

26 July 2021



SUPREME COURT OF GEORGIA  
Case No. S21C0864

July 20, 2021

The Honorable Supreme Court met pursuant to  
adjournment.

The following order was passed.

DANIEL SPOTTSVILLE v. THE STATE.

The Supreme Court today denied the petition for certiorari  
in this case.

*Nahmias, C.J., Boggs, P.J., and Peterson, Warren, Bethel,  
and LaGrua, JJ., concur. Ellington and McMillian, JJ.,  
disqualified.*

Court of Appeals Case No. A21A0947.

- APPENDIX - A

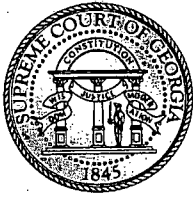
**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

  
, Clerk



SUPREME COURT OF GEORGIA  
Case No. S21C0864

26 Aug 2021  
August 24, 2021

The Honorable Supreme Court met pursuant to  
adjournment.

The following order was passed.

DANIEL SPOTTSVILLE v. THE STATE.

The motion for reconsideration having been filed late, it is  
hereby dismissed as untimely. Supreme Court Rule 27.

*All the Justices concur, except Ellington and McMillian, JJ.,  
disqualified, and Colvin, J., not participating.*

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the  
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

*Theresa A. Barnes*, Clerk

APPENDIX - B -

# Court of Appeals of the State of Georgia

ATLANTA, February 11, 2021

*The Court of Appeals hereby passes the following order:*

## **A21A0947. DANIEL SPOTTSVILLE v. THE STATE.**

In 1998, a jury found Daniel Spottsville guilty of two counts of child molestation and one count of aggravated assault, and we affirmed the denial of his motion for a new trial on appeal. See *Spottsville v. State*, No. A03A0007 (Feb. 4, 2003). In June 2020, Spottsville filed a motion for an out-of-time appeal, which the trial court denied. Spottsville then filed this direct appeal. We lack jurisdiction.

“An out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal.” *Kilgore v. State*, 325 Ga. App. 874, 875 (1) (756 SE2d 9) (2014) (punctuation omitted). Because Spottsville already has had a direct appeal, he is not entitled to an out-of-time appeal. See *Richards v. State*, 275 Ga. 190, 191 (563 SE2d 856) (2002) (“[T]here is no right to directly appeal the denial of a motion for out-of-time appeal filed by a criminal defendant whose conviction has been affirmed on direct appeal.”); *Jackson v. State*, 273 Ga. 320, 320 (540 SE2d 612) (2001) (a defendant “is not entitled to another bite at the apple by way of a second appeal”). Accordingly, this appeal is hereby DISMISSED. See *Richards*, 275 Ga. at 191-192.



*Court of Appeals of the State of Georgia*

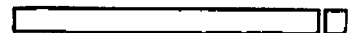
*Clerk's Office, Atlanta, 02/11/2021*

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Clerk Stephen E. Carlton*

APPENDIX-D -



IN THE SUPERIOR COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

v.

DANIEL A. SPOTTSVILLE,

Defendant.

:  
:  
:  
:  
:  
:  
:

Criminal Case No. SU-98-CR-1445

ORDER

This matter came before the Court on June 3, 2020, on defendant's *pro se* motion for out-of-time appeal and on defendant's affidavit of poverty. After a careful consideration of the filings, relevant law, and the entire record of the matter, the Court rules as follows:

In December 1998, defendant was convicted by a jury in Muscogee County, Georgia, of one count of aggravated assault and one count of child molestation. On December 9, 1998, the trial court sentenced defendant to twenty years' imprisonment on each count, with each sentence to run concurrently.

On May 6, 2002, the trial court denied defendant's motion for new trial.

On February 4, 2003, the Court of Appeals of Georgia affirmed the trial court.

A determination on direct appeal of a criminal judgment is ordinarily *res judicata*. *Ward v. State*, 299 Ga. App. 63, 64 (2009). In addition, particularly when addressing *pro se* filings, courts look to the substance of a motion, rather than the nomenclature of a motion. *Felder v. State*, 274 Ga. 870 (2002).

Here, defendant seeks an out-of-time appeal to challenge, for a second time, his prior conviction. Defendant is not entitled to a second attempt to challenge his prior conviction. *See Watts v. State*, 261 Ga. App. 29 (2003). The Court DENIES defendant's motion for out-of-time appeal.

-APPENDIX-E

22 Sep. 2020

su-98-cr-1445

GEORGIA, MUSCOGEE COUNTY  
SUPERIOR/STATE COURT  
eFILED  
9/17/2020 9:15 AM  
DANIELLE F. FORTE, CLERK



**RON MULLINS**  
JUDGE OF SUPERIOR COURTS

GOVERNMENT CENTER  
P.O. BOX 1340  
COLUMBUS, GEORGIA 31902-1340

TELEPHONE  
706/653-4277  
FACSIMILE  
706/225-4286

September 17, 2020

Mr. Daniel A. Spottsville  
G.D.C. No. 977050  
Johnson State Prison  
Post Office Box 344  
Wrightsville, Georgia 31096

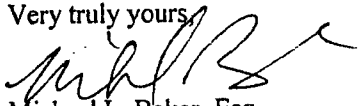
Re: State v. Daniel A. Spottsville  
Criminal Case No. SU-98-CR-1445  
Muscogee County Superior Court

Dear Mr. Spottsville,

I acknowledge receipt of your motion in arrest of judgment and motion to modify void sentence, filed June 3, 2020. I did not see a certificate of service showing service of your letter upon the State.

Under the Code of Judicial Conduct, a Judge may not consider *ex parte* communications (communications from one side of a controversy) or consider other communications made to him outside the presence of the parties regarding a pending matter. This rule against *ex parte* communications is one of the main ways that the law protects the impartiality of a Judge. It is your obligation to ensure that counsel for opposing parties are provided a copy of any written correspondence to the Court. Because your motion has already been filed with the Clerk's Office, Judge Mullins will not act upon it because it was filed *ex parte*.

Very truly yours,

  
Michael L. Baker, Esq.  
Law Clerk, The Honorable Ron Mullins  
Chattahoochee Judicial Circuit

cc: George E. Lipscomb, II, Esq.  
District Attorney's Office for the  
Chattahoochee Judicial Circuit  
Post Office Box 1340  
Columbus, Georgia 31901  
glipscomb@columbusga.org  
Assistant District Attorney

Ms. Danielle Forté  
Muscogee County Clerk of Superior Court  
Post Office Box 2145  
Columbus, Georgia 31902



**RON MULLINS**  
JUDGE OF SUPERIOR COURTS

GOVERNMENT CENTER  
P.O. BOX 1340  
COLUMBUS, GEORGIA 31902-1340

TELEPHONE  
706/653-4277  
FACSIMILE  
706/225-4286

September 18, 2020

Ms. Danielle Forté  
Muscogee County Clerk of Superior Court  
Post Office Box 2145  
Columbus, Georgia 31902

Re: State v. Daniel A. Spottsville  
Criminal Case No. SU-98-CR-1445  
Muscogee County Superior Court

Dear Ms. Forté,

Please file the enclosed order denying defendant's motion for out-of-time appeal and dismissing defendant's affidavit of poverty in the above referenced case.

By copy of this letter, I am providing the State with a copy of the order via Odyssey eFileGa and I am providing the defendant with a copy of the order via U.S. Mail.

Very truly yours,

Michael L. Baker, Esq.  
Law Clerk, The Honorable Ron Mullins  
Chattahoochee Judicial Circuit

Enclosure

cc: George E. Lipscomb, II, Esq. (enclosure)  
District Attorney's Office for the  
Chattahoochee Judicial Circuit  
Post Office Box 1340  
Columbus, Georgia 31901  
glipscomb@columbusga.org  
Assistant District Attorney

Mr. Daniel A. Spottsville (enclosure)  
G.D.C. No. 977050  
Johnson State Prison  
Post Office Box 344  
Wrightsville, Georgia 31096  
*Defendant Pro Se*

DEPARTMENT OF THE ARMY  
HEADQUARTERS, UNITED STATES INFANTRY CENTER  
FORT BENNING, GEORGIA 31905-5000

ORDERS 261-2200

18 September 2001

SPOTTSVILLE, DANIEL A [REDACTED] PV1 USA MEDDAC FT BENNING (W2L3AA) FT BENNING  
GA 31905

You are reassigned to the U.S. Army transition point shown for transition processing. After processing, you are discharged from the Component shown. If you are delayed in reporting to the transition point, you still must report to the transition point as soon as possible or as authorized to receive a new effective date of discharge.

Assigned to: US ARMY TRANSITION CENTER (WOU2NT) FORT BENNING GA 31905-5010

Reporting date: 19 September 2001

Component: RA

Date of discharge unless changed or rescinded: 19 September 2001

Additional instructions: a. Soldiers who reside in on-post family quarters are required to report to the Family Housing Office, Bldg 399, at least 30 days prior to their departure to schedule a pre-termination and termination appointment. b. You must personally clear your local Education Center, be counseled on VA Educational Benefits, and pick up DA Form 669 (Educational Development Record). c. You are required to undergo a physical exam prior to separation or have a completed FB Form 128 (Statement of Option for Medical Examination for Separation/Retirement) prior to your departure date. d. You are authorized movement of household goods. e. Government transportation authorized from Ft. Benning, GA to Home of Record or PLEAD. f. Report to Transition Point, Bldg. 2622, 2d floor, East Wing, by appointment, (TEL: 545-1162/1368). Bring your MED/DEN/EDUC Records to include ETS Physical, completed Installation Clearance DD Form 137, TCA Checklist, and, if applicable, Dependent ID Card(s). g. Official travel arrangements purchased through a travel agency not under contract to government is NOT reimbursable

FOR ARMY USE

Auth: AR 635-200

HOR: SACRAMENTO CA US

Place EAD or OAD: OAKLAND CA

MDC: 7BE1

Format: 501

FOR THE COMMANDER:

\*\*\*\*\*  
\* OFFICIAL \*  
\* FORT BENNING, GA \*  
\*\*\*\*\*

DISTRIBUTION:

PV1 SPOTTSVILLE (1)

Cdr USA MEDDAC FT BENNING (1)

TRANSITION PT (moh)

TOTAL: (2)

JAMES E. BRINSON  
ADJUTANT GENERAL

-APPENDIX - G  
□



3098 CR 1445-6

# AFFIDAVIT OF CUSTODIAN

(Judge Allen)

Georgia, Muscogee County

I, the undersigned custodian of the defendant do swear and affirm that the following information is true and correct to the best of my knowledge.

Daniel A. Spottsville

Name of Defendant

If defendant was confined in a hospital or other institution prior to date sentence was imposed please indicate date entered 7-19-97 and date released 9-23-98

If subject was released on bond or escaped, indicate date departed \_\_\_\_\_ and date returned 11-12-98

The defendant spent a total of 459 days in jail, Central State Hospital or other institution prior to date sentence was imposed.

NOTE: On probated sentences received after July 1, 1970, enter jail time prior to subjects release on probation.

COMMENTS: \_\_\_\_\_

SENTENCE DATE: 12-9-98

[Signature]  
Sworn to and subscribed before me this 14th day of Dec 19 98

My Commission Expires January 17, 1999

[Signature]  
(Custodian of Defendant)

Capt. Terri Ezell  
(Title)

Muscogee County Sheriff Dept.  
(Department)

Georgia, Muscogee County.

I, the undersigned (~~Clerk~~) (Deputy Clerk) of the Superior Court, in and for said county, do hereby certify that the above is a true and complete copy of affidavit of custodian, a part of the official record of the trial of said defendant, as appears of record and form the minutes of said court. Given under my official signature and the seal of the said court this 31 day of December 1998

[Signature]  
(~~Clerk~~) (Deputy Clerk)

(Seal)

**IMPORTANT:** The custodian of the defendant shall forward the original and one copy of this document to the Clerk of the Court. The Clerk of the Court shall retain the original and shall forward one (1) certified copy of this document to The Georgia Department of Corrections along with the sentence(s), commitment history, etc., in each case.

(Authority: Ga. L. 1956, pp.161, 171 as amended (Ga. code ann. sec. 77-309); Ga. L. 1970, pp. 692-693)