

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 11 2003**

**A03D0348. MARSHALL GREEN v. THE STATE.**

Marshall Green seeks a discretionary appeal of the order, entered April 25, 2003, denying his motion to vacate a void judgment. Although Green's motion is captioned as a motion to vacate void judgment, the substance of the motion is a claim that the consecutive sentences imposed upon him were void because the offenses should have been merged and also because the sentences violated the ex post facto prohibition under Article I, Section I, Paragraph 10 of the Georgia Constitution of 1983. Green requested the following relief in his motion to vacate: "[T]hat his sentence be set aside and [that he be] resentenced according to the laws existing at the time" of the commission of the offenses.

Thus, the underlying subject matter of this application is the denial of a motion to vacate a void sentence. The underlying subject matter of an appeal generally controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994). In *Williams v. State*, 271 Ga. 686, 689 (1) (523 SE2d 857) (1999), it was held that "the denial of a petition to correct a sentence on the ground that the original sentence was void is [directly] appealable as a matter of right."

Although Green had a right to directly appeal his motion to vacate on the grounds that his sentence was void, he did not file a notice of appeal but rather filed a timely application for discretionary appeal. The order in this case being directly appealable is not subject to the discretionary appeal requirements. This application is thus GRANTED as required under the provisions of OCGA § 5-6-35 (j). Applicant shall have ten days from the date of this order to file his notice of appeal with the trial

court. The clerk of the superior court is directed to include a copy of this order in the record transmitted to this Court.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 11 2003**

*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.*

*Will. L. Martz, Jr.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 19, 2003

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

APPLICATION NO. A03D0349  
LEOPOLD O.V. ENWONWU V. FULTON COUNTY POLICE DEPARTMENT

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95030  
2002CV51355

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 19 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Jill. L. Marti*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 06, 2003

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

APPLICATION NO. A03D0350

KEITH REAL V. ANGIE REAL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96030

2001V396

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 06 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 17, 2003

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

APPLICATION NO. A03D0351

A.A. PROFESSIONAL BAIL (JOHN HORSLEY, JR.,) V. STATE OF GEORGIA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98030

2991D93261S4

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 17 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mait; [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 04 2003**

**A03D0352. ROBERT FRAZIER v. DORTHEA BROWN.**

Applicant Robert Frazier, acting pro se, seeks discretionary review of the trial court's order modifying, inter alia, the joint physical custody and child support provision set forth in the parties divorce decree. Since the order sought to be appealed expressly contests the modification of the child support provisions of a final divorce decree, this matter falls within the divorce and alimony jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, Sec. VI, Para. III (6); See *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (435 SE2d 914) (1993). Accordingly, this application is ordered TRANSFERRED to the Supreme Court for disposition.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 04 2003**

*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.*

*Will. L. Martin, Jr.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 11, 2003

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

APPLICATION NO. A03D0353

DAVID DIAL V. LYNN ADKINS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93030

02CV01,847

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 11 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

JUNE

23, 2003

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

APPLICATION NO. A03D0354

SOUTHERN AG CARRIERS, INC., ET AL V. WILLIAM NEAL GAY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99030

03CV94

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 23 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Mait; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 20, 2003

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

APPLICATION NO. A03D0355  
KIMBERLY D. KEANEY V. KEVIN L. KEANEY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91030

02CV0137X

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 20 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Mait; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 23, 2003

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

APPLICATION NO. A03D0356  
JENNIFER DIANE CLABAUGH V. FREDRICK CHARLES KING

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

90030

2001CV39482

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 23 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 17, 2003

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

APPLICATION NO. A03D0357  
RONALD MINOTT V. RANDY BLACK ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

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03C26712

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 17 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mart; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 25, 2003

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

APPLICATION NO. A03D0358  
KEITH LAUFENBERG V. SOUTHLAKE MITSUBISHI / STOWE ASSOCIATES

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

92030

2003CV66855

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 25 2003**

*I certify that the above is a true extract fromd  
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.

*William L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 25, 2003

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

APPLICATION NO. A03D0359  
SPEEDWAY SUPERAMERICA, LLC., ET AL V. KIMBERLY COOPER

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

70030

03CV33053

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 25 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. J. L. Martie*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 06 2003**

**A03D0360. Christine H. Dujsik v. Jason M. Dujsik**

Applicant Christine H. Dujsik seeks discretionary review of the trial court's order modifying the child support provision set forth in the parties divorce decree. Since the order sought to be appealed involves a modification of the child support provisions of a final divorce decree, this matter falls within the divorce and alimony jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, Sec. VI, Para. III (6); *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (435 SE2d 914) (1993). Accordingly, this application is ordered TRANSFERRED to the Supreme Court for disposition.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 06 2003**

*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.*

*Will. L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 17 2003**

**A03D0361. DARIAN DAVID TANT v. THE STATE**

Darian David Tant filed this application for discretionary appeal from the superior court's April 15, 2003 order denying his "Motion to Enter a Valid Judgment." The application was docketed in this Court on May 30, 2003, 45 days after the superior court's order was entered. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Tant filed his application in this Court more than 30 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. For this reason, the application is hereby ordered DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 17 2003**

*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.*

*Will. L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 18, 2003

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

APPLICATION NO. A03D0362  
ARTHUR E. FERDINAND, FULTON COUNTY TAX COMMISSIONER  
V, WILBERT WILLIAMS ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

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2002CV61865

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUN 18 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Maiti*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 23 2003**

**A03D0363. KIRK L. CLERMONT v. STEPHANIE D. CLERMONT.**

Kirk L. Clermont filed an application seeking discretionary review of the superior court's order finding him in contempt of a temporary order entered in a divorce action. This Court, however, lacks jurisdiction to review the application. The order complained of arises in the context of a pending divorce action, and therefore, jurisdiction to consider the merits of the application lies in the Supreme Court. Ga. Const. Art. VI, Sec. VI, Para. III (6). Therefore, the application is ordered TRANSFERRED to the Supreme Court.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 23 2003**

*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.*

*Will. L. Martin, Jr.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 30, 2003

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

APPLICATION NO. A03D0364

UNITED MAINTENANCE, INC., V. THE GEORGIA INDUSTRIAL GROUP, INC

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97031

02CV0795

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUN 30 2003

*I certify that the above is a true extract fromd  
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.*

*C. Will. L. Mait; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 18, 2003

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

APPLICATION NO. A03D0365  
SAM MCLAWHORN A/K/A SAM HORNE V. J. KELLY & ASSOCIATES,  
INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93031

2002CV57713

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUN 18 2003**

*I certify that the above is a true extract fromd  
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*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

Clerk.

*C. Will. L. Mart; R*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*      **JUN 26 2003**

## **A03D0366. ST. PAUL REINSURANCE CO., LTD. v. SHIRLEY ROSS ET AL.**

On May 19, 2003, St. Paul Reinsurance Co., Ltd. as garnishee filed a discretionary appeal to this Court, docketed as A03D0344, seeking an appeal of the trial court's April 18, 2003, order directing it to pay Ronald and Shirley Ross \$300,000 plus post judgment interest and ordering the parties to appear before the court for a hearing to determine the amount of interest due and sanctions. On May 14, 2003, the trial court entered a contempt order directing St. Paul to pay the judgment of \$300,000.00 and \$102,000.00 interest from the date of an order entered June 13, 2000, to date. St. Paul filed another application for discretionary appeal from this order, docketed as this application A03D0366.

On June 4, 2003, this Court granted discretionary application A03D0344. A separate application from the order of contempt is unnecessary. OCGA § 5-6-34 (d) provides that when a direct appeal is filed, "all judgments, rulings, or orders rendered in the case which are raised on appeal and which may affect the proceedings below shall be reviewed and determined by the appellate court . . ." Under this code section,

St. Paul may allege any errors committed by the trial court in any ruling in the case.  
Application A03D0366 is thus DISMISSED as superfluous.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*

**JUN 26 2003**

*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.*

*Will. L. Martin*, Clerk.

99G72569

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 26, 2003

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

APPLICATION NO. A03D0367

KENNITH LAUGHLIN V. CITY OF ATLANTA, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91031

2002CV61202

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 26 2003**

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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 above written.*

*Clerk.*

*William L. Maitland*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 01, 2003

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

APPLICATION NO. A03D0368

MOHAWK INDUSTRIES, INC., ET AL V. EMILIA RODRIGUEZ

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

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*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 01 2003**

*I certify that the above is a true extract fromd  
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.*

*Will. L. Mait; JR*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUL 07 2003

**A03D0369. MILTON v. THE STATE.**

James Milton seeks an appeal from an order denying his "motion to set aside void judgment" based on this court's decision in *Carlton v. State*, 254 Ga. App. 653 (563 SE2d 521) (2002), which overruled *Newt v. State*, 190 Ga. App. 301 (379 SE2d 11) (1987). Milton essentially argues that since his first appeal was unsuccessful based on this court's reliance on *Newt v. State*, supra, and since *Newt* has since been overruled, his conviction is now void.

But even assuming that the facts are as Milton represents them and even assuming his first appeal would have been resolved differently under current law, this does not entitle him to a second direct appeal to relitigate issues specifically addressed in his first appeal. "[Milton] has already had his 'day in court.' He has fully exhausted his appellate rights in this case and the case is final. There is nothing more to consider. We are not the habeas corpus court and thus do not presume to consider the [application] in that light. There must be an end to litigation and that end occurs when a judgment becomes final. Such finality has occurred in this case. We may no longer exercise jurisdiction over this case." *Payne v. State*, 170 Ga. App. 203 (316 SE2d 828) (1984). Accordingly, Milton's application is hereby *dismissed* for lack of jurisdiction.<sup>1</sup>

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 07 2003

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.

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<sup>1</sup>Because Milton is pro se he is advised that this court's holding in *Carlton v. State*, supra, was reversed by the Supreme Court of Georgia in an opinion issued on June 30, 2003. The clerk is directed to include a copy of the Supreme Court's slip opinion in *Carlton* for Milton's information.

In the Supreme Court of Georgia

Decided: June 30, 2003

S02G1175. THE STATE v. CARLTON.

HINES, Justice.

We granted certiorari to the Court of Appeals in *Carlton v. State*, 254 Ga. App. 653 (563 SE2d 521) (2002), to consider its determination in Division 2 that a detainer based on an arrest warrant for pending criminal charges triggers the protections of the Interstate Agreement on Detainers (“IAD”), OCGA § 42-6-20.<sup>1</sup> For the reasons which follow, we conclude that the IAD does not apply to arrest warrants, and we reverse the judgment of the Court of Appeals.

The relevant facts are set forth in the opinion of the Court of Appeals.

Walker County lodged a detainer against federal prisoner Thomas Carlton with the Federal Bureau of Prisons based on a warrant for Carlton’s arrest for

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<sup>1</sup>In Division 1 of its opinion, the Court of Appeals declined to rule on any procedural issue regarding the service of Carlton’s IAD request, after determining that such issue was not properly before it. Division 1 is not addressed in this granted certiorari, nor is any question of jurisdiction regarding Carlton’s initial right to a direct appeal to the Court of Appeals.

violation of the Georgia Controlled Substances Act by possession of methamphetamine. The arrest warrant was based upon an affidavit and signed by a magistrate. It was forwarded to the original federal correctional facility having custody of Carlton by letter from the Walker County Sheriff's Office. The letter, which was signed by the warrant officer, related information about Carlton and stated:

Enclosed is a certified copy of an arrest warrant on file at the WALKER COUNTY SHERIFF'S DEPARTMENT, LAFAYETTE, GA. Please accept this letter and copy of the warrant as a detainer on the above named subject. Please advise when this subject is ready to be released from your facility. We will pick up subject.

In response, Carlton demanded final disposition of the "indictments, informations, or complaints" pending against him. A federal correctional officer forwarded Carlton's demand by letter, sent certified mail, to the district attorney. The letter was received by the clerk of the superior court and filed. When Carlton's demand for disposition of the pending charges was not acted upon in the 180-day time frame provided in Art. III of the IAD, he moved for dismissal of the charges as provided in the IAD. The trial court denied the motion to dismiss on the ground that the IAD did not apply to

cases in the warrant stage, that it required a formal charging instrument, i.e., an indictment or its equivalent. Following the grant of Carlton's motion for an out-of-time appeal, he filed a direct appeal to the Court of Appeals.

The Court of Appeals reversed the judgment of the trial court, finding that the detainer based on the arrest warrant invoked the protections of the IAD.<sup>2</sup> The Court found that the purpose and legislative history of the IAD demonstrated that the drafters intended for it to include protections for detainees based on arrest warrants. It concluded that a Georgia arrest warrant meets all the criteria of a "complaint," as used in the IAD, that is, that such a warrant is the functional equivalent of a "complaint" for purposes of the IAD. But the analysis employed by the Court of Appeals is flawed and its ultimate conclusion unsound.

A majority of the states along with the Federal Government and the District of Columbia have entered into the Interstate Agreement on Detainers, an interstate compact. *Alabama v. Bozeman*, 533 U. S. 146, 148 (121 SC 2079, 150 LE2d 188) (2001). The IAD "creates uniform procedures for

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<sup>2</sup>In so doing, the Court of Appeals overruled *Newt v. State*, 190 Ga. App. 301 (379 SE2d 11) (1989), concluding that it conflicted with this Court's interpretation of the IAD in *Suggs v. Hopper*, 234 Ga. 242, 243 (215 SE2d 246) (1975).

lodging and executing a detainer, i.e., a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime.” Id. The purpose of the IAD is stated in OCGA § 42-6-20 (Art. I): “to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, information or complaints.” If a prisoner complies with the notice requirements of the IAD and the receiving state fails to bring the prisoner to trial within the statutory time frame, the court in the receiving state must dismiss with prejudice the “indictment, information or complaint” on the basis of which a detainer has been lodged against the prisoner. Id. (Art. III (a) & (d)).

It necessarily follows that a prisoner’s request for final disposition triggers the requirements of the IAD only if the request is in response to a detainer lodged against the prisoner on the basis of an “untried indictment, information or complaint.” Id.; see *Crawford v. State*, 669 N.E. 2d 141 (Indiana 1996). Thus, the fact that the Walker County Sheriff’s Office intended the arrest warrant for Carlton for violation of the Georgia Controlled

Substances Act to serve as an instrument to detain him did not render the arrest warrant a detainer under the auspices of the IAD unless it was based on an untried indictment, information, or complaint. OCGA § 42-6-20 (Art. III (a) & (d)); *Crawford v. State*, supra at 147.

Recognizing this and the fact that there was no indictment or other formal charging instrument pending against Carlton, the Court of Appeals likened the arrest warrant to a “complaint” under the IAD; indeed, it found the arrest warrant to be its “functional equivalent.” *Carlton v. State*, supra at 657.

The Court of Appeals reached this conclusion based, in large measure, on a definition of “complaint” contained in Black’s Law Dictionary (6<sup>th</sup> ed.).<sup>3</sup>

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<sup>3</sup>The following is the definition relied upon by the Court of Appeals:

a charge, preferred before a magistrate having jurisdiction, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. The complaint can be “taken out” by the victim, a police officer, the district attorney, or other interested party. Although the complaint charges an offense, an indictment or information may be the formal charging document. The complaint is a written statement of the essential facts constituting the offense charged. In the federal courts, it is to be made upon oath before a magistrate. Fed. R. Crim. P. 3. If it appears from the complaint that probable cause exists that the person named in the complaint committed the alleged crime, a warrant (q.v.) for his arrest will be issued. Fed. R. Crim. P. 4

This definition more closely fits that of the affidavit upon which an arrest warrant is based rather than the warrant itself. However, inasmuch as the IAD is an interstate compact it is subject to federal construction. *Cuyler v. Adams*, 449 U. S. 433, 438 (101 SC 703, 66 LE2d 641) (1981). Thus, the Court of Appeals's reliance on a dictionary definition was misplaced.

Federal Rule of Criminal Procedure 3 states: "The complaint is a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer." Under the Federal Rules of Criminal Procedure, the complaint is a charging document and the trial of a misdemeanor may proceed on a complaint, as well as on an indictment or information. See Fed. R. Crim. P. 58 (b) (1). Therefore, a complaint stands upon equal footing with an indictment or information as demonstrating pending charges upon which trial may be had.

Also a common sense reading of Art. III of the IAD dictates that a complaint must be a charging instrument upon which an individual can go to trial. The use of the word "untried" as a qualifier for all three terms, "indictment, information, and complaint," logically compels the conclusion

that one must be able to be tried on each. OCGA § 42-6-20 (Art. III (a) & (d)); See *Crawford v. State*, supra at 148. There is no question that in this State one cannot be tried upon an arrest warrant. Moreover, if trial is not had on the untried indictment, information, or complaint as provided in the IAD, the court is to enter an order “dismissing the same with prejudice.” OCGA § 42-6-20 (Art. III (a) & (d)). Such a dismissal simply does not lend itself to an arrest warrant. See *Crawford v. State*, supra at 148.

The federal courts have tended to narrowly construe what constitutes a detainer for purposes of the IAD. See *United States v. Hall*, 974 F2d 1201 (9<sup>th</sup> Cir., 1992) (IAD not applicable where government had filed no indictment, information, or complaint); *Carchman v. Nash*, 473 U. S. 716 (105 SC 3401, 87 LE2d 516) (1985) (IAD Art. III does not apply to detainers based upon probation violation charges); *United States v. Bottoms*, 755 F2d 1349 (9<sup>th</sup> Cir., 1985) (detainer based upon arrest warrant not subject to IAD); *United States v. Mauro*, 436 U. S. 340 (98 SC 1834, 56 LE2d 329) (1978) (writ of habeas corpus ad prosequendum not a detainer under IAD).

Even in one of the few state jurisdictions in which an arrest warrant has been found to trigger the provisions of the IAD, the wisdom of such a

determination has been called into question. The Supreme Court of Tennessee observed that although the general practice of state prosecutors was to attempt to lodge a detainer based upon an arrest warrant,

the better view and the more consistent interpretation of the [IAD] is that an untried “indictment, information or complaint” is a charging instrument upon which the requesting state may proceed to trial, and not merely a warrant of arrest . . . . Proceeding on a bare warrant . . . obviously can produce situations of unusual complexity . . . .

*State v. Moore*, 774 S.W. 2d 590, 597 (Tenn., 1989).

While it may be common practice for the State to attempt to detain a prisoner based upon an arrest warrant for other charges, as in this case, this Court must conclude that an arrest warrant, in and of itself, is insufficient to invoke the speedy trial protections of the IAD.

Judgment reversed. All the Justices concur.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 20 2003**

**A03D0370. Shaw Industries, Inc. v. Annie Ruth Mantooth**

Applicant Shaw Industries, Inc. filed this application seeking to appeal the trial court's order affirming a decision of the State Board of Workers' Compensation. The order sought to be appealed was entered by the trial court on April 17, 2003. This application was filed on May 21, 2003. For this Court to have jurisdiction to consider an application for discretionary appeal, an application must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-35 (d). In this case, the application was not filed until 34 days after entry of the order sought to be appealed. Accordingly, this Court lacks jurisdiction to consider this application and it is ordered DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 20 2003**

*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.*

*Will. L. Mant; [Signature]*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 26 2003**

**A03D0372. MITCHELL et al. v. FISH.**

Tambra and David Mitchell filed an application for discretionary appeal of the order, entered May 19, 2003, granting grandparent visitation rights to Kay Fish. The above-captioned application is granted only as to the following issue: Whether the trial court erred in not dismissing the suit on the ground that Kay Fish lacked standing to commence and maintain it under the grandparent visitation statute, OCGA § 19-7-3.

Pursuant to the authority of this Court to protect and aid its appellate jurisdiction, the application for discretionary appeal is denied as to all other issues. Ga. Const. of 1983, Art. VI, Sec. I, Par. IV.; see *Grim v. Grim*, 268 Ga. 2, 3 (2) (486 SE2d 27) (1997); *Brown v. Kinser*, 218 Ga. App. 385, 386 (461 SE2d 564) (1995); *A Southern Outdoor Promotions v. National Banner Company*, 215 Ga. App. 133 (1) (449 SE2d 684) (1994); see also *Matthews v. Riviera Equipment, Inc.*, 152 Ga. App. 870, 871 (2) (264 SE2d 318) (1980).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 26 2003**  
*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.*

*Will. L. Matz*, Clerk.

**Court of Appeals  
of the State of Georgia**

**ATLANTA,**      JULY 03, 2003

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

**MOTION DOCKET NO. 354. MITCHELL et al. v. FISH.**

Upon consideration, the Motion for Emergency Writ of Supersedeas filed by Tandra D. Mitchell and David P. Mitchell pursuant to Rule 40 (b) of this Court is hereby DENIED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL - 3 2003

*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.*

*C. Will. L. Martin, Jr.*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 07 2003

**A03D0373. JOHN MARTIN et al v. RICHMOND COUNTY.**

John Martin and Nakia Ruff filed this application for discretionary appeal from the superior court's orders denying their motions for new trial in the magistrate court pursuant to OCGA § 5-4-15. The orders that appellants seek to appeal from, however, are not final judgments since these appeals by writ of certiorari were answered and, according to our telephone inquiry with the clerk of superior court, remain pending.

Thus, appellants were required to follow the interlocutory appeal procedure of OCGA § 5-6-34 (b), including obtaining a certificate of immediate review from the superior court within the required period of time. *Scruggs v. Dept. of Human Resources*, 261 Ga. 587, 588 (408 SE2d 103) (1991); *Williams v. Clark-Atlanta University*, 200 Ga. App. 51 (406 SE2d 559) (1991). Appellants' failure to follow the requisite interlocutory appeal procedure deprives this Court of jurisdiction to consider their appeal, which is accordingly hereby DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL 07 2003

*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.*

*Will. L. Mait; R*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 30, 2003

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

APPLICATION NO. A03D0375  
CASEY D. SHEFFIELD V. THE STATE

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

98032

96CR289

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 30 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Matier*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 03, 2003

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

APPLICATION NO. A03D0376

HUGH ROWDEN V. TRACIE PRINCE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97032

02CV58968

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 03 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 26 2003**

**A03D0377. JOSEPH TREGEAGLE v. WILLIAM J. SUSSMAN.**

On June 16, 2003, Joseph Tregeagle filed an application for discretionary appeal seeking an appeal of the order, entered February 14, 2003, denying his petition for a criminal arrest warrant and his request for a hearing on the petition. Under OCGA § 5-6-35 (d), an application for discretionary appeal shall be filed with the clerk of this Court within 30 days of the entry of the order sought to be appealed. Because Tregeagle's application was not filed within 30 days of the order entered on February 14, 2003, it is ordered DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 26 2003**

*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.*

*William L. Maitland*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUL 03 2003**

**A03D0378. THOMAS BATTLE v. CHERRIE L. WINGFIELD.**

This application arises from a dispossessory action brought by Thomas Battle against Cherrie L. Wingfield in the Magistrate Court of Hancock County. An order of the magistrate court granting the dispossessory was appealed to the superior court by Wingfield. On May 20, 2003, the superior entered an order denying Battle's petition for a dispossessory warrant. Battle filed an application for discretionary appeal of the denial of his petition on June 14, 2003.

Generally, an application for discretionary appeal shall be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal generally controls over the relief sought in determining the proper appellate procedure. *Ribich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d

192) (1994). OCGA § 44-7-56 provides that an appeal from any dispossession judgment must be filed within seven days of the date the judgment was entered. Because the application was not filed within seven days of the entry of the dispossession judgment, this application is untimely and this court lacks jurisdiction to consider the appeal. *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999).

Therefore, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 03 2008**

*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.*

*Will. L. Mattingly*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUL 16 2003**

**A03D0379. VOLLRATH v. SAWYER.**

Upon consideration of respondent's motion to dismiss, the motion is hereby *denied*. Upon consideration of the application on its merits, the application is hereby *denied*. Respondent's motion for damages for frivolous appeal is likewise *denied*.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 16 2003**

*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.*

*Will. L. Martini*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,                      JULY                      08, 2003

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

APPLICATION NO.            A03D0380  
DUANE ALEXANDER COOPER V. THE STATE

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

90032

01A115106

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **JUL 08 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Martin, JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 17, 2003

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

APPLICATION NO. A03D0381

NATALIE ELIZABETH PARKER V. DUSTIN KEITH BRYANT

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94032

01A107501

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUL 17 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mait; R*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 02 2003

**A03D0382. National Union Fire Insurance Company v. Diane Renee Freeman,  
as Administratrix of the Estate of Walter K. Freeman**

Applicant National Union Fire Insurance Company filed this application for discretionary appeal seeking review of the trial court's denial of its motion to set aside pursuant to OCGA § 9-11-7 (b). An application for discretionary appeal is only required on the denial of a motion to set aside when the denial is pursuant to OCGA § 9-11-60 (d) or (e). In this case, because the denial of the motion to set aside is pursuant to OCGA § 9-11-7 (b), this case is directly appealable. Accordingly, this application is hereby GRANTED pursuant to OCGA § 5-6-35 (j). National shall have ten days from the date of this Order to file its notice of appeal. The clerk of the superior court is directed to include a copy of this Order in the record transmitted to the Court of Appeals.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUL 02 2003

*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.*

*William L. Matz, Jr.*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUL 18 2003**

**A03D0384. McAFEE v. THE STATE.**

Allen Todd McAfee filed an application for discretionary appeal on June 19, 2003, from an order denying his "motion to vacate a void sentence" entered on April 2, 2003. Because McAfee failed to file his application within 30 days of the entry of the order complained of as required under OCGA § 5-6-35 (d), this court is without jurisdiction to consider it. The application is therefore *dismissed* as untimely. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 18 2003**

*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.*

*Will. L. Maitland*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 18, 2003

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

APPLICATION NO. A03D0385  
UNITED WASTE SERVICES ET AL V. ROBERT MOODY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95033

03A037592

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUL 18 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Mait; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 30, 2003

*The Court of Appeals passed the following order*

Case No. A03D0385

UNITED WASTE SERVICES ET AL V. ROBERT MOODY

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

95-033  
03A037592

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 30, 2003*

*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.

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 16, 2003

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

\* APPLICATION NO. A03D0386  
CLEVELAND WILBORN V. THE STATE

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

96033

94R485

95R144

97R055

98R354

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUL 16 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 16, 2003

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

APPLICATION NO. A03D0387  
RICKY L. RAMEY V. CITY OF NORCROSS ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98033

03A037357

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUL 16 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Jill. L. Martin; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 23, 2003

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

APPLICATION NO. A03D0388  
CHRISTOPHER HOLT V. CITY OF PEACHTREE CITY

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

97033

2002V0899

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 23 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Matz, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 18, 2003

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

APPLICATION NO. A03D0389

SUSIE MAE HANNAH ET AL V. CYNTHIA B. PERRY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93033

2002CV0105

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUL 18 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Maiti*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 05, 2003

*The Court of Appeals passed the following order*

Case No. A03D0390

ALZED K. GHOUSE V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-033  
98R90

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta AUG 05, 2003*

*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.*

*Will. L. Matier*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 05, 2003

*The Court of Appeals passed the following order*

Case No. A03D0390

ALZED K. GHOUSE V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-033  
98R90

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta AUG 05, 2003*

*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.

*William L. Matier*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 21, 2003

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

APPLICATION NO. A03D0391

AHMOND S. DUNNIGAN V. JIM WETHERINGTON., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91033

2003CV70767

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 21 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mart; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 22, 2003

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

APPLICATION NO. A03D0393

DANNY SIMS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94033

SU02CR1496

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 22 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mart; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 28, 2003

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

APPLICATION NO. A03D0394  
SHAW INDUSTRIES GROUP, INC., V. ROY M. MILLSAP

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92033

03CI445

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 28 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Maiti*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 15, 2003

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

APPLICATION NO. A03D0395  
KELLY D. SMITH V. JOHN C. RICHARDS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

70033

02CV18848

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 15 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Martin, III*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 30, 2003

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

APPLICATION NO. A03D0396  
MICHAEL SAMUEL TODD V. MARY IRENE TODD

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

71033

02A93225

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 30 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mait; JR*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 15 2003**

## **A03D0397. DOUGLAS HARRISON et al v. CGU INSURANCE COMPANY.**

This application arises from an underlying personal injury claim. On July 2, 2003, Douglas and Amy Harrison filed a timely application for discretionary appeal of the order entered June 2, 2003, denying their motion for contempt citation and denying their motion for attorney fees under OCGA § 9-15-14.

All orders involving contempt cases, except those listed in OCGA § 5-6-35 (a) (2), are directly appealable and do not require a discretionary application. OCGA § 5-6-34 (a) (2); compare *In re Booker*, 186 Ga. App. 614 (367 SE2d 850) (1988) with *Russo v. Manning*, 252 Ga. 155 (312 SE2d 319) (1984). Nor does an appeal of an award of attorney fees as part of a judgment which is otherwise subject to direct appeal require a discretionary application. *Stancil v. Gwinnett County*, 259 Ga. 507, 508 (384 SE2d 666) (1989); see *Haggard v. Board of Regents &c*, 257 Ga. 524, 526 (4) (a) (360 SE2d 566) (1987).

Accordingly, this application is ordered GRANTED under OCGA § 5-6-35 (j). The Harrisons shall have ten days from the date of this order to file a notice of appeal. The clerk of the State court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 15 2003**

*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.*

*William L. Maitland*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 29, 2003

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

APPLICATION NO. A03D0398

BEVERLY J. SUMMERS ET AL V. BFI WASTE SERVICES, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96034

03A058612

*Court of Appeals of the State of Georgia,*

*Clerk's Office, Atlanta* **JUL 29 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 30, 2003

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

APPLICATION NO. A03D0399

HENRY PACE V. THE STATE ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98034

03CV966

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 30 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mart; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 17, 2003

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

APPLICATION NO. A03D0400

DAVID REEVES ET AL V. SHANNON DANELLE PHILLIPS ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97034

032107C

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 17 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mait; JR*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 24 2003

**A03D0401. HEATHER DAWN LEDFORD v. DOYCE ALEX LOUDERMILK**

Heather Dawn Ledford filed this application for discretionary appeal, seeking review of the superior court's "Interim Order" dealing with custody of the parties' minor child and other issues. By its express terms, however, the order is not a final judgment and is therefore an interlocutory order. Accordingly, Ledford was required to follow the interlocutory appeal procedures of OCGA § 5-6-34 (b), including obtaining a certificate of immediate review from the trial court. Ledford's failure to follow the interlocutory appeal procedures deprives this Court of jurisdiction to consider this appeal, which is hereby DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUL 24 2003

*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.*

*C. Will. L. Maitland*, Clerk.

CLERK'S OFFICE  
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Sherie M. Welch, Clerk

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** August 13, 2003

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S03C1775**

HEATHER DAWN LEDFORD v. DOYCE ALEX LOUDERMILK

Clerk, Supreme Court of Georgia

Case No. A03D0401

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**AUG 15 2003**

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 16, 2003

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

APPLICATION NO. A03D0402

JAMAAL ABDUL-HAKIM V. MEAD SCHOOL & OFFICE PRODUCTS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99034

2003CV67948

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 16 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUL 30 2003**

**A03D0403. DANNY WILLIAMS v. THE STATE.**

Danny Williams has filed a discretionary application seeking review of the denial of his extraordinary motion for new trial. Because Williams was convicted of murder, see *Williams v. State*, 256 Ga. 609 (351 SE2d 454) (1987), his appeal is hereby TRANSFERRED to the Supreme Court pursuant to *State v. Thornton*, 253 Ga. 524 (1) (322 SE2d 711) (1984).

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 30 2003**

*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.*

*Will. L. Martin, Jr.*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 04 2003**

## **A03D0404. WRIGHT v. STATE OF GEORGIA DEPARTMENT OF NATURAL RESOURCES.**

In May 2001 the Department of Natural Resources sent a letter to Winston Wright denying the renewal of his alligator farming license. The same day the DNR issued a proposed administrative order to the effect that Wright was in unlawful possession of wild alligators and that all of the alligators on his land would be disposed of by the agency. Wright and his wife thereafter filed for Chapter 12 bankruptcy protection. On November 4, 2002, the bankruptcy court granted the agency's petition for relief from the automatic stay. Wright's attorney claims he was not notified that the stay had been lifted until December 16, 2002, when he received a copy of the DNR's motion to dismiss the administrative law proceedings. Two days later the DNR's motion was granted. A subsequent motion for a hearing and for reconsideration of the dismissal order was denied by order entered on December 31, 2002.

Wright filed an appeal to superior court on January 30, 2003. It is undisputed that the final decision was affirmed by operation of law under OCGA § 12-2-1 (c)<sup>1</sup>

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<sup>1</sup>“(c) Notwithstanding any other law to the contrary, when a petition for judicial review of a final decision of the Board of Natural Resources in any matter arising under this title is filed pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” *if the superior court in which the petition for review is filed does not hear the case within 90 days from the date the petition for review is filed with the court, the final decision of the board shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 90 days has been continued to a date certain by order of the court. In the event a hearing is held later than 90 days after the date the petition*

on April 30, 2003, because the initial hearing date was not scheduled within 90 days as required. Wright now appeals from a subsequent order canceling the hearing scheduled for June 17, 2003, for lack of jurisdiction.

Wright is not entitled to seek an appeal of the order canceling the hearing because the decision that was to be the subject matter of that hearing had already been affirmed by operation of law, thus rendering the scheduled hearing moot. OCGA § 5-6-48 (b) (3). Wright's contention that the 90 day limitation for scheduling a hearing as provided in OCGA § 12-2-1 (c) is directory only is clearly without merit. An affirmance by operation of law requires no court action whatsoever to give it effect, and that effect is to divest the superior court of jurisdiction to take further action of any kind in the case. Accord *Pine Timber Trucking Co. v. Teal*, 230 Ga. App. 362 (496 SE2d 270) (1998). It follows that when Wright failed to apply for an appeal within 30 days following the affirmance of his appeal to superior court, he thereby lost his opportunity to seek further judicial review. Accordingly, Wright's application for appeal from an order that merely acknowledges that court's loss of appellate jurisdiction by operation of law is hereby *dismissed* as moot.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **AUG 04 2003**

*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.*

*C. Will. L. Martin, JR.*, Clerk.

---

for review is filed with the superior court because a hearing originally scheduled to be heard within the 90 days has been continued to a date certain by order of the court, the final decision of the board shall be considered affirmed by operation of law if no order of the court disposing of the issues presented for review has been entered within 30 days after the date of the continued hearing. If a case is heard within 90 days from the date the petition for review is filed, the final decision of the board shall be considered affirmed by operation of law if no order of the court dispositive of the issues presented for review has been entered within 30 days of the date of the hearing." (Emphasis supplied.)

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 17, 2003

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

APPLICATION NO. A03D0405  
STEVEN LEE WILSON V. CITY OF MANCHESTER

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

94034

2002CV0151

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUL 17 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Martini*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 29, 2003

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

APPLICATION NO. A03D0406

GEORGE C. HITT III, ET AL., V. EARL DABBS, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92034

1B02CV129

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 29 2003**

*I certify that the above is a true extract fromd  
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.

*C. Will. L. Maitier*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 06, 2003

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

APPLICATION NO. A03D0407

LAURENCE DANESE V. DEKALB COUNTY, GEORGIA., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

70034

03CV13261

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 06 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Martini*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 11, 2003

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

APPLICATION NO. A03D0408  
MARCIA F. SMITH V. CITY OF ATLANTA BOARD OF EDUCATION  
A/K/A ATLANTA PUBLIC SCHOOLS

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

71034

2003CV68055

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 11 2003**

*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.

*Will. L. Martine*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 05, 2003

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

APPLICATION NO. A03D0409

JASON SOUDER V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95035

93CR371

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 05 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mait; [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

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

**JUL 16 2003**

**A03D0410. EDDIE EUGENE BRUMBELOW v. THE STATE**

On July 11, 2003, Eddie Eugene Brumbelow filed an application for appeal from a probation revocation order entered October 1, 2002. To be timely, such an application must be filed within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Brumbelow's untimely application is therefore *dismissed* for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 16 2003**

*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.*

*Will. L. Matier*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 12, 2003

*The Court of Appeals passed the following order*

Case No. A03D0410

EDDIE EUGENE BRUMBELOW V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

96-035  
999158124

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta AUG 12, 2003*

*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.

*Will. L. Martin, Jr.*

CLERK'S OFFICE  
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

**Docketing Date:** August 26, 2003

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S03C1854**

EDDIE EUGENE BRUMBELOW v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A03D0410

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**AUG 27 2003** Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 04, 2003

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

APPLICATION NO. A03D0411  
JIMONTA JOHNSON V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96035

02SC03425 02SC09000 0SC09245

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 04 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mat; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 25, 2003

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

APPLICATION NO. A03D0412

JEROME TYSON V. MOSE WEST

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97035

99V058

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 25 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Martin, Jr.*

CLERK'S OFFICE  
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

**Docketing Date:** August 13, 2003

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S03C1781**

JEROME TYSON v. MOSE WEST

Clerk, Supreme Court of Georgia

Case No. A03D0412

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

~~XXXXXXXXXX~~  
**AUG 15 2003**

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 05, 2003

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

APPLICATION NO. A03D0413

AUBREY SILVEY ENTERPRISE, INC., ET AL V. DOYLE DAWSON.,  
ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93035

03V00835

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 05 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Mait; [Signature]*

**Court of Appeals  
of the State of Georgia**

ATLANTA,            AUGUST            12, 2003

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

APPLICATION NO.            A03D0414  
WET WALLS, INC., ET AL V. SAUL R. LEDEZMA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99035

03CV301210

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **AUG 12 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 06, 2003

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

APPLICATION NO. A03D0415  
PRESTON D. COOPER V. THE STATE

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

91035

32954

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 06 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 30, 2003

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

APPLICATION NO. A03D0416

STEVEN MIZE V. REGIONS BANK

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90035

01HV418T

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 30 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martine*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 04, 2003

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

APPLICATION NO. A03D0417

JOYCE HILL V. OMNI HOTEL AT CNN CENTER ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94035

2003CV694466

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 04 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, August 11, 2003

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

## **A03D0418. SWEENEY v. THE STATE.**

Terence Sweeney seeks a discretionary appeal from an order denying his "Demand to Dismiss for Procedural Misconduct by the Prosecutor and Other Parties". Because the prosecution against him is still pending in the court below and because he failed to follow the interlocutory appeal procedure as provided under OCGA § 5-6-34 (b), Sweeney's application is hereby *dismissed* as premature. *Scruggs v. Dept. of Human Resources*, 261 Ga. 587 (1) (408 SE2d 103) (1991).

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta August 11, 2003*

*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.*

*Will. L. Mat; [Signature]*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,            AUGUST            14, 2003

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

APPLICATION NO.            A03D0419  
GEORGIA DEPARTMENT OF HUMAN RESOURCES., ET AL V.  
CHRISTOPHER ROOKS ET AL

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

70035

0201491

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **AUG 14 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 31, 2003

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

APPLICATION NO. A03D0420  
THE KEEBLER COMPANY V. DEBORA BENEFIELD

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

71035

03CV20190

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUL 31 2003**

*I certify that the above is a true extract fromd  
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.

*C. Will. L. Mait; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 31, 2003

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

APPLICATION NO. A03D0421

JOHN THOMAS HART V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95036

98A5950

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 31 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 12, 2003

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

APPLICATION NO. A03D0422  
STEPHEN ANDREW SMITH V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96036

01CR15392 01CR15486 02CR15725

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 12 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*William L. Martini*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 06, 2003

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

APPLICATION NO. A03D0423

EUGENE SMITH V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98036

91CR0545

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 06 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA,            AUGUST            08, 2003

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

APPLICATION NO.            A03D0424  
DIANE MINTER V. TYSON FOODS, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97036  
03CV049

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **AUG 08 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mait; JR*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 06 2003**

## **A03D0425. JIMMY LEE WHITE v. THE STATE.**

On Tuesday, July 22, 2003, Jimmy Lee White filed an application for discretionary appeal of the order, entered June 19, 2003, revoking his parole. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because White did not file his application within the 30-day time period, this court is without appellate jurisdiction over this application and accordingly, it is ordered DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 06 2003**

*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.*

*Will. L. Mantz*....., Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 12, 2003

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

APPLICATION NO. A03D0426  
THERESA ANDERSON V. NORTHSIDE HOSPITAL, INC.

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

99036

02A8586

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 12 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Jill L. Maitland*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 18, 2003

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

APPLICATION NO. A03D0427

FORBES & FORBES WORLDWIDE, INC., F/K/A QUICKTRACK GAMING, INC.

V. FIRST AMERICAN TRACKING CORP., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91036

99A096948

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 18 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Will. L. <sup>Clerk.</sup> Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 14, 2003

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

APPLICATION NO. A03D0428  
RUTH COOPER V. SPELMAN COLLEGE., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90036

2003CV67946

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 14 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Matier*

CLERK'S OFFICE  
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

**Docketing Date:** September 25, 2003

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S04C0145**

RUTH D. COOPER v. SPELMAN COLLEGE et al.

Clerk, Supreme Court of Georgia

Case No. A03D0428

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**SEP 29 2003**

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 13, 2003

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

APPLICATION NO. A03D0429

BOBBY HARDWICK V. SCOTT HODGE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94036

2003V095

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 13 2003**

*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.*

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 08, 2003

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

APPLICATION NO. A03D0430

GORDON CITIZENS FOR OBJECTIVE GOVERNMENT, INC., ET AL

V. GORDON COUNTY, GEORGIA., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92036

0239926

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 08 2003**

*I certify that the above is a true extract fromd  
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.*

*Will. L. Mat; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 14, 2003

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

APPLICATION NO. A03D0431

RELIABLE BONDING AGENCY ET AL V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

70036

CR012111AB

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 14 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Marti, Jr.*

# Court of Appeals of the State of Georgia

ATLANTA AUGUST 25, 2003

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

A03D0432. TERRY KENDRICK v. GEORGIA DEPARTMENT OF HUMAN  
RESOURCES, ET AL

Upon consideration of the motion for withdrawal of the above styled  
application, it is hereby ordered that said motion be GRANTED.

71-036

03CV36653

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta AUGUST 25, 2003*

*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.*

*C. Will. L. Maitland*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 15, 2003

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

APPLICATION NO. A03D0433

SIERRA ROGERS DEEGANS V. JASON FRANKLIN ROGERS ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95037

01CV01369

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **AUG 15 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Mait; [Signature]*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 22, 2003

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

APPLICATION NO. A03D0434

CARMEN ALAM DE LA PENA V. NOAH PHILIP DE LA PENA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96037

031439124

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**AUG 22 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mait; [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUL 30 2003**

## **A03D0435. INSERECTION, A FANTASY STORE, ET AL v. THE CITY OF MARIETTA, GEORGIA.**

Applicants Inserecton, A Fantasy Store, et al., have filed a timely application for a discretionary appeal and an emergency motion for writ of supersedeas seeking review of and relief from the order of the Superior Court of Cobb County, entered July 28, 2003 temporarily restraining and enjoining applicants from operating Inserecton, A Fantasy Store, until further order of the court, and directing the City of Marietta Police Department to abate said public nuisance and padlock the said premises until further order of the court.

As the primary appellate issue in this case raises a substantive issue regarding the propriety of granting an equitable injunction and other extraordinary relief, and as resolution of these issues also appear to require an interpretation of the United States Constitution and the Georgia Constitution of 1983, the Supreme Court of Georgia, rather than this court, has appellate jurisdiction over both this application and the accompanying emergency motion for writ of supersedeas. See *Electronic Data Systems Corp. v. Heinemann*, 268 Ga. 755 (493 SE2d 132) (1997); *Glynn County v. Waters*, 268 Ga. 500, 501 (1) (491 SE2d 370) (1997); *Wojcik v. State*, 260 Ga. 260 (392 SE2d 525) (1990); *Kolker v. State*, 193 Ga. App. 306 (387 SE2d 597) (1989), aff. 260 Ga. 240 (391 SE2d 391) (1990); see also *Beauchamp v. Knight*, 261 Ga. 608, 609 (2) (409 SE2d 208) (1991). Accordingly, this application and

accompanying motion for writ of supersedeas is ordered TRANSFERRED to the Supreme Court.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 30 2003**

*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.*

*C. Will. L. Martin, Jr.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 11, 2003

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

APPLICATION NO. A03D0436  
SAUL LEDEZMA V. WET WALLS, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99037

03CV301210

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 11 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mait; R*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 05 2003**

**A03D0437. ANNIE HARDY v. THE STATE.**

On July 30, 2003, Annie Hardy filed a discretionary application for appeal from a nolle prosequi order entered on June 26, 2003. To be timely, such application must be filed within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Hardy's untimely application is therefore DISMISSED for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 05 2003**

*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.*

*Will. L. Maitland*  
..... Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,            AUGUST            20, 2003

*The Court of Appeals passed the following order*

Case No. A03D0437

ANNIE HARDY V. THE STATE

Upon consideration of the motion for reconsideration filed  
in this case, it is ordered that it be hereby denied.

97-037  
02SR20866

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    AUG 20, 2003*

*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.

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 26, 2003

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

APPLICATION NO. A03D0438  
VINCENT CASTELLI V. YULIYA CASTELLI

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93037

2003CV71110

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**AUG 26 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Marti, Jr.*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 14 2003**

**A03D0439. Lamb v. Lamb**

Applicant Johnny M. Lamb seeks discretionary review of the trial court's denial of his motion to vacate a final judgment and decree of divorce. However, because this action is ancillary to the parties divorce proceeding, the Supreme Court has appellate jurisdiction over this matter. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985). Accordingly, this application is ordered TRANSFERRED to the Supreme Court.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 14 2003**

*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.*

*C. Will. L. Martini*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 15, 2003

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

APPLICATION NO. A03D0440

ARCHIE PARKS ET AL V. PHILLIP CARTER ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90037

SC1999CV505

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 15 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 13, 2003

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

APPLICATION NO. A03D0441

LANISE SAILEM V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94037

2002FE069F 2003FE109F 2003FE110F 2003FE219F

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 13 2003

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*



# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 22 2003**

**A03D0442. DAVID J. COVALL, M. D. v. PEACHTREE ORTHOPAEDIC CLINIC, P. A.**

Plaintiff Peachtree Orthopaedic Clinic, P. A. filed this action seeking enforcement of a noncompetition covenant contained within a contract executed by defendant Davis J. Covall, M. D. Plaintiff also moved for a temporary restraining order or, in the alternative, for preliminary injunction prohibiting Covall from violating the contract by practicing medicine in the specialty of orthopaedics within a designated area.

A hearing was held at which both parties were apparently represented by counsel and the superior court subsequently entered an order granting the plaintiff all of the relief sought with respect to enforcement of the noncompetition covenant. The limitations on defendant's conduct ordered by the superior court after the hearing, while described as being the grant of a temporary restraining order, was in substance an interlocutory injunction. See *Glynn County Bd. of Tax Assessors v. Haller*, 273 Ga. 649 (2) (543 SE2d 699) (2001); *Dolinger v. Driver*, 269 Ga. 141, 142 (1) (498 SE2d 252) (1998).

The grant of an interlocutory injunction is subject to direct appeal. OCGA § 5-6-34 (a) (4). Because the order appealed from is directly appealable, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j).

Covall shall have 10 days from the date of this order in which to file a notice of appeal. The Clerk of the superior court is directed to include a copy of this order in the appeal record transmitted to this Court.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 22 2003**

*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.*

*William L. Martin, Jr.* ..... , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 18 2003**

**A03D0443. Fannon v. The City of Alpharetta, Ga.**

Applicant Charles Fannon seeks discretionary review of the trial court's denial of his petition for writ of certiorari and writ of mandamus seeking to require the City of Alpharetta, Georgia to provide an evidentiary hearing prior to any disciplinary action being taken against him. However, the Supreme Court has jurisdiction over appeals in mandamus cases. Ga. Const. of 1983, Art. VI, Sec. VI, Para. III (5); OCGA § 9-6-28 (b); c.f., *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994). Accordingly, this application is ordered TRANSFERRED to the Supreme Court for disposition.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 18 2003**

*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.*

*Will. L. Martin, Jr.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 20, 2003

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

APPLICATION NO. A03D0444

DAN JAMES, III V. PROFESSIONAL STANDARDS COMMISSION

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71037

02CV23593

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 20 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Marti, Jr.*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 27 2003**

**A03D0445. STACY ROBIN LAY et al. v. DIANE M. LAY et al.**

On August 8, 2003, Stacy Robin Lay filed this discretionary application seeking review of the juvenile court's February 28, 2003 final custody order. The juvenile court had granted Lay three extensions of time for filing an application for discretionary appeal. However, there is no authority for an extension of time for the filing of an application for discretionary appeal directed to this Court. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Because Lay's application was not filed within 30 days of the appealable order, this Court lacks jurisdiction to consider it. OCGA § 5-6-35 (d). Accordingly, the motions to dismiss of Diane M. and Kenneth Lay and of Michael Lay are hereby GRANTED, and Stacy Robin Lay's application for discretionary appeal is hereby DISMISSED. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**AUG 27 2003**

*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.*

*Will. L. Martin, JR.*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 14, 2003

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

APPLICATION NO. A03D0446

WARREN SKILLERN V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96038

9510

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 14 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Mait; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 21, 2003

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

APPLICATION NO. A03D0447  
RHESHONDA JENKINS V. FRED JENKINS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98038

03A029642

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 21 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Martin, Jr.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, AUGUST 27, 2003

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

APPLICATION NO. A03D0448  
CONNIE SPENCER V. STEPHEN SPENCER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97038

2002C348

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 27 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Marti; JR*

**Court of Appeals  
of the State of Georgia**

ATLANTA,                      SEPTEMBER 12, 2003

*The Court of Appeals passed the following order*

Case No. A03D0448

CONNIE SPENCER V. STEPHEN SPENCER

Upon consideration of the motion for reconsideration filed  
in this case, it is ordered that it be hereby denied.

97-038  
2002C348

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    SEP 12, 2003*

*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.*

*Will. L. Mat; JR*

CLERK'S OFFICE  
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Sherie M. Welch, Clerk

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** October 2, 2003

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S04C0205**

CONNIE SPENCER v. STEPHEN SPENCER

Clerk, Supreme Court of Georgia

Case No. A03D0448

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 07 2003

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 20 2003**

## **A03D0449. Gilyard v. The State**

On September 21, 1998, Gilyard entered a plea of guilty to the offenses of child molestation and enticing a child for indecent purposes and was sentenced to a term of years in prison. Gilyard did not appeal his plea and sentence. On March 29, 2001, Gilyard filed a petition for habeas corpus which was denied by the trial court. The Supreme Court denied his habeas petition on February 27, 2003. On January 17, 2003, Gilyard filed a motion to withdraw his guilty plea which the trial court dismissed for lack of jurisdiction because it was filed after the term of court in which the plea was entered. OCGA § 17-9-61 (b).

In this discretionary application, Gilyard seeks to appeal the dismissal of his motion to withdraw his guilty plea. However, as the trial court held, after the expiration of the term of court in which the sentence was entered, the only available remedy for Gilyard for withdrawing his guilty plea is through habeas corpus proceedings. *Grice v. State*, 236 Ga. App. 379, 380 (511 SE2d 909) (1999); see also *Caine v. State*, 266 Ga. 421, 422 (467 SE2d 570) (1996).

Because the motion was filed and denied after the expiration of the term of court in which the sentence was entered, this Court lacks jurisdiction to consider this application. Further, OCGA § 5-6-35 (j) is inapplicable as this Court also lacks

jurisdiction to consider a direct appeal. Accordingly, this application is ordered  
DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 20 2003**

*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.*

*Will. L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,

SEPTEMBER 03, 2003

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

APPLICATION NO. A03D0450

BRANDON ELLIOTT COLEMAN V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99038

99B02731

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta

**SEP 03 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*C. Will. L. Martin, Jr.*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **AUG 26 2003**

## **A03D0451. Barrett v. Marathon Investment Corporation**

Jacquelyn H. Barrett filed this application seeking review of the trial court's final order and judgment awarding Marathon Investment Corporation excess funds, interest and attorney fees pursuant to OCGA § 15-13-1 *et seq.* However, this order and judgment is not one subject to the discretionary appeal requirements set forth in OCGA § 5-6-35 (a). Because a timely notice of appeal has been filed in the trial court, the grant of this application pursuant to OCGA § 5-6-35 (j) is unauthorized. Accordingly, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 26 2003**

*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.*

*Will. L. Mart; JR*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA,

SEPTEMBER 02, 2003

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

APPLICATION NO. A03D0452

VELMA JEAN MOULDER V. BARTOW COUNTY BOARD OF EDUCATION

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90038

03CV187

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 02 2003**

*I certify that the above is a true extract fromd  
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 above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, SEPTEMBER 12, 2003

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

APPLICATION NO. A03D0453  
AMERICAN ALTERNATIVE INSURANCE COMPANY ET AL  
V. LEGION INSURANCE COMPANY ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94038

2003CV70161

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**SEP 12 2003**

*I certify that the above is a true extract fromd  
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 above written.*

Clerk.

*Will. L. Mart; JR*