Court of Appeals
of the State of Georgia

ATLANTA, April 26, 2012

The Court of Appeals hereby passes the following order:

A12D0346. ROBERT AUTRUE DURHAM v. THE STATE.

Robert Autrue Durham seeks discretionary review of the trial court's February 16, 2012 order denying his motion to withdraw his guilty plea. Durham's application, however, was not filed in this Court until April 3, 2012, 47 days after entry of the trial court's order.[1] To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Accordingly, we lack jurisdiction to consider Durham's application, which is hereby DISMISSED.[2]

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[1] Durham attempted to file his application earlier, but it was returned to him because it did not contain a copy of the order to be appealed, in violation of OCGA § 5-6-35 (c).

[2] It appears that Durham filed his motion to withdraw his guilty plea outside the term of court in which the plea was entered. See *State v. Shields*, 265 Ga. App. 473 (594 SE2d 692) (2004) ("The terms of court for the State Court of Gwinnett County shall be as follows: first Mondays in January, March, May, July; second Monday in September; and first Monday in November."). If so, the trial court lacked jurisdiction to entertain or grant the motion, and Durham's only remedy for withdrawing the plea would be through a habeas corpus proceeding. See *Crane v. State*, 302 Ga. App. 422 (1) (691 SE2d 559) (2010).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 04/26/2012

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.

Holly K. O. Loarca , *Clerk.*