

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

September 14, 2015

To: Mr. Marrico J. Young, GDC1197949, Wilcox State Prison, Post Office Box 397, Abbeville, Georgia 31001

Docket Number: Style: Marrico J. Young 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:**

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IN THE COURT OF APPEALS
STATE OF GEORGIA

MARRICO J. YOUNG,
Petitioner,

VS.

THE STATE OF GEORGIA,
Respondent,

RECEIVED BY APPELL
2015 SEP -9 AM 11:32
LETTER
COURT OF APPEALS
STATE OF GEORGIA
CIVIL ACTION No. 2015-V-836

RE: LEAVE TO PROCEED, REQUEST

PREQUEST FOR LEAVE TO PROCEED

Comes Now, THE DEFENDANT, MARRICO J. YOUNG, PRO-SE, to the Honorable COURT OF APPEALS OF GEORGIA BY MOTION REQUESTING LEAVE TO PROCEED UNDER THE AUTHORITY OF O.C.G.A. § 5-6-35 BASED ON THE FOLLOWING:

On October 27th, 2004 the Defendant was convicted of four counts of Armed Robbery by way of guilty plea proceeding held by Honorable, A. Rahn III, Judge of LIBERTY COUNTY SUPERIOR COURT and was sentenced to serve fifteen years in confinement on September 12th, 2005.

It wasn't until December 10, 2012 that the Petitioner filed a Pro-se motion for Out-of-Time APPEAL in the Liberty County Superior court clerks office as required by statute in exhaustion of State remedy.

The trial court failed to respond to the motion, which this inclined the Petitioner to file for Writ of Mandamus on August 11, 2015.

On August 26th, 2015 the Petitioner received an Order Denying the civil action by Honorable, DAVID L. CAVENDER, Judge of Superior

Court in Liberty County.

The Petitioner asserts that the trial court abused its discretion and powers in the Order Denying the Petitioner's motion for Out-of-Time Appeal, and that the Court failed to consider the evidence or merits within the motion of the Out-of-Time appeal. Furthermore, the Order of the ~~Denial~~ Denial does not enumerate any significance of reason for denying the motion, rather it states:

The Court finds the pleading show on their face such an absence of any justiciable issue of law or fact that it cannot reasonably be believed that any court could grant relief against any party named in the proceeding.

The fact of the matter is the motion for out-of-time appeal were predicated upon violations ~~clearly~~ clearly established on the face of the record, to wit:

- A. Plain error by Trial Judge.
- B. VIOLATIONS UNDER BOYKIN.
- C. Ineffective Assistance of Counsel.
- D. Procedural errors in violations of the Constitution of this State and O.C.G.A. §

The Petitioner upon request for Leave to Proceed regarding these events asserts that the merits of appeal are within the following:

The Petitioner through this conviction had undergone two ~~separte~~ separate proceedings on two separate dates before the conviction was final.

For clarification purposes it should be noted that approximately a year had elapsed between the day of the entry of the guilty plea and the day of the sentencing.

The guilty plea proceeding was held on October 27th 2004 before the Honorable, Charles P. Rose. The sentencing proceeding came a year later September 12, 2005 and was held before the Honorable, A. Rahn III.

During the guilty plea proceeding the following transpired.
(See page 6 lines 13-17 of the g/p transcript)

The COURT: Do you also understand that after we enter this plea today, if you get back and you decide you want to withdraw it, the Court's not so sure you can withdraw it after you do that. Do you understand that?

The DEFENDANT: No, Sir.
(Further on page 7 lines 3-6)

The COURT: then I don't want you to get down to the day before we have the sentencing and say you want to change your mind, you don't want to plea.

O.C.G.A. §17-7-93(b) requires that: an accused person has an absolute right to withdraw a plea of guilty and plead not guilty any time he wishes so long as the sentencing has not commenced. According to the case of, Welch v. State, 63 Ga. App. 277, 11 S.E. 2d 42 (1940) orally announcing sentencing ends that absolute right, a right not presumed to be limited or qualified as cited in the case of, Thompson v. State, 218 Ga. App. 444, 462 S.E. 2d 404 (1995)

We can see that the Court during the tendering of the plea makes a plain error on the face of the record by comparing O.C.G.A. §17-7-93(b), Welch v. State and Thompson v. State, because the Petitioner had been misinformed of his right to withdraw the guilty plea caused the Petitioner a sense of "hopelessness" and the Court failed to rescue himself after the error, and no other official of the Court attempted to correct or guard the Petitioner constitutional right to due process, not even the Petitioner's court appointed attorney who allowed the Court to pressure the Petitioner to plea make an objection to remind the Court that the Petitioner could have withdrawn his plea as a matter of right if the Petitioner was not going to be sentenced the same day of the entry of the plea.

See guilty plea transcript page 14 lines 1-3

The Court: "All right. We'll continue the sentencing until such time as we get the sentence investigation done."

The Petitioner asserts that this guilty plea was not voluntarily given rather it was the product of his ignorance of what his rights were, and of his fear of consequences of going to trial for which counsel admittedly was not prepared and of ineffectiveness, Colson v. Smith, 1970, 315 F. Supp. 179, affirmed 438 F. 2d 1075, and that the plea was unduly influenced by judges comment. Cherry v. State, 240 Ga. App. 41, 522 S.E. 2d 540 (1999).

Upon scrutiny of the guilty plea transcript, and in light of the motion for Out-of-Time Appeal - this Honorable Court may find that the Petitioner's trial counsel from moment of appearance as attorney of record did nothing meaningful to his case and should be scrutinized to the holdings cited in the case of, Heath v. State, 268 Ga. App. 235, 601 S.E. 2d 758 (2004) and that the Petitioner in light of the errors committed by the Court in violation of to the Constitution of this States right to due process should have been granted a hearing on claims of Boykin and ineffective assistance of counsel which bore responsibility of the appeal. Harrell v. State, 257 Ga. App. 525, 571 S.E. 2d 540 (2003)

The Petitioner asserts that the transcribed record of the guilty plea is silent from waiver of the fundamentally known Boykin right against compulsory self incrimination; And that there is discrepancy regarding fair waiver of the fundamentally known Boykin right to trial by jury.

Due to the negligence of the Petitioner's court appointed attorney, his rights were either impartially explained or erraneously accepted by the Court, and ultimately allowed a procedurally blind

Defendant to enter an unintelligent plea agreement. Boykin v. Alabama, 395 U.S. 238 (1969) O.C.G.A. § 17-7-93(b)

The Petitioner asserts that his court appointed attorney disappeared after the entry of the guilty plea and by sudden withdrawal left the Petitioner to fend for himself whenever the date of sentencing came forth.

Subsequently, the Petitioner was refused or denied by the sentencing judge to have a continuance at the request of counsel who explained to the Court that he had in fact never met the Defendant and need time to consult with him in order that he may proceed adequately. This counselor was unknown to the Petitioner, was appearing through unconsented actions, and no knowledge of the Petitioner's case. Sentencing judge cognizant of counselor not knowing anything about the Petitioner's case - did move to commence the sentencing with his reason being that the case had been on the calendar "long enough".

The Petitioner asserts that at the moment of denying continuance or time to consult with the Petitioner, and moving to commence the sentencing that he was denied "actual assistance of counsel" similarly to the sitting citing of the case, Cronic v. United States, 104 S. Ct. page 2039 (1984), Stano v. Dugger, 524 So. 2d 1018-19 (Fla. 1988)

Relief Requested

The Petitioner prays that this Honorable Court grants the 30 day window in which he may seek appeal by direct review, or grant relief by "time served" from the remaining three years left on his sentence.

Conclusion

Gathered in the totality of errors committed by the Court rather knowingly or unknowingly, the Petitioner has suffered losses due to the overall neglect of properly implementing the Constitutional right to due process and the condoning of the Trial Court appeasing its errors by denial of civil action will only result in manifest injustice.

The Petitioner prays that this Honorable Court considers the circumstances regarding the Petitioner seeking relief.

This the 2nd day of September, 2015

my commission expires: 10/29/2018

[Signature]
Notary Public, State of Ga.

Sworn and subscribed before me

This the 02 day of September, 2015

x [Signature]

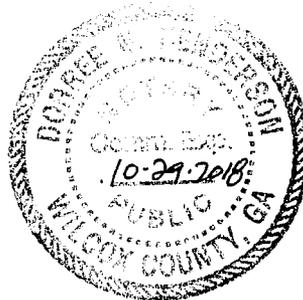
MARRICO J. YOUNG

GDC no. 1197949

Wilcox State Prison

P.O. Box 397

Abbeville, Ga. 31001



IN THE SUPERIOR COURT OF LIBERTY COUNTY

FILED--OFFICE OF CLERK
LIBERTY SUPERIOR STATE
JUV. & MAGISTRATE COURT

STATE OF GEORGIA

2015 AUG 21 PM 4: 39

MARRICO J. YOUNG,

Petitioner,

vs.

Civil Action No: 2015-V-836

CHARLES P. ROSE, JR.,
Judge, Liberty County Superior Court,

Respondent.

ORDER

Petitioner Marrico J. Young, an inmate incarcerated at Wilcox State Prison, has presented for filing a Writ of Mandamus against the Honorable Charles P. Rose, Jr.

In accordance with OCGA § 9-15-2(d), the Court finds the pleadings show on their face such an absence of any justiciable issue of law or fact that it cannot reasonably be believed that any court could grant any relief against any party named in the proceedings.

For the foregoing reason, the court **DENIES** the filing of Petitioner's civil action. The Clerk of Court is hereby directed to serve a copy of said Order upon the Petitioner.

SO ORDERED this 21st day of August, 2015.

David L. Cavender

DAVID L. CAVENDER
Judge, Superior Courts of Georgia
Atlantic Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have served the opposing party with a complete and accurate copy of the foregoing documents. Service was made by placing the same in an envelope, and with sufficient postage affixed, placed in the U.S. Mail, and on this day mailed to the party(s) as follows:

Honorable Clerk:
Court of Appeals of Georgia
47 Trinity Ave.
ATLANTA, GA. 30334

This the 2nd day of September, 2015

 PRO SE
MARRICO J. YOUNG GDC#1197949
Wilcox State Prison
P.O. Box 397
Abbeville, Ga. 31001