

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

ATLANTA, SEPTEMBER 03, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0001
AIMEE PULLIAM V. CEBCOR/RJT BONES STEAKHOUSE ET AL

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

95001

03CZ166B

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.

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: September 23, 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 **S04C0134**

AIMEE PULLIAM v. CEBCOR/RJT BONES STEAKHOUSE et al.

Clerk, Supreme Court of Georgia

Case No. A04D0001

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 25 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 11, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0002
QUIRION DEVA3CO COLEY V. THE STATE

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

96001

99R230

Court of Appeals of the State of Georgia

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

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

Will. L. Martine

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

ATLANTA, **SEP 11 2003**

The Court of Appeals hereby passes the following order:

A04D0003. Cornetta v. Fulton County, Georgia

John Cornetta, Cornetta Enterprises, Inc., Anatasia Properties, L.L.C. d/b/a "The Love Shack," Mishka, L.L.C d/b/a "The Love Shack," and The Love Shack, Inc. ("Cornetta") filed this application for discretionary appeal seeking review of the trial court's issuance of a temporary restraining order in favor of Fulton County, Georgia restraining Cornetta from operating any of its three stores as "adult bookstores" without a special use permit or from operating the Old National Highway Store in violation of a zoning condition. However, because the order sought to be appealed is an interlocutory order as the case remains pending in the trial court, a certificate of immediate review is required for appellate review. OCGA § 5-6-34 (b). Cornetta's failure to comply with the interlocutory appeal requirements deprives this Court of jurisdiction to consider this application. Accordingly, this application is ordered **DISMISSED**.

Court of Appeals of the State of Georgia

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

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

William L. Maitland, Clerk.

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

ATLANTA,

SEPTEMBER 10, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0004
JOHN SCOTT FRANK V. ANGELA LAKE

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.

97001

02CV26974

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 10 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: **SEP 05 2003**

A04D0005. MAYS v. GRIFFIN, et al.

Willie Mays filed an application for appeal on August 20, 2003, seeking an appeal from a dismissal order entered on May 14, 2003. Because Mays failed to file his application in this court within 30 days as required under OCGA § 5-6-35 (d), the application is hereby *dismissed* for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

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

SEP 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. Mait; JR, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0006. AA-OK Bonding Co. of Gwinnett v. Underwriters Surety, Inc.

This dispossessory action was originally brought in the magistrate court and was subsequently appealed de novo to the superior court. By order entered July 21, 2003, the superior court issued its final decision which included a writ of possession in favor of Underwriters and against AA-OK Bonding Co. of Gwinnett ("AA-OK").

AA-OK filed this application for discretionary appeal, pursuant to OCGA § 5-6-35 (a) (1), on August 20, 2003. However, while OCGA § 5-6-35 (d) generally provides that an appeal taken by application must be filed within 30 days of the entry of the judgment complained of, OCGA § 44-7-56 provides specifically that a judgment in a statutory dispossessory proceeding may be appealable under Chapters 2, 3, 6, and 7 of Title 5 only if "any such appeal shall be filed within seven days of the date such judgment was entered" Since OCGA § 44-7-56 requires a judgment in a dispossessory action to be appealed, whether directly or by application, within seven days of the entry of the final judgment, this application is untimely and this Court lacks jurisdiction to consider it. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 03 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, SEPTEMBER 10, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0007
ROBERT POOLE, JR. 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.

93001

54579

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 10 2003**

*I certify that the above is a true extract fromd
the minutes of the Court of Appeals of Georgia*

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Clerk.

C. Will. L. Mait; JR

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

ATLANTA, SEPTEMBER 15, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0008
JEFFRY MICHAEL MATHERLEE V. THE STATE

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

99001

03CR0184

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

SEP 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. Matherlee

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

ATLANTA,

SEPTEMBER 23, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0009

RICHARD NELSON V. GEORGIA REAL ESTATE COMMISSION

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

91001

2002CV61125

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

SEP 23 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.

Will. L. Mait; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

SEP 11 2003

The Court of Appeals hereby passes the following order:

A04D0010. Clarence J. Mathews v. Deloris J. Orr

Clarence J. Mathews filed this application seeking review of the superior court's order dismissing his appeal. Mathews sought to appeal a decision of the probate court. The superior court dismissed his appeal for failure to pay costs, and Mathews filed this application for discretionary appeal. However, appeals of decisions of superior courts reviewing decisions of probate courts are specifically excluded from the discretionary appeal requirements set forth in OCGA § 5-6-35 (a) (1). Thus, Mathews' appeal is directly appealable. Accordingly, this appeal is ordered GRANTED pursuant to OCGA § 5-6-35 (j). Mathews shall have ten days from the date of this order to file a notice of appeal with the trial court. 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

SEP 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.*

C. Will. L. Mattingly, Clerk.

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

ATLANTA,

SEPTEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0011
JOHN JOSEPH PALMER V. THE STATE

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

92001

CR981652FR

*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
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Clerk.

C. Will. L. Mart; R

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

ATLANTA, SEPTEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0012
MICHAEL C. BERGMANN V. TERES M. BERGMANN

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

94001

DR010177BR

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
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Clerk.

Will. L. Mart; R

Court of Appeals of the State of Georgia

ATLANTA,

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

**A04D0013. SPEEDWELL UNITED METHODIST CHURCH ET AL v.
CHATHAM COUNTY, GEORGIA, ET AL.**

On August 25, 2003, Plaintiffs Speedwell United Methodist Church, et al., filed an application for discretionary review in the above-captioned case with this Court. In the application, plaintiffs state that “[j]urisdiction lies in the Court of Appeals in the event the Supreme Court determines it does not have jurisdiction over this case.” It appears that a similar application was filed on August 21, 2003, in Supreme Court and was docketed as Case No. S03D1834.

The Supreme Court of Georgia has “ultimate responsibility for construing the constitutional provisions regarding appellate jurisdiction” and its determinations result “in a binding and conclusive determination of the jurisdiction of the Court of Appeals.” *Saxton v. Coastal Dialysis &c., Inc.*, 267 Ga. 177, 178 (476 SE2d 587) (1996). Therefore, in the interest of judicial economy and in aid of our appellate jurisdiction, this discretionary application is ordered TRANSFERRED to the Supreme Court for consolidation with Case No. S03D1834 so that one authoritative determination can be made as to which appellate court exercises appellate jurisdiction over both of these applications. See Georgia Constitution of 1983, Article VI, Section I, Paragraph IV.

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

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Will. L. Maitland, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 17 2003

A04D0014. DEREK LEE THOMAS v. THE STATE.

Derek Lee Thomas filed an application on August 25, 2003, seeking to appeal from a final order dismissing complaint entered on February 5, 2003, and an order denying motion to reconsider petition and alter or amend order entered on March 19, 2003. Because Thomas failed to file his application in this court within 30 days of entry of the order sought to be appealed as required under OCGA § 5-6-35 (d), the application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

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

SEP 17 2003

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the minutes of the Court of Appeals of Georgia.*

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C. Jill L. Martin, Clerk.

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

ATLANTA,

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

A04D0014. DEREK LEE THOMAS v. THE STATE

Derek Lee Thomas has requested an extension of time in which to file his motion for reconsideration in this case. Upon consideration of said motion, the same is hereby DENIED.

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

A04D0015. DEREK LEE THOMAS v. THE STATE.

Derek Lee Thomas filed an application on August 25, 2003, seeking to appeal an order denying motion to vacate and void judgment entered on March 19, 2003. Because Thomas failed to file his application in this court within 30 days of entry of the order sought to be appealed as required under OCGA § 5-6-35 (d), the application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

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

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

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

ATLANTA, OCTOBER 20, 2003

The Court of Appeals passed the following order

Case No. A04D0015

DEREK LEE THOMAS V. THE STATE

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

96-003
1999CV12546

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

SEPTEMBER 10, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0016

IN THE INTEREST OF C.A.C. V. TAQUILLA F. BRANCH ET AL

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

98002

0762003J0742

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 10 2003

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Clerk.

Will. L. Mait; 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: September 29, 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 **S04C0168**

JOHN MATTHEW CAMPBELL et al. v. TAQUILLA F. BRANCH et al.

Clerk, Supreme Court of Georgia

Case No. A04D0016

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 01 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA,

SEPTEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0017

HATTEN PLUMBING COMPANY ET AL V. ELLIS CHARLES LEE

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

97002

2003SUV160

Court of Appeals of the State of Georgia

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

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the minutes of the Court of Appeals of Georgia*

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Clerk.

Will. L. Matier

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0018. ENVIRO PRO, INC. v. EMANUEL COUNTY, GEORGIA ET AL.

Enviro Pro, Inc. has filed this application for discretionary appeal from the superior court's order denying its petition for declaratory judgment. Enviro Pro, Inc. had received a letter from the former Chairman of the Emanuel County Commission purporting to grant approval for Enviro Pro to operate a septage treatment facility. Enviro Pro filed a declaratory judgment action seeking a declaration from the court that the letter constituted rights to a permit under OCGA § 12-8-41. The court held that the letter did not give Enviro Pro this right because the commissioner, acting alone, did not have authority to approve the issuance of the permit. Enviro Pro filed this discretionary application from the order.

This is not an appeal from a decision of a superior court reviewing a decision of a state or local administrative agency, or a lower court by certiorari or de novo proceedings, as contemplated by OCGA § 5-6-35 (a) (1), nor does it fall within any other provision of OCGA § 5-6-35 (a). The order in this case is thus directly appealable and is not subject to the discretionary appeal requirements. This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice

of appeal. In this case, however, Enviro Pro, Inc. has filed a timely notice of appeal. Thus, OCGA § 5-6-35 (j) does not apply. This application is thus DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 17 2003

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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 11, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0019

JOHNNY RAY JOHNSON V. THE STATE

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

90002

88R093

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

SEP 11 2003

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Clerk.

Will. L. Marti; JR

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

ATLANTA,

SEPTEMBER 23, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0020

ESTHER WILLIAMS V. HENRY MEDICAL CENTER

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

93002

03CV1597C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 23 2003

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Clerk.

William 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: October 14, 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 **S04C0271**

ESTHER WILLIAMS v. HENRY MEDICAL CENTER et al.

Clerk, Supreme Court of Georgia

Case No. A04D0020

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 17 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: **SEP 12 2003**

A04D0021. ARDENEUX v. THE STATE.

Arthur R. Ardeneaux seeks an appeal from an order denying his "Extraordinary Motion to Vacate Void Judgment and Sentence." Although the trial court treated Ardeneaux's motion as an extraordinary motion for new trial, in light of the Supreme Court's decision in *Williams v. State*, 271 Ga. 686, 688-689 (1) (523 SE2d 857) (1999), and in light of the nature of the argument presented in the motion, we deem it appropriate to treat the trial court's order as the denial of a motion to correct a void sentence. As held in *Williams*, the denial of such a motion is directly appealable. Accordingly, Ardeneaux's application is hereby *granted* as required under OCGA § 5-6-35 (j).

Ardeneaux shall have ten days from the date of this order to file a notice of appeal with the superior court. The superior court is instructed 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

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.

Will. L. Mat..., Clerk.

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

ATLANTA,

SEPTEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0022

ROZENA HICKMON ET AL V. PROVIDIAN NATIONAL BANK

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

91002

00A669702

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 12 2003

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Clerk.

Will. L. Mait; JR

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

ATLANTA,

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

A04D0023. CURTIS E. TURNER v. THE STATE.

Upon consideration of the State's motion to dismiss this application, the motion is hereby DENIED. Upon consideration of the application for discretionary appeal, the application is hereby DENIED.

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

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

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Will. L. Martin, Jr., Clerk.

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 29, 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 **S04C0161**

CURTIS E. TURNER v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0023

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 30 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: **SEP 09 2003**

A04D0024. Baker v. The Housing Authority of the City of Waynesboro

Tomeka Baker filed this application for discretionary appeal seeking review of the trial court's August 18, 2003 order granting The Housing Authority of the City of Waynesboro a writ of possession. However, because the order sought to be appealed is a final order in a dispossessory action, and because OCGA § 5-6-35 (a) (3) is inapplicable because the amount of rent due is not the only issue to be resolved, this case is directly appealable. A timely notice of appeal was filed on August 25, 2003. Accordingly, this application for discretionary appeal is ordered **DISMISSED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 09 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; [Signature], Clerk.

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

ATLANTA, SEPTEMBER 19, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0025
JEFFREY ELDON FISH V. DARBY S. FISH

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.

94002

94A05102 03A77762

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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. Will. L. Mart; JR

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

ATLANTA, OCTOBER 09, 2003

The Court of Appeals passed the following order

Case No. A04D0026

CORLISIA SIMS V. CHARLES TANNER

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

95-003
2002CV62109

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 09, 2003*

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Clerk.

Will. L. Mart; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

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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: October 29, 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 **S04C0364**

CORLISIA SIMS v. CHARLES TANNER

Clerk, Supreme Court of Georgia

Case No. A04D0026

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

OCT 31 2003

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 10 2003**

A04D0027. Laurie Bryant v. George Tate

Laurie Bryant filed this application for discretionary appeal seeking review of an order finding a change in circumstances materially affecting the welfare of her children and temporarily changing custody of the parties' two minor children to joint legal and physical custody between Bryant and George Tate. However, a discretionary application does not lie from such an order. In this case, the order by its terms reserves ruling on the issue of child support and thus does not constitute a final ruling on the merits of the action. Because the order appealed is not a final order, Bryant was required to follow the interlocutory application procedures in OCGA § 5-6-34 (b) by obtaining a certificate of immediate review from the trial court within the requisite time period. *Scruggs v. Dept. of Human Resources*, 261 Ga. 587, 588 (408 SE2d 103) (1991). The discretionary application statute, OCGA § 5-6-35, does not allow a party to ignore the applicable interlocutory application procedures of OCGA § 5-6-34 (b) when seeking appellate review. *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996). Because Bryant did not follow the interlocutory appeal procedures, this court lacks jurisdiction to consider this appeal at this time. Accordingly, the application is ordered **DISMISSED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 10 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,

SEPTEMBER 25, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0028

ANDEAN MOTOR COMPANY ET AL V. MITCHELL GENE HAMILTON

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

97003

03A059953

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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.

Will. L. Mait; R

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

ATLANTA,

SEPTEMBER 19, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0029

ANDRE M. GORDON V. THE STATE

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

71003

97CR0176

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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
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Clerk.

Will. L. Mat; R

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 19 2003

A04D0030. WILLIE MAYS v. THE STATE.

Willie Mays filed this application for discretionary appeal seeking review of the trial court's order dismissing his extraordinary motion for new trial. The application does not contain a stamped "filed" copy of the order sought to be appealed as required by Court of Appeals Rule 31 (d). On September 3, 2003, this Court ordered Mays to supplement his application with a stamped "filed" copy of the order sought to be appealed within 10 days or the application would be dismissed. No stamped "filed" order has been filed within the time allowed. Therefore, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 19 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,

SEPTEMBER 17, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0031

CATHERINE J. SYKES F/K/A AKAR V. IBRAHIM A. AKAR

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

93003

031340005

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 17 2003

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Clerk.

C. Will. L. Martin

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0032. Tukes v. The State

John T. Tukes filed this application for discretionary appeal seeking review of the trial court's dismissal of his civil claim for replevin. The order Tukes seeks to appeal was entered by the trial court on May 14, 2003. This application for discretionary appeal was filed on September 8, 2003. However, an application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-35 (d). Tukes failure to timely file this application deprives this Court of jurisdiction to consider the application. Accordingly, this application is ordered DISMISSED.

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

Will. L. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

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

**A04D0033. JACQUELYN H. BARRETT, SHERIFF v. MARTHON
INVESTMENT CORPORATION**

The applicant filed a direct appeal from the superior court's July 18, 2003, final order and judgment in this case, which has been docketed in this Court as appeal A04A0120. The applicant also filed an application for discretionary appeal to this Court, docketed as application A03D0451, from this same order. On August 26, 2003, this Court dismissed application A03D0451 on the basis that the applicant had already filed a direct appeal in the case. The applicant also filed an application for discretionary appeal in the Supreme Court from this same order. That Court has transferred the application to this Court on the basis that it did not have jurisdiction to consider the case. This application has been docketed in this Court as A04D0033, which is hereby DISMISSED as duplicative.

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

SEP 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.*

Will. L. Martine, Clerk.

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

ATLANTA, OCTOBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0034
DONNA MARIE., SMITH V. THE STATE

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

71004

989098828

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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 written.*

Clerk.

Will. L. Mait; [Signature]

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

ATLANTA, OCTOBER 07, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0035

THREE DOLLAR CAFE VII, INC., V. GEYER CONSTRUCTION, INC.

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

91003

03C66324

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 07 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.

Will. L. Mart; JR

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

ATLANTA, OCTOBER 03, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0036
TERESINA MAHONEY V. THE STATE

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

92003

99CR1473N

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 03 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.

Will. L. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA, **SEP 11 2003**

The Court of Appeals hereby passes the following order:

**A04D0037. DAVID J. MacDONALD v. WILLIE CARL HARRIS a/k/a WILLIE
CARR HARRIS**

David J. MacDonald seeks review of a post-judgment order that he pay Willie Carl Harris a/k/a Willie Carr Harris OCGA § 9-15-14 attorney fees. The underlying grant of summary judgment to Harris is on appeal as Case No. A03A2234.

Under *Rolleston v. Huie*, 198 Ga. App. 49 (400 SE2d 349) (1990), a post-judgment award of attorney fees may be directly appealed without regard to the discretionary appeal procedures, where there is a pending "direct appeal" taken from the underlying judgment. Because MacDonald was entitled to bring this appeal under OCGA § 5-6-34 (a), this application is GRANTED under OCGA § 5-6-35 (j).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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. Matier, Clerk.

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

ATLANTA, SEPTEMBER 30, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0038

SUSAN D. MORRISON F/K/A SUSAN D. GRAVES V. JOHN

H. GRAVES

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

94003

DR991310BA

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

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

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 25 2003

**A04D0039. HAROLD N. ACKER v. LANE COMPANY d/b/a MAXWELL
HOUSE APARTMENTS.**

On September 5, 2003, defendant Harold N. Acker, acting pro se, filed an application seeking discretionary appeal of the order entered August 8, 2003, granting summary judgment and writ of possession to plaintiff Lane Company d/b/a Maxwell House Apartments and denying Acker's motion to recuse and motion for reconsideration.

OCGA § 44-7-56, pertaining to dispossessory proceedings, states that any judgment by the trial court shall be appealable under Chapters 2, 3, 6, and 7 of Title 5 of the OCGA, provided that any such appeal shall be filed within seven days of the date such judgment was entered. The underlying subject matter generally controls over the relief sought in determining the proper procedure to follow on appeal. See *Rebich v. Miles*, 264 Ga. 467, 469 (448 SE2d 192) (1994). Because the underlying subject matter of this suit is a dispossessory proceeding and the application was not filed within

seven days of the date of entry of the order sought to be appealed, the application is untimely. Compare *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521, 522 (521 SE2d 456) (1999); see also *Miller v. Ga. Dept. of Public Safety*, 265 Ga. 62, 64 (453 SE2d 725) (1995); *Self v. Bayneum*, 265 Ga. 14 (453 SE2d 27) (1995).

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

SEP 25 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 written.*

C. Will. L. Martineau, Clerk.

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

ATLANTA SEPTEMBER 22, 2003

The Court of Appeals hereby passes the following order:

A04D0040. HOUSTON MEDICAL CENTER v. JENNIFER P. HILL.

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

96-004

2003V75748L

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

Will. L. Matzger, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 26 2003

A04D0041. Judith Watts v. Premiere Designs, Inc.

Judith Watts filed this application seeking discretionary review of the trial court's order denying her motion for new trial. In this case, Premiere Designs, Inc. sued Watts under a contract claim. The jury awarded Premiere \$5,344.00 in principal, \$3,800.00 interest, and \$20,607.14 in attorney fees. The jury also awarded Watts \$1,439.00 on her counterclaim. Watts sought a motion for new trial contending the jury verdict awarding attorney fees was contrary to law. OCGA § 13-1-11. The trial court denied the motion finding the attorney fees were authorized citing *Performance Mechanical Co. v. Heat Transfer Control, Inc.*, 247 Ga. App. 436 (543 SE2d 808) (2000). Watts then filed this application for discretionary appeal. However, OCGA § 5-6-35 (a) (10) is inapplicable, because that code section only applies to appeals from attorney fees awards under OCGA § 9-15-14, not OCGA § 13-6-11. Thus, the order sought to be appealed is subject to direct appeal under OCGA § 5-6-34 (a) (1). Accordingly, this application is GRANTED pursuant to OCGA § 5-6-35 (j). Watts has 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 **SEP 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 written.*

Will. L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0042. BETTY LOVE v. THE MONEY TREE, INC.

Betty Love seeks to appeal the order dismissing this action and granting The Money Tree, Inc.'s motion to compel arbitration. The case originated in magistrate court and was transferred to superior court because Love's counterclaim exceeded the magistrate court's jurisdictional limit. Therefore, this is not an appeal from a decision of a superior court reviewing a decision of a lower court by certiorari or de novo proceedings, as contemplated by OCGA § 5-6-35 (a) (1), nor does it fall within any other provision of OCGA § 5-6-35 (a).

Moreover, the order is final, not interlocutory, because the trial court dismissed the action instead of staying it. The order Love challenges is thus a final order that is directly appealable and is not subject to the interlocutory or discretionary appeal requirements. Therefore, Love's application is hereby *granted* as required under OCGA § 5-6-35 (j). Love shall have ten days from the date of this order to file a notice of appeal with the superior court. The superior court is instructed 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*

SEP 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.*

William L. Maitland, Clerk.

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

ATLANTA,

SEPTEMBER 16, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0043

SABRINA HAWKINS-BAILEY V. THE MONEY TREE, 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.

97005

00CV749

00CV767

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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. Mart; JR

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

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 23 2003

A04D0044. WREN v. M&M CLAYS, INC. et al.

Applicant's motion for reconsideration is hereby GRANTED. The application is reinstated for consideration on the merits.

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

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

OCT 23 2003

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Will. L. Martineau, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 17 2008**

A04D0044. WREN v. M&M CLAYS, INC. et al.

On October 1, 2003, this discretionary application was dismissed as untimely. The applicant filed a motion for reconsideration, which was granted on October 23, 2003, but through a clerical error the dismissal order was not vacated. Therefore the application was never reinstated for a decision on the merits. No inquiry was made until February 2008, when the applicant telephoned the clerk of the superior court seeking information on a ruling.

It is unfortunate, and not due to any fault of the applicant, that the application was never presented for a decision. However, the applicant bears the responsibility for failing to inquire after the application after a decision on the merits should have been rendered. The applicant should have inquired shortly after expiration of the thirty days during which a decision on a properly submitted application would have been required by law, OCGA § 5-6-35 (f). At that time, if the decision was to grant the application, the applicant would be required to file a notice of appeal within ten days. OCGA § 5-6-35 (g). No notice of appeal was filed. Even if we assume, without deciding, that the application was granted by operation of law, the time during which a notice of appeal could have been filed expired over four years ago.

Moreover, the principle of laches also applies here.

Whether laches should apply depends on a consideration of the particular circumstances, including the length of the delay in the claimant's assertion of rights, the sufficiency of the excuse for the delay, the loss of evidence on disputed matters, the opportunity for the claimant to have acted sooner. . . . These factors are relevant because laches is not merely

a question of time, but principally a matter of inequity in permitting the claim to be enforced. But lapse of time is an important element and in itself may be telling on the question of inequity.

(Citations and punctuation omitted.) *Plyman v. Glynn County*, 276 Ga. 426, 427 (578 SE2d 124) (2003). Here, the lapse of time attributable to the applicant is more than four years, during which evidence presumably has been lost and memories have faded. Reviving an application which was not resolved four years ago plainly would work inequity against the respondent to the application. A failure to inquire into a pending matter for over four years constitutes laches and an abandonment of the application.

The order granting the motion for reconsideration therefore is vacated as moot, the previous, unvacated order dismissing the application remains in effect, and the application stands dismissed.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 17 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.

Willie L. Matlock, Clerk.

Court of Appeals of the State of Georgia

[Handwritten initials]

PROPOSED ORDER (A04D0044.90) February 28, 2008	
AGREE	DISAGREE
<i>[Handwritten signature]</i>	

ATLANTA,

The Court of Appeals hereby passes the following order:

A04D0044. WREN v. M&M CLAYS, INC. et al.

On October 1, 2003, this discretionary application was dismissed as untimely. The applicant filed a motion for reconsideration, which was granted on October 23, 2003, but through a clerical error the dismissal order was not vacated. Therefore the application was never reinstated for a decision on the merits. No inquiry was made until February 2008, when the applicant telephoned the clerk of the superior court seeking information on a ruling.

It is unfortunate, and not due to any fault of the applicant, that the application was never presented for a decision. However, the applicant bears the responsibility for failing to inquire after the application after a decision on the merits should have been rendered. The applicant should have inquired shortly after expiration of the thirty days during which a decision on a properly submitted application would have been required by law, OCGA § 5-6-35 (f). At that time, if the decision was to grant the application, the applicant would be required to file a notice of appeal within ten days. OCGA § 5-6-35 (g). **No notice of appeal was filed. «Call in to Bill to confirm this with superior court clerk»** Even if we assume, without deciding, that the application was granted by operation of law, the time during which a notice of appeal could have been filed expired over four years ago.

Moreover, the principle of laches also applies here.

Whether laches should apply depends on a consideration of the particular circumstances, including the length of the delay in the claimant's assertion of rights, the sufficiency of the excuse for the delay, the loss of evidence on disputed matters, the opportunity for the claimant to have

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 01 2003**

A04D0044. ROBERT T. WREN v. M&M CLAYS, INC. ET AL.

Robert T. Wren filed this discretionary application from an award of the State Board of Workers' Compensation Appellate Division, which was affirmed by operation of law in the superior court. The Appellate Division's award was entered April 21, 2003. Wren timely appealed the decision to the Superior Court of Wilkinson County. The Appellate Division transferred the record of its proceedings to the superior court, where the case was docketed on June 12, 2003. The superior court, however, did not hold a hearing on the case and did not continue the case. Accordingly, under OCGA § 34-9-105 (b), the case was affirmed by operation of law in the superior court on August 11, 2003.

Wren then filed his discretionary application to this Court. The application was docketed when received in this Court on September 11, 2003. Rule 4 of the Court of Appeals provides that documents are deemed to be filed when physically delivered to the Clerk's office or when mailed, provided they are sent by *registered or certified mail*. Here, the application was sent on September 10, 2003, by UPS Next Day Air, not by registered or certified mail. Thus, the application was filed thirty-one days after the Appellate Division's award was affirmed by operation of law. An application for discretionary appeal must be physically filed or sent by registered or certified mail within thirty days of the order appealed. OCGA § 5-6-35 (d); Court of Appeals Rule 32 (b). Because the applicant filed his application in this Court more than thirty days after entry of the order he seeks to appeal, it is untimely, and this Court is without

jurisdiction to consider it. Accordingly, this application for discretionary appeal is hereby DISMISSED.

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

OCT 01 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 written.*

Will. L. Martin, Jr., Clerk.

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

ATLANTA, OCTOBER 01, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0045
JOSEPH TREGEAGLE V. WILLIAM SUSSMAN

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

93004

NO CASE

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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 above written.*

Clerk.

C. Will. L. Martini

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

ATLANTA, NOVEMBER 13, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0046
ALEXANDER N. TERRY V. TERESA M. GARIBALDI

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.

99004

2002CV49605

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

NOV 13 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.

Will. L. McIntire

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

ATLANTA, OCTOBER 07, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0047

RONNIE SHANKLIN V. THE STATE

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

91004

2003CV022357

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

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the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court
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Clerk.

Will. L. Martin, Jr.

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

ATLANTA, OCTOBER 03, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0048
PAMELA P. DUKES V. RAY E. DUKES

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

92004

02CV260

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 03 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 written.*

Clerk.

Will. L. Mait; JR

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

ATLANTA, OCTOBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0049
RALPH JONES V. PATRICIA BURKS

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.

94004

2003CVD733

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

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0050
KAREN LONG MORRIS F/K/A KAREN LONG MARCHANT
V. HENRY DORMAN MARCHANT, II.

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

95005

SU02DR344P

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 08 2003

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the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court
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Clerk.

Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 18 2003

A04D0051. CORRIE A. MCMILLIAN v. THE STATE.

Corrie A. McMillian filed an application for appeal on September 15, 2003, seeking an appeal from a denial of an out of time appeal entered on August 5, 2003. Because McMillian failed to file an application in this court within 30 days following entry of the order sought to be appealed as required under OCGA § 5-6-35 (d), the application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 18 2003

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*Witness my signature and the seal of said court
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Will. L. Maitland, Clerk.

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

ATLANTA, OCTOBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0052

WILLIAM ROWAN V. THE STATE

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

98005

02CR058

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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. Marti, Jr.

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

ATLANTA, OCTOBER 07, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0053
SAMMIE C. POOLE, SR., V. CHIPS TRANSPORT, D/B/A
J.J & S TRANSPORT ET AL

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

71005

03CV0493

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 07 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, OCTOBER 16, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0054

BRENDA KRISTINE DOBBINS ET AL V. STANLEY JOSEPH BLASCO

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

90005

0210785605

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

William L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 18 2003

**A04D0055. TRANSPORT PACKAGING INTERNATIONAL, INC., ET AL v.
CLIP-LOK SIMPAK (USA), INC.**

Plaintiff Clip-Lok Simpak (USA), Inc. filed suit against defendants Transport Packaging International, Inc., et al., asserting claims of breach of fiduciary duty, misappropriation of trade secrets, conversion, tortious interference with contractual and business relations, and attorney fees under OCGA § 13-6-11, and praying for damages, punitive damages, a temporary restraining order, an interlocutory injunction, and attorney fees. On September 15, 2003, the superior court entered an order finding that defendants had misappropriated plaintiff's trade secrets and granting plaintiff both a temporary restraining order and an interlocutory injunction.

On September 18, 2003, defendants filed in this Court, an application for a discretionary appeal and an emergency motion to expedite appeal and stay the temporary restraining order. The underlying issue in both the emergency motion and the application pertains to the propriety of granting equitable and extraordinary relief in the form of an interlocutory injunction restraining defendants from making use of any trade secrets belonging to plaintiff and unfairly competing with plaintiffs through the use of the Clap & Snap product and further restraining defendants from using the Clap & Snap product, including both clips and containers, in any way, shape, or form. The propriety of granting a temporary restraining order restraining defendants from engaging in the same conduct is also in issue.

An interlocutory injunction invokes the trial court's equitable powers. Equity intervenes by grant of an interlocutory injunction to prevent irreparable damage to one of the parties and to maintain the status quo until the final determination is made.

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

ATLANTA, OCTOBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0056
AJM PACKAGING CORPORATION ET AL V. JON RAYMOND BRAXTON

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

99005
03V135

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

OCT 08 2003

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the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court
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Clerk.

C. Jill L. Mait; JR

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

ATLANTA, OCTOBER 16, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0057
CHRISTOPHER LESTER V. CITY OF DALTON

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

91005
85102J

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

Clerk.

Will. L. Mart; JR

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

ATLANTA,

OCTOBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0058

J.L. FERNANDEZ, M.D., ET AL V. SHANN BOATRIGHT (AUSTIN)

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

70005

03CV1361M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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. Mait; [Signature]

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

ATLANTA, OCTOBER 14, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0059
STEPHEN JAMES BUTLER V. THE STATE

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

92005

01B33154

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

OCT 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, OCTOBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0060
CAV CORPORATION, D/B/A WEEKENDS AT BACKSTREET ET AL
V. BARNEY SIMMS ET AL .

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

94005

2003CV64843

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 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, OCTOBER 09, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0061
FRUIT OF THE LOOM ET AL V. TAMMY MOORE

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

95006

03CV304W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 09 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, OCTOBER 20, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0062

JUANITA HICKS, CLERK OF SUPERIOR COURT OF FULTON COUNTY ET AL V.
THE FLORIDA STATE BOARD OF ADMINISTRATION 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.

96006

2002CV61424

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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. Mart; [Signature]

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

ATLANTA, OCTOBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0063
ADVANCE AUTO STORES COMPANY, INC. V. FRANK COLEMAN

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

98006

02CV343

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

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0064. WANDA B. MCLEOD v. THE STATE.

Wanda B. McLeod filed this application for discretionary appeal from the superior court's order denying her motion for reduction of sentence. The superior court's order was filed in the superior court on August 21, 2003. McCleod's application for discretionary appeal was docketed in this Court on September 23, 2003, thirty-three days after the order was entered in the trial court. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because McLeod filed her application in this Court more than thirty days after entry of the order she 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 **SEP 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. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 10 2003**

A04D0065. BERT ALLEN MAXWELL, JR. v. THE STATE.

Bert Allen Maxwell, Jr., filed an application for discretionary appeal of the order, entered August 20, 2003, finding that Maxwell had violated the terms of his first offender probation, entering an adjudication of guilt, and sentencing him to “10 years, serve five years, balance probated – over and above that time already served on probation.” The above-captioned application is granted only as to the following issues: Whether the newly imposed sentence is void because Maxwell was not informed in the sentencing order that he would receive credit for time served on probation against any new sentence; and whether the trial court erred by failing to give Maxwell credit for time already served on probation in accordance with *Roland v. Meadows*, 273 Ga. 857 (548 SE2d 289) (2001).

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

OCT 10 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 E. Matz, Clerk.

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

ATLANTA, OCTOBER 14, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0066
IDA V. SHELLEY V. HARVEY M. KOENIG

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.

90006
03SV00316

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

*I certify that the above is a true extract fromd
the minutes of the Court of Appeals of Georgia*

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Clerk.

William L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 17 2003

A04D0067. ANDERSON, III v. REAGAN.

This court dismissed direct appeal no. A04A0122 filed by inmate Thomas Watson Anderson, III, on September 10, 2003, for failure to follow the discretionary appeal procedure as required under OCGA §§ 5-6-35 (a) (2) and 42-12-8. Anderson thereafter filed an application for discretionary appeal. The judgment complained of, however, was entered on August 21, 2002. Because Anderson failed to file his application for discretionary appeal within 30 days of the order complained of as required under OCGA § 5-6-35 (d), his application is hereby *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

OCT 17 2003

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the minutes of the Court of Appeals of Georgia.*

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Will. L. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 29 2003**

A04D0068. Michael Watson v. The State

Applicant Michael Watson filed this application for discretionary appeal seeking review of the trial court's order revoking his probation. OCGA § 5-6-35 (a) (5). The order Watson seeks to appeal was entered by the trial court on July 1, 2003. Watson filed this application on September 24, 2003. However, an application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-35 (d). Watson's failure to file this application within 30 days after entry of the order sought to be appealed deprives this Court of jurisdiction to consider the application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 29 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, OCTOBER 20, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0069
KENNETH M. GILLIARD 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.

91006
01R012

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

OCT 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 written.*

Will. L. Mast; JR
Clerk.

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

ATLANTA, OCTOBER 17, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0070

DANIEL DOWNING V. THE STATE

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

92006

96RCCR89

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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. Marti; JR

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

ATLANTA, OCTOBER 22, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0071

GEORGE YARBOROUGH III, V. RACHEL FRANCINE HOLMES

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

70006

021491935

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

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0072. LEHRER v. GRAHAM, State Revenue Commissioner.

Tax refund claimant Lonnie Lehrer filed an application for discretionary appeal from an order of the superior court granting the State Revenue Commissioner's motion for summary judgment and denying Lehrer's motion for summary judgment. As a preliminary matter, the Commissioner has filed a motion to transfer Lehrer's application to the Supreme Court on the ground that this is a case "involving the construction of . . . the Constitution . . . of the United States" as well as a case "in which the constitutionality of a law . . . has been drawn into question." Ga. Const. of 1983, Art. VI, § VI, ¶ II (1). We note, however, that the Commissioner also asserts on page 22 of his brief that "substantial, well-established law and precedent already exist" on these same matters. The Commissioner is advised that the Court of Appeals has appellate jurisdiction to consider issues involving settled principles of constitutional law. *Pollard v. State*, 229 Ga. 698 (194 SE2d 107) (1972). Because neither the Commissioner's motion nor Lehrer's application for appeal demonstrates a need for the Supreme Court to consider a constitutional issue of first impression within its exclusive appellate jurisdiction, the motion to transfer is hereby *denied*.

Lehrer filed this action in the superior court under OCGA § 48-2-35 (b) (4) after the Commissioner failed to make a decision on his claim for refund within one year of the date the claim was filed. Because Lehrer's action for a refund does not seek review of an adverse decision by the Commissioner on his claim for a refund, OCGA § 5-6-35 (a) (1) does not apply. Since the discretionary appeal procedure is not applicable in this case, Lehrer's application for appeal is hereby *granted* as required under OCGA § 5-6-35 (j). Lehrer shall have ten days from the date of this

order to file his notice of appeal. 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*

OCT 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.*

Will. L. Martin, Jr., Clerk.

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

ATLANTA, OCTOBER 24, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0073
MURRAY GORDON MCGREGOR V. TIM BURGESS,
COMMISSIONER OF STATE DEPARTMENT OF MOTOR
VEHICLE SAFETY (DMVS)

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

95007

2003CV71946

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 24 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

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: November 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 **S04C0427**

MURRAY GORDON MCGREGOR v. TIM BURGESS, Comr.

Clerk, Supreme Court of Georgia

Case No. A04D0073

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 17 2003

NOV 17 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA, OCTOBER 20, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0074

JUAN MILLER 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.

96007

00CR0430C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 20 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.

Will. L. Mart; JR

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

ATLANTA, OCTOBER 22, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0075
LARRY D. AILES V. STEPHANIE DICKERSON

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

98007

02CV84803

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 22 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 written.*

Clerk.

Will. L. Mat; JR

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

ATLANTA, OCTOBER 23, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0076
ONE BEACON INSURANCE COMPANY F/K/A COMMERICAL
UNION INSURANCE COMPANY ET AL V. LISA JOY HUGHES

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.

97007

2003CA385

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 20 2003

A04D0077. LANE v. THE STATE.

Roger W. Lane filed an application for discretionary appeal on October 3, 2003, from an order denying a "motion to vacate void judgment" entered on August 19, 2003. This court is without jurisdiction to consider Lane's application because it was not filed within 30 days of the order complained of as required under OCGA § 5-6-35 (d). *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Moreover, Lane's conviction was previously affirmed by this court in *Mann v. State*, 244 Ga. App. 756, 760-761 (536 SE2d 608) (2000). We note that the superior court's order addresses no issue that could entitle Lane to a second appeal in this court. See *Daniels v. State*, 244 Ga. App. 522 (536 SE2d 206) (2000) (defendant may not raise issues addressing the validity of the underlying conviction when that conviction has been previously reviewed by appeal); see also *Goodrum v. State*, 259 Ga. App. 704 (578 SE2d 484) (2003) (motion alleging a "void judgment" does not lie where neither subject matter jurisdiction nor personal jurisdiction is meaningfully challenged and the sentence rendered is otherwise within legal limits). For these reasons, Lane's application is hereby *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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, Jr., Clerk.

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

ATLANTA, NOVEMBER 12, 2003

The Court of Appeals passed the following order

Case No. A04D0077

ROGER W. LANE V. THE STATE

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

71-007
98CR397

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

William L. Martin, III

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: November 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 **S04C0519**

ROGER W. LANE v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0077

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 01 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: **OCT 20 2003**

**A04D0078. TUCKER & TUCKER REALTY et al. v. MACON OUTREACH AT
MULBERRY et al.**

Upon consideration of the Application for Discretionary appeal, it is ordered that it be hereby DENIED. It is further ordered that respondents' motion for sanctions is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **OCT 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. Mat; [Signature], Clerk.



SUPREME COURT OF GEORGIA
Case No. S04D0112.

FILED IN OFFICE

OCT - 3 2003

CLERK COURT OF APPEALS OF GA

Atlanta

OCT 03 2003

The Honorable Supreme Court met pursuant to adjournment.

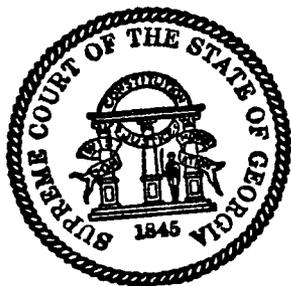
The following order was passed:

TUCKER & TUCKER REALTY CO., et al.
v. MACON OUTREACH AT MULBERRY et al.

From the Superior Court of Bibb County.

Appellants filed a complaint seeking injunctive and declaratory relief regarding appellees' application for a conditional use permit. The trial court affirmed the Commission's grant of the permit in its May 6, 2003 order, but did not expressly determine that its ruling was a final judgment under OCGA § 9-11-54 (b) and did not resolve all pending claims until its order of August 21, 2003. Appellants timely filed a discretionary appeal in this Court under its constitutional question jurisdiction, asserting that the approval of the permit was vague and confusing and was an unconstitutional delegation of the zoning power. Nothing in the trial court's May 6, 2003 order reflects that it addressed the issues petitioners now seek to raise and petitioners present nothing in their application to establish that any constitutional issues were timely raised and ruled on below. See Santana v. Georgia Power Co., 269 Ga. 127, 129 (6) (498 SE2d 521) (1998). In any event, the appeal does not draw into question the constitutionality of a

law, ordinance or constitutional provision. 1983 Ga. Const., Art. VI, Sec. VI, Par. II (1).¹ Therefore, the appeal hereby is transferred to the Court of Appeals.



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

 , Chief Deputy Clerk

¹ Although in their application, petitioners quote from Trend Dev. Corp. v. Douglas County, 259 Ga. 425 (1989) that this Court has constitutional question jurisdiction over decisions of a court reviewing a zoning decision, this Court held in Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 (2001) that decisions on building permits do not constitute zoning decisions.

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

ATLANTA, OCTOBER 28, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0079
DARRELL MADDOX V. THE STATE

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

93007
03CR114

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

Clerk.

C. Will. L. Mart; [Signature]

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

ATLANTA, OCTOBER 16, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0080

MICHAEL YOHE V. KATIE HONG

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

99007

03A006764

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 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. Mait; JR

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

ATLANTA, NOVEMBER 04, 2003

The Court of Appeals passed the following order

Case No. A04D0080

MICHAEL YOHE V. KATIE HONG

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

99-007
03A006764

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

Clerk.

Will. L. Mart; [Signature]

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: November 24, 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 **S04C0502**

MICHAEL YOHE v. KATIE HONG

Clerk, Supreme Court of Georgia

Case No. A04D0080

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 25 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA, OCTOBER 31, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0081

JOHN THOMPSON V. THE STATE

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

91007

97B016693

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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.

C. Jill L. Marti; JR

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

ATLANTA, NOVEMBER 19, 2003

The Court of Appeals passed the following order

Case No. A04D0081

JOHN THOMPSON V. THE STATE

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

91-007
97B016693

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 19, 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, III

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: December 1, 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 **S04C0523**

JOHN THOMPSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0081

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 01 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: **OCT 17 2003**

A04D0082. CECIL R. HALL v. THE STATE.

On October 6, 2003, Cecil R. Hall, pro se, filed this application for discretionary appeal from the trial court's August 25, 2003 dismissal of his motion for out-of-time appeal. Because Hall failed to file this application in this court within 30 days of entry of the order sought to be appealed as required under OCGA § 5-6-35 (d), the application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 337) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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. Mat..., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 14 2003

**A04D0083. IN RE: JULY - AUGUST GRAND JURY PRESENTMENT FOR
THE JULY - AUGUST 2003 TERM.**

Acting on behalf of the grand jury, DeKalb County district attorney J. Tom Morgan has filed a "conditional" application for discretionary appeal from an order granting chief executive officer Vernon Jones's petition to expunge portions of the grand jury's proposed presentment for the July-August 2003 term. Applicant advises that a notice of appeal has also been filed with the superior court and that this application was filed merely in an abundance of caution.

The matter is no longer pending in the court below, and hence the order to expunge is directly appealable. It is not subject to the interlocutory appeal requirements. This court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal. Therefore, the application is GRANTED. If a notice of appeal has not already been filed, applicant shall have ten days from the date of this order to file one with the trial court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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.*

Will. L. Maitland, Clerk.

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

ATLANTA, OCTOBER 31, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0084
ANTHONY GEORGE JOHNSON V. THE STATE

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

94007

00R091

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

OCT 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,

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

A04D0085. WILLIE J. ROBERTSON v. THE STATE.

Willie J. Robertson seeks a discretionary appeal of the order declining to grant his petition for writ of mandamus and dismissing his case, Civil Action No. 03-EV-190-T, with prejudice. Because the Supreme Court has appellate jurisdiction in cases involving extraordinary remedies, this appeal is hereby TRANSFERRED to the Supreme Court. Ga. Const. of 1983, Art. VI, § VI, ¶ III (5); OCGA § 9-6-28 (a).

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

Will. L. Martz, Jr., Clerk.

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

ATLANTA, OCTOBER 20, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0086
JEAN - WEBER LOUIS V. THE STATE

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

96008

86R5107

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 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. Martin, Jr.

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

ATLANTA, NOVEMBER 13, 2003

The Court of Appeals passed the following order

Case No. A04D0086

JEAN - WEBER LOUIS V. THE STATE

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

96-008
86R5107

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

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: December 8, 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 **S04C0582**

JEAN WEBER LOUIS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0086

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 09 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA, OCTOBER 31, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0087
VENANCIO FRIAS V. CONTINENTAL GRAIN CO., D/B/A
DUTCH QUALITY HOUSE., ET AL

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

98008

2003S060643

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

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

ATLANTA, NOVEMBER 26, 2003

The Court of Appeals passed the following order

Case No. A04D0087

VENANCIO FRIAS V. CONTINENTAL GRAIN CO., D/B/A
DUTCH QUALITY HOUSE., ET AL

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

98-008
2003S060643

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

Clerk.

Will. L. Mait; JR

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

ATLANTA, NOVEMBER 05, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0088
LIBERTY MUTUAL INSURANCE CO. V. EDWARD GRILL

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

97008

2003CV1889C

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

NOV 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]

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: December 15, 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 **S04C0608**

LIBERTY MUTUAL INSURANCE COMPANY v. EDWARD GRILL

Clerk, Supreme Court of Georgia

Case No. A04D0088

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 12 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 06, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0089
AMIRA HASSAN V. OLIVER NWABUDE

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

71008

03C08064

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

NOV 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.*

Clerk.

Will. L. Mait; [Signature]

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

ATLANTA, OCTOBER 23, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0090
BETTY H. GORDON V. BEVERLY ANN GORDON A/K/A
BEVERLY ANN MOORE

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.

90008

03CV301

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 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. Mart; JR

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

ATLANTA, NOVEMBER 06, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0091

ROY SCHMITT ET AL V. JACKSON 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.

93008

X03CV0681

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Mart; JR

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

ATLANTA, NOVEMBER 04, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0092
JIMMY EARL COLLUM V. THE STATE

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

99008

00CR1083

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

C. Will. L. Maitland

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

ATLANTA, OCTOBER 31, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0093

WILLIAM JOSEPH CARPENTER V. STACEY L. THALKEN

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

91008

0285369

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 31 2003**

A04D0094. RICE v. RICE.

The issues raised in the above styled application for discretionary appeal include whether the trial court erred in holding applicant in contempt for failure to abide by certain provisions of the parties' final divorce decree. Since the contempt action is ancillary to the underlying divorce action and involves issues other than custody, this application falls within the divorce and alimony jurisdiction of the Supreme Court. Accordingly, the application is hereby *transferred* to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (254 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Phillips v. Brown*, 263 Ga. 50, 51 (2) (426 SE2d 866) (1993); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction in contempt action involving child custody issues, but not issues relating to divorce and alimony, is with the Court of Appeals).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 31 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, Clerk.

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

ATLANTA, NOVEMBER 06, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0095
JEREMEE J. MCCABE V. MARIE THEREZE KLENDA ET AL

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

92008

SU02DM37215

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

NOV 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.*

W. L. Martine
Clerk.

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

ATLANTA,

NOVEMBER 07, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0096

MICHELLE WARNOCK V. NEAL CHILDERS

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

94008

2003CV72427

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 07 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: **NOV 19 2003**

A04D0097. CALLAWAY v. THE STATE

Harry L. Callaway seeks discretionary review of the trial court's order denying his motion for arrest of judgment, petition for writ of mandamus, and petition for impeachment. The Supreme Court has held that the ruling denying the motion for arrest of judgment rendered the petition for writ of mandamus and petition for impeachment no longer viable. The only remaining issue for appeal is the denial of the motion for arrest of judgment. However, the denial of a motion for arrest of judgment is not subject to the discretionary appeal requirements. OCGA § 5-6-35. Callaway also filed a direct appeal of this order; however, this Court dismissed that appeal as an invalid appeal because the motion for arrest of judgment was not timely filed with the trial court. Because the issue Callaway seeks to appeal is not discretionary and because a direct appeal is not proper, 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 **NOV 19 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, NOVEMBER 05, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0098
LISA JOY HUGHES V. ONE BEACON INSURANCE COMPANY
F/K/A COMMERCIAL UNION INSURANCE COMPANY 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.

97009

2003CA385

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Martin, Jr.

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

ATLANTA, OCTOBER 31, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0099

AARON RYALS V. THE STATE

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

96009

2001SUR101

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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, NOVEMBER 13, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0100
STEPHEN HERRING A/K/A HORACE HAWKINS V. THE STATE

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

98009

03CR1141

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

C. Will. L. Mait; JR

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

ATLANTA, NOVEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0101
JOSEPH FRANCIS WINKLER V. THE STATE

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

71009

92CR1125B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Mart; JR

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

ATLANTA,

DECEMBER 15, 2003

The Court of Appeals passed the following order

Case No. A04D0101

JOSEPH FRANCIS WINKLER V. THE STATE

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

71-009
92CR1125B

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

Clerk.

Will. L. Mait; 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: January 12, 2004

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 **S04C0771**

JOSEPH FRANCIS WINKLER v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0101

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 13 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 13 2003**

**A04D0102. EMBRY MALONE v. NATIONWIDE MORTGAGE SERVICES,
INC.**

On October 20, 2003, Embry Malone, pro se, filed this application for discretionary appeal from the state court's October 8, 2003, order dismissing his appeal in his dispossessory case. In a dispossessory action, a notice of appeal must be filed within seven days of the date the judgment sought to be appealed was entered. OCGA § 44-7-56; *Ray M Wright, Inc. v. Jones*, 239 Ga. App. 521, 522-523 (521 SE2d 456) (1999). The underlying subject matter generally controls over the relief sought in determining the proper procedure to follow on appeal. See *Rebich v. Miles*, 264 Ga. 467, 469 (448 SE2d 192) (1994). Because the underlying subject matter of this suit is a dispossessory proceeding and the application was not filed within seven days of the date of entry of the order sought to be appealed, the application is untimely. See *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. at 522-523. This Court accordingly lacks jurisdiction to consider this application, which is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.*

Will. L. Martin, Jr., Clerk.

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

ATLANTA, NOVEMBER 13, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0103
DORIS JENKINS V. NANCY JAN JAMES

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.

93009

M99CV0310

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

C. Vill. L. Marti; JR

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

ATLANTA, NOVEMBER 13, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0104
STEPHANIE NELSON V. DOLLAR TREE STORES ET AL

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

99009

03CV38191C

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

C. Will. L. Mait; 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: December 3, 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 **S04C0566**

STEPHANIE NELSON v. DOLLAR TREE STORES

Clerk, Supreme Court of Georgia

Case No. A04D0104

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 09 2003

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 21, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0105
KENNETH JACKSON V. THE STATE

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

91009

00SC15067

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Mait; JR

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

ATLANTA, NOVEMBER 13, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0106

PHILIP B. NEWCOMER V. VALLADARES AUTOMOTIVE, INC., ET AL

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

70009

01VS017894E

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 13 2003

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the minutes of the Court of Appeals of Georgia*

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Clerk.

Will. L. Mart; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0107. MARY E. HARKLEROAD v. GEORGIA DEPARTMENT OF MOTOR VEHICLE SAFETY

Mary E. Harkleroad filed a petition for administrative review of the Georgia Department of Motor Vehicle Safety's decision to suspend her driver's license pursuant to OCGA § 40-5-67.1. On July 15, 2002, the administrative law judge entered an order affirming the decision. Harkleroad appealed to the superior court, which affirmed the administrative law judge's order on June 17, 2003. Harkleroad filed a motion for reconsideration of this order on June 25, 2003. Harkleroad then filed a notice of direct appeal to this Court, which was docketed as appeal A03A2375. This appeal was dismissed, however, on August 12, 2003. On October 1, 2003, the superior court denied Harkleroad's motion for reconsideration. Harkleroad then filed this discretionary application on October 23, 2003, from the superior court's order denying her motion for reconsideration.

This Court, however, does not have jurisdiction to consider the merits of this application. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Here, the superior court's order affirming the order of the administrative law judge -- the order properly appealed from -- was entered 128 days prior to the date this application was filed. A motion for reconsideration does not extend the time for filing a discretionary application. OCGA § 5-6-35 (d); see also OCGA § 5-6-38 (a), and *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Further, a denial of a motion for reconsideration is not itself appealable. *Savage v. Newsome*, 173 Ga. App. 271 (326

SE2d 5) (1985). Because the application is untimely, this Court lacks jurisdiction to consider it. For these reasons, the application is ordered DISMISSED.

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

NOV 18 2003

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Will. L. Martin, Jr., Clerk.

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

ATLANTA, NOVEMBER 04, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0108
SCOTT VOZAR V. THE STATE

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

94009

CR020113AB

Court of Appeals of the State of Georgia

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

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the minutes of the Court of Appeals of Georgia*

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hereto affixed the day and year last above above written.*

Clerk.

Will. L. Mait; JR

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

ATLANTA, NOVEMBER 14, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0109

JOHN WILLIS HOMES, INC. V. WILLIAM A. ALBRIGHT, ET AL

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

95010

02CV123824 02CV123844

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

NOV 14 2003

*I certify that the above is a true extract fromd
the minutes of the Court of Appeals of Georgia*

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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, NOVEMBER 14, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0110

JOHN WILLIS HOMES, INC., ET AL V. WILLIAM A. ALBRIGHT, ET AL

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

95011

02CV123844 02CV123824

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

NOV 14 2003

*I certify that the above is a true extract fromd
the minutes of the Court of Appeals of Georgia*

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hereto affixed the day and year last above above written.*

Clerk.

William L. Mait; JR

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

ATLANTA, NOVEMBER 14, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0111
SHEDONNA PADGETT ET AL V . GEORGIA RECEIVABLES, 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96010
03A025452

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

NOV 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. Mait; JR

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

ATLANTA, NOVEMBER 18, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0112
ERNST MEISTER ET AL V. STEVE BROCK

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.

98010
2002CV49903

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 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; [Signature]

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

ATLANTA, NOVEMBER 07, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0113
ELAINE HOUSTON V. WAL-MART STORES, INC., ET AL

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

97010

03V01432

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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
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Clerk.

C. Will. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 19 2003**

A04D0114. LLOYD TIMMY DAVIS v. THE STATE

In May 2001, Lloyd Timmy Davis was convicted of being a habitual violator, DUI, and obstruction of a law enforcement officer. He was sentenced to four years probation. On June 25, 2002, the trial court revoked the balance of Davis's probation for committing the new offense of theft by taking. On September 25, 2003, the trial court denied Davis's motion for modification of sentence, but granted his motion for an "out-of-time appeal" of the June 25, 2002, revocation order. On October 27, 2003, Davis filed this application for discretionary review of the trial court's June 25, 2002, order revoking his probation. Applications for discretionary appeal, however, are addressed to the appellate courts, and any request for permission to file an untimely application necessarily would also be addressed to the appropriate appellate court rather than the trial court. This Court has already noted the lack of any authority to grant such a request. See *Dept. of Offender Rehabilitation v. Meeks*, 165 Ga. App. 269 (299 SE2d 757) (1983). Accordingly, this untimely application for discretionary appeal is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 19 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 written.*

C. Will. L. Martini Clerk.

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

ATLANTA, NOVEMBER 20, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0115
ATLAS CONSTRUCTION COMPANY, INC., ET AL V. ADALY
CASTILLO PENA, ET AL

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

90010

03CV77

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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 written.*

Clerk.

Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

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

**A04D0115. ATLAS CONSTRUCTION COMPANY, INC. ET AL v. ADALY
CASTILLO PENA, ET AL.**

Atlas Construction Company, et al., has filed a motion for reconsideration of the order of this Court, entered November 20, 2003, denying its application for discretionary appeal. The motion for reconsideration is GRANTED, this Court's previous order dismissing the application is hereby VACATED, and discretionary application A04D0115 is hereby REINSTATED. Upon further consideration of said application for discretionary appeal on the merits, the application is ordered GRANTED.

Atlas Construction Company, et al., shall file a notice of appeal within 10 days of the date of this order. The clerk of the superior court shall include a copy of this order in the record of trial forwarded to this Court.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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. Martz, Jr., Clerk.

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

ATLANTA, NOVEMBER 18, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0116
SONYA PRIEST V. JOHN R. PRIEST, JR.

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

93010

02236

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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
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Clerk.

Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 25 2003**

A04D0117. CITY OF LYONS ET AL v. TERRY LEE WEBB.

This application for discretionary appeal in a workers' compensation case seeks review of an order determining that the employee's current hearing request has not been dismissed under OCGA § 34-9-100 (c). "'The Work(ers') Compensation act makes no provision for an appeal to the superior court from a decision by the [appellate division] other than one which grants or denies compensation.' *Garner v. Owens-Illinois Glass*, 134 Ga. App. 917 (216 SE2d 709) (1975); OCGA § 34-9-105 (b)." *Conwood Corp. v. Guinn*, 190 Ga. App. 595 (379 SE2d 621) (1989). The appellate division's ruling on this issue did not constitute a "final order or judgment" within the contemplation of OCGA § 34-9-105 (b), but instead was interlocutory, the matter being remanded to the administrative law judge for a hearing on the merits of the employee's claim. Under these circumstances, neither the superior court nor this Court is authorized to review the appellate division's ruling in this matter. Therefore, this application is hereby DISMISSED for lack of jurisdiction.

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

Will. L. Maitland, Clerk.

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

ATLANTA, DECEMBER 01, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0118
JOHN T. WILLIAMS V. CARL GAFFE

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

91010

SU03CV016

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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 above written.*

Clerk.

Will. L. Matier

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

ATLANTA, NOVEMBER 21, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0119
SHOMARI BENTON V. THE STATE

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

70010

00CR00393 01SC07255

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

NOV 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. Mat; JR

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

ATLANTA, NOVEMBER 26, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0120

U.S. EXPRESS ENTERPRISES, INC., ET AL V. MARTIN HAMBY

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

92010

03CV441

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Martin, Jr.

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

ATLANTA, NOVEMBER 18, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0121
KAMERON K. GARDNER V. THE STATE

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

94010
97R059

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 13 2003**

A04D0122. MICHAEL CRUMPTON v. THE STATE.

Michael Crumpton seeks an appeal from a September 2, 2003, order denying his motion for modification of the sentence imposed upon the revocation of his probation. Crumpton's application was not filed with this court until November 3, 2003.¹ Because Crumpton's submission was not filed within 30 days as required under OCGA § 5-6-35 (d), the application is hereby *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 **NOV 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.*

William L. Martin, Jr., Clerk.

¹Although timely received, Crumpton's original submission, which was transferred here from the Georgia Supreme Court, could not be accepted for filing because it did not contain a filing fee or sufficient pauper's affidavit as required under OCGA § 5-6-4, nor did it include a Certificate of Service as required under Court of Appeals Rule 1 (a).

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

ATLANTA, DECEMBER 19, 2003

The Court of Appeals passed the following order

Case No. A04D0122

MICHAEL CRUMPTON V. THE STATE

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

96-011
97146147 97351359

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 19, 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. Matz, 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: January 2, 2004

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 **S04C0723**

MICHAEL CRUMPTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0122

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 05 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0123

LAWRENCE JACKSON V. THE STATE

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

98011

00CR54742

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

DEC 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.

C. Will. L. Mait; JR

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

ATLANTA, JANUARY 07, 2004

The Court of Appeals passed the following order

Case No. A04D0123

LAWRENCE JACKSON V. THE STATE

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

98-011
00CR54742

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 07, 2004*

*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. Mait; [Signature]

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

ATLANTA, DECEMBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0124
PHYLLIS GLISSON V. ROOMS TO GO 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.

97011

CV031357BR

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 02 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.
C. Vill. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 19 2003

A04D0125. Litsky v. Schaub

Howard Litsky brought this application for discretionary appeal seeking review of the trial court's denial of his counterclaim for wilful contempt. The order Litsky seeks to appeal was entered on May 2, 2003. Litsky filed a motion for reconsideration in which the trial court reversed its prior order finding Litsky in contempt; however, Litsky's motion for reconsideration of his counterclaim for contempt against Dana Lord Schaub was denied. This application seeks review of the denial of his motion for reconsideration. However, a motion for reconsideration does not extend the time for filing a discretionary application. OCGA § 5-6-35 (d); see also OCGA § 5-6-38 (a), and *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Further, a denial of a motion for reconsideration is not itself appealable. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Litsky was required to file this application within 30 days after entry of the order denying his counterclaim for wilful contempt against Schaub. Because Litsky failed to timely file this application, this Court lacks jurisdiction to consider it. For these reasons, the application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 19 2003

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*Witness my signature and the seal of said court
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C. Will. L. Mart, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 13 2003**

A04D0126. JASON QUINLAN v. THE STATE

Jason Quinlan filed this application for discretionary appeal from the superior court's order revoking his probation, which was filed in the superior court on October 3, 2003. Quinlan's application for discretionary appeal was docketed in this Court effective as of November 5, 2003, the day that he sent the application to this Court by certified mail. The application was thus docketed thirty-three days after the order was entered in the trial court. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Quinlan filed his application in this Court more than thirty 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 **NOV 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.*

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

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

ATLANTA, NOVEMBER 26, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0127

FULTON COUNTY, GEORGIA V. STEVE GAY, ET AL

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

93011

2002CV52692

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 26 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.

Will. L. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 18 2003

A04D0128. MARY SCHRODER v. RICK MURPHY.

Mary Schroder filed this discretionary application seeking review of an order entering judgment against her and holding her liable for money damages to Rick Murphy. Schroder's application was filed with this Court on November 6, 2003. By statute, applications for discretionary appeal must be filed within 30 days of entry of the order complained of. OCGA § 5-6-35 (d). Schroder's application was filed approximately five months after entry of the order complained of and is therefore untimely. This Court lacks jurisdiction to consider an untimely application for discretionary appeal. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, this application is DISMISSED.

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

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*Witness my signature and the seal of said court
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C. Will. L. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0129. DAVID CHARLES SUTTON v. THE STATE.

David Charles Sutton filed this discretionary application seeking review of an order denying his motion to void judgment. Sutton has already challenged his conviction by direct appeal to this court and the judgment was affirmed. *Sutton v. State*, 236 Ga. App. 363 (511 SE2d 888) (1999). This court's affirmance is res judicata. See *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991). Because Sutton raises no issue that could not have been raised in his first appeal, and because he otherwise raises no issue that suggests that either his conviction or his sentence is a legal nullity, we lack jurisdiction to consider Sutton's application for discretionary appeal. See *Daniels v. State*, 244 Ga. App. 522 (536 SE2d 206) (2000) (defendant may not raise issues going solely to the validity of the underlying conviction when that conviction has been previously reviewed by appeal). A second direct appeal raising the same issues submitted in this application was dismissed on June 24, 2003 due to this court's lack of jurisdiction to consider these issues. *Sutton v. State*, Case No. A03A1633. This application for discretionary appeal is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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. Martineau, 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: December 15, 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 **S04C0621**

DAVID CHARLES SUTTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0129

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 24 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: **DEC 03 2003**

**A04D0130. SRISOVANA, et al. v. THE CAMBODIAN BUDDHIST SOCIETY,
INC., et al.**

The applicants in the above styled case seek an appeal pursuant to OCGA § 5-6-35 (a) (9) from an order addressing the respondents' motion for a temporary restraining order. Among other things, the order directs that "[t]he [defendants] and persons acting in concert with them are restrained and enjoined from holding themselves out as members of the board of directors of the temple or taking any action with respect to the temple's property, money or buildings which would interfere with the 2001 board's authority to direct the temple." This is in substance an interlocutory injunction and not a mere temporary restraining order. As such, neither the discretionary nor interlocutory appeal procedures apply here. OCGA § 5-6-34 (a) (4); see generally *Sieg v. Sieg*, 265 Ga. 384 (455 SE2d 830) (1995).¹ The

¹Because we conclude that the order complained of imposes an interlocutory injunction, which is directly appealable under OCGA § 5-6-34 (a) (4), it is unnecessary to decide for jurisdictional purposes whether the order also represents a directly appealable declaratory judgment. See OCGA § 9-4-2 (a); *Sunstates Refrigerated Svcs. v. Griffin*, 215 Ga. App. 61, 62 (1) (449 SE2d 858) (1994).

application for appeal is therefore *granted* as required under OCGA § 5-6-35 (j).

Applicants shall have ten days from the date of this order to file their 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

DEC 03 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, NOVEMBER 26, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0131

EDGAR C. MORGAN ET AL V. CITY OF DOUGLASVILLE ET AL

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

92011

02CV00794

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

Will. L. Marti; JR

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

ATLANTA, DECEMBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0132

LAJUAN MCDONALD V. THE STATE

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

94011

99CR00919A

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

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 10 2003**

A04D0132. LAJUAN MCDONALD v. THE STATE.

On December 2, 2003, this Court denied Lajuan McDonald's application for discretionary appeal. McDonald's "Motion to Sanction under the Doctrine of Estoppel" is accordingly hereby DENIED as moot.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 10 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, Jr., Clerk.

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

ATLANTA, DECEMBER 16, 2003

The Court of Appeals passed the following order

Case No. A04D0132

LAJUAN MCDONALD V. THE STATE

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

94-011
99CR00919A

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

Clerk.

Will. L. Martin, 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: January 5, 2004

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 **S04C0751**

LAJUAN MCDONALD v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0132

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 07 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 25, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0133
STEVEN R. COTTING V. MIKI COTTING

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

95012

01A032326 01A130696

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0134. TROY LEE CARTER v. CLERK OF COURT.

Troy Lee Carter, pro se, filed this application for discretionary appeal from the trial court's September 24, 2003, order denying his request for a transcript of his sentence. The application was docketed in this Court on November 7, 2003.¹ An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Carter filed his application 44 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 **NOV 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.*

William L. Martin, Clerk.

¹Carter's original submissions were not accepted for filing because they lacked a filing fee or sufficient pauper's affidavit in violation of Court of Appeals Rule 31 (c); a stamped "filed" copy of the trial court's order in violation of Court of Appeals Rule 31 (d); or a certificate of service in violation of Court of Appeals Rule 1 (a).

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

ATLANTA, DECEMBER 10, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0135
DONALD STEPHENS V. CITY OF ATLANTA ET AL

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

98012

2003CV70634

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 10 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; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0136. FOX v. THE STATE.

Wayne Fox seeks an appeal from a probation revocation order entered on August 8, 1996. This court may not consider the merits of an application for discretionary appeal unless it is filed within 30 days of the entry of the order that is the subject of the application. OCGA § 5-6-35 (d). Because Fox's application is untimely, it is hereby *dismissed* for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 03 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, DECEMBER 17, 2003

The Court of Appeals passed the following order

Case No. A04D0136

WAYNE FOX V. THE STATE

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

97-012
86R190

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

Clerk.

Will. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 25 2003**

A04D0137. Julie Fox Berry v. James Thomas Barry, Jr.

Julie Fox Berry filed this application for discretionary appeal seeking review of the trial court's order finding her in contempt of the parties Final Judgment and Decree of Total Divorce. Specifically, Ms. Berry was found to have violated the following provision of the divorce decree: "nor shall either party expose the children to a meretricious relationship by having the children overnight in the presence of a third party to whom a party is not married." At issue is whether this provision is enforceable and can be a basis for a finding of contempt under current law. See *In re J.M.*, 276 Ga. 88 (575 SE2d 441) (2003). However, since the contempt action is ancillary to the underlying divorce action and involves issues other than custody, this application falls within the divorce and alimony jurisdiction of the Supreme Court. Accordingly, the application is hereby *transferred* to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (254 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Phillips v. Brown*, 263 Ga. 50, 51 (2) (426 SE2d 866) (1993); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction in contempt action involving child custody issues, but not issues relating to divorce and alimony, is with the Court of Appeals).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 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.*

Will. L. Martineau, Clerk.



SUPREME COURT OF GEORGIA
Case No. S04D0513

FILED IN OFFICE

DEC 11 2003

CLERK COURT OF APPEALS OF GA

DEC 11 2003

Atlanta

RECEIVED IN OFFICE
2003 DEC 11 AM 4:11
Clerk's Office
Clerk of the Court of Appeals
John R. ...

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

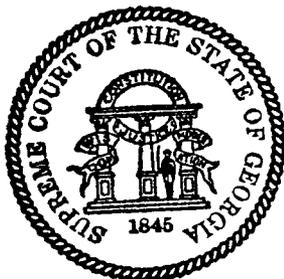
DEC 11 2003

JULIE FOX BARRY v. JAMES THOMAS BARRY, JR.

Appellee filed this application for discretionary appeal in the Court of Appeals seeking review of a trial court order which found her in wilful contempt of that portion of her April 2000 divorce decree which prohibited her from exposing her children to a meretricious relationship during their visitation with her. The Court of Appeals transferred the appeal here asserting that "since the contempt action is ancillary to the underlying divorce action and involves issues other than custody, the application falls within the divorce and alimony jurisdiction of" the Supreme Court.

While this Court has jurisdiction over contempt actions if they involve matters ancillary to the divorce or alimony provisions of a prior divorce decree, Brown v. King, 266 Ga. 890 (472 SE2d 65) (1996); Hines v. Hines, 237 Ga. 755 (229 SE2d 744) (1976), this application does not address either of those issues. Instead, the application involves non-financial, child custody-type issues and thus, it does not present issues which are ancillary to the initial divorce decree for purposes of invoking this Court's jurisdiction. See Ashburn v. Baker, 256 Ga. 507 (350 SE2d 437) (1986); Carter v. Foster, 247 Ga. 26 (273 SE2d 614) (1981); Munday v. Munday, 243 Ga. 863 (257 SE2d 282) (1979); Cranford v. Cranford, 225 Ga. 60 (165 SE2d 847) (1969). Accordingly, it is ordered that the application be and it hereby is returned to the Court of Appeals for resolution.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta



I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

John M. Stuchess, Chief Deputy Clerk

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

ATLANTA, JANUARY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0137

JULIE FOX BARRY V. JAMES THOMAS BARRY, JR.

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

71012

2003RCD1329

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 09 2004

*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.

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: January 28, 2004

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 **S04C0862**

JULIE FOX BARRY v. JAMES THOMAS BARRY, Jr.

Clerk, Supreme Court of Georgia

Case No. A04D0137

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 30 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 02, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0138

CLARENCE SMITH V. THE STATE

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

90012

88CR5832R

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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. Matz, Jr.

Court of Appeals
of the State of Georgia

ATLANTA, DECEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0139
RELIABLE COURIER AND DELIVERY ET AL V. JOYCE REGISTER

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

93012

03CV1170

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

DEC 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. Mat;er

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

ATLANTA, NOVEMBER 26, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0140

WILLIAM DAVIS, JR. V. CARTER MECHANICAL, 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.

99012

03CV22068

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

Will. L. Martin

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

ATLANTA,

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

**APPLICATION NO. A04D0141
DELORIS MILLS v. SARAH WILSON LIVINGSTON**

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

Upon consideration of the Motion for Frivolous Appeal penalties, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.*

Clerk.

William L. Martin, Jr.

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

ATLANTA, DECEMBER 31, 2003

The Court of Appeals passed the following order

Case No. A04D0142

LAWRENCE CONRAD FREEMAN ET AL V. WALTER H. BUTLER, MD
ET AL

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

70-012
D90611

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 31, 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. Maitland

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 31 2003**

A04D0142. FREEMAN, et al. v. BUTLER, et al.

Upon consideration of the applicants' motion to combine discretionary appeals,
the motion is hereby *denied*.

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

DECEMBER 09, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0143

SPHERION CORPORATION ET AL V. VALERIE RACHEL

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

92012

031560434

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 09 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, DECEMBER 09, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0144
DAVID CASS BURCH ET AL V. DONALD DINES

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.

94012

03CV207

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 09 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, DECEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0145
HOWARD LITSKY V. DANA LORD SCHAUB

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

71013

00A096314 00A089814 0059172 0026472

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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. Will. L. Mait; [Signature]

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

ATLANTA, NOVEMBER 26, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0146
WARREN SKILLERN V. THE STATE

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

95013

93CR0432

Court of Appeals of the State of Georgia

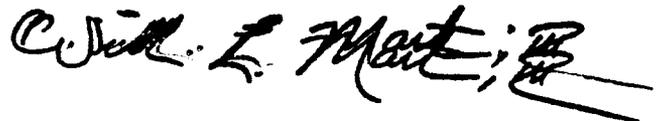
Clerk's Office, Atlanta

NOV 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.

A handwritten signature in black ink, appearing to read "C. J. L. Martin", with a stylized flourish at the end.

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: December 4, 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 **S04C0562**

WARREN SKILLERN v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0146

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office **DEC 09 2003**

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 10, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0147
IGNATIUS KOSIOR, JR., ET AL V. HENRY COUNTY, BY AND THROUGH
BOARD OF COMMISSIONERS OF HENRY COUNTY., ET AL

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

96013

03CV0001C 02CV3074C

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

DEC 10 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, DECEMBER 18, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0148

TAMI RAY V. INTERFACE FLOORING, INC., ET AL

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

98013

NONE

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

DEC 12 2003

The Court of Appeals hereby passes the following order:

A04D0149. ROBINSON v. THE STATE.

Freddie Robinson seeks an appeal from an order entered on October 14, 2003, dismissing a "Motion to Enter Valid Judgment." The application was filed in this court on November 17, 2003. Because Robinson failed to file his application for appeal within 30 days as required under OCGA § 5-6-35 (d), the application is hereby *dismissed* for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 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.*

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

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: January 2, 2004

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 **S04C0757**

FREDDIE ROBINSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0149

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 08 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 08, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0150
LEONCE S. WHITE V. GEORGIA PEACE OFFICER STANDARDS
AND TRAINING COUNCIL

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.

90013

2003CV27565

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

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0151

LAWRENCE CONRAD FREEMAN, ET AL. v. SIDNEY F. WHEELER, 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 the State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Upon consideration of the Motion for Sanctions Pursuant to Rule 15(a) filed by the respondents, the same is hereby DENIED.

93013

00VS006145

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.*

Clerk.

C. Will. L. Mart; R

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

ATLANTA, DECEMBER 04, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0152
CARRIE JOHNSON V. HOMER LASSISTER, SR., ET AL

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

99013

02CV29651

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

C. Will. L. Martin, Jr.

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

ATLANTA, DECEMBER 23, 2003

The Court of Appeals passed the following order

Case No. A04D0152

CARRIE JOHNSON V. HOMER LASSISTER, SR., ET AL

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

99-013
02CV29651

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

Clerk.

Will. L. Maitz, Jr.

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

ATLANTA, DECEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0153
WILLIAM JASON GRINSTEAD 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.

91013
2001C27737

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

DEC 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

Court of Appeals of the State of Georgia

ATLANTA,

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

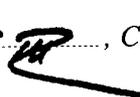
A04D0154. McELROY v. GENERAL MOTORS CORPORATION.

Mary Ann McElroy has filed an application for discretionary appeal from an interlocutory order disposing of certain pretrial motions. The order complained of is not a final order and therefore McElroy was required to comply with the additional requirements of the interlocutory appeal procedure, OCGA § 5-6-34 (b). *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991). Because McElroy failed to follow the proper appellate procedure, her application is hereby *dismissed* as premature.

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

C. Will. L. Mait; , Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 01 2003**

A04D0155. Piedmont Hospital, Inc. v. Georgia Department of Community Health

A04D0157. St. Joseph Hospital of Atlanta, Inc. v. Georgia Department of Community Health

Piedmont Hospital, Inc. and St. Joseph Hospital of Atlanta, Inc. have each filed an application for discretionary appeal in this Court. They have also simultaneously filed applications for discretionary appeal in the Supreme Court contending the Supreme Court has jurisdiction over the case because there is an issue involving the Code of Professional Responsibility.

The Supreme Court of Georgia has "ultimate responsibility for construing the constitutional provisions regarding appellate jurisdiction" and its determinations result "in a binding and conclusive determination of the jurisdiction of the Court of Appeals." *Saxon v. Coastal Dialysis & Medical Clinic, Inc.*, 267 Ga. 177, 178 (476 SE2d 587) (1996). Therefore, in the interest of judicial economy and in aid of our appellate jurisdiction, these discretionary applications are ordered TRANSFERRED to the Supreme Court for consolidation with Case No. S04D0480 and S04D0484 so that one authoritative determination can be made. See Georgia Constitution of 1983, Art. VI, Sec. I, Para. IV.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 01 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, Jr., Clerk.



SUPREME COURT OF GEORGIA

A04D146

Atlanta

DEC 12 2003

RECEIVED IN OFFICE
2003 DEC 12 AM 4:07
CLERK OF SUPREME COURT
OFFICE OF THE CLERK
1000 N. W. AVENUE
ATLANTA, GA 30309

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

FILED IN OFFICE

DEC 12 2003

S04D0480 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

S04D0484 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

S04D0538 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

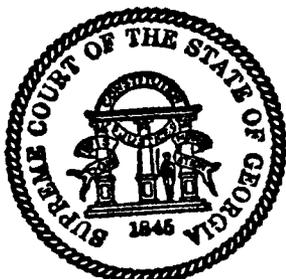
S04D0539 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

From the Superior Court of Fulton County.

Appellants filed the instant applications for discretionary appeal in these related actions seeking, in relevant part, review of the trial court's order affirming the denial of their motion to disqualify appellee's counsel for alleged violations of Rule 1.9 of the Georgia Rule of Professional Conduct. Although appellants admit that this Court typically would not have subject matter jurisdiction over this appeal, they assert that jurisdiction is proper in this instance because the case involves matters relating to the practice of law which appellants assert are within the inherent and exclusive jurisdiction of the Supreme Court of Georgia.

Although it is true that this Court has the exclusive power to regulate the profession, appellants did not seek to disbar appellee's counsel from the practice of law nor to penalize counsel for the unauthorized practice of law. Instead, they only sought to prevent counsel from representing appellee in this single case. Appellants cite no authority for the proposition that the Court's authority to regulate the profession grants it exclusive jurisdiction to hear appeals from the grant or denial of

motions to disqualify opposing counsel regardless of the underlying subject matter of the case and none appears to exist. Indeed, the Court of Appeals has heard such appeals in cases where the record reveals no basis for subject matter jurisdiction in this Court. See Ga. Baptist Health Care Sys. v. Hanafi, 253 Ga. App. 540 (559 SE2d 746) (2002); Lassiter Props. v. Davidson Mineral Props., 230 Ga. App. 216 (495 SE2d 663) (1998). Thus, as this Court does not have subject matter jurisdiction over the underlying actions, applications S04A0480 and S04A0484 must be and hereby are transferred to the Court of Appeals for resolution and applications S04A0538 and S04A0539 are hereby returned to the Court of Appeals.



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

A handwritten signature in cursive script, reading "Lynn M. Sanchez-Rome".

, Chief Deputy Clerk

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 08 2004**

**A04D0155. Piedmont Hospital, Inc. v. Georgia Dept. of Community Health
A04D0157. Saint Joseph's Hospital of Atlanta, Inc. v. Georgia Dept. of
Community Health, et al.**

**A04D0184. Piedmont Hospital, Inc. v. Dept. of Community Health, et al.
A04D0185. Saint Joseph's Hospital of Atlanta, Inc. v. Dept. of Community
Health**

Piedmont Hospital, Inc., and St. Joseph's Hospital of Atlanta, Inc., filed applications A04D0155 and A04D0157 for discretionary appeal in this Court on November 20, 2003. Because they filed identical applications with the Supreme Court, this Court transferred these applications in order for the Supreme Court to determine jurisdiction. The Supreme Court has now transferred these applications to this Court to consider the issues raised in the applications.

Because we now have duplicate applications, applications A04D0155 and A04D0157 are ordered DISMISSED. Upon consideration of applications A04D0184 and A04D0185 on the merits, they are DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 08 2004**

*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. Martineau, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: DEC 09 2003

A04D0156. TANYA REESE F/K/A TANYA GRANT v. HAL GRANT

Tanya Reese, f/k/a Tanya Grant, filed this application for discretionary appeal seeking review of an order awarding her former husband attorney fees in his action alleging contempt of certain provisions of the parties' final divorce decree. Because the ruling complained of directly addresses enforcement of the non-custodial provisions of the parties' divorce decree, Reese's appeal is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (254 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); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction in contempt action involving child custody issues, but not issues relating to divorce and alimony, is with the Court of Appeals).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 09 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: **JAN 0 8 2004**

A04D0155. Piedmont Hospital, Inc. v. Georgia Dept. of Community Health

**A04D0157. Saint Joseph's Hospital of Atlanta, Inc. v. Georgia Dept. of
Community Health, et al.**

A04D0184. Piedmont Hospital, Inc. v. Dept. of Community Health, et al.

**A04D0185. Saint Joseph's Hospital of Atlanta, Inc. v. Dept. of Community
Health**

Piedmont Hospital, Inc., and St. Joseph's Hospital of Atlanta, Inc., filed applications A04D0155 and A04D0157 for discretionary appeal in this Court on November 20, 2003. Because they filed identical applications with the Supreme Court, this Court transferred these applications in order for the Supreme Court to determine jurisdiction. The Supreme Court has now transferred these applications to this Court to consider the issues raised in the applications.

Because we now have duplicate applications, applications A04D0155 and A04D0157 are ordered DISMISSED. Upon consideration of applications A04D0184 and A04D0185 on the merits, they are DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 0 8 2004**

*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.



SUPREME COURT OF GEORGIA

FILED IN OFFICE

DEC 12 2003

CLERK COURT OF APPEALS OF GA

Atlanta

DEC 12 2003

2003 DEC 12 AM 4:06

RECEIVED IN OFFICE

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

- S04D0480 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0484 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0538 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0539 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

From the Superior Court of Fulton County.

Appellants filed the instant applications for discretionary appeal in these related actions seeking, in relevant part, review of the trial court's order affirming the denial of their motion to disqualify appellee's counsel for alleged violations of Rule 1.9 of the Georgia Rule of Professional Conduct. Although appellants admit that this Court typically would not have subject matter jurisdiction over this appeal, they assert that jurisdiction is proper in this instance because the case involves matters relating to the practice of law which appellants assert are within the inherent and exclusive jurisdiction of the Supreme Court of Georgia.

Although it is true that this Court has the exclusive power to regulate the profession, appellants did not seek to disbar appellee's counsel from the practice of law nor to penalize counsel for the unauthorized practice of law. Instead, they only sought to prevent counsel from representing appellee in this single case. Appellants cite no authority for the proposition that the Court's authority to regulate the profession grants it exclusive jurisdiction to hear appeals from the grant or denial of

motions to disqualify opposing counsel regardless of the underlying subject matter of the case and none appears to exist. Indeed, the Court of Appeals has heard such appeals in cases where the record reveals no basis for subject matter jurisdiction in this Court. See Ga. Baptist Health Care Sys. v. Hanafi, 253 Ga. App. 540 (559 SE2d 746) (2002); Lassiter Props. v. Davidson Mineral Props., 230 Ga. App. 216 (495 SE2d 663) (1998). Thus, as this Court does not have subject matter jurisdiction over the underlying actions, applications S04A0480 and S04A0484 must be and hereby are transferred to the Court of Appeals for resolution and applications S04A0538 and S04A0539 are hereby returned to the Court of Appeals.



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

, Chief Deputy Clerk

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

ATLANTA, DECEMBER 17, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0158
CHAPARRAL BOATS, INC., ET AL V. DALE HEATH

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.

95014
03C485

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 10 2003**

A04D0159. GEORGE A. BROWN v. THE STATE.

George A. Brown, pro se, filed this application from the trial court's October 6, 2003, order denying his post-conviction "motion for reconsideration and motion for immediate discharge."¹ The application was docketed in this Court on November 20, 2003. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Brown filed his application 45 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 **DEC 10 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.

¹Brown challenges the denial of his motion for discharge and acquittal under OCGA § 17-7-170. This Court rejected the challenge in his direct appeal, *Brown v. State*, A03A1534 (Ga. Ct. App. Oct. 23, 2003).

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

ATLANTA, DECEMBER 30, 2003

The Court of Appeals passed the following order

Case No. A04D0159

GEORGE A. BROWN V. THE STATE

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

96-014
CR020524FR

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

Will. L. Martineau

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: January 2, 2004

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 **S04C0896**

GEORGE A. BROWN v. STATE OF GEORGIA

Clerk, Supreme Court of Georgia

Case No. A04D0159

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 04 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0160. DARRELL W. WHITEHEAD v. JAKE YARBROUGH ET AL.

Darrell W. Whitehead filed this application for discretionary appeal seeking review of the denial of his timely motion for new trial in this premises liability case. The order appealed from is subject to direct appeal pursuant to OCGA § § 5-6-34 (a) (1) and 5-6-38 (a), and no application is required under OCGA § 5-6-35 (a). Because the order appealed is directly appealable, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j).

The applicant 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*

*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,

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

A04D0161. LEMON v. THE STATE.

George Lemon seeks an appeal from an order revoking the balance of his probation. The order was entered on October 2, 2003, and Lemon's application was filed on November 21, 2003. Because Lemon's application was not filed within 30 days of the entry of the probation revocation order as required under OCGA § 5-6-35 (d), Lemon's application is hereby *dismissed* for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).¹

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.*

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

¹We note that the application contains an order entered on November 19, 2003, purporting to vacate and re-enter a "Bond Revocation Order." Regardless of what the superior court may have intended to accomplish by entering this order, such an order does not serve to extend the time for filing an application for appeal from the probation revocation order entered on October 2, 2003.

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

ATLANTA, JANUARY 16, 2004

The Court of Appeals passed the following order

Case No. A04D0161

GEORGE LEMON V. THE STATE

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

97-014
03R0226

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 16, 2004*

*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. Maitland

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

ATLANTA, DECEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0162

ALLISON REBEKAH BISHER V. RANDY HIRAM JONES

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.

71014

02CV0094

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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, DECEMBER 12, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0163
CLYDE MCCULLOUGH, III V. MARISA HAMPTON

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

95015

02A75875

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

DEC 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. Will. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 29 2003**

A04D0164. MYRA Y. JOHNSON v. DENIS W. WEICKERT.

Myra Y. Johnson filed an application for discretionary appeal of the order, entered November 10, 2003, modifying custody so as to award both Johnson and her former husband, Denis W. Weickert, joint legal custody of the parties' minor children but granting primary physical custody of the children to Weickert. The above-captioned application is GRANTED only as to the following issues: (1) Under the holding in *Bodne v. Bodne*, Ga. (S03G0275, decided November 10, 2003) is a finding of a material change of custody for the worse still required as a prerequisite to changing physical custody of the minor children from one parent to another and, if so, does the evidence reasonably support the finding made by the trial court; (2) under the holding in *Bodne v. Bodne*, supra, must a finding be made that there has been a new and material change in circumstances (either for the better or for the worse) that affects the children before the trial court can consider the best interests of the child in a change of custody proceeding between the parents; and, (3) did the trial court err in failing to make an express finding regarding the best interest of the children in its

Condition →

written order when it did find that modification of the original judgment would have the effect of promoting their welfare.

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).

Applicants shall have ten days from the date of this order to file a notice of appeal in superior 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

DEC 29 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: **FEB 19 2004**

A04D0164. MYRA Y. JOHNSON v. DENIS W. WEICKERT

In order to correct clerical error, the attached order is hereby substituted for the Court's order dated December 29, 2003.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 19 2004**

*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,

The Court of Appeals hereby passes the following order: **DEC 29 2003**

A04D0164. MYRA Y. JOHNSON v. DENIS W. WEICKERT.

Myra Y. Johnson filed an application for discretionary appeal of the order, entered November 10, 2003, modifying custody so as to award both Johnson and her former husband, Denis W. Weickert, joint legal custody of the parties' minor children but granting primary physical custody of the children to Weickert.

The above-captioned application is GRANTED only as to the following issues: (1) Under the holding in *Bodne v. Bodne*, 277 Ga. 445 (SE2d) (2003), is a finding of a material change of condition the same as a material change in circumstances; (2) Under the holding in *Bodne v. Bodne*, supra, is a finding of a material change of condition for the worse still required as a prerequisite to changing physical custody of the minor children from one parent to another and, if so, does the evidence reasonably support the finding made by the trial court; (2) under the holding in *Bodne v. Bodne*, supra, must a finding be made that there has been a new and material change in circumstances (either for the better or for the worse) that affects the children before the trial court can consider the best interests of the child in a change of custody proceeding between the parents and, if so, does the evidence reasonably support the finding made by the trial court; and, (3) did the trial court err in failing to make an express finding regarding the best interest of the children in its written order when it did find that modification of the original judgment would have the effect of promoting their welfare.

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).

Applicants shall have ten days from the date of this order to file a notice of appeal in superior 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 **DEC 29 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: **DEC 08 2003**

A04D0165. CHARLES LAMONT MILLER v. THE STATE.

Charles Lamont Miller, pro se, filed a discretionary application for review of an order purportedly entered by the Superior Court of Chatham County revoking his probation. This order is not included in the application before us. Because of the lack of any order, there exists no judgment upon which Miller could effectively appeal. Thus, this appeal is not ripe for appellate adjudication and docketing in this Court is premature. Accordingly, this appeal is hereby DISMISSED. In the aid of the jurisdiction of this Court, Miller may file an application for discretionary appeal within thirty (30) days of the entry of any order of the trial court which has the effect of revoking his probation or within thirty (30) days of an order of the trial court on a timely filed motion for new trial with regard to an order revoking his probation. See *Wells v. State*, 236 Ga. App. 607 (512 SE2d 711) (1999).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 08 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. Jill L. Maitland, Clerk.

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

ATLANTA, FEBRUARY 23, 2004

The Court of Appeals passed the following order

Case No. A04D0165

CHARLES LAMONT MILLER V. THE STATE

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

93-014
CR911646

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 23, 2004*

*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. Mart; [Signature]

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: March 15, 2004

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 **S04C1135**

CHARLES LAMONT MILLER v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0165

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 16 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 23, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0166
FRANKENMUTH MUTUAL INSURANCE COMPANY V. JEFFREY
J. LACKEY ET AL

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

99014

03CV2680

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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, DECEMBER 18, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0167
EBODIO PONSE V. ATLANTA CASUALTY COMPANY

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.

91014

98C014013

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0168. Taylor v. City of College Park, Ga.

On December 1, 2003, Zachary Bouvier Taylor filed this application for discretionary appeal. Taylor seeks to appeal a decision by the City Court of College Park which fined him \$355.00 based upon a traffic citation. However, Taylor was required to first appeal this decision to the Superior Court pursuant to OCGA § 40-13-28. See *Franklin v. Recorder's Court*, 174 Ga. App. 498 (330 SE2d 429) (1985). Taylor's failure to first appeal to the superior court and obtain a decision in a court of record deprives this Court of jurisdiction to consider this application. Accordingly, this application is ordered DISMISSED.

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

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

ATLANTA, JANUARY 07, 2004

The Court of Appeals passed the following order

Case No. A04D0168

ZACHARY BOUVIER TAYLOR V. CITY OF COLLEGE PARK, GA, ET AL

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

70-014
0311991 222678

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 07, 2004*

*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. Martini

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: January 27, 2004

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 **S04C0875**

ZACHARY BOUVIER TAYLOR v. CITY OF COLLEGE PARK et al.

Clerk, Supreme Court of Georgia

Case No. A04D0168

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 03 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 09 2003**

**A04D0169. JAMES STEWART ET AL. v. DEBORAH A. CARDELLA, ON
BEHALF OF KRISTIN SCHMITZ**

Deborah A. Cardella filed a petition on behalf of her children under OCGA § 16-5-94, alleging conduct constituting stalking on the part of Adam Stewart and seeking a restraining order to prohibit him for stalking her children. The trial court granted the petition, and the petitioners filed an application for discretionary appeal from this order. The order appealed from, however, constitutes an injunction subject to direct appeal under 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). The applicants 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

DEC 09 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: **DEC 16 2003**

A04D0170. LISA WU SWEAT v. KEITH DOUGLAS SWEAT.

Applicant Lisa Wu Sweat seeks a discretionary appeal of the provisions of a final judgment and decree of divorce granting sole physical and legal custody of the minor children of the marriage to respondent Keith Douglas Sweat. The parties Reconciliation and Postnuptial Agreement, which was incorporated into the final judgment and decree of divorce, reserved the issue of child support and alimony for determination by the court in the event of a divorce or legal separation, and the issue of custody of the parties' minor children was a contested issue in the divorce proceedings. The court heard the custody issue and in the final judgment and decree of divorce awarded legal and physical custody of the parties' two minor children to their father, Keith Douglas Sweat.

Sweat subsequently amended her application for discretionary appeal expressly asserting that the trial court also abused its discretion as to the amount and terms of alimony awarded to the applicant.

Since the underlying subject matter of Lisa Wu Sweat's application for

discretionary appeal constitutes a direct challenge of custody and alimony determinations found in and inextricably linked to the final judgment and decree of divorce entered in a divorce *case* in which child custody was contested and expressly adjudicated, this matter falls within the divorce and alimony jurisdiction of the Supreme Court. Ga. Const. of 1983, Art VI, Sec. VI, Para. III (6) (Supreme Court has jurisdiction in “[a]ll divorce and alimony cases.”); compare *Carter v. Foster*, 247 Ga. 26 (273 SE2d 614) (1981) (supreme court no longer has jurisdiction over appeals involving child custody questions unless the appeal also involves a judgment for divorce and alimony).

Accordingly, this application is ordered TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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, DECEMBER 29, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0171
AUGUSTUS JACKSON V. THE STATE

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

98015

2001FE450F

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.

Will. L. Marti; JR

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

ATLANTA, DECEMBER 17, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0172

JAMES COBB V. THE STATE

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

97015

98R94

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0173. BARBER v. HAL'S ON OLD IVY ROAD, INC.

Ron Barber filed an application for appeal on December 2, 2003, from a final judgment entered on May 29, 2003. Because Barber failed to file his application for appeal within 30 days as required under OCGA § 5-6-35 (d), the application is hereby *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

DEC 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. Matz, Clerk.

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

ATLANTA, DECEMBER 17, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0174

ABDI BILAL V. HARDIN CONSTRUCTION GROUP INC., ET AL

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

90015

2003CV73515

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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. 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: January 6, 2004

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 **S04C0752**

ABDI BILAL v. HARDIN CONSTRUCTION GROUP, INC., et al.

Clerk, Supreme Court of Georgia

Case No. A04D0174

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 08 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 29, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0175

ARTHUR E. FERDINAND, IN HIS CAPACITY AS TAX COMMISSIONER
OF FULTON COUNTY ET AL V. JACQUELY H. BARRETT, IN HER
CAPACITY AS SHERIFF OF FULTON CONTY

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

93015

02GR011354C 03GR014549F

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 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. Jill. L. Martin

Court of Appeals of the State of Georgia

ATLANTA,

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

A04D0176. SURAIYA A. MATEEN v. FRANK DICUS

Suraiya A. Mateen filed this discretionary application seeking appellate review of the denial of her motion to set aside default judgment. An order and judgment striking the answer and any counterclaims filed by Mateen and other defendants, entering judgment by default, and ordering the setting of the case on the next available default calendar for the purpose of liquidating the damages and attorney's fees was entered on February 12, 2001 pursuant to OCGA § 9-11-37 (d). On October 21, 2003, Mateen, pro se, filed her motion to set aside the default judgment. The order sought to be appealed, denying Mateen's motion, notes that the case is on a future jury trial calendar for a trial on damages. Thus, it is apparent that no final judgment has been entered and issues of unliquidated damages remain pending before the trial court for resolution at trial. Thus, the interlocutory appeal procedures were

required in this case. OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). The discretionary appeal procedure does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996). Because Mateen failed to follow the interlocutory procedures of OCGA § 5-6-34 (b), this premature application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.

C. Will. L. Mattingly, Clerk.

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

ATLANTA, JANUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0177

KATE O'NEAL V. JOSE GONZALEZ

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

91015

03CV01829

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 05 2004

*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,

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

A04D0178. NATHANIEL PETERS, JR. v. THE STATE.

Nathaniel Peters, Jr. seeks an appeal from an order entered October 17, 2003, denying his motion to modify sentence. The application was filed in this Court on December 11, 2003. Because Peters failed to file his application for appeal within 30 days as required under OCGA § 5-6-35 (d), the application is hereby DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

JAN 07 2004

A04D0179. TOMBERLIN v. ORR.

Darrell R. Tomberlin seeks a discretionary appeal from an order finding him in contempt of certain provisions of the parties' divorce decree as originally entered involving educational expenses. A contempt action based on the failure to comply with the child support provisions of a final divorce decree is ancillary to the prior divorce action and is therefore within the general appellate jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, § VI, ¶ 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); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction over appeal of contempt action involving child custody issues, but not issues relating to divorce and alimony, is within the Court of Appeals, even though such action involves an action for contempt for violation of a divorce decree). Accordingly, Tomberlin's application is hereby *transferred* to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 07 2004

*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, Jr., Clerk.

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

ATLANTA, DECEMBER 30, 2003

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0180
DAVID RONALD HARRISON V. THE STATE

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

94015

88CR282

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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.

C. Will. L. Mart; JR

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

ATLANTA, JANUARY 13, 2004

The Court of Appeals passed the following order

Case No. A04D0180

DAVID RONALD HARRISON V. THE STATE

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

94-015
88CR282

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 13, 2004*

*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. Jill L. Martin

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: January 29, 2004

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 **S04C0881**

DAVID RONALD HARRISON V. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0180

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 03 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JANUARY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0181

MICHELLE GOOGE V. THE STATE

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

95016

99CR11953

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 09 2004**

*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, JANUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0182

WAYCROSS MOLDED PRODUCTS V. ANNETTE BROWN

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

96016

03V0657

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 05 2004

*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, JANUARY 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0183

MICHAEL ANDERSON V. THE STATE

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

98016

03R0247

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 07 2004**

*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.



SUPREME COURT OF GEORGIA

FILED IN OFFICE

DEC 12 2003

CLERK COURT OF APPEALS OF GA

Atlanta

DEC 12 2003

RECEIVED IN OFFICE
2003 DEC 12 AM 4:04
CLERK COURT OF APPEALS OF GA

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

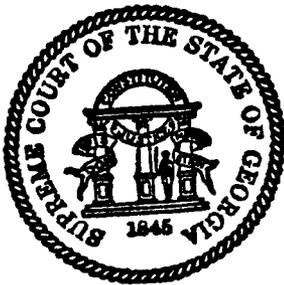
- S04D0480 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0484 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0538 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0539 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

From the Superior Court of Fulton County.

Appellants filed the instant applications for discretionary appeal in these related actions seeking, in relevant part, review of the trial court's order affirming the denial of their motion to disqualify appellee's counsel for alleged violations of Rule 1.9 of the Georgia Rule of Professional Conduct. Although appellants admit that this Court typically would not have subject matter jurisdiction over this appeal, they assert that jurisdiction is proper in this instance because the case involves matters relating to the practice of law which appellants assert are within the inherent and exclusive jurisdiction of the Supreme Court of Georgia.

Although it is true that this Court has the exclusive power to regulate the profession, appellants did not seek to disbar appellee's counsel from the practice of law nor to penalize counsel for the unauthorized practice of law. Instead, they only sought to prevent counsel from representing appellee in this single case. Appellants cite no authority for the proposition that the Court's authority to regulate the profession grants it exclusive jurisdiction to hear appeals from the grant or denial of

motions to disqualify opposing counsel regardless of the underlying subject matter of the case and none appears to exist. Indeed, the Court of Appeals has heard such appeals in cases where the record reveals no basis for subject matter jurisdiction in this Court. See Ga. Baptist Health Care Sys. v. Hanafi, 253 Ga. App. 540 (559 SE2d 746) (2002); Lassiter Props. v. Davidson Mineral Props., 230 Ga. App. 216 (495 SE2d 663) (1998). Thus, as this Court does not have subject matter jurisdiction over the underlying actions, applications S04A0480 and S04A0484 must be and hereby are transferred to the Court of Appeals for resolution and applications S04A0538 and S04A0539 are hereby returned to the Court of Appeals.



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

A handwritten signature in cursive script, reading "Lynn M. Sanchez-Romero".

, Chief Deputy Clerk

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 08 2004**

A04D0155. Piedmont Hospital, Inc. v. Georgia Dept. of Community Health

**A04D0157. Saint Joseph's Hospital of Atlanta, Inc. v. Georgia Dept. of
Community Health, et al.**

A04D0184. Piedmont Hospital, Inc. v. Dept. of Community Health, et al.

**A04D0185. Saint Joseph's Hospital of Atlanta, Inc. v. Dept. of Community
Health**

Piedmont Hospital, Inc., and St. Joseph's Hospital of Atlanta, Inc., filed applications A04D0155 and A04D0157 for discretionary appeal in this Court on November 20, 2003. Because they filed identical applications with the Supreme Court, this Court transferred these applications in order for the Supreme Court to determine jurisdiction. The Supreme Court has now transferred these applications to this Court to consider the issues raised in the applications.

Because we now have duplicate applications, applications A04D0155 and A04D0157 are ordered DISMISSED. Upon consideration of applications A04D0184 and A04D0185 on the merits, they are DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 08 2004

*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.

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: January 28, 2004

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 **S04C0858**

SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. GEORGIA DEPARTMENT OF COMMUNITY HEALTH et al.

Clerk, Supreme Court of Georgia

Case No. A04D0185

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 04 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 08 2004**

A04D0155. Piedmont Hospital, Inc. v. Georgia Dept. of Community Health

**A04D0157. Saint Joseph's Hospital of Atlanta, Inc. v. Georgia Dept. of
Community Health, et al.**

A04D0184. Piedmont Hospital, Inc. v. Dept. of Community Health, et al.

**A04D0185. Saint Joseph's Hospital of Atlanta, Inc. v. Dept. of Community
Health**

Piedmont Hospital, Inc., and St. Joseph's Hospital of Atlanta, Inc., filed applications A04D0155 and A04D0157 for discretionary appeal in this Court on November 20, 2003. Because they filed identical applications with the Supreme Court, this Court transferred these applications in order for the Supreme Court to determine jurisdiction. The Supreme Court has now transferred these applications to this Court to consider the issues raised in the applications.

Because we now have duplicate applications, applications A04D0155 and A04D0157 are ordered DISMISSED. Upon consideration of applications A04D0184 and A04D0185 on the merits, they are DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 08 2004**

*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.

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: January 28, 2004

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 **S04C0854**

PIEDMONT HOSPITAL, INC. v. GEORGIA DEPARTMENT OF COMMUNITY HEALTH
et al.

Clerk, Supreme Court of Georgia

Case No. A04D0184

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 04 2004

Clerk, Court of Appeals of Georgia



SUPREME COURT OF GEORGIA

Atlanta

DEC 12 2003

RECEIVED IN OFFICE
2003 DEC 12 AM 4:07
Clerk of the Court
OFFICE OF THE CLERK
1000 N. W. AVENUE
ATLANTA, GA 30309

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

FILED IN OFFICE

DEC 12 2003

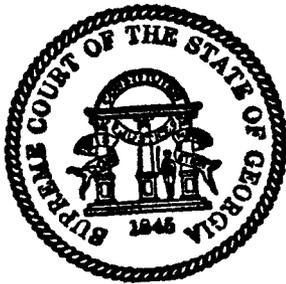
- S04D0480 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0484 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0538 **PIEDMONT HOSPITAL, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**
- S04D0539 **SAINT JOSEPH'S HOSPITAL OF ATLANTA, INC. v. DEPARTMENT OF COMMUNITY HEALTH et al.**

From the Superior Court of Fulton County.

Appellants filed the instant applications for discretionary appeal in these related actions seeking, in relevant part, review of the trial court's order affirming the denial of their motion to disqualify appellee's counsel for alleged violations of Rule 1.9 of the Georgia Rule of Professional Conduct. Although appellants admit that this Court typically would not have subject matter jurisdiction over this appeal, they assert that jurisdiction is proper in this instance because the case involves matters relating to the practice of law which appellants assert are within the inherent and exclusive jurisdiction of the Supreme Court of Georgia.

Although it is true that this Court has the exclusive power to regulate the profession, appellants did not seek to disbar appellee's counsel from the practice of law nor to penalize counsel for the unauthorized practice of law. Instead, they only sought to prevent counsel from representing appellee in this single case. Appellants cite no authority for the proposition that the Court's authority to regulate the profession grants it exclusive jurisdiction to hear appeals from the grant or denial of

motions to disqualify opposing counsel regardless of the underlying subject matter of the case and none appears to exist. Indeed, the Court of Appeals has heard such appeals in cases where the record reveals no basis for subject matter jurisdiction in this Court. See Ga. Baptist Health Care Sys. v. Hanafi, 253 Ga. App. 540 (559 SE2d 746) (2002); Lassiter Props. v. Davidson Mineral Props., 230 Ga. App. 216 (495 SE2d 663) (1998). Thus, as this Court does not have subject matter jurisdiction over the underlying actions, applications S04A0480 and S04A0484 must be and hereby are transferred to the Court of Appeals for resolution and applications S04A0538 and S04A0539 are hereby returned to the Court of Appeals.



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

, Chief Deputy Clerk

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

ATLANTA, JANUARY 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0186

JOHN HOLLEY, ET AL V. ABERNATHY/ROSWELL DEVELOPMENT, LTD.

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.

97016

2002V103

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 08 2004**

*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,

The Court of Appeals hereby passes the following order: JAN 14 2004

A04D0187. MERRITT v. MERRITT.

Kenneth T. Merritt seeks an appeal from an order holding him in contempt of the child support provisions of the parties' 1989 divorce decree and ordering him incarcerated until such time as he makes sufficient arrangements to purge himself of his contempt. A contempt action based on the failure to comply with the child support provisions of a final divorce decree is ancillary to the prior divorce action and is therefore within the general appellate jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, § VI, ¶ 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); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction over appeal of contempt action involving child custody issues, but not issues relating to divorce and alimony, is within the Court of Appeals, even though such action involves an action for contempt for violation of a divorce decree). Accordingly, Merritt's application is hereby *transferred* to the Supreme Court for disposition.

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

I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia. JAN 14 2004

Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Will. L. Mait; JR
Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

DEC 19 2003

A04D0188. Williams v. Pittman

Applicant Franklin L. Williams seeks discretionary review of the trial court's final order dismissing his civil complaint with prejudice. The order Williams seeks to appeal was entered by the trial court on October 31, 2003. This application was filed in this Court on December 12, 2003. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Williams filed his application in this Court more than thirty 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 **DEC 19 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, MARCH 09, 2004

The Court of Appeals passed the following order

Case No. A04D0188

FRANKLIN L. WILLIAMS V. CRAIG PITTMAN, ET AL

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

90-016
03V0320

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 09, 2004*

*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. Mait; [Signature]

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: March 17, 2004

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 **S04C1153**

FRANKLIN L. WILLIAMS v. CRAIGE PITTMAN et al.

Clerk, Supreme Court of Georgia

Case No. A04D0188

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 17 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 0 8 2004**

A04D0189. JESSE DANIEL v. THE COCA-COLA COMPANY ET AL.

Jesse Daniel filed this application for discretionary appeal from the superior court's November 13, 2003, order in his workers' compensation case. Daniel submitted the application to this Court on December 15, 2003. Although the application contained a copy of the order he seeks to appeal, the order was neither signed by the superior court nor stamp-filed by the superior court clerk's office. Because the copy of the order was not signed by the trial court, this Clerk of this Court refused to docket the application. The following day, Daniel submitted a signed and stamp-filed copy of the order he seeks to appeal. His application for discretionary appeal was thus docketed in this Court on December 16, 2003, thirty-three days after the order was entered in the trial court. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Daniel filed his application in this Court more than thirty 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

JAN 0 8 2004

*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, JANUARY 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0190
DOUGLAS MCARTHUR KEATON, III V. THE STATE

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

99016

03R065

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 08 2004**

*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. Mart; JR

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

ATLANTA, JANUARY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0191
EARTH FIRST GRADING & BUILDERS INSURANCE
GROUP/ASSOCIATION SERVICES, INC V. ANCELMO GUTIERREZ

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.

91016

03V01607

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 09 2004

*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. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

JAN 09 2004

A04D0192. AVA CHUN v. CHRISTOPHE A. SMITH.

This discretionary application, filed December 18, 2003, seeks review of an apparent final order entered on December 8, 2003 in a child custody case. However, the response shows that on December 17, 2003, within the same term of court and on the date preceding the filing of the application, an amended final judgment order was entered setting aside and replacing the December 8, 2003 order sought to be appealed. Therefore, the order of December 8, 2003 is not an appealable final order in this action and this application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 09 2004**

*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; [Signature], Clerk.

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

ATLANTA, JANUARY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0193
CATHY CARDEN V. DIXIE WARREN, JR.

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.

94016

03CV1901M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 15 2004**

*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, JANUARY 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0194

GREER, KLOSIK & DAUGHERTY, ET AL V. DONALD J. SHARP

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

95017

2000A10471

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 16 2004

*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, JANUARY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0195

JOANNE STATEN V. PEACH STATE NURSING ET AL

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

96017

03CV21864

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 15 2004**

*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, FEBRUARY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0224
RYAN CRAIG PITTS 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.

93019

00CR0236

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 2004

*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, FEBRUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0231
LARRY DIXON, IV 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.

98020

99CR4582

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 05 2004

*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, FEBRUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0237
KEITH BRAYNON V. ALEXA HILBERT

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.

91020
03CV0142C

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 05 2004**

*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, FEBRUARY 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0246

HEIDI ANNE COHEN V. RICHARD ALLEN NUDELMAN

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.

90021

01CV69886

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 17 2004

*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, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0391
STANLEY SEARS V. MACON WATER AUTHORITY

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.

93033

04CV24126

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

JUN 25 2004

*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 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0404
DAVID MEREDITH BOWERS, JR. V. MARGARET PEARSON

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

2003V271

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

JUL 09 2004

*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. Martin, Jr.

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

ATLANTA, JULY 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0407
JOHN A. KAHLIG V. KAY MARTINEZ

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.

92034

03SC1461

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 01 2004

*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, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0412
LINDA R. DAVIS V. BRUCE T. DAVIS

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.

97035

04A12962

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 16 2004**

*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. Maitland

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 27, 2004

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 **S05C0176**

MARK D. ADKINS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0458

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 28 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0458

MARK D. ADKINS V. THE STATE

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

96039

019385842

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

AUG 25 2004

*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. Martin, III

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

ATLANTA, SEPTEMBER 15, 2004

The Court of Appeals passed the following order

Case No. A04D0458

MARK D. ADKINS V. THE STATE

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

96-039
019385842

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 15, 2004*

*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.



SUPREME COURT OF GEORGIA
Case No. S04D1861

Atlanta

AUG 06 2004

RECEIVED
ADMINISTRATOR
AUG 6 2004
11:31 AM

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

FILED IN OFFICE

AUG 06 2004

ROGER C. DAY v. THE STATE

COURT CLERK
CLERK COURT OF APPEALS OF GA

Appellant, a prisoner, filed a civil action for a declaratory judgment that OCGA § 16-6-1 (rape) and OCGA § 16-5-40 (b) (kidnapping with bodily injury), the statutes under which he was convicted, are unconstitutional because they “do not contain the essential element of intent.” The trial court issued a form order stating that “the written request for leave to file a Civil Action as a pauper is hereby DENIED for there is no justiciable issue of fact or law.” Appellant filed an application for appeal asserting jurisdiction in this Court because a “Declaratory Judgment [is] an Extraordinary Writ.” “An action for declaratory judgment is not ... one involving an extraordinary remedy within the meaning of that provision of the Constitution defining the jurisdiction of this [C]ourt.” Mock v. Darby, 219 Ga. 597 (134 SE2d 805) (1964). Moreover, the appeal does not invoke the Court’s constitutional question jurisdiction as the trial court did not rule on appellant’s challenge to the statutes’ constitutionality, see Santana v. Georgia Power Co., 269 Ga. 127, 129 (6) (498 SE2d 521) (1998) (Court will not rule on constitutional question unless “the trial court distinctly ruled on the point”). Accordingly, it is ordered that the above-styled appeal be transferred to the Court of Appeals.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk’s Office, Atlanta



I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

, Chief Deputy Clerk

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

ATLANTA, AUGUST 18, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0459

ROGER C. DAY V. THE STATE

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

98039

2004CV87202

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 18 2004**

*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. McIntire
Clerk.

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 7, 2004

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 **S05C0043**

ROGER C. DAY v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0459

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 08 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 31, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0460
ANTHONY EUGENE GILLIAM V. THE STATE

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

97037

99CR0067

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

AUG 31 2004

*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, SEPTEMBER 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0461
JERLYN CROSBY V. SPECTRUM APPAREL A/K/A BROMLEY
COATS A/K/A HERMAN KAY COMPANY ET AL

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

97038

2004S040348

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 03 2004

*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. Mait; JR

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

ATLANTA, SEPTEMBER 16, 2004

The Court of Appeals passed the following order

Case No. A04D0461

JERLYN CROSBY V. SPECTRUM APPAREL A/K/A BROMLEY
COATS A/K/A HERMAN KAY COMPANY ET AL

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

97-038
2004S040348

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 16, 2004*

*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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 23 2004**

A04D0462. GUS L. POPE, JR. v. THE STATE.

Gus L. Pope, Jr., was convicted of burglary, and on September 9, 1999, this Court affirmed his judgment of conviction and sentence. *Pope v. State*, 240 Ga. App. 803 (522 SE2d 291) (1989). Pope subsequently filed a motion to set aside judgment and sentence on the grounds that his sentence was void. On March 16, 2004, the superior court entered an order denying Pope's motion. Pope filed a notice of appeal seeking a direct appeal of the order entered on March 16, 2004. The state moved to dismiss Pope's notice of appeal. On April 29, 2004, the superior court entered an order granting the state's motion to dismiss Pope's notice of appeal. On May 25, 2004, Pope filed a motion for reconsideration of the order granting the state's motion to dismiss. On June 25, 2004, the superior court entered an order denying Pope's motion for reconsideration. On August 9, 2004, Pope filed an application for discretionary appeal of the order denying his motion for reconsideration.

This Court lacks appellate jurisdiction over this appeal for each of the following reasons. First, this application was not filed within 30 days of the date of

entry of the order sought to be appealed as required by OCGA § 5-6-35 (d). Secondly, motions for reconsideration will not extend the time for filing an appeal of an underlying order that being the order denying Pope's notice of appeal, and except for orders requiring an application for interlocutory review, the denial of a motion for reconsideration is not appealable in its own right. See *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985); *Blackwell v. Sutton*, 261 Ga. 284 (404 SE2d 114) (1991). For each of the foregoing reasons, Pope's application for discretionary appeal is hereby DISMISSED for lack of jurisdiction.

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

AUG 23 2004

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 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0463

BROOK FACEY V. GAIL FACEY

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.

71039

D2002944

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 30 2004**

*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, Jr.

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

ATLANTA,

SEPTEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0464

TANYA MCNURE V. RINKER MATERIALS ET AL

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

90039

200404885

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

SEP 01 2004

*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

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 10 2004**

A04D0465. GRAHAM, REVENUE COMMISSIONER v. PARKER.

State Revenue Commissioner Bart L. Graham seeks an appeal from an order entered on July 13, 2004 “nunc pro tunc June 7, 2004,” purporting to dismiss a tax appeal as moot, and also from a separate order entered that same day denying the applicant’s motion for reconsideration of an order granting attorney’s fees to the respondent. The only appealable order in this case, however, is the final order entered on June 16, 2004, declaring the respondent’s appeal moot and awarding respondent attorney’s fees under OCGA § 9-15-14. That order alone disposed of all issues then pending before the court. The nunc pro tunc entry of a second order also declaring the appeal moot is a mere nullity presenting nothing for appellate review. Moreover, the denial of a motion for reconsideration is not itself appealable and the filing of such a motion does not otherwise extend the time for filing an appeal. *Blackwell v. Sutton*, 261 Ga. 284 (404 SE2d 114) (1991); *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000); *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Because this application was not filed within 30 days of the final order entered on June 16, 2004, the application is hereby *dismissed* for lack of jurisdiction. OCGA § 5-6-35 (d).

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

SEP 10 2004
*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. Mart; [Signature], Clerk.

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

ATLANTA, SEPTEMBER 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0466
JOYCE WIESTMILLER V. DUNWOODY MEDICAL CENTER

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

99039

04CV48822

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 08 2004**

*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, SEPTEMBER 21, 2004

The Court of Appeals passed the following order

Case No. A04D0466

JOYCE WIESTMILLER V. DUNWOODY MEDICAL CENTER

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

99-039
04CV48822

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 21, 2004*

*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. Mait; 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: October 12, 2004

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 **S05C0277**

JOYCE WEISTMILLER v. DUNWOODY MEDICAL CENTER et al.

Clerk, Supreme Court of Georgia

Case No. A04D0466

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 20 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0467
JAMES R. DAVIS V. STUART R. BROWN

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.

91039

SU04CV05855

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 10 2004

*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. Martin, Jr.

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

ATLANTA, AUGUST 23, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0468

RONNIE WELLS V. THE STATE

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

70039

00R8988

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 23 2004**

*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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 20 2004**

A04D0469. RAFAEL LOPEZ v. MARSHA LYNN DEFELICE F/K/A MARSHA LYNN LOPEZ.

Rafael Lopez seeks to appeal the temporary order awarding custody of his children to their mother. The issue of child support remains pending. Because the order is not a final order, Lopez should have followed the interlocutory appeal procedure. See OCGA § 5-6-34 (b). The discretionary application statute, OCGA § 5-6-35, does not allow a party to ignore the interlocutory application procedures of OCGA § 5-6-34 (b) when seeking appellate review. *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996). Therefore, Lopez's application for discretionary appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 20 2004**

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.