

Court of Appeals of the State of Georgia

ATLANTA, September 01, 2026

The Court of Appeals hereby passes the following order:

A27D0102. PAUL BETTENCOURT v. THE STATE.

Paul Bettencourt was convicted of armed robbery, kidnapping and aggravated sodomy. After the denial of his motion for new trial, Bettencourt appealed and we affirmed his convictions. See *Rogers v. State*, 247 Ga. App. 219 (543 SE2d 81) (2000).¹ In June 2026, Bettencourt filed a motion to set aside his convictions for fraud pursuant to OCGA § 9-11-60(d). The trial court denied his motion on July 9, 2026, and Bettencourt filed the instant application August 26, 2026. We lack jurisdiction for two reasons.

First, Bettencourt's application is untimely. An application for discretionary appeal must be filed within 30 days of entry of the judgment or trial court order sought to be appealed. OCGA § 5-6-35(d). "The requirements of OCGA § 5-6-35 are jurisdictional and this [C]ourt cannot accept an appeal not made in compliance therewith." *Boyle v. State*, 190 Ga. App. 734, 734 (380 SE2d 57) (1989). See also *Gable v. State*, 290 Ga. 81, 82 (2) (a) (720 SE2d 170) (2011) (failure to meet the statutory deadline for filing a discretionary appeal is a jurisdictional defect). Bettencourt's application was filed 48 days after entry of the trial court's order.

Second, Bettencourt did not include the motion he filed below, in violation of Court of Appeals Rule 31(e). However, it appears from his application that he was attempting to challenge his convictions. It is well established that substance controls over nomenclature. See, e.g., *Giles v. State*, 257 Ga. App. 65, 69(2) (570 SE2d 375)

¹ Bettencourt was tried with two co-defendants.

(2002). A motion seeking to challenge an allegedly invalid or void judgment of conviction “is not one of the established procedures for challenging the validity of a judgment in a criminal case.” *Roberts v. State*, 286 Ga. 532, 532 (690 SE2d 150) (2010). Because Bettencourt is not authorized to collaterally attack his convictions in this manner, his application is subject to dismissal for this reason as well. See *id.*

For these reasons, we lack jurisdiction to consider this application, which is hereby DISMISSED.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 09/01/2026

*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.*

Christina Bailey Smith
_____, Clerk.