



Court of Appeals of Georgia

December 8, 2015

TO: Mr. Xavier White, GDC1253499, Georgia State Prison, 2164 Georgia Highway 147, Reidsville, Georgia 30499

RE: **Motion for Out-of-Time Appeal**

MOTION FOR OUT-OF-TIME APPEAL - RETURN OF MOTION

- 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.**

COURT OF APPEALS OF THE STATE OF GEORGIA

2015 DEC - 8 AM 10:57

COURT OF APPEALS OF GA

STATE OF GEORGIA

CASE NUMBERS

VS.

A16A0444; 12SC110501; 12SC110502;

XAVIER WHITE

13 SC 122385

MOTION FOR OUT-OF-TIME APPEAL

COMES NOW, THE ABOVE NAMED DEFENDANT AND MOVES THIS COURT TO GRANT HIM AN OUT-OF-TIME APPEAL ON THE FOLLOWING GROUNDS:

1. "A CRIMINAL DEFENDANT WHO HAS LOST HIS RIGHT TO APPEAL LATE REVIEW OF HIS CONVICTION DUE TO ERROR OF COUNSEL IS ENTITLED TO AN OUT-OF-TIME APPEAL." ROWLAND V. STATE, 264 GA. 872, 452 S.E. 2D 756 (1995); SEE: WALSH V. STATE, 302 GA. APP. 461, 691 S.E. 2D 320 (2010).

2. ON NOVEMBER 5, 2013, DEFENDANT PLED GUILTY TO 3 COUNTS OF ARMED ROBBERY, 2 COUNTS OF BURGLARY, 2 COUNTS OF POSSESSION OF A FIREARM BY A CONVICTED FELON, 2 COUNTS OF POSSESSION OF A FIREARM DURING COMMISSION OF A CRIME, POSSESSION OF MARIJUANA, CRUELTY TO CHILDREN 3RD DEGREE, CRIMINAL DAMAGE 2ND DEGREE, AGGRAVATED BATTERY, AGGRAVATED ASSAULT, AND POSSESSION KNIFE DURING CRIME AND WAS SENTENCED TO 20 YEARS TO SERVE

3. DEFENDANT HAS NEVER AFFIRMATIVELY WAIVED HIS RIGHT TO APPEAL NOR HAS HE PERFORMED ANY ACT WHICH CAN BE CONSTRUED AS A WAIVER.

4. THE ISSUES THAT DEFENDANT WOULD RAISE ON APPEAL WOULD BE CLEAR AND CAN BE FOUND ON THE RECORD OF THE CASE.

5. THE FAILURE TO FILE AN TIMELY APPEAL IS NOT THE DEFENDANTS OWN FAULT AS HE ADVISED COUNSEL OF HIS DESIRE TO APPEAL AND REQUESTED THAT COUNSEL FILE A TIMELY APPEAL. DEFENDANT SHOULD NOT BE HELD ACCOUNTABLE FOR COUNSELS FAILURE TO FILE A TIMELY NOTICE OF APPEAL.

6. A HEARING WOULD BE PROPER TO DETERMINE DEFENDANTS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. STRICTLAND V. WASHINGTON, 466 U.S. 668 (1984); ROE V. FLORES-ORTEGA, 528 U.S. 470, 120 S. CT. 1029 (2006) (COUNSELS FAILURE TO FILE NOTICE OF APPEAL WITHOUT THE DEFENDANTS CONSENT, CONSTITUTES DEFICIENT PERFORMANCE)

WHEREFORE, DEFENDANT PRAYS THIS HONORABLE COURT SET THIS MATTER DOWN FOR HEARING AND GRANT HIS MOTION FOR OUT-OF-TIME APPEAL.

THIS HE WILL EVER PRAY.

RESPECTFULLY SUBMITTED THIS 3 DAY OF DECEMBER, 2015

XAVIER WHITE GDC#1253499

Xavier White

GEORGIA STATE PRISON

2164 GA HWY 147

REIDSVILLE, GA 30499

DECLARATION UNDER PENALTY OF PERJURY

Under penalty of perjury, I declare, verify, affirm, and state that all statements I have made in the within and foregoing document and its attachment/s are true and correct to the best of my belief based on the information and knowledge I have at the time of making this declaration. 28 U.S.C. 1746. O.C.G.A. 9-10-110: 9-10-111.

Date : 12/3/15

XAVIER WHITE GDC#1253499
Declarant

CERTIFICATE OF SERVICE

Under penalty of perjury, I certify, verify, affirm, and state that I have mailed a copy of the within and foregoing document and its attachment/s, today, through the internal mail system of the prison and/or via United States Postal Service, adequate first-class postage affixed thereto, to cause its prompt delivery to the following:--

(1) COURT OF APPEALS OF GEORGIA

47 TRINITY AVENUE SUITE 501

ATLANTA, GA 30334

(2) _____

(3) _____

(4) _____

DATE: 12/3/15

Xavier White
Signature

Address : GEORGIA STATE PRISON

2164 GA HWY 147

REDSVILLE, GA 30449



Court of Appeals of Georgia

December 8, 2015

TO: Mr. Xavier White, GDC1253499, Georgia State Prison, 2164 Georgia Highway 147, Reidsville, Georgia 30499

RE: **Motion for Out-of-Time Appeal**

MOTION FOR OUT-OF-TIME APPEAL - RETURN OF MOTION

- 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.**