Court of Appeals
of the State of Georgia

ATLANTA, August 18, 2016

The Court of Appeals hereby passes the following order:

A16A1855. ROYLEE SMITH v. THE STATE.

Roylee Smith filed a notice of appeal from the trial court's order denying his motion to modify his sentence. However, we lack jurisdiction.

In construing pleadings, substance controls over nomenclature. See *Kuriatnyk v. Kuriatnyk*, 286 Ga. 589, 590 (690 SE2d 397) (2010). Here, although titled a "Motion for Modification of Sentences," Smith's motion alleged that the trial court improperly revoked his probation. Because the underlying subject matter of this appeal is the revocation of probation, Smith was required to file an application for discretionary appeal in order to obtain review in this Court. See OCGA § 5-6-35 (a) (5); *Jones v. State*, 322 Ga. App. 269 n. 2 (745 SE2d 1) (2013); *Zamora v. State*, 226 Ga. App. 105 (485 SE2d 214) (1997). His failure to do so deprives us of jurisdiction over this appeal, which is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 08/18/2016
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.

Stephen E. Castlen, *Clerk.*