, or 3) paupers (with affidavit).

Related Cases: Attorneys must notify the Court if the above-styled case is related to any other case that is or was docketed in the Court. (E-filers file this as "Information" on the Docket. Hard copy submissions should be by separate letter to the Clerk.)

Attorneys: Attorneys: Note that Rule 46 requires that all submissions be via electronic format. E-filing instructions are found at www.gaappeals.us.

Pro Se Filing by US Postal Mail or Delivery Service: The contents of a properly addressed mailing other than a motion for reconsideration shall be deemed filed on the date of the U.S. Postal Service postmark date if it is stamped on the envelope or container. A filing received from an overnight delivery service is deemed filed on the date shown on the envelope or container. If no date appears on the container or envelope of a mailing or delivery, the contents shall be deemed filed on the date of receipt by the court. **Motions for reconsideration are deemed filed on the date the motion is physically received in the Clerk's office, i.e., the postmark date is not relevant.**

Oral Argument: A Request for Oral Argument shall be filed within 20 days of the date on this docketing notice. If oral argument is requested and granted by this Court, the argument is tentatively scheduled for Jun 03 2015 before the Third Division: P. J., Ellington, J., Dillard, J., McFadden. A calendar will be sent to counsel of record confirming the exact date of oral argument. If the calendar has not been received at least ten days prior to the tentative oral argument date, please contact the Clerk's office.

Communications: There shall be no communications relating to pending appeals with any judge or member of the judge's staff.

Feb. 2, 2015

Alphonso Wooten
#408512 M-4 P.O. Box 426
Oglethorpe, GA. 31068

RECEIVED
MAR 09 2015
Mailroom
Macon S.P.

RE: EXTENSION OF
Time to File

Clerk of Court, GA. Court of Appeals
Atlanta, GA. 30334

Clerk;

Sir, I am writing to request a extension
in which to file my direct appeal from super-
ior court Judge F. Gates PEEKS' final order
denying my motion for new trial.

Said order was filed on 1-24-15. I received
on Feb. 2, 2015. My case is a judicial nightmare,
the trial court violated O.C.G.A. § 15-6-21,

denied petitioner Appellate Counsel and has
refused to provide the complete record to me -
specifically not transcript of voir dire, motion for
new trial transcript and other requested documents.

I receive a mere 30 minute a week on the
Prisons' Law Library computer. I had to file a
motion to compel in order to get the final order,
needless to say, Trial judge failed the re-
quirement on that motion; twenty two mons.
after the hearing.

My appointed appellate counsel, Ms.
Melissa Lawrence abandoned me and never

informed me that she had dropped her representation of me.

MS. LAWRENCE responded to a bar grievance I filed and in that response I learned of her leaving the case in September, 2013.

I received the enclosed letter from the State Bar of GA. stating that Mr. Chris Schneider had been appointed to my case, and to make contact with him. I'm enclosing two responses from my contact as well.

Also, it was a lawyer before that, and it turn out to be the same situation. now am compel to ask the court appeal for mercy to appoint me a counsel as well.

I do not have a complete record and am alerting this court of that now, for a extension to clear this matter up.

I'm respectfully submit this letter for extension of time on this the second day of February, 2015.

Alphonso Wooten
Alphonso Wooten, PRO SE
408512 M-4, P.O. Box 426
Oglethorpe, GA 31068

CERTIFICATE OF SERVICE

I Alphonso Wooten, SWEAR that I have mailed a copy of my letter for an extension of counseling as well as time in which to file my appeal from the denial of my motion for new trial v/a the prison mail box on this the 2nd day of Feb. 2015, addressed to the opposing party and Clerk of Court, 47 Trinity Ave, St. 501, Atl. Ga. 30334.

District Attorney's Office
1 Courland Street
State land, GA. 30458
(912) 764-9924

Joseph L. Cushner
Assistant District Att.
Ogeechee Judicial Circuit
of GA.
State Bar No. 146492

CERTIFICATE OF SERVICE

I, Alphonso Wooten swear that I have placed a copy of my Notice of Appeal to the following parties on this the 2nd day of February, 2015 with ample postage affixed in the prison mail box: 2/3/15

- ✓ 1. Clerk of Court, 20 Sizbold St, Judicial Annex, Stokely, GA 30458.
- ✓ 2. Office of D.A., One Courthouse, 2nd Floor, Stokely, GA 30458;

Alphonso Wooten

Alphonso Wooten pro se

408512, H14, PO Box 426

October 20, 2014

Alphonso Wooten (408512)
Macon State Prison
P.O. Box 426
Oglethorpe, Georgia 31068

RECEIVED

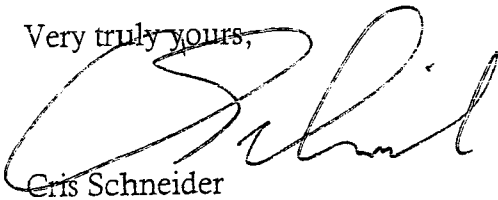
OCT 27 2014

Mailroom
Macon S.P.

Dear Mr. Wooten,

As of October 20, 2014 the contract to handle your appeal between my firm and GPDSC has not been finalized. I anticipate said contract to be finalized in November. I will contact you via standard U.S. mail as soon as the contract is finalized.

Very truly yours,



Cris Schneider





February 6, 2015

Alphonso Wooten
408512
M.S.P. P.O. Box 426
Oglethorpe, Georgia 31068

Re: Response for Appeal

Mr. Wooten,

I am writing to confirm that I received your letter you mailed to my office on 1/18/15. At the moment, the State has not completed my contract to begin working on your appeal. As soon as I am contracted to handle your appeal I will be in contact with you.

Sincerely,

Cris Schneider

IN THE SUPERIOR COURT OF BULLOCH COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

vs.

ALFONSO WOOTEN,

Defendant.

)
)
)
)
)
)

INDICTMENT NO. 1Bo8CR368P

ORDER ON MOTION FOR NEW TRIAL

Defendant Alfonso Wooten filed a Motion for New Trial. The State filed a timely response. A hearing was held on March 6, 2013 and it was concluded on March 27, 2013 with the record to be left open for any follow up briefs to be filed. Since the hearing no follow up briefs have been filed by either party. Now, having given full consideration to the facts and circumstances as set forth in the Motion, the record in this case, and the law, the Court finds and concludes as follows:

Facts

A verdict of guilt was returned against Defendant on March 2, 2010. Defendant was found guilty of armed robbery and aggravated assault. Defendant was sentenced the same day to life in prison without parole. Defendant now seeks a new trial and argues approximately four allegations of error. The Court has divided these allegations into two categories: procedural questions and ineffective assistance of trial counsel.

Discussion

I. PROCEDURAL QUESTIONS

Defendant argues that the following procedural errors occurred during trial.

1. *The statements made by the State in closing were not improper*

In closing argument it is improper for counsel to state his or her personal belief as to the veracity of any witness; however, it is permissible for counsel to urge the jury to deduce such a conclusion from proven facts and based on the evidence.¹ In the present case the Defendant alleges the State made statements during closing that were improper

¹ Smith v. State, 300 Ga. App. 220, 222 (2009). See also: Reginald James Mason v. State, 274 Ga 79 (2001); Metts v. State, 270 Ga 181 (1999).

RECEIVED
FEB 02 2015

Mallroom

because they were based on the prosecutor's personal belief of a witness's credibility. However, the statements were not made based on the prosecutor's personal beliefs, but rather as part of an argument to get the jury to draw a certain conclusion based on the evidence presented at trial.² The wide leeway given to argue all reasonable inferences that may be drawn from the evidence during closing argument encompasses pointing inconsistencies in a defendant's testimony and urging that, on that basis, the defendant lied.³ Therefore, the State's statements during closing were not improper. Further, even if the Court were to find such statements were improper, the Court would find such statements to be harmless error, because there is a high probability that without such statements the jury would have reached the same verdict.⁴

Defendant also alleged that the State improperly referenced statements made by the Defendant even though the Defendant did not testify. This allegation was raised by the Defendant for the first time at the motion for new trial hearing, and counsel did not provide any law to support this position. The Court finds it was not improper for the State, in its closing argument, to reference things said by the Defendant in his closing argument. Further, even if the Court were to find such statements were error the Court would find the same to be harmless error.

2. Defendant made the decision to represent himself knowingly, intelligently and voluntarily

The Defendant has a federal constitutional right to self-representation at the trial stage.⁵ Before a defendant can represent himself the Court must determine whether the defendant is aware of the risks associated with and fully understands what self-representation entails.⁶ In the present case the Court informed the Defendant of all of the *Faretta* warnings and the Defendant acknowledged that he understood each of them; subsequently the Defendant stated he still wished to proceed pro se.⁷ After the colloquy by the Court the Defendant stated, "I want to be able to ask questions. I want to be able to talk. I don't want to be able to be manipulated."⁸ The Defendant also

² Trial Transcript pages 290-291

³ *Appling v. State*, 281 Ga. 590, 592-593 (2007) (internal citations omitted).

⁴ *Alexander v. State*, 263 Ga. 474, 478 (1993).

⁵ *Faretta v. California*, 422 U.S. 806 (1975).

⁶ *Id.* See also *Lamar v. State*, 278 Ga. 150 (2004).

⁷ Trial Transcript pages 126-141

⁸ Trial Transcript page 141, lines 3-5

answered affirmatively when asked if he wanted his attorney released from the case.⁹ The Defendant's actions in this case demonstrated a voluntarily choice to proceed pro se and a valid waiver of his constitutional right to counsel.

II. DEFENDANT FAILED TO SHOW INEFFECTIVE ASSISTANCE OF COUNSEL

To establish ineffective assistance of counsel, the Defendant must show that his trial counsel's performance was deficient and that the deficiency so prejudiced his defense that a reasonable possibility existed that the trial's outcome would have been different but for that deficiency.¹⁰ Unless a defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable.¹¹

Defendant claims that his trial counsel was ineffective based upon approximately two allegations of error. Defendant initially alleged that trial counsel failed to submit certain motions and objections that should have been submitted. However, Defendant's trial counsel, Dustin Barr, testified that he submitted motions, written and verbal, and raised the objections that were appropriate given his trial strategy.¹² The Defendant claimed his trial counsel failed to object to papers with the Defendant's name on them that were found at the crash site. Defendant claims his trial counsel should have objected to references to these papers because they were never admitted into evidence. However, this argument is moot because during the Defendant's closing argument the Defendant admitted to owning the truck and the briefcase.¹³

Defendant further claims he was denied effective assistance of counsel because there was evidence to suggest the possibility of a law enforcement officer on the jury. However, after reviewing the record in this case there does not appear to be any evidence of a law enforcement officer being on the jury. The Court stated its regular practice of administering the appropriate oaths on the mornings of jury selection, which include asking whether there are any law enforcement officers currently exercising their

⁹ Trial Transcript page 141, lines 12-14

¹⁰ Jackson v. State, 248 Ga. App. 7 (2001), Strickland v. Washington, 466 U.S. 668 (1984).

¹¹ Edwards v. Edwards, 224 Ga. App. 332 (1997).

¹² Motion for New Trial Hearing Transcript, March 6, 2013 (hereinafter MFNT Transcript 1), pages 29-31 and 37

¹³ During trial the papers were referenced in an attempt to show ownership of the truck and the briefcase.

powers of arrest.¹⁴ Further, there is also no evidence in the record that Defendant's trial counsel, Dustin Barr, was in fact the attorney who conducted voir dire in this case.

The Defendant has failed to meet his burden to prove that the above allegations occurred, that they reflected ineffective assistance, or that the outcome of the trial would have been any different.

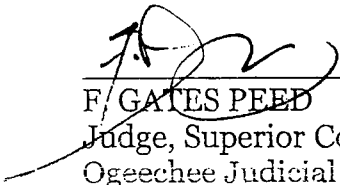
IT IS FURTHER ORDERED that any inconsistencies that existed with certified copies of Defendant's convictions have now been resolved, and the Court hereby resentsences Defendant to life in prison without parole.

Conclusion:

No error was had in the Defendant's trial and the evidence was sufficient to enable a rational trier of fact to find the Defendant guilty beyond a reasonable doubt of murder, aggravated assault and possession of a firearm during the commission of a crime.¹⁵

WHEREFORE, Alfonzo Wooten's Motion for New Trial is hereby **DENIED**.

SO ORDERED this 16 day of Jan, 2015.


F. GATES PEED

Judge, Superior Court of Bulloch County
Ogeechee Judicial Circuit

¹⁴ Motion for New Trial Hearing Transcript, March 27, 2013 (hereinafter MFNT Transcript 2), page 7

¹⁵ Jackson v. Virginia, 443 U.S. 307 (1979).

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

March 2, 2015

To: Mr. Alphonso Wooten, GDC408512 N4, Macon State Prison, Post Office Box 426,
Oglethope, Georgia 31068

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 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: _____
- ☐ **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.
- ☒ **Please attach a copy of the order denying the Motion for New Trial.**

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

February 12, 2015

To: Mr. Alphonso Wooten, GDC408512 N4, Macon State Prison, Post Office Box 426,
Oglethope, Georgia 31068

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 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: _____
- ☐ 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.
- ☒ An improper Certificate of Service accompanied your document(s). Your Certificate of Service did not include the complete name and mailing address of each opposing party. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.