

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

September 1, 2015

To: Mr. James Wright, GDC1069039, Coffee Correctional Facility, Post Office Box 650, Nicholls, Georgia 31554

Docket Number: Style: James Wright 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. No Certificate of Service accompanied your document(s). Rule 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.
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)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
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

(140A)

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS

9/1/15

To: James Wright

Docket Number: A15D0486

Style: James Wright 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.**
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15. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rules 1(c), 30 (e) and 31 (c)
16. 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).

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

IN THE COURT OF APPEALS
STATE OF GEORGIA

JAMES WRIGHT

v.

CASE NO. A15D0486

STATE OF GEORGIA.

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APPELLANT'S BRIEF

JAMES WRIGHT
GDC-1069039
COFFEE CORRECTIONAL FACILITY
P.O. BOX 650
NICHOLLS, GA. 31554

ADAM KING
ASSISTANCE DISTRICT ATTORNEY
AUGUSTA JUDICIAL CIRCUIT
551 GREEN STREET
AUGUSTA, GA. 30901

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Part One-Proceedings Below

Statement Of Facts

On 9-24-2008, James Wright, the appellant entered a guilty plea in the Superior Court of Burke County, State of Georgia, to three counts of Child Molestation. The appellant was 20 years. At the beginning of the hearing trial Judge ask the defendant what was the last grade he'd completed in school. The appellant stated that he'd gone to the twelfth grade through Special education see Plea HEARING Transcript Page 4. (19-22). At the mention of special education, Defendant's trial counsel submitted a letter presented into evidence stating that the appellant could only read and comprehend on a third grade level and that he'd attended Special Educational Classes through out schooling. see PHT.P.5 (1-9), and asking trial Court for help.

At the beginning of the Hearing appellant competency became serious issue for which nearly the whole hearing was based. Thus it was brought strangly to the trial court attention that a serious, if not, a potential competence issue was before the court and the appellant evidence of illiteracy problem, Counsel's testimony was more proof that there was an issue by stating that he and other had tried to explain to the appellant the crime he was charged with and the proceedings before him was clear indication that there was a potential incompetency that needed to be properly addressed. Yet, The record shows that though court was made known of the appellant's potential incompetence, Court did not stop the hearing to conduct any test, sua sponte or adequate colloquy for competency hearing, call experts (Psychiatric and Psychological) to evaluate the appellant to satisfy the Court that the appellant was competent to intelligently make a plea.

The record does not show that trial court or trial counsel for the appellant established that he was advised of his rights against self incrimination at the time appellant entered Plea. Nor does the record show that he was sufficiently made aware of the relevant circumstances and likely consequences of his Plea which includes the essential constitutional protection that the accused would enjoy if he instead insisted upon trial. At the plea hearing appellants mental competency was a critical issue and factor in his ability to understand the proceeding. Trial counsel's testimony that he and others (note: None Experts of Psychology or Psychiatry). Who also tried to explain and discussed many "Things" with the appellant, see PHT.P.5.(21-22) Nor was the two persons that counsel referred to was present at the plea hearing to testify to what counsel stated. Thus is hearsay entered by counsel, see PHT.P.5.(10-11).

Counsel was clearly aware that the appellant had attended education during his schooling. This alone show that there was actually a potential competence matter. Yet counsel neglected this, or rather delibererately ignored this fact, And his subjecting the appellant questioning before the Court was of the effect of subjecting the appellant to an adverserial challenge instead of the prosecution to protect counsel's own interest instead of the appellant, **See PHT.P.5. (1-22), PHT.P.6(1-3). It's clear** that counsel was a hostel prosecutor than a counsel for the defendant and appellant answers of "YES" was cleary out of fear and along with his illiteratacy.

The record shows that counsel was so intent on succuring his own defense the he did not object to any error of the court or prosecution who in hearsay statements base his case against the defendant with out prosenting those witnesses or their legal written statement, which violates the appellant due process rights to confrotation. Counsel objected to nothing, But subjected his on defendant to interrisation. **See PHT.P.5. Thru 6. P.7.(21), PHT.P.9.-P.10(4-7).** The record shows counsels self interest in this case and his determination to get the appellant to Plea, And his manager show antagonism for his own defendant.

*

The Statement Of Fact Above Are Here By Sworn
To Be A Production Of The Plea Hearing Transcript.

Part Two-Enumeration Of Error

Statement Of Jurisdiction

The Court of Appeals Of Georgia has proper Jurisdiction over this matter Pursuant to the provisions of **Article VI. Section VI. PARAGRAPH III** of the Georgia Constitution of 1983 O.C.G.A. **§. 5-6-34(a)**

Enumeration Of Errors

Enumeration Of Error One, Error of Ineffective Assistance Of Counsel.

Counsel failure to advise the appellant of the relevent circumstunces, of the likely consequences of his Guilty Plea

The manner of counsel's questioning of the appellant was as if he was talking to a child. And shows that counsel was clearly aware of appellants mental illiteracy because counsel surely know that the appellant attended special educational classes. Counsel still elected to neglect the appellants competence issue and constitutional right.

Appellant counsel did not establish that he understood when he entered Guilty Plea that if he insisted on trial he could not be compelled to testify as required a guilty plea to be knowing and intelligent. see *Lejeune McLaughlin*. 766 S.E.2d 803. 2014.

Testimony of counsel did not establish that defendant was advised of the right against self incrimination at time of entered Plea. see *Lejeune McLaughlin*.

For a plea to be "knowing and intelligent" the accused must have sufficient awareness of the relevant circumstances and likely consequences of his plea which includes the essential constitutional protection that the accused would enjoy if he instead insisted upon trial. see *Lejeune v. McLaughlin*.

In a guilty plea proceeding there must be affirmative evidence that a defendant's rights were conveyed to him, including the right against compulsory self incrimination would be waived by pleading guilty this is warranted because the waiver of constitutional rights that occurs when a plea of guilty is entered is so great that it demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences. see *Crutchfield v. Lawson* 754 S.E.2d 50 (GA. 2014); *Murrie v. Carrier* 277 U.S. 478, 496 (1986) see also *Fullwood v. State* 290 Ga. 335. 2012, *Smith v. State* 697 S.E.2d 177 (2010) 6th Amendment right to Due Process, and right to effective Counsel, *Vera v. State*, 329 Ga. App. 177, 764 S.E.2d 427(2014)

It is clear by the record that appellant competency was an issue. There is reasonable probability that had the appellant been made to clearly understand that should he go to trial, he'd have other options to prove his case such as a motion for New Trial and a "Direct Appeal" and other post-conviction remedies. It's clear by the record that the only option that was made clear and adequately advised to the appellant was the option to plead guilty by counsel. This shows deficient performance under *Strickland v. Washington*, 466 U.S. 668, 104 Sct 2052 (1984) see also *Florescu v. State* 623 S.E.2d 147 (2005)

These errors committed by counsel are Prejudicial and harmful and warrants reversal of the appellants Guilty Plea.

Enumeration of Error Two: Trial Court Error.

_____ Trial court erred and committed prejudicial and harmful error by failing to conduct a *sua sponte* hearing and or colloquy testing of the appellant whose mental deficiency and competency was made known to the court and was an actual and critical

Trial Court Error: Trial Court failure to prove subject matter jurisdiction. Trial Court failure to prove jurisdiction in this case violates Due Process. Thereby violating appellant Due Process rights tried in the correct jurisdiction in which crime was committed, And to know the nature of crimes by venue, failure of trial court to prove jurisdiction, and or, Venue in any case is error, but in a case that involves a mental competency issue is a critical error. That violates the accused fundamental rights to a fair trial. Thus this error warrants reversal of the appellants plea and or conviction.

Part Three-Argument and Citation of Authority

Enumeration of Error One: Ineffective Assistance of Counsel

Counsel's failure to advise the appellant of the relevant circumstances of the likely consequences of his Guilty Plea which include waiver of the essential constitutional protection that he would enjoy if he instead insisted upon trial, Such as the rights against compulsory self incrimination, His rights not to testify. His right to file motion for New Trial and a **"Direct Appeal"** should he be conviction. His right to withdraw his guilty plea (within the term of court), and other rights guaranteed. Show deficient Performance and violates appellants 6th Amendment and Due Process rights to effective assistance of counsel. And is prejudicial and harmful errors.

The appellant a Mental Deficient Defendant of Illiterate Manner was represented by counsel to which said counsel only coercive advice to the defendant was a plea of guilty, Which the appellant did so. **see P.H.T.->Plea Hearing Transcript.** The record reflect any instance where counsel adequately advise the appellant of his rights to go to trial and his constitutional right should he chose to do so. No where in the Plea Hearing Transcript does it show that trial counsel advised him of his right against compulsory self-incrimination, that he did not have to Plea Guilty and that he had a constitutional right to trial. That he could chose not to testify on the stand, There absolutely no mention what so ever of the appellant being advised of his appellate right advised to him by counsel. Or an adequate showing that he even knew or understood that such constitution right to a **"Direct Appeal"** existed. Not even the mention of a possible filing of a motion for a New Trial. **see entire Plea Transcript.** Counsel's sole testimony was of the effect of subjecting the appellant to an adversarial challenge instead of the prosecution, Counsel's interrogative questioning of the appellant clearly shows counsel's presentment of mitigating evidence of defense was of the counsel's own interest. **see P.H.T. Page 5(10-22) P.6.(11),P.7(21),P.9(12-22) P.10(5-7),P.16(16).**

he did , he did not have to testify as required a guilty plea to be knowing and intelligent. The record does not show that trial court or counsel established that appellant advise of his rights against self incrimination at the time he entered plea. There's nothing in records that reflects he was sufficiently made aware of the relevant circumstances and likely consequences of his plea which includes the essential constitutional protection that the accused would enjoy if he instead insisted upon trial. Thus these errors were prejudicial and amounts to harmful errors that warrants reversal of the appellants guilty plea and or conviction.

Enumeration of Error Three: Ineffective Assistance of Counsel.

Trial counsel's representation of the defendant whose mental deficiency of incompetency was a critical issue upon his guilty plea fall far below the constitutional 6th Amendment Due Process standards of reasonable representation of trial counsel by counsel's errors and shows deficient performance by counsel's failure to (1) Request a sua sponte competency hearing to evaluate appellant's competence to knowingly and intelligently enter guilty plea. (2) Object to the court's failure to properly subject the appellant to a proper colloquy testing of appellants competency to enter plea. (3) Failure to investigate properly and submit physical and expert evidence of legal psychiatric and or, psychological evaluation and special educational records, shows deficient performance by counsel that prejudiced the appellant and is harmful errors which caused the appellant to be detached and to suffer mentally physically by such error, and deprive him of his 6th Amendment and Due Process right to counsel, wherefore his Guilty Plea must be reversed.

The record show that counsel was clearly aware that appellant had an issue of competency. see Plea Hearing Transcripts (P.H.T.) Page 4. (19-22) and P.H.T. P. 8 (1-9). Even the constant questioning of appellant by his own counsel, which subjected the appellant to an adversarial challenge instead of the prosecution. see PHT. P. 5. P.6 P.7(21), P9, P10(4-7), is proof on record that counsel manner and questioning is evidence that him self was clearly aware that had a competence problem, Yet counsel ignore and evaded the appellant constitution rights not to be tried will incompetent and his constitution rights granted to incompetent defendant to be represented by effective assistance of counsel, see *Lejaune v. McLaughlin* 766 S.E.2d 803, 2014, *Fullwood v. State* 290. 335(2012), *Smith v. State* 697 S.E.2d 177 (2010) 6th Amendment rights to Due Process and Counsel,

"The right to effective assistance of counsel may in a particular case be violated by even an isolated error of counsel in that error is sufficiently egregious and prejudicial" *Murrie v. Carrier* 277 U.S. 478, 496 (1986)

issue in the plea hearing. Thus allowing him to plea guilty before properly establishing for the record that he was competent and intelligent to make such a plea violating his constitutional rights to fundamental fairness and his constitutional rights guarantying protection to mentally incompetent defendants. Which constitutes prejudicial and harmful error. Causing the appellant to be detained and to suffer mentally and physically by such errors and deprives him of his rights against a miscarriage of justice. Plain error, partial justice and 5th to 14th Amendment rights as guaranteed. see, *Boykin v. Alabama* 395 U.S. 238, 89 Sct, 1709 (1969)

An accused has a constitutional right not to be tried while incompetent. see *Huzzie v. State*, 512 S.E.2d 5 (1999), *Gay v. State*, 505 S.E.2d 29 (1998), *Vera v. State* 329 Ga.App. 177, 764 S.E.2d 427 (2014) Where a defendant's competence is challenged by defense, or appears to be in question at the time of trial. The constitution of the the United States requires that his or her competence be determined, O.C.G.A. 17-7-130 see also *Tyner v. State* 714 S.E.2d 577 (2011) see *Boykin v. Alabama*

Even where there is no special plea of incompetence to stand trial is filed, and when a question about a defendant's competence is raised, the trial court must hold an adequate hearing on the issue. see *Wadley v. State* 295 Ga.App. 556, 672 S.E.2d 504(2009), *Flanagan v. State* 480 S.E.2d 299.

The states burden must be met by showing on the record that the defendant was aware of his rights and that he waives those right, or by using extrinsic evidence that shows affirmatively that the defendant entered the Plea knowingly and voluntarily. *Bazemore v. State* 535 S.E.2d 760(2000) quoted in *Lejune v. McLaughlin* 766 S.E.2d 803(2014) Uniform Rule 33.9 requires the court to subjectively satisfy it's on the record the defendant understand rights.

There's no mention in the plea hearing transcript of the trial court giving the appellant any instruction of his Boykin rights, His right to a direct appeal. His rights not to testify. His right against self-incrimination. And certainly not a mention or reflection of a *sua sponte competency hearing*. or adequate advisement of other right.

Plain Error is error that is clearly and obvious and affect the defendant substantial rights. An error is a deviation from legal rules. see *Iglesias* 535 F.3d 150,155(2008), *Battle v. Chapman*, 506 S.E.2d 838 (1998), *Codinez v. Moran*, 509 U.S. 389(1993) *Boykin v. Alabama*

The record in this case does not show that though court was made known of the appellants potential incompetency trial court did not stop the plea hearing any testing, (sua sponte, and or, colloquy) of the appellant, call any expert (psychiatric and or psychological) to evaluate the appellant to satisfy the court that he was competent to intelligently make a competent Plea. There's nothing in the record that court established that

which includes waiver of the essentials constitutional Protection that he would enjoy if he innstead insisted upon trial. Such as his right, (1) Against compulsory self-incrimination. (2) His rights not to tesify. (3) His right to file motion for New Trial and a "Direct Appeal" should ge be convicted. (4) His right to Withdraw his Guilty Plea (with in the term of Court), And other guaranteed Constitutional Rights, Shows defecient Proformance and violates appellants 6th Amendment and Due Process Rights to effective assistance of counsel. Thus committing Prejudicial and harmfus error causing the appellant to be detained and suffer mentally and physically by such errors.

Enumeration of Error Two: Trial Court Error.

Trial Court committed prejudicial and harmful error by failing to conduct a **sua sponte competency hearing**, and on **Proper Colloquy Testing of the Appellant** whoes mental deficient and competency was made known to the Court asn was a critical issue in the plea. Thus allowing the appellant to plea Guilty before properly establishing for the record that the appellant was competent and intelligent enough to make such a plea. violating the appellants Constitutional Due Process Rights to fundamental fairness and his Constitutional Right guarantying protection to mentally incompetent defendants. Which constitutes prejudicial and substantial harmful error causing the appellant to be detained and suffer mentally and physical harm by such error and deprives him of his right againt a miscarriage of justice, plain error, partial justice and 5th to 14th Amendment Rights as guaranteed. Wherefore the Guilty Plea must be reversed.

Enumeration of Error Three: Ineffective assistance of Counsel.

Trial counsel's repersentation of the defendant whoes mental deficiency was a critical issue upon his Plea of Guilty fail for below the Constitutional 6th Maendment Due Process Standards of resonable representation of trial counsel. And show deficient proformance that deprived the of his guarntee'd 6th Amendment and Due Process Rights to effective assistance of counsel by counsel's failure to (1) Request a **sua sponte comptency hearing** to evaluate appellants competency to knowingly and intellingently enter Guilty Plea, (2) Object to the Court's failure to properly subject the appellant to a proper colloquy testing of appellant's competency to enter plea, (3) Failure to investigate properly and submit physical and expert evidence of legal phychiatric, and or , psycological evaluation and special educational records, shows deficient proformance by counsel that prejudiced the appellant and is harmful error which caused the appellant to be detained and to suffer mentally physically by such error, wherefore the Guilty Plea must be reversed.

Wherefore this error of the appellants counsel is clear error that prejudiced the appellant and is harmful error that warrants reversal of his guilty and or conviction.

Enumeration of Error Four: Trial court failure to prove subject matter jurisdiction and or venue in this case violates due process. Thereby violating appellant Due Process rights to be tried in the correct jurisdiction in which crime was committed. And to know the nature of crimes by venue. Failure of trial court to prove jurisdiction and or venue in any case is error. But in a case that involves a mental competency issue is a critical error that violates the accused fundamental rights to a fair trial. Thus this error warrants reversal of appellants plea, and or, conviction.

Viewing the plea hearing transcripts, There is not facts stated by trial court Judge that establishes jurisdiction that the appellant was being actually tried in the correct county for which the crimes he is accused of was committed. Trial court who was aware that there was a potential competence issue did not attempt to see if the appellant understood what jurisdiction meant. The matter of jurisdiction is a critical matter and had to be proven. Nor was venue proven in this case and was also since the prosecution's own testimony that the crime took place in two different counties (**Screven County and Burke County**) see **Plea Hearing Transcripts Page. 11(lines 13-14)**. Yet , the record statements by either trial court or prosecution establishing venue or jurisdiction of the correct county or crime the accused was being tried, And to allow the appellant to make a plea without proving jurisdiction or venue was a serious error. And miscarriage of justice, And violates Due Process. **Crutchfield v. Lawson 754 S.E.2d 50(2014)** **U.S. v. Cotton 535 U.S. 625 (2002)**

Federal, and state constitution "The accused has the right (1) "To be informed of the nature and cause of the accusation" (that is, the basis on which he is accused of a crime) (2) To be "Held to answer for trial in the state and district wherein the crime shall have been committed, see **Hurtado v. California U.S.Ct 111(1984)** The United States Supreme Court held that these protections apply to State Court Prosecutions, in **re Winship 90 Sct 1068 (1976)**

In this case, The appellant, has a constitutional right to know these facts before any pleading or trial hearing and the State Court for which the appellant entered the plea did not prove subject matter jurisdiction, Nor does the record show that venue was proven since the prosecution won't mention of two counties for which two different time frames and presented no proof of which crime the defendant was pleading to , and further in error since the court was made know of a competence issue, Thus violating the appellants Due Process rights. warranting reversal of the Guilty Plea and conviction.

Conclusion

For the aforementioned reasons, Appellant in this appeal, James Wright, pray and respectfully request that this honorable Court vacate the Plea and Conviction.

Respectfully submitted this 13th day
of August (2015)



Linda Faye Walker

Appellant _____

Pro-se. James Wright _____

G-DC 1069039 _____

THIS FORM IS TO BE COMPLETED ONLY BY AN AUTHORIZED INDIVIDUAL AT THE INSTITUTION WHERE THE INMATE PLAINTIFF IS PRESENTLY INCARCERATED, OR HIS/HER DESIGNEE.

CERTIFICATION

I hereby certify that the Plaintiff herein, _____
as an average monthly balance for the last twelve (12) months of \$ 113.92 on account at
re: CCF

_____ institution where confined. (If not
confined for a full twelve (12) months, specify the number of months confined. Then compute the average monthly
balance on that number of months.)

I further certify that Plaintiff likewise has the following securities according to the records of said
institution: 10.00 sawing non-spendable

M. Steed _____ 8/6/15
Authorized Officer of Institution Date

NOTE: Please attach a copy of the prisoner's inmate account of the last 12 months or the period of incarceration, whichever is less.

prison accounts):

G Yes G No ✓

If the answer is "Yes", state the total value of the items owned : _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? G Yes G No ✓

If the answer is "Yes", describe the property and state its approximate value :

5. List the persons who are dependent upon you for financial support, state your relationship to those persons, and indicate how you contribute toward their support : _____

Three children I'm incarcerated at this time

understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury and that state law provides as follows:

- a. A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue on point in question.
- b. A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000 or by imprisonment for not less than one nor more than ten years, or both. O.C.G.A. §16-10-70.

Jamarc Wright
Signature of Petitioner

8-3-15
Date

VERIFICATION

I, the plaintiff in this action and know the content of the above Request to Proceed in Forma Pauperis. I verify the answers I have given are true of my own knowledge, except as to those matters that are stated in it on my information and belief, and as to those matters I believe them to be true. I have read the perjury statute set out here and am aware of the penalties for giving any false information on this form.

Jamarc Wright
Signature of Affiant Petitioner

8/13/15
Date

I, _____, do hereby certify that I am a Notary Public for the State of Georgia and have administered the foregoing Oath to and subscribed before me this _____ day of _____, 2015.
Linda Faye Walker
Public or Other Person Authorized to Administer Oaths

