

Supreme Court of Georgia

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OPINION SUMMARIES

September 19, 2005

DOMESTIC RELATIONS

The Supreme Court has unanimously reversed a **Polk** County Superior Court judge in Bullard v. Swafford, S05A0722. Justice P. Harris Hines wrote for the Court.

Swafford sought to have his child support obligation terminated after his son failed to graduate from high school as expected. In this regard, Swafford “filed a ‘Motion for Declaratory Judgment or for Modification of Child Support’ seeking a declaration that the son was emancipated or that there was a material change in circumstances since the agreement because of his son’s alleged refusal to attend school and [Wife’s] alleged refusal to make him go.” The trial court “focused on the son’s absences, tardiness, and failure to attend summer school and concluded that the son was not a ‘continuous full time student’; consequently, it ruled that Swafford’s child support obligation terminated as of May 20, 2004, ‘when the 2003-04 school year ended and the [son] ceased attending school on a full time basis.’”

In reversing the trial court, Justice Hines notes that although “[i]t is undisputed that Swafford’s son’s class absences and tardiness were largely responsible for his failure to graduate from high school in May 2004,” it is also true that “[t]here is no evidence that the son voluntarily ‘dropped out’ of school or that he was suspended, expelled, or otherwise disqualified from attending school.” Additionally, “the plain language in the agreement shows that the parties clearly contemplated, for whatever reason, that it might take beyond their son’s eighteenth birthday for him to finish secondary school, and that the father’s support would continue until the son reached twenty should that be necessary.” As a result, because “[t]he aim of the support provision is to facilitate the child’s completion of secondary school,” [footnote omitted], the Supreme Court has held that “[t]he superior court’s ruling runs afoul of this Court’s precedent and defeats that important goal.”

Attorneys for Appellant: Richard J. Lundy; Charles E. Morris, Jr.
Attorneys for Appellee: Anthony N. Perrotta; Hannibal F. Heredia

In companion cases, Walker et al. v. Estate of Aldine Marcus et al., S05G0988 & S05A1383, the Supreme Court has affirmed both the Court of Appeals of Georgia and the ruling of a **Henry** County Superior Court judge.

Justice George H. Carley wrote for the Court.

The Court found that “[w]hen Judith Walker and Dr. Aldine Mays were divorced in 1975, the final decree approved and incorporated a settlement agreement which provided that he would maintain a life insurance policy naming her and the children of the marriage as the beneficiaries”; that “[t]he duration of his obligation to do so was ‘for as long as [the] Agreement is in force’”; and that “[w]hen Dr. Mays died in 2002, there was no life insurance policy in effect that named his ex-wife or their children as beneficiaries.” The trial court ultimately ruled that “that Dr. Mays’ obligation to insure his life was an award in the nature of periodic alimony and, as such, terminated upon Ms. Walker’s remarriage and the children reaching the age of majority.”

Attorney for Appellants: Wade M. Crumbley
Attorneys for Appellees: John E. Robinson; Gregory H. Blazer

ELECTION CONTEST

In a unanimous decision authored by Chief Justice Leah Ward Sears, the Supreme Court has reversed a **Carroll** County Superior Court judge in Burton-Callaway v. Carroll County Board of Elections, S05A0828.

At issue in this appeal is “the validity of a referendum, as mandated by House Bill 1795, which shortened Burton-Callaway’s term as a member of Carroll County’s Board of Education.”

The Supreme Court found that “the voters were not informed, either in the published legal notice concerning the referendum, or in the language of the referendum itself, that the terms of office for some of the current board members would be shortened.” As a result, the Court has reversed the trial court’s ruling and remanded the case to Carroll County “for proceedings consistent with this opinion.”

Attorney for Appellant: Gary P. Bunch
Attorneys for Appellee: David A. Basil; Robert F. Dangle

INDEMNIFICATION/THIRD-PARTY CLAIMS

The Supreme Court has declined to answer five questions certified to it by the **United States District Court for the Southern District of Georgia** in CSX Transportation, Inc., et al. v. City of Garden City, S05Q1165, because “such questions address matters which have either been decided by this Court in CSX IV, [footnote omitted] are advisory or anticipatory in nature, [footnote omitted] or appear to involve determinations properly made under federal practice and procedure.”

Justice P. Harris Hines wrote the Court’s unanimous decision.

Attorneys for Appellants: James W. Purcell; L. Dean Best
Attorneys for Appellees: James P. Gerard; Patrick T. O’Connor

INEFFECTIVE ASSISTANCE OF COUNSEL

In a unanimous decision authored by Justice Robert Benham, the Supreme Court has reversed a **Lee** County Superior Court judge in Davis v. Murrell, S05A0744.

The Court found that Davis “pled guilty to one count of armed robbery pursuant to a plea bargain.” He later filed a petition for habeas corpus, contending that he was assured by his trial counsel “that he would be eligible for parole after serving ten years of his 20-year sentence.” This was inaccurate “because the conviction for armed robbery made Davis ineligible for sentence review,” as did his “conviction for a violent felony.”

In reversing the trial court’s denial of Davis’ petition for habeas corpus, the Supreme Court has ruled that trial counsel’s assurance was “so inaccurate that it falls outside the permitted range of competence.”

Attorney for Appellant: Marcus C. Chamblee
Attorneys for Appellee: Thurbert E. Baker, A.G.; Jason C. Fisher, A.A.G.

In a unanimous decision authored by Justice George H. Carley, the Supreme Court has affirmed a **Gwinnett** County Superior Court judge in Martin, Warden v. Barrett, S05A0856, holding that “the habeas court did not err in concluding that the performance of Barrett’s lawyers was deficient.”

The Court found that “Barrett was convicted of aggravated child molestation and two counts of cruelty to children”; that “[h]e was represented by two attorneys who served as public defenders”; and that despite being “notified prior to trial that Barrett had been hospitalized for treatment of mental illness,” his attorneys “neither . . .

obtained the records or requested an evaluation of him by a mental health expert.”

Attorneys for Appellant: Thurbert E. Baker, A.G.; William P. Rowe, III

Attorneys for Appellee: Michael S. Katz

The Supreme Court has unanimously affirmed a **DeKalb** County Superior Court judge in Patel v. The State, S05A0941, holding that “[t]he trial court’s finding that Patel was afforded effective assistance of counsel was not clearly erroneous.”

Justice Hugh P. Thompson wrote the majority opinion; Justice George H. Carley wrote a special concurrence.

Patel contends that his counsel rendered ineffective assistance at his trial for murder and other crimes. His principal claim is that counsel’s performance was ineffective because he “fail[ed] to request a jury instruction on use of force in defense of habitation under OCGA § 16-3-23, [footnote omitted] in that the latter provides a broader defense to the use of deadly force than those relied upon at trial.” The Court found, however, that Patel’s “trial counsel practices almost exclusively in the area of criminal defense, having tried more than 100 cases since his admission to the Georgia Bar in 1977,” and that “trial counsel was questioned extensively and gave reasoned explanations for his defense strategy.”

In his special concurrence, Justice Carley notes that “[p]ursuant to [OCGA § 16-3-23 (3)] a person is justified in using deadly force if he ‘reasonably believes that the entry is made or attempted for the purpose of committing a felony therein and that such force is necessary to prevent the commission of the felony.’” In this case, “even assuming that there was evidence of an aggravated assault, Patel could not have reasonably believed that deadly force was ‘necessary to prevent the commission of a felony,’” and as a result, “the evidence does not authorize a charge on that method of the defense of habitation, and Patel’s attorney clearly was not ineffective in failing to request such a charge.”

Attorney for Appellant: Laurence H. Margolis

Attorneys for Appellee: Gwendolyn K. Fleming, D.A.; Barbara B. Conroy, Dep. D.A.; Thurbert E. Baker, A.G.; Jason C. Fisher, A.A.G.

The Supreme Court has unanimously affirmed a **Carroll** County Superior Court judge in Hampton v. The State, S05A1168, holding that the trial court correctly determined “Hampton failed to present evidence to carry his burden of showing that trial counsel’s performance was deficient and that any such deficiency would have altered the outcome at trial.”

Justice P. Harris Hines wrote for the Court.

Attorney for Appellant: Kevin T. Hampton, pro se

Attorneys for Appellee: Peter J. Skandalakis, D.A.; Jeffery W. Hunt, A.D.A. ; Thurbert E. Baker, A.G.; Julie A. Adams, A.A.G.

LAWYER DISCIPLINE

In the Matter of Milton D. Rowan, S05Y1196 - S05Y1201; S05Y1289. The Supreme Court has disbarred Gadsden, Alabama lawyer Milton D. Rowan from the practice of law in Georgia for “violating Rules 1.1; 1.2; 1.3; 1.4; 1.15; 1.16; 2.1; 3.2; 8.4; and 9.3 of Bar Rule 4-102 (d).”

In the Matter of Douglas Clark Rogers, S05Y1455. The Supreme Court has accepted Moultrie lawyer Douglas Clark Roger’s petition to surrender his license to practice law in Georgia. Rogers “admit[ted] that on April 20, 2005 he was convicted in the United States District Court for the Middle District of Georgia on four counts of mail fraud in violation of 18 USC § 1341, all felony violations of the United States Code, and that by virtue of these convictions he has violated Rule 8.4 (a) (2) of Bar Rule 4-102 (d), the maximum penalty for which is disbarment.”

In the Matter of Marcelo Antonio Estrada, S05Y1528 & S05Y1529. The Supreme Court has disbarred Atlanta lawyer Marcelo Antonio Estrada from the practice of law in Georgia. The Court found that Estrada abandoned two clients and that “he is in default, has no right to an evidentiary hearing, and is subject to such discipline as may be determined by this Court.”

In the Matter of Steven H. Ballard, S05Y1654. The Supreme Court has accepted McDonough lawyer Steven H. Ballard’s petition for voluntary discipline and has suspended him from the practice of law in Georgia for a period of two years for his violation of “Rules 1.15 (I) (a) and 1.15 (II) (b) of Bar Rule 4-102 (d) of the Georgia Rules of Professional Conduct.”

In the Matter of Christopher George Lazarou, S05Y1722. The Supreme Court has disbarred Atlanta lawyer Christopher George Lazarou from the practice of law in Georgia for violating “Rules 1.15 (I) (a), 1.15 (II) (b), 8.4 (a) (1), and 8.4 (a) (4) of the Rules of Professional Conduct which are found in Bar Rule 4-102 (d).”

In the Matter of Rodney B. Glass, S05Y1988. The Supreme Court has suspended Mableton lawyer Rodney B. Glass from the practice of law in Georgia for a period of twelve months. Glass admitted in a petition for voluntary discipline “that he misappropriated \$47,000 of his former law firm’s money for his own use.”

MANDAMUS

The Supreme Court has affirmed a **Cobb** County Superior Court judge in Uzomba v. Cobb County Magistrate Court et al., S05A1204. All the Justices concurred, except Justice Carley, who concurred in Division 1 and the judgment.

Presiding Justice Carol W. Hunstein wrote for the Court.

After Uzomba was involved in a physical altercation with Henry Brock-Bey, he went before a magistrate judge seeking an arrest warrant. “[C]iting serious questions concerning the veracity of” appellant, the magistrate judge declined to issue a warrant. Uzomba then “filed a petition for mandamus in Cobb County Superior Court alleging that the magistrate judge abused his discretion in refusing to issue the warrant.” The petition was subsequently dismissed.

In affirming the trial court, the Supreme Court ruled that “[n]o abuse of discretion having been shown, it was not error to dismiss the petition.”

Attorney for Appellant: Kennedy C. Uzomba, pro se

Attorneys for Appellees: Deborah L. Dance; Thurbert E, Baker, A.G.

MOTION TO DISMISS INDICTMENTS

In a unanimous decision written by Justice George H. Carley, the Supreme Court has affirmed a **Fulton** County Superior Court judge in Scandrett v. The State, S05A1229.

Appellant, who has been indicted for two murders, “filed a motion to dismiss the indictments, alleging excessive pre-trial delay in his prosecution.” The motion was denied in the trial court.

In affirming the decision below, the Supreme Court has ruled that “[c]onsidering that the short delay attributable to the State did not have any demonstrable harmful effect on Scandrett’s defense against the murder charges and that he himself was dilatory in formally asserting the right to a speedy trial, the trial court correctly balanced the elements of his constitutional claim and properly denied the motion to dismiss.”

Attorney for Appellant: James D. Cooper, Jr.

Attorneys for the State: Paul L. Howard, Jr., D.A.; Peggy Ann Katz, A.D.A.; Thurbert E. Baker, A.G.; Julie A. Adams, A.A.G.

MOTION TO SUPPRESS

The Supreme Court has unanimously affirmed a **Grady** County Superior Court judge in The State v. Nash, S05A1315. Justice Robert Benham wrote for the Court.

The Court found that “Chadrick D. Nash was arrested on October 30, 2004, in connection with the shooting death of Leon Williams which had occurred earlier that day,” and that during police questioning, he “made several inculpatory statements.” After being indicted for murder and other crimes, “Nash filed a motion to suppress the custodial statement he had made to the GBI agent and police official the night of his arrest.” The trial court granted his motion, “ruling that the investigators did not terminate the interview upon Nash’s invocation of his Fifth Amendment right to remain silent and his Sixth Amendment right to have counsel present.”

Attorneys for Appellant: Joseph K. Mulholland, D.A.; Charles M. Stines, A.D.A.

Attorneys for Appellee: Ernie M. Sheffield; James C. Bonner, Jr.

In a unanimous decision authored by Justice Harold D. Melton, the Supreme Court has affirmed a **Cobb** County Superior Court judge in Lemon v. The State, S05A1039.

Appellant has been indicted for the murder of Annette Wooten. In this appeal, he maintains “that the trial court erred by denying his motion to suppress certain evidence seized from his home during the execution of a search warrant.”

In affirming the court below, the Supreme Court has ruled that contrary to Lemon’s contentions, the authorities neither lacked probable cause for the search nor was “the information contained in the search warrant . . . stale.”

Attorney for Appellant: L. David Wolfe

Attorneys for Appellee: Patrick H. Head, D.A.; Dana J. Norman, A.D.A.; Thurbert E. Baker, A.G.

MOTION TO WITHDRAW GUILTY PLEAS

The Supreme Court has affirmed a **Clay** County Superior Court judge in Dupree v. The State, S05A0971. Justice P. Harris Hines wrote for the Court.

Dupree filed a motion to withdraw his “Alford pleas to felony murder, burglary, and theft by taking a motor vehicle,” and the trial court dismissed his motion.

In affirming the trial court, the Supreme Court has ruled that “[t]he superior court correctly dismissed Dupree’s motion to withdraw his pleas because the motion was well out-of-term, and thus, clearly untimely.”

Attorney for Appellant: Samuel G. Merritt

Attorneys for Appellee: Charles M. Ferguson, D.A.; Keith W. Day

MURDER

The Supreme Court has unanimously affirmed the following cases: Ramirez v. The State, S05A0664; Ward v. The State, S05A0739; Scott v. The State, S05A0870; Odom v. The State, S05A0903; Williams v. The State, S05A0908; Ros v. The State, S05A0913; Yat v. The State, S05A0933; Tran v. The State, S05A0935; Henry v. The State, S05A0985; Mason v. The State, S05A1286; Moreland v. The State, S05A1301; Hayes v. The State, S05A1308. In each case the Court ruled that the evidence relied on by the jury supported its verdict and that no reversible error occurred at trial.

A **DeKalb** County jury convicted Bautista Ramirez of felony murder and other crimes related to the death of

“Hugh Arango, a City of Doraville peace officer” in May of 2000.

John Lee Ward was convicted in **Burke** County of murder and other crimes related to the death of Larry McTier on April 20, 2002.

A jury in **Newton** County convicted Eddie Scott of felony murder in connection with the death of Frank Mealer in December of 2001.

A **Clayton** County jury convicted James Stewart Odom of murder and other crimes in connection with the stabbing death of Buford Evans in November of 2001.

A jury in **Henry** County convicted Timothy Shawn Williams of malice murder and possession of a firearm during the commission of a felony in connection with the shooting death of Earl Welch on March 7, 2003.

Vandara Ros was convicted in **Gwinnett** County of malice murder in connection with the shooting death of Hieu Tran on January 9, 2000.

Rheakdsy Mike Yat was convicted by a **Gwinnett** County jury of felony murder and possession of a firearm during the commission of a felony in connection with the shooting death of Hieu Tran.

Albert Kim Tran was convicted of felony murder in **Gwinnett** County in connection with the death of Hieu Tran.

A **Fulton** County jury found Milton Henry guilty of the malice murder of Harvey Kent, Jr., and the aggravated assault of Bernice on May 25, 1997.

A jury in **Fulton** County convicted Cornelius Mason of murder and other crimes in connection with the shooting death of Antonio Johnson on January 1, 1998.

Ladell Moreland was convicted in **Fulton** County of murder and aggravated assault in connection with the shooting death of Andrew Green on July 1, 2001.

A jury in **Fulton** County found Michael Hayes guilty of felony murder and other crimes related to the shooting death of Dejuan McCrary on August 22, 2002.

In a unanimous decision authored by Presiding Justice Carol W. Hunstein, the Supreme Court affirmed Tammie Lynn Rhodes’ **Jones** County convictions for felony murder and cruelty to children. Rhodes v. The State, S05A0787.

The Court found that the victim, appellant’s twelve-month-old son Jacob, “had been severely beaten and ultimately died of blunt force trauma injuries to the head.” Despite having numerous opportunities to seek medical attention for her son, appellant failed to do so. Additionally, “[a]lthough Rhodes blamed her six- and four-year-old sons for Jacob’s injuries, experts opined that the severity of Jacob’s injuries were the result of an ‘adult strength’ force.” The Court found that this and other evidence supported the jury’s verdict.

Rhodes was sentenced “to two concurrent life sentences on the felony murder counts,” but she “may not be convicted on both felony murder counts when only one person was killed because such action improperly subjects her to multiple convictions and punishments for one crime.” As a result, the Court “vacated and remanded for resentencing.”

Attorney for Appellant: Hugh D. Ridgway, III

Attorneys for Appellee: Fredric D. Bright, D.A.; Gregory L. Bushway, A.D.A.; Thurbert E. Baker, A.G.; Raina J. Nadler, A.A.G.

MURDER/DEATH PENALTY

The Supreme Court has unanimously affirmed Gerald Patrick Lewis’ **Douglas** County convictions and death sentence in Lewis v. The State, S05P0906.

Chief Justice Leah Wards Sears wrote for the Court.

Lewis has confessed to committing two murders in Alabama, where he is now under a sentence of death, and two murders in Georgia, one of which involved Peggy Grimes whose body was found in Douglas County in 1993. Lewis confessed to picking Grimes up in Atlanta and transporting her to Douglas County where he murdered her. She was pregnant at the time of her death. Evidence also showed that after Lewis' confession, "[t]he medical examiner re-examined the remains recovered at [the Douglas County] crime scene in 1993 and found fetal bones in the recovered dirt." Additionally, "[t]he crime lab was able to identify the remains as Peggy Grimes's from DNA supplied by her mother." The Court found that this and other evidence relied on by the jury supported its verdict.

With respect to the jury's recommendation that Lewis be sentenced to death, the Court found that the "sentence was not imposed as the result of passion, prejudice, or any other arbitrary factor," [footnote omitted] and that "[t]he death sentence is also not excessive or disproportionate to the penalty imposed in similar cases, considering both the crimes and the defendant."

Attorneys for Appellant: Michael Mears; Kenneth W. Krontz

Attorneys for Appellee: James D. McDade, D.A.; Christopher R. Johnson, A.D.A.; Thurbert E. Baker, A.G.; Susan V. Boleyn, A.A.G.

RIGHT TO COUNSEL

In a unanimous decision authored by Justice Harold D. Melton, the Supreme Court has reversed a **Tattnall** County Superior Court judge in Jones v. Terry, Warden, S05A1125.

The Court found that Jones "entered a plea of guilty [to felony escape] and received a one-year sentence consecutive to the life sentence he was then serving." The Court also found that Jones "was not represented by counsel at the time of the plea, and, although the sentencing court instructed Jones that he would have a 'continued right to the assistance of an attorney throughout the jury trial,' it is undisputed that the sentencing court never informed Jones that he had a right to counsel during the plea hearing." As a result, the Supreme Court has ruled that "the habeas court erred in finding that Jones waived the right to be represented by counsel at the plea hearing."

Attorney for Appellant: Larry Jones, pro se

Attorneys for Appellee: Thurbert E. Baker, A.G.; Julie A. Adams, A.A.G.;

SEARCH & SEIZURE

In The State v. Ponce, S05G0878, the Supreme Court has unanimously decided that it must "vacate the holding of the **Court of Appeals** in Division 2 of Ponce, supra, and remand the case for that court's consideration of the constitutionality of the State's warrantless search of Ponce's commercial vehicle in light of this opinion."

Presiding Justice Carol W. Hunstein wrote for the Court.

Attorneys for Appellant: Timothy G. Madison, D.A.; Robin R. Riggs, A.D.A.

Attorneys for Appellee: Jennifer S. Hanson; Bruce S. Harvey

TITLE TO LAND

In a unanimous decision authored by Justice Hugh P. Thompson, the Supreme Court has affirmed a **Jenkins** County Superior Court judge in Williams et al. v. Screven Wood Company, Inc., et al., S05A0920.

The Court found that "Screven Wood Company filed an action to quiet title to establish their ownership interest in the timber on an 89-acre tract of land located in Jenkins County, Georgia," and that "[t]he other plaintiffs, who sold the timber to Screven Wood, are the descendants of Jack Johnson and claim ownership in the entire 89-acre tract." The trial court affirmed a special master's ruling "in favor of plaintiffs, awarding Screven Wood ownership in the timber on the entire 89 acre tract free and clear of defendants' claims, and awarding the remaining plaintiffs exclusive ownership in the underlying fee."

Attorney for Appellants: Susan A. Welch

Attorney for Appellees: R. Hubert Reeves, III

The Supreme Court has affirmed a **Newton** County Superior Court judge in Lett et al. v. Alderman et al., S05A1222. Justice Robert Benham wrote for the Court.

The Court found that “appellees Barbara Alderman and Richard and Audrey Daniel filed a petition seeking to establish title against all the world to a certain .05-acre parcel of land in the City of Porterdale in Newton County.” Furthermore, “[u]pon the trial court’s receipt of findings of fact and a proposed order from the special master to whom the petition was submitted by the trial court (see OCGA §§ 23-3-63, 23-3-66), the trial court entered an order in favor of appellees.” The appellants moved for “reconsideration of the trial court’s decision on the ground that the special master had heard the matter without the presence of appellants’ counsel because counsel was appearing in another court in another county at the time of the special master’s hearing.”

In affirming the trial court, the Supreme Court ruled that because “appellants cannot establish that they were without fault with regard to counsel’s failure to appear, the special master did not abuse his discretion in denying the request for a continuance and the trial court did not err when it denied appellants’ motion for reconsideration.”

Attorney for Appellants: E. Earle Burke

Attorneys for Appellees: Barbara A. Alderman, pro se; Richard L. Daniel, pro se

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