



**Court of Appeals of Georgia**

December 22, 2015

TO: Mr. Alexis Velez-Caliz, GDC1000800024, Central State Prison, 4600 Fulton Mill Road, Macon, Georgia 31208

RE: **A16A0069. Alexis Velez-Caliz 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 dismissed on September 25, 2015. The remittitur issued on December 22, 2015, divesting this Court of any further jurisdiction of your case. The case is therefore, final.**

**An Application for Writ of Mandamus is 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. The mailing address for the Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.**

**CASE STATUS - PENDING**

- The above referenced appeal is pending in your name before this Court. The appeal was docketed in the \_\_\_\_\_ Term and a decision must be rendered by the Court by the end of the \_\_\_\_\_ Term which ends on or around \_\_\_\_\_.

**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.

RECEIVED IN OFFICE  
2016 DEC 21 PM 3:39  
CLERK/CLERK ASSISTANT  
COURT OF APPEALS OF GA

IN THE COURT OF APPEALS  
STATE OF GEORGIA

VELEZ-CALIZ, ALEXIS, PROSE. Civ. Action # \_\_\_\_\_  
PETITIONER

VS. CASE NO. A16A0069

STATE OF GEORGIA  
RESPONDENT

PETITION FOR WRIT OF MANDAMUS

COMES NOW ALEXIS VELEZ-CALIZ, PETITIONER  
IN THE ABOVE STYLED CASE, AND FILES THIS  
PETITION FOR MANDAMUS AND MANDAMUS RULE  
NISI, THIS THE 17 DAY OF DECEMBER, 2015,  
AND FURTHER COMES TO SHOW THE FOLLOWING  
TO WIT;

1.  
RESPONDENT(S) ARE EMPLOYED BY THE STATE  
OF GEORGIA IN THE OFFICIAL CAPACITY OF CLERK  
OF THE COURT OF APPEALS, AND AS SUCH ARE  
SUBJECT TO THE JURISDICTION OF THE COURT.

II.

PETITIONER is ALEXIS VELEZ-CALIZ, AN INMATE CURRENTLY IN THE CUSTODY OF THE GEORGIA DEPARTMENT OF CORRECTIONS, HOUSED AT CENTRAL STATE PRISON, 4600 FULTON MILL RD., MACON, GEORGIA 31208. THE PROPER MAILING ADDRESSED LISTED BELOW.

III.

PETITIONER STATES A CLAIM AS FOLLOWS:

ON SEPTEMBER 24, 2015, APPELLANT CASE NO. A16A0069, RECEIVED CORRESPONDENCE FROM THE COURT OF APPEALS OF GEORGIA, WITH SAID CORRESPONDENCE STATING THAT, "THE HONORABLE STEPHEN LOUIS A. DILLARD, JUDGE OF THE 2016 FIFTH DIVISION OF THE COURT OF APPEALS OF GEORGIA, IS HEREBY ASSIGNED TO THE 2016 SECOND DIVISION OF THE COURT OF APPEALS OF GEORGIA, IN LIEU OF NEW JUDGE,

WHO HAS NOT YET BEEN APPOINTED BY THE GOVERNOR TO THE COURT OF APPEALS TO DECIDE THE ABOVE APPEAL. THE ABOVE APPEAL WAS DOCKETED AS A JANUARY 2016 TERM CASE IN THIS COURT AND SHALL BE DISPOSED OF BY THE COURT ON OR BEFORE THE CONCLUSION OF THE APRIL 2016 TERM".

Then again on September 25, 2015;  
It had happened again, The Court of Appeals  
of Georgia, Dismissed Appellants Appeal for  
Lack of jurisdiction.

Upon review of this order, Appellant  
was led to construe that first order  
to mean that Appellants case was going  
to be seen and heard by this new  
Judge the Governor is appointing to this  
case on or before the April 2016 term.

Petitioner does not understand how  
this could be done and is not clear  
on how this Honorable Court can allow  
such contradictions to happen.

Petitioner would like, also this  
Honorable Court to reconsider these orders  
and request this Court to take  
Judicial cognizance of this case and  
request for a manifest injustice review  
of this said Court, on this said case.

#### IV.

PETITIONER would like to Point-out. That he is NOT ATTACKING the punishment PART OF his SENTENCE, INSTEAD, PETITIONER is trying to show that this Honorable Court, that it misconstrued Appellant's "Motion to RENDER Indictments Void", AS A WAY, to HAVE his Judgment of CONVICTION VACATED; which is only PARTLY true.

PETITIONER intention was to get the TRIAL Court to VACATE OR SET-ASIDE those ERRONEOUS indictments and ONCE that's done, THE TRIAL Court will HAVE no other option but to dismiss the whole proceeding; which were solely BASED UPON those ERRONEOUS indictments.

Both indictments were FATALY FLAWED, THEREIN violating Appellant's due PROCESS and Equal PROTECTION OF the LAW Rights.

#### V.

PETITIONER'S claim violation in due PROCESS in violation of the 14<sup>th</sup> and 6 AMENDMENT Rights  
- SEE Motion to RENDER Indictments Void  
Filed on MAY 12, 2015 in CHEROKEE County

# SUPERIOR COURT.

VI.

## STATEMENT OF FACTS:

FACT: PETITIONER WAS INDICTED UNDER # 11CR0558 ON JUNE 13, 2011.

FACT: UNDER INDICTMENT # 11CR0558 ERRONEOUSLY IT STATES THAT PETITIONER COMMITTED SAID OFFENSES ON THE 20<sup>TH</sup> DAY OF APRIL, 2011.

FACT: PETITIONER WAS IN CHEROKEE COUNTY DETENTION CENTER FROM MAY 20, 2011 UNTIL JULY 05, 2012

FACT: UNDER 'INDEX OF PROCEEDINGS'. THE FIRST DAY OF TRIAL, IT HAS TWO CASE NUMBERS; CASE # 11CR0558, AND 12CR0166, THIS ON THE 27<sup>TH</sup> DAY OF FEBRUARY, 2012. SAME FOR THE 2<sup>ND</sup> DAY OF TRIAL, 28<sup>TH</sup> DAY FEBRUARY, 2012, AND THE 3<sup>RD</sup> DAY OF TRIAL, 29<sup>TH</sup> DAY OF FEBRUARY, 2012.

FACT: A PETITION FOR ENTRY OF NOLLE PROSEQUI UNDER O.C.G.A. § 17-8-3 WAS FILED ON APRIL 27, 2012, ON INDICTMENT # 11CR0558; OVER TWO MONTHS AFTER THE TRIAL; AND AFTER INDICTMENT NO. 12CR0166 WAS FILED.

FACT: In his order of April 27, 2012, The Judge stated that, "in the above styled case, which has not been submitted to a Jury..." which is an ERRONEOUS statement, since both indictments numbers were affixed on the face of the record.

FACT: Both indictments, 11CR0558, and 12CR0166 are clearly fatally flawed and therefore null and void under the clearly established laws of the State of Georgia.

FACT: The Trial Court and the prosecutor Mr. Wallace W. Rogers Jr., clearly abused their discretion by allowing such an erroneous chain of events to take place, therein prejudicing the entire case.

FACT: This second indictment was filed with the Clerk of Cherokee County Superior Court on the 14th day of February, 2012; Thirteen days before Petitioners first day of trial.

FACT: Only indictment # 12CR0166 was presented to the jury to deliberate on.

FACT: ON THE FACE OF THE RECORD, INDICTMENT # 12CRO166 WAS THE ONLY INDICTMENT THAT PETITIONER WAS SENTENCED UNDER.

FACT: THERE WAS NEVER AN AMENDMENT FILED ON EITHER INDICTMENTS, BUT THERE WAS DIFFERENT OFFENSES NAMED ON EACH INDICTMENT.

## VII. ARGUMENT AND CITATION OF LAW

PETITIONER HAD TWO INDICTMENTS, BOTH ACTIVE, AT THE TIME OF HIS TRIAL AND SENTENCING AND AFTER THE JURY HAD BEEN SWORN-IN. BOTH WERE SEVEN COUNT INDICTMENTS WITH DIFFERENT OFFENSES, PRESENTED TO DIFFERENT GRAND JURIES, WITHOUT A MOTION TO NOLLE PROSEQUI THE FIRST INDICTMENT, AND NO MOTION TO AMEND THE FIRST INDICTMENT. THEREIN VIOLATING APPELLANT'S RIGHT TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION CLAUSE.

"A GENERAL DEMURDER CHALLENGING THE VALIDITY OF INDICTMENTS MAY BE RAISED AT ANY TIME." FLEMING V. STATE, 623 S.E.2d 696 (2005).

" In 1981 The Georgia Legislature enacted a Bill which generally authorized The District Attorney to enter a Nolle Prosequi without the consent of the Trial Judge. However, The Bill was vetoed by the Governor. None of the Georgia cases seem to suggest any criteria to be considered by The Judge in determining whether or not to consent to the entry of a Nolle Prosequi. Rule 48(A) of the Federal Rules of Criminal Procedure provides that The United States Attorney may, "By leave of Court file a dismissal of an indictment". In United States v. Hamm, 659 F.2d. 624 (5th Cir. 1981), The Court concluded that The Trial Judge must grant The Motion to Dismiss...

" With the consent of the Court, The District Attorney may enter a Nolle Prosequi, or Nol Pros The case, before The Jury is sworn and after an examination of a case in open Court".  
-SEE, MARTIN V. STATE, 73 GA. App. 573, 575 (1).

" AFTER THE JURY IS SWORN, A NOLLE PROSEQUI MAY NOT BE ENTERED UNLESS THE DEFENDANT CONSENTS TO IT". SEE O.C.G.A. § 17-8-3; RHEAR V. STATE, 171 GA. APP. 435, 436, 319 S.E.2D 895 (1984).

PETITIONER WOULD LIKE TO POINT OUT AT THIS TIME THAT NONE OF THIS WAS DONE IN HIS CASE, EXCEPT THE FACT THAT THE PROSECUTOR, AFTER NINE MONTHS, NOTICED THAT THE PRESENT INDICTMENT WAS FATAALLY FLAWED AND COULD NOT PROCEED ALONE WITH THIS INDICTMENT. HOWEVER, WITHOUT NOTICE TO THE COURT, NOR NOTICE TO THE DEFENDANT, AND WITHOUT MOTION OR CONSENT OF THE COURT, THE PROSECUTOR TOOK IT UPON HIMSELF TO RE-INDICT APPELLANT WITHOUT AMENDING THE PRESENT INDICTMENT NO. 11CR055B, AND PRESENTING THESE SAME FACTS AND ACCUSATIONS TO GET THE GRAND JURY TO RE-INDICT AND ALTER THE FACTS AND OFFENSES TO BETTER FIT THE ACCUSATIONS OF THE FLAWED INDICTMENT AND GET A GENERAL BILL, INDICTMENT NO. 12CR0166.

"The Prosecuting Attorney must Notify The Defendant and The Defendant Attorney, either personally or by mail in writing, within thirty days of the entry of a Nolle Prosequi." SEE, O.C.G.A. § 17-8-3 and G.C.A. § 27-1B01.

"An indictment obtained without the dismissal of a prior indictment, is a superseding indictment." SEE, LAROCHELLE V. STATE, 219 GA. App. 792, 794, 466 SE.2d 672 (1996).

### Conclusion

As this Honorable Court can clearly see, both of these indictments are fatally flawed and procedurally erroneous, indictment # 11CR0558, and 12CR0166.

Therefore, they should be rendered Null and Void, making this Court REVERSE The Judgment of the lower Court.

## VIII.

### ENUMERATION OF ERRORS

ERROR # 1. : IN violation of this STATES STATUTORY LAW D.C.G.A. § 17-B-3, by NOT FIRST Nolle Prosequi indictment NO. 11CROSSB OR AMENDMENT OF SAME.

ERROR # 2. : ABUSE OF discretion by THE PROSECUTOR to OBTAIN AND PRESENT two FATALLY FLAWED indictment to the COURT AND to the JURY, ALSO IN violation of this STATES STATUTORY LAWS.

ERROR # 3. : INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; in that TRIAL COUNSEL FAILED TO MOVE THE COURT FOR A DISMISSAL OF BOTH indictments AFTER THE JURY WAS SWORN - IN.

ERROR # 4. : INEFFECTIVE ASSISTANCE OF Appellate Counsel; in that Appellate Counsel should HAVE INVESTIGATED FULLY THE PROCEEDINGS AND ATTACKED THE VALIDITY OF THE Indictments ON Appeal.

ERROR # 5. : ABUSE OF discretion by the TRIAL COURT to ALLOW two FATALLY FLAWED

INDICTMENTS TO BE HEARD IN OPEN COURT AND PRESENTED TO A JURY.

WHEREFORE, PETITIONER PRAYS THAT THIS HONORABLE COURT FIND IN HIS FAVOR AND REVERSE THE ERRONEOUS JUDGMENT OF THE LOWER COURT AND GRANT PETITIONER THE RIGHT TO FORMALLY APPEAL THE LOWER COURT'S CONVICTION, JUDGMENT, AND SENTENCE THAT WAS GARNERED BY AND FROM A FATAALLY FLAWED INDICTMENT THAT SHOULD HAVE BEEN PROCEDURALLY BARRED. SO PRAYS PETITIONER.

IX.

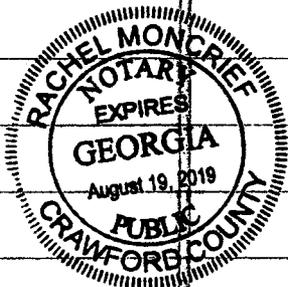
PETITIONER HAS CLEAR LEGAL RIGHT TO THE GRANT OF RELIEF SOUGHT, BUT HAS NO REMEDY OTHER THAN A PETITION FOR WRIT OF MANDAMUS TO OBTAIN SUCH RELIEF, AND IF PETITIONER IS NOT GRANTED RELIEF, HE WILL SUFFER DAMAGES.

X.

PETITIONER REQUEST THIS COURT TO ISSUE A MANDAMUS NISI ORDER, TO RESPONDANT, SO AS TO RESOLVE THE PENDING ISSUE

IN THIS COURT'S JURISDICTION. THAT THE RESPONDANT BE COMPELLED TO SHOW CAUSE NOT LESS THAN 10 (TEN) NOR MORE THAN 30 (THIRTY) DAYS AS TO WHY SAID MANDAMUS SHOULD NOT BE ISSUED.

Respectfully submitted this 17 DECEMBER, 2015



Rachel Moncrief  
12/17/15

Alexis Velez-Caliz  
ALEXIS VELEZ-CALIZ  
PETITIONER, PROSE

### CERTIFICATE OF SERVICE

Comes now Alexis VELEZ-CALIZ, PETITIONER, PROSE in the ABOVE styled PETITION FOR WRIT OF Mandamus, and hereby SWEAR that I HAVE this \_\_\_ day of DECEMBER, 2015 SERVED a TRUE and EXACT copy to the ATTORNEY GENERAL and the Clerk of the Court of Appeals of GEORGIA by placing SAME document in the UNITED STATES MAIL with sufficient POSTAGE THEREON to ASSURE its prompt DELIVERY, and THAT SAME is CORRECTLY ADDRESSED AS FOLLOWS:

- COURT OF APPEALS OF GEORGIA  
SUITE 501  
47 TRINITY AVENUE S.W.  
ATLANTA, GA 30334

- GEORGIA DEPARTMENT OF LAW  
40 CAPITOL SQUARE S.W.  
ATLANTA, GA 30334

Submitted this 17 day of December, 2015.

By: ALEXIS VELEZ-CALIZ  
GAC 1000800024  
C.S.P.  
4600 FULTON MILL RD.  
MACON, GA 31208

Alexis Velez Caliz  
PRO SE, PETITIONER