

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

June 9, 2015

To: Mr. Phillip Anthony Harwood, GDC1130009 G-2, Lee State Prison, 153 Pinewood Road, Leesburg, Georgia 31763

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 your name. I am returning your correspondence to you.**
- 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.
- 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.

CLERK OF SUPERIOR COURT
FULTON COUNTY
Cathelene Robinson

6-1-15

CASE FILE # 2015CV257058

5-28-15

To: Clerk of Superior Court,

ON- 5-11-15, I received documents of mine; Notice of Appeal
"motion to disregard court's order of; Feb. 2, 2015" but have not
received any notification that the following documents have been
forwarded to the "Court of Appeals".

- (1) Original, Inmate Form for civil action, Filed; 6-9-14-3rd Filing-11-5-2014
- (2) Judge Lane's order APRIL/MAY 21ST 2014, with cv number / w/out cv number
- (3) Presiding Judge's order- Jan/ Feb- and 2015
- (4) copy of 'notice' of Appeal filed APRIL 30th 2015 and brief

I have provided copies of (1) and (4), I don't have copies enough of (2) and
(4) to provide to the Court of Appeals, since mine was not returned from your
office.

I have asked the clerk of the Court of Appeals to please return
copies of filed. stamp filed with the C.O.A.'s case file stamped and
dated.

Thank you sincerely for your assistance in this matter.

Phillip Anthony Harwood

Phillip Anthony HARWOOD
1130009- Lee State Prison-G.2
153 Pinewood Rd.
Leesburg GA. 31763

Copy C.O.A.

I

Fulton Co. File #
Case File # 2015CV257058

To: Clerk of Appeals

RE: Phillip A. Harwood G-2
1130009-lee State Prison
153 Pinewood Road
Leesburg GA. 31763
5-28-15

"A" Please be advised and acknowledge that an appeal has been made in Fulton Co. Superior Court and received in your office titled: Notice of Appeal; motion to disregard Court's order of Feb. 2, 2015, and advise what the Superior Court clerk of Fulton Co. has provided to this honorable court for review.

"B" Please note; that this Plaintiff has received on 5-11-15 notice of his appeal notice being filed in the Superior Court of Fulton Co. on 4-30-15 to this court.

"C" Also note; that this appeal is due to the denial of an alleged presiding judge's order of Feb. 2, 2015, of which was not proper; no legitimate or legible signature on court's order, or typed name presented.

"D" The clerk of Superior Court, in Fulton Co., should have provided a copy of the; 6-9-14- NOV. 5TH 2014, MARCH 13, 2015 Notice of Appeal, Court's order of Feb. 2, 2015, to this honorable court of Appeals, please advise. Copy of March 13, 2015 notice of Appeal provided to clerk.

II

Please accept, file, attach the court appeals case number to my notice of appeal and brief and return my copy.

Thank you in advance.

Respectfully Yours

Phillip Anthony Harwood
113009- Lee State Prison
153 Pinewood Rd
Leesburg GA. 31763

BRIEF

Phillip Anthony HARWOOD
vs
Plaintiff

C.O.A.
Civil action number

BRUCE HARVEY, L. David Wolfe
Thomas M. West, Robert H. Citronberg
Paul Howard JR. Defendants

Comes Now, Phillip Anthony HARWOOD, To be hereby known as The "Plaintiff" in the above styled case and hereby presents his "BRIEF" in support of his civil action filed on Nov. 5th 2014 and to his notice of appeal filed 4-30-15.

Plaintiff presented to the clerk of Superior Court of Fulton Co., a "third" civil action filing on Nov. 5th 2014 with a "notice" that the clerk was to disregard the June 2014 filing and allow the Nov. 5th, 2014 filing as a amended filing. This was due to the clerk not providing any notice that the June filing was in fact filed.

On Jan/Feb. 2nd 2015, Plaintiff received an "unofficial" order of some presiding judge, denying the June 2014 civil action, stating that: Plaintiff had not presented any "Justiciable" law or facts.

As stated: First and foremost, this Plaintiff has asked, by right, to present these issues to a jury.

Plaintiff has supported the facts with case law and procedures that not only show that his constitutional rights, the 6th and 14th amendment has been violated, by his demand for speedy trial being denied him, by the court, state and his first set of attorneys Harvey and Wolfe, failure to protect these rights, but also, Plaintiff has shown that by the state not "Reindicting" according to: Dalton v State, 263 GA. 138, 429 SE2d 89, that the state's notice was never corrected nor properly invoked, thereby making this Plaintiff's plea of Feb. 12, 2003, null and void, according to: Santobello vs New York, 404 U.S. 257, 262, 92 S.Ct. 495, 499

Plaintiff has presented that, according to Mize v State, 1992, 262 GA. 489, 422 S.E.2d 180, that because the State failed to announce ready for trial at the Sep/Oct and Nov/Dec. terms of 1998 Demand for Trial, the term of Sep/Oct. skipped to the Jan/Feb term of 1999. Because the Demand for Trial was still valid, the State's attempt to rearraign to correct its procedural error and correct its notice of intent, failed according to Dalton Supra.

Even if it's ruled that, because the State's notice was not invoked during the terms, the State did not have to announce ready for trial, the fact remains that the State, his attorney's Harvey + Wolfe and the Court failed to protect his 6th and 14th Amendment rights.

As stated, because the State failed to properly correct its procedural error by "Reindicting" during the terms of the Speedy Trial demand, the State did not have a "bargaining" chip to offer for Plaintiff's guilty plea, thereby making his guilty plea of Feb. 12, 2008 Null and Void.

And by this fact, because attorney's Thomas M. West, and Robert H. Citronberg failed to present these issues before and after the guilty plea, these attorneys are ineffective, according to: Crawford v Thompson, 278 GA. 517, 603 S.E.2d 259, (2004) Sloan v Sanders 271 GA. 299, 519 S.E. 2d. 219

The trial court's order and the transcripts of Oct. 13, 1998, shows both and supporting facts that the State failed to acknowledge as well as his attorneys, that a demand for trial was filed.

Plaintiff has petitioned the clerk of Superior Court of Fulton Co. for the Dec. 1998 transcripts, which no doubt will show that no attorneys announced ready for trial, which shows ineffective assistance of counsel.

This court, in Feb. 23, 2010 and May 21st, 2012, ruled that because of a negotiated plea and the guilty plea, that this court affirmed the Superior Court's ruling in Fulton Co, denying his out-of-time appeal.

This court as well as the trial court, failed to address the issues that continue to be presented. First, the State's notice of intent was not only not corrected, but the State did not correct during the terms to if possible, toll the demand, but also failed to rearraign to correct its error, but failed to reindict, thereby never correcting its notice of intent. According to Dalton Supra, the State, because of the Demand

For Trial, WAS required to "Reindict" And have the Trial within The Terms. The Trial Court's use of Terry v State 257 GA. 473 Falls short due to the fact that Terry did not file a demand for Trial and this Court also fails to recognize that because the demand for Trial WAS filed "before" the State filed it's untimely notice, there is no law that allows the Tolling of a demand for Trial filed in this manner,

The Court of Appeals as well as the Trial court fails to note that a Demand for Trial WAS filed by Attorney HARVEY on Aug. 24, 1998, with a waiver of arraignment.

Even with the States Attempt to correct it's procedural error by the re-arraignment of Jan 29th 1999, the fact remains that the terms of demand for Trial WAS complete Dec. 1998. And because the records of Oct. - Dec. 1998 clearly show that attorneys HARVEY and Wolfe were in court but failed to announce ready for Trial shows ineffective assistance of counsel. Furthermore, because attorneys West and Citronberg failed to present there in his Acquit and Dismiss motion, SEE: Sloan vs Sanders and Crawford vs Thomson and on Appeal after his guilty plea, According to: ROE v Flores-Ortega 528 U.S. 470, 145 L. Ed 2d 985 (2000) Campusano v United States, 442 F.3d 110 [2d Cir. 2006] Evitts v Lucey 469 U.S. 387, 83 L. Ed 2d 821 (1985)

According to: Houston v Lockhart 982 F.2d 1246 [8th Cir. 1993] the fact that none of Plaintiff's Attorneys presented that he passed a Polygraph that shows he did not commit the crime has yet to be presented, and shows ineffective assistance of all his Attorneys.

This Honorable Court has before it issues that are to be presented to a Jury. This Court can and should rule to the following issues, and upon it's ruling state that Plaintiff has presented justifiable grounds to proceed in his civil action.

First, can this court show that the State and his Attorneys HARVEY and Wolfe, did not conspire with the State to not announce ready for Trial and to willfully not inform the Court that a demand for Trial WAS valid and pending.

And, can this court show that the State's notice WAS corrected and that the State's notice WAS a valid bargaining chip in the Feb. 2003 Plea hearing where the State offered to dismiss it's notice for a guilty plea.

3rd. Can This Honorable Court conclude That Attorneys Thomas M. West and Robert H. Citronberg, were not ineffective for not showing in His Acquittal and dismiss motions filed Oct. 16, 2000, June 4, 2001, Sep. 21st 2001 and Feb. 1st 2002 and on Appeal after the guilty plea, These issues that this Plaintiff has again presented.

4th. Considering the Barker v Wingo, 407 U.S. 514 Factor analysis, upon the finding that the States notice was neither invoked nor tolled Demand for Trial, the prejudice prong has been met, with the four and one half years in the horrid conditions of the Fulton CO. Jail, from June 98, until Feb. 2003, with the anxiety and concern that the State was seeking the death penalty for a crime he did not commit. And that this issue was never addressed by His Attorneys, on Appeal or otherwise.

5th. If This Honorable Court can show that the State per Paul Howard was not deceptive and in violation of law and procedure by not informing the Court in Oct. 1998, that a demand for trial was filed and by so doing denying His 6th and 14th amendment right to a speedy trial and by this action, using a death penalty threat that was never properly invoked to obtain His guilty plea, let this Court so rule.

Conclusion

This Honorable Court has been presented with facts and laws supported by the records, that the State failed to perform its duties concerning the Demand for Trial, the Attorneys failed to protect Plaintiff's rights in the manners shown.

Whether the State did in fact invoke its notice of intent properly is only the issue concerning His guilty plea, but not the issue before this Court, concerning if His civil suit has merit to proceed due to His counsel being ineffective and how Paul Howard failed in His duties to insure that Plaintiff's Demand for Trial was met.

At some point in time, the issue of whether the State properly invoked its notice of intent and whether it had any tolling effect will be presented to the Courts for a ruling on. Now or later its up to this Court now.

CERTIFICATE OF SERVICE

I Phillip Anthony HARWOOD do hereby certify that I have presented to the clerk of the Court of Appeals his Brief and other noted documents in his "notice of Appeal, motion to disregard courts order of: Feb 2, 2015.

Court of Appeals
47 TRINITY AVE SW,
Suite 501
Atlanta, GA, 30334

By placing the same in the United States mail with sufficient postage.

This 28th day of MAY 2015

Phillip Anthony Harwood
PRO SE

1130009 Lee State Prison G.
153 Pinewood Rd.
Leesburg GA. 31763

To: Clerk of Appeals Court,

5-28-15

2015 CV 257058.

Please be advised that I am sending you a Brief to my Notice of Appeal, motion to disregard Court's order of Feb. 2, 2015 - And to the Nov. 5th 2014 Civil action that the Superior Court of Fulton Co. HAS yet to rule on, but, I asked that it be an amended motion to the 6-9-14 civil action filed, and to disregard the 6-9-14 filing - I would not be sending you all this, but I'm afraid to wait on the Fulton Co. Courts to send your office my filings.

Whew! can't help but smile, God is good!

Please if there's already been a filing by the clerk of Fulton Co. concerning C.V. 2015 CV 257058, please return everything but my Brief original which you can please file with my civil action of Nov. 5th 2014.

Thank you and God Bless you & your people,

Sincerely yours

Phillip Anthony Harwood
Phillip Anthony Harwood
1130009- Lee State Prison - G-2
153 Pinewood Rd.
Leesburg GA. 31763

JMS 488-2 12:53

Clerk of Appeals Court