

Court of Appeals of the State of Georgia

ATLANTA,

AUG 27 2004

The Court of Appeals hereby passes the following order:

A05D0001. STEVEN G. MITCHELL v. THE STATE.

On August 13, 2004, Steven G. Mitchell, pro se, filed an application for discretionary appeal. In order for this Court to have jurisdiction to consider an application for discretionary appeal, it must be filed within 30 days of the date of entry of the order, decision, or judgment sought to be appealed. OCGA § 5-6-35 (d). Court of Appeals Rule 31 (d) requires that the application contain a stamped "filed" copy of the trial court's order from which the appeal is sought. While this application does not clearly specify the judgment sought to be appealed, there is no appealable judgment shown to have been entered within 30 days prior to the filing of the application. This application is untimely because it was not filed within 30 days of the date of entry of any of the appealable orders contained in the application. Therefore, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 27 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. Mattingly, Clerk.

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

ATLANTA, SEPTEMBER 28, 2004

Honorable Court of Appeals hereby passes the following order:

A05D0001. STEVEN G. MITCHELL v. THE STATE.

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

2002R318

2003R82

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 28 2004

*I certify that the above is a true extract from
minutes 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: **AUG 31 2004**

A05D0002. PITTS v. PITTS

Because this application for appeal is from a final judgment and decree of divorce, the application is hereby *transferred* to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, § VI, Par. III (6).

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

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

ATLANTA, SEPTEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0003

BRUCE A. WHITLEY V. LISA DIANNE JOHNSON, F/K/A

LISA D. WHITLEY

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

96001

0109082

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. Mait; JR

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

ATLANTA, SEPTEMBER 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0004
STEVEN MIZE V. REGIONS BANK N.A.

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

98001

01HV418T

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 13 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. Jill 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 4, 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 **S05C0237**

STEVEN MIZE v. REGIONS BANK

Clerk, Supreme Court of Georgia

Case No. A05D0004

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 28, 2004

The Court of Appeals passed the following order

Case No. A05D0005

JAIMIE TRANSPORTATION, INC., ET AL V. NATHANIEL JONES

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

90-001
04CV00771

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 28, 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.

William L. Martine

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: October 14, 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 **S05C0287**

JAIMIE TRANSPORTATION, INC., et al. v. NATHANIEL JONES

Clerk, Supreme Court of Georgia

Case No. A05D0005

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,

The Court of Appeals hereby passes the following order: **AUG 25 2004**

A05D0006. DANNY LAMAR McCASTLE v. THE STATE.

Danny Lamar McCastle seeks an appeal from an order entered February 18, 2004 revoking his probation. On August 16, 2004, the trial court entered an order purporting to grant McCastle an out-of-time appeal. McCastle filed his application for discretionary appeal on August 17, 2004.

This court lacks jurisdiction to consider McCastle's application because it was not filed within 30 days of the entry of the probation revocation order. The trial court's order granting McCastle an out-of-time appeal, even if interpreted as the grant of an out-of-time application for appeal, was ineffective for that purpose. *Department of Offender Rehabilitation v. Meeks*, 165 Ga. App. 269 (299 SE2d 757) (1983).

Because McCastle's application was not filed within 30 days as required under OCGA § 5-6-35 (d), it is hereby DISMISSED for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582-583 (420 SE2d 393) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 25 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, SEPTEMBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0007
CHARLES LAMONT MILLER V. THE STATE

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

97001

CR911646FR

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 14 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.*

C. Will. L. Maiti
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: October 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 **S05C0409**

CHARLES LAMONT MILLER v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0007

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 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: **SEP 13 2004**

A05D0008. FOREHAND v. THE STATE.

Marcus Ellis Forehand purports to seek an appeal from a determination of the superior court “dated and entered on July 21, 2004, which order found petitioner guilty of violating his probation. . . .” Forehand further discloses that the trial court “did not prepare a written order of his finding.” These statements are fundamentally inconsistent. While this court has no reason to doubt that the superior court did rule from the bench that Forehand’s probation is to be revoked, such a ruling is not final and reviewable on appeal until reduced to a writing that is signed by the judge and filed with the clerk. OCGA § 5-6-31; *Smith v. State*, 242 Ga. App. 459 (530 SE2d 223) (2000). Because Forehand’s application reflects that no order revoking his probation has yet been entered, his application for appeal is hereby *dismissed* without prejudice as premature.

Court of Appeals of the State of Georgia

Clerk’s Office, Atlanta **SEP 13 2004**

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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. Martz, JR., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 15 2004**

A05D0009. Echols v. The State

Anthony Echols filed this application for discretionary appeal seeking review of an order by the trial court entered on March 15, 2004. This application was filed in this Court on August 23, 2004. However, an application for discretionary appeal must be filed or sent by registered or certified mail within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d); Court of Appeals Rules 4; 32 (b). Because Echols filed this application 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. Accordingly, this application is ordered DISMISSED.

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.*

Will. L. Martini, 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.

(404) 656-3470

Docketing Date: May 20, 2005

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 **S05C1444**

ANTHONY ECHOLS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0009

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 27 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0010

HAROLD LANE ET AL V. FIRST COMMERCE COMMUNITY BANK 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.

93001

04CV313

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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.

William L. Mart; R

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

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 01 2004

A05D0011. ANTHONY J. CARTER v. THE STATE.

On August 26, 2004, Anthony J. Carter, acting pro se, filed an application for discretionary appeal seeking an appeal of the order, entered June 23, 2004, wherein the trial judge denied Carter's motion to recuse, motion to modify probation, emergency motion to return to the Highway 85 property, and request to proceed as an indigent. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with the Clerk of the Supreme Court or of this Court within 30 days of the date of entry of the order sought to be appealed.

Because Carter did not file his application with this Court with 30 days of the date of entry of the order of June 23, 2004, this Court is without appellate jurisdiction over this appeal, and the application is ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 01 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. Maitland, Clerk.

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

ATLANTA, SEPTEMBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0013
INLAND PAPERBOARD ET AL V. GEORGIA DEPARTMENT
OF REVENUE 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.

95002

02CV24976

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

SEP 29 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, SEPTEMBER 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0014
MORNINGSTAR BAPTIST TREATMENT SERVICES ET AL V.
JANICE D. GREEN

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

96002

CE0400522063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 24 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.
P. Will. L. Mait; [Signature]

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

ATLANTA, SEPTEMBER 23, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0015
JENNIE FOSTER V. GEBRIEL GIDEWON

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

98002

2004CV87088

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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. L. Martineau

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

ATLANTA, OCTOBER 08, 2004

The Court of Appeals passed the following order

Case No. A05D0015

JENNIE FOSTER V. GEBRIEL GIDEWON

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

98-002
2004CV87088

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

Clerk.

William 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: October 25, 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 **S05C0353**

JENNIE FOSTER v. GEBREIL GIDEWON

Clerk, Supreme Court of Georgia

Case No. A05D0015

Court of Appeals of Georgia

OCT 26 2004

Notice of Petition for Certiorari

filed in office

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 29 2004**

A05D0016. RACHEL N. STENNER v. DAVID E. STENNER.

Rachel N. Stenner filed this discretionary application from the superior court's order denying her motion for new trial and the denial of her petition to reform/set aside the parties' settlement agreement, which was incorporated into and made a part of the parties' final divorce decree. The Supreme Court, however, has exclusive jurisdiction over all divorce and alimony cases. Ga. Const. Art. 6, Sec. 6, Par. III (6). See *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (1) (435 SE2d 914)(1993); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979). Therefore, this application is ordered TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 29 2004

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hereto affixed the day and year last above written.*

Cecil L. Martineau, Clerk.

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

ATLANTA, SEPTEMBER 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0017

WARREN SKILLERN V. THE STATE

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

70002

93CR0432

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
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Clerk.

William L. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

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

A05D0017. WARREN SKILLERN v, THE STATE.

On September 17, 2004, Warren Skillern, acting pro se, filed a motion for reconsideration of the order of this Court, entered September 10, 2004, denying his application for discretionary appeal. On September 29, 2004, this Court entered an order denying Skillern's motion for reconsideration. On October 8, 2004, Skillern filed a second motion for reconsideration of this Court's order denying his application for discretionary appeal. Skillern did not obtain approval from this Court to file the second motion for reconsideration. Court of Appeals Rule 37 (d) provides that "[n]o party shall file a second motion for reconsideration unless permitted by order of the Court." Because Skillern did not obtain an order permitting the filing of a second motion for reconsideration, as required by Rule 37 (d), and in aid of this Court's appellate jurisdiction, the second motion for reconsideration is DISMISSED. Ga. Const. of 1983, Article VI, Section I, Paragraph IV; Court of Appeals Rule 37 (d).

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 20 2004**

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

Will. L. Maitland, 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: November 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 **S05C0475**

WARREN SKILLERN v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0017

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 18 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0018
AUGUSTA VIDEO, INC. V. CITY OF AUGUSTA ET AL

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

97002

2004RCCV92

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 22 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. Martini

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

ATLANTA, SEPTEMBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0019
THREE RIVERS HOME HEALTH SERVICES, INC. V. GEORGIA
DEPARTMENT OF COMMUNITY HEALTH ET AL

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

71002

04V1296

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 29 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. V. L. Mart; R

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

ATLANTA, OCTOBER 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0020
PAUL JARETSKY V. GEORGIA REAL ESTATE APPRAISERS
BOARD

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

91002

2003CV77223

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **OCT 04 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; [Signature]

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

ATLANTA, SEPTEMBER 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0021

GENERAL WHOLESALE COMPANY ET AL V. DAVID PLUNKETT

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

92002

2004CV83905

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 28 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. Jill L. Martin

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

ATLANTA, SEPTEMBER 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0022

JOHN E. FARRAR, PH.D., V. STATE BOARD OF EXAMINERS
OF PSYCHOLOGISTS

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.

93002

03CV23086

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 27 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, SEPTEMBER 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0023

RICKY REDDING V. THE STATE

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

99002

02R934

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 13 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, III

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

ATLANTA, SEPTEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0024

MOHAWK INDUSTRIES ET AL V. RICHARD HARRIS

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

94002

04CV44401

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

Clerk.

C. Will. L. Mart; R

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

ATLANTA, SEPTEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0025
BEAULIEU OF AMERICA ET AL V. ALICE FOUTS

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

95003

88776A

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

Will. L. ^{Clerk} Martin; JR

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

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 14 2004

A05D0026. DAVID J. DORSEY v. THE STATE.

On September 8, 2004, David J. Dorsey filed an application for discretion appeal of the order denying his motion for new trial, entered July 15, 2004 and the sentencing order on petition for adjudication of guilt in first offender case and petitions for revocation of probation, entered May 7, 2003. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Dorsey has not filed his application within 30 days of the date of entry of either of the orders he seeks to appeal, this Court is without jurisdiction over this application and it is DISMISSED. See *White v. State*, 188 Ga. App. 556 (373 SE2d 824) (1988).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 14 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, JR., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

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

A05D0027. Phillip E. Hill, Sr. v. ABN AMRO Mortgage

Phillip E. Hill, Sr., *pro se*, filed this application for discretionary appeal from the superior court's "Order Denying Defendant Phillip E. Hill, Sr.'s Motion to Set Aside Judgments." The order appealed from, however, is interlocutory because the case remains pending below. Hill was thus 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 (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 Hill failed to follow the interlocutory appeal procedures, this Court lacks jurisdiction to consider this application for appeal. See *Pinyan v. Hamby*, 176 Ga. App. 411 (336 SE2d 331) (1985); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997). Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 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.*

Will L. Martin, JR., Clerk.

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

ATLANTA, NOVEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0028
JUDITH J. WALKER ET AL V. THE ESTATE OF ALDINE
MARCUS MAYS ET AL

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

90003

03CV2159C

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

NOV 22 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.

Con L. Matier

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 13, 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 **S05C0610**

JUDITH J. WALKER et al. v. ESTATE OF ALDINE MARCUS MAYS et al.

Clerk, Supreme Court of Georgia

Case No. A05D0028

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 26 2005

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 16 2004

A05D0029. RODERICK HOWARD v. THE STATE.

Roderick Howard is pending trial in the Superior Court of Muscogee County, Case No. SU 95 CR 291. He filed a motion to dismiss indictment on the grounds of lack of speedy trial in violation of the Sixth Amendment of the Constitution of the United States. On September 13, 2004, the trial court entered an order denying the motion to dismiss indictment. On the same date, Howard filed an application for discretionary appeal. “[A] defendant may directly appeal from the pre-trial denial of either a constitutional or statutory speedy trial claim.” *Callaway v. State*, 275 Ga. 332 (567 SE2d 13) (2002). But Howard has not filed a notice of appeal in this case.

Under OCGA § 5-6-35 (j), when a timely application for discretionary appeal is filed in a case that is subject to direct appeal under OCGA § 5-6-34 (a) but not subject to discretionary appeal under OCGA § 5-6-35 (a), and the applicant has not filed a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. Accordingly, this application is GRANTED.

Howard shall have ten days from the date of this order to file a notice of appeal

with the superior court. OCGA § 5-6-35 (g). The clerk of the superior court is instructed 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 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.

William L. Martin, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 22 2004**

A05D0030. RALPH J. VILLANI v. RALPH E. HUGHES.

Defendant Ralph J. Villani has filed this application for discretionary appeal from a default judgment awarding plaintiff Ralph E. Hughes \$12,181.40 plus court costs on his contract action. Villani filed this application as a precautionary measure although he has also filed a notice of direct appeal.¹ This Court will grant a 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, Villani has filed an apparently timely notice of appeal in addition to the instant application. Thus, OCGA § 5-6-35 (j) does not apply, and this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 22 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. Martini, Clerk.

¹Villani does not explain the reasons for his uncertainty and the Court cannot conclusively determine whether jurisdiction over a direct appeal is proper, given the dearth of materials included with the application.

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

ATLANTA, OCTOBER 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0031

ANTHONY JACKSON V. THE STATE

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

71003

99CR1020 99CR10212

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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. Maitland

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

ATLANTA, OCTOBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0032

CHARLES CRONIN V. THE STATE

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

91003

04R023

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

OCT 14 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, SEPTEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0033
DOUGLAS MITTLEIDER ET AL V. NETBANK, INC.

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

92003

2004CV83820

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 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 above written.*

Clerk.

William L. Mart; JR

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

ATLANTA, OCTOBER 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0034

PAULA DEANNE MCNULTY V. JOHN SCOTT DOOLEY

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

93003

04CV330C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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 written.*

Clerk.

Will. L. Mait; JR

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

ATLANTA, SEPTEMBER 23, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0035
MARVIN LEE HILDRETH V. THE STATE

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

99003

993118

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

Will. L. Mart; JR

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

ATLANTA, OCTOBER 18, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0036
ANNE EMANUEL ET AL V. DEKALB COUNTY ZONING
BOARD OF APPEALS ET AL

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

94003

02CV114136

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

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

ATLANTA, OCTOBER 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0037
KMART CORPORATION V. CYNTHIA ARGO

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

95004

041373418

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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 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 13 2004

A05D0038. LEWALLEN v. THE STATE.

Jesse Walter Lewallen filed an application for discretionary appeal in this court on September 17, 2004, from an order entered on August 11, 2004, granting the state's motion to dismiss certain motions and objections previously filed by Lewallen. Because Lewallen failed to file his application for appeal in this court within 30 days of the order complained of as required under OCGA § 5-6-35 (d), Lewallen's application is hereby *dismissed* for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

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

OCT 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.*

[Handwritten Signature], Clerk.

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

ATLANTA, NOVEMBER 01, 2004

The Court of Appeals passed the following order

Case No. A05D0038

JESSE WALTER LEWALLEN V. THE STATE

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

96-004
91CR0141

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

William L. Martin

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

ATLANTA, OCTOBER 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0039
TIMOTHY WAYNE POOLE V. DANNY B. SMITH

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.

98004

01CV415

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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 written.*

Clerk.

William L. Martin, Jr.

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

ATLANTA, OCTOBER 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0040

ROBERT DEVITO V. HARRISON BODY SHOP ET AL

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

90004

04CV24654

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 21 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, III

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

ATLANTA, NOVEMBER 04, 2004

The Court of Appeals passed the following order

Case No. A05D0040

ROBERT DEVITO V. HARRISON BODY SHOP ET AL

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

90-004
04CV24654

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 04, 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. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 12 2004**

A05D0041. JOHN KENDRIX ET AL v. ANGELA LAKE WALLACE.

On March 4, 2004, plaintiff, Levi Joseph Green, filed a petition for legitimization and custody of the minor child, Chandler Stone Green, against the child's mother, Angela Lane Wallace. In the petition, Green sought both legal and physical custody of the child.

On March 29, 2004, John and Lee Kendrix, the maternal grandparents of Chandler Stone Green filed a motion to intervene under OCGA § 9-11-24 (b). In the petition for intervention, the Kendrixes alleged that Angela Lane Wallace was currently incarcerated on drug charges and, if convicted, faced substantial a substantial period of confinement.

On April 1, 2004, the trial court entered an order granting that portion of the petition pertaining to legitimization and declared Chandler Stone Green the legitimate child of Levi Joseph Green. Ruling was deferred on the issue of child custody. On June 11, 2004, the trial court entered an order granting the Kendrixes motion to intervene, and appointed a Guardian ad Litem for Chandler Stone Green noting that Angela Lane Wallace is the "legal physical custodian" of the child.

On August 20, 2004, a hearing was held on the issue of temporary custody of the minor child with all parties being represented by counsel. On August 23, 2004, the trial court entered an "Order" awarding "temporary physical custody" of the minor child, Chandler Stone Green, to his father, Levi Joseph Green, provided:

"[Levi Joseph Green] submits bi-weekly (once every two weeks) drug screens to the Guardian ad Litem. The Guardian ad Litem is given the discretion to request urine, blood, or hair sample testing. The Father

must also submit to such drug testing at any time as may be requested by the Guardian ad Litem. The Father is not to drink alcohol. The first drug screen will be presented to the Guardian ad Litem within five days of the filing of this order. The Father is responsible for all costs of drug screening. Any failure of a drug and alcohol screen or refusal to submit to such request will be deemed an emergency and the basis for change of custody.” The order also confirmed that Angela Lane Wallace “is presently incarcerated on drug trafficking charges.”

It is this order that the Kendrixes seek to appeal in their application for discretionary appeal. It is the substance or function of an order and not its nomenclature that controls its legal classification. See *Howell Mill/Collier Associates v. Pennypackers*, 194 Ga. App. 169 (1) (390 SE2d 257) (1990); *Cain v. Moore*, 207 Ga. App. 726, 727 (2) (429 SE2d 135) (1993).

Examining the trial court’s order in its totality, it appears that the practical function of the order was to temporarily retain legal custody of the child with its mother, vest temporary physical custody of the child with its father, divest the intervenors of their physical custody of the child, continue the appointment of the Guardian ad Litem on behalf of the child and vest the Guardian ad Litem with certain supervisory responsibilities for monitoring the father’s continuous drug screening. It is also apparent from examining the order that the issue of permanent legal and physical custody of the child, raised in Levi Joseph Green’s petition for custody remains unresolved; and that the order awarding temporary physical custody leaves open the length of time that Levi Joseph Green must continue to provide the Guardian ad Litem with drug screening results.

Thus, the order, entered 23 August 2004, is an interlocutory order in a domestic relations case thereby implicating both the discretionary and interlocutory appeal statutes, OCGA § 5-6-324 (b) and OCGA § 5-6-35 (a) (2). Compare *Walls v. Walls*, 278 Ga. 206 (2004); *In re R. L. L. & J. M. L.*, 258 Ga. 628 (1988); *Harms v. Harms*, 236 Ga. 250 (1976); cf. *Gray v. Gray*, 226 Ga. 767 (1970). “[A] party appealing an interlocutory order must comply with the requirements of OCGA § 5-6-34 (b),

irrespective of whether the appeal is brought pursuant to OCGA § 5-6-35. *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996).

Because the Kendrixes failed to follow the required interlocutory procedure, we are without jurisdiction to hear the merits of this application and it is DISMISSED. See *id.* at 833.

*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.*


....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 05 2004**

A05D0042. DOUGLAS MAURICE ARRINGTON v. THE STATE.

Douglas Maurice Arrington is no stranger to this Court. He has already challenged his robbery conviction by direct appeal to this Court, and the judgment was affirmed. *Arrington v. State*, 244 Ga. App. 672 (535 SE2d 337) (2000). This Court's affirmance is res judicata. See *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991). At separate times, he has filed both a second direct appeal, A01A1687, and an application for discretionary review, A04D0367, alleging his sentence was "void"; both of these appellate actions were dismissed for failure to raise a legitimate issue that would entitle Arrington to a second review. Now, Arrington has filed the instant discretionary application seeking review of an order denying his "Motion to Arrest Void Sentence," premised upon the notion that a conflict exists between the offenses outlined in OCGA § 16-8-40, robbery, and OCGA § 16-8-41, armed robbery, thereby rendering his robbery conviction "void." Because Arrington raises no issue that could not have been raised in his first appeal, and because he otherwise raises no issue that could entitle him to a second appeal in this court, we lack jurisdiction to consider this application for discretionary appeal. *Daniels v. State*, 244 Ga. App. 522 (536 SE2d 206) (2000). Arrington's allegation of "void sentence" does not change this result. A motion alleging a "void sentence" does not lie where neither subject matter jurisdiction nor personal jurisdiction is meaningfully challenged and the sentence rendered is otherwise within legal limits. *Goodrum v. State*, 259 Ga. App. 704 (578 SE2d 484) (2003). For these reasons, Arrington's application is hereby DISMISSED for lack of jurisdiction.

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.

Jill 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: January 19, 2006

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 **S06C0894**

DOUGLAS MAURICE ARRINGTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0042

Court of Appeals of Georgia

JAN 27 2006

Notice of Petition for Certiorari

filed in office

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 14 2004

A05D0043. ERNEST MYERS, JR. v. THE STATE.

Ernest Myers, Jr. filed an application for discretionary appeal in this court on September 27, 2004, from an order entered on August 16, 2004, denying his motion for out-of-time appeal. Because Myers failed to file his application for appeal in this court within 30 days of the order complained of as required under OCGA § 5-6-35 (d), Myers's application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 14 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. Martin, Jr., Clerk.

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

ATLANTA, OCTOBER 28, 2004

The Court of Appeals passed the following order

Case No. A05D0043

ERNEST MYERS, JR. V. THE STATE

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

71-004
CR971835BR

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 28, 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. Mart; 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.

(404) 656-3470

Docketing Date: November 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 **S05C0480**

ERNEST MYERS, JR. v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0043

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 18 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: **OCT 21 2004**

A05D0044. FOREHAND v. THE STATE.

Marcus Ellis Forehand filed an application for appeal on September 28, 2004, seeking an appeal from an order entered on July 26, 2004, revoking his probation.¹ Because his application was not filed within 30 days of the order complained of, it is hereby *dismissed* for lack of jurisdiction. OCGA § 5-6-35 (d); *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

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

Will. L. Mart; JR, Clerk.

¹We recognize that Forehand filed an earlier application for appeal on August 20, 2004, contending that his probation had been revoked but also stating through counsel that no written order had been entered to that effect. This court dismissed that application as premature based on the facts as presented in the application. Such circumstances do not, however, serve to extend the time for Forehand to file a second application for appeal. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Assoc., Inc.*, 167 Ga. App. 257, 258 (306 SE2d 22) (1983) (lack of notice of the entry of a judgment may serve as a basis for setting aside a judgment, but it does not serve to extend the time for filing an appeal).

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

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 12 2004

A05D0045. Deshonne Brown v. The State

Deshonne Brown filed this application for discretionary appeal seeking review of the trial court's order denying his motion for an out of time appeal. The order Brown seeks to appeal was entered in the trial court on August 10, 2004. This application was filed on September 23, 2004. However, an application for discretionary appeal must be filed or sent by registered or certified mail within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d); Court of Appeals Rules 4; 32 (b). Because Brown filed this application 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. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 12 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; R, Clerk.

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

ATLANTA, NOVEMBER 03, 2004

The Court of Appeals passed the following order

Case No. A05D0045

DESHONNE BROWN V. THE STATE

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

92-004
Z96725

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

William L. Maitland

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

ATLANTA, OCTOBER 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0046
PAMELA WOODARD F/K/A PAMELA JONES V.
RICKY E. JONES

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

93004

02CV148

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

OCT 28 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, NOVEMBER 15, 2004

The Court of Appeals passed the following order

Case No. A05D0046

PAMELA WOODARD F/K/A PAMELA JONES V.
RICKY E. JONES

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

93-004
02CV148

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

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

ATLANTA, OCTOBER 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0047

MARY L. WILLIAMS V. DEPARTMENT OF HUMAN RESOURCES
FOR LEE COUNTY FAMILY & CHILDREN SERVICES, STATE OF
GEORGIA

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

99004

0882928

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 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.

C. Vill. L. Mait; R

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

ATLANTA, OCTOBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0048
BIBB COUNTY V. WILLIAM DAVID PRICE

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

94004

04CV24942

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 22 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, OCTOBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0049

MARION WILLIAM HENSLEY, JR., V. THE STATE

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

95005

04CR876

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 2004

*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 written.*

Clerk.

Will. L. Mart; JR

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

ATLANTA, OCTOBER 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0050

JANET RUSSEY V. JEFF RUSSEY

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

96005

200223533

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 27 2004

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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. Martin, JR

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

ATLANTA,

The Court of Appeals hereby passes the following order:

OCT 08 2004

A05D0051. Spencer Lawton, Jr. as District Attorney v. Chaney-Outler

The District Attorney for Chatham County filed this application for discretionary appeal seeking review of the Superior Court of Chatham County's order granting Juanita Theresa Chaney-Outler's request for expungement of her arrest record for simple battery under the Family Violence Act. The order the District Attorney seeks to appeal was entered in the trial court on August 30, 2004. This application was filed 32 days later on October 1, 2004. However, an application for discretionary appeal must be filed or sent by registered or certified mail within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d); Court of Appeals Rules 4; 32 (b). Because the District Attorney filed this application 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. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 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.*

William L. Martin, Jr., Clerk.

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

ATLANTA, OCTOBER 26, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0052

MICHAEL SCOTT CANNON V. ERIC C. SMITH ETA L

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

90005

DR040485MO

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

OCT 26 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

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 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 **S05C0468**

MICHAEL SCOTT CANNON v. ERIC C. SMITH et al.

 Clerk, Supreme Court of Georgia

Case No. A05D0052

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 18 2004

 Clerk, Court of Appeals of Georgia

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

ATLANTA, OCTOBER 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0053
NORTHSIDE CORP. D/B/A TOWER PACKAGE STORE ET AL
V. CITY OF ATLANTA, 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.

70005

2004CV84745

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 21 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, OCTOBER 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0054

REGINA L. TUTTLE 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.

97005

03CR116

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 21 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. Martini

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

ATLANTA,

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

A05D0055. BRIAN BRETILING v. OFFICER POPP ET AL.

Brian Bretling filed an application for discretionary appeal in this court on October 4, 2004, from an order entered on July 19, 2004, denying several post-dismissal motions. Because Bretling failed to file his application for appeal in this court within 30 days of the order complained of as required under OCGA § 5-6-35 (d), Bretling's application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **OCT 14 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. Mat; R, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 03 2004

A05D0056, A05D0057. ANDERSON v. DEAS (two applications).

In Application No. A05D0056, Jonita Anderson seeks an appeal from an order in which the trial court determined that it does not have jurisdiction to consider her motion for an emergency child custody hearing. In Application No. A04D0057, Anderson seeks an appeal from an order setting aside an ex parte protective order to the extent that it conflicts with orders entered by the Circuit Court for Washington County, Maryland in a pending custody case. The respondent argues that both of these applications must be dismissed due to Anderson's failure to follow the interlocutory appeal procedure. We agree. Because Anderson failed to obtain certificates of immediate review authorizing these applications as required, the applications are hereby *dismissed* for lack of jurisdiction. *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. App. 587 (408 SE2d 103) (1991).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.*

C. Jill L. Maitland, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 03 2004**

A05D0056, A05D0057. ANDERSON v. DEAS (two applications).

In Application No. A05D0056, Jonita Anderson seeks an appeal from an order in which the trial court determined that it does not have jurisdiction to consider her motion for an emergency child custody hearing. In Application No. A04D0057, Anderson seeks an appeal from an order setting aside an ex parte protective order to the extent that it conflicts with orders entered by the Circuit Court for Washington County, Maryland in a pending custody case. The respondent argues that both of these applications must be dismissed due to Anderson's failure to follow the interlocutory appeal procedure. We agree. Because Anderson failed to obtain certificates of immediate review authorizing these applications as required, the applications are hereby *dismissed* for lack of jurisdiction. *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. App. 587 (408 SE2d 103) (1991).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.*

C. Jill L. Maitland, Clerk.

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

ATLANTA, OCTOBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0058
TRADESMEN INTERNATIONAL, INC., ET AL V.
DANIEL RIZZO

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

92005

04CV159

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 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. Vill. L. Mart; R

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

ATLANTA, OCTOBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0059
O'RON MARQUIS LOWE V. THE STATE

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

93005

99286834

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 22 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, OCTOBER 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0060

ARCHIE WOODS V. THE STATE

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

99005

0000323

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 19 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. Matier

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

ATLANTA, OCTOBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0061

MONICA BROWN V. VIVIAN BELL

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

94005

2003CV77858 2003CV77838

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 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.

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: November 18, 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 **S05C0500**

MONICA BROWN v. VIVIAN BELL

Clerk, Supreme Court of Georgia

Case No. A05D0061

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 01 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0062

SHERRY LYNN CLEVINGER V. WILLARD ROBIN ALLEN

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

95006

04CV511W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 03 2004

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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. Martin

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

ATLANTA, NOVEMBER 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0063

CITY OF COLLEGE PARK V. LISA D. INKLEBARGER ET AL

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

96006

2002CV57852 2002CV57856

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

NOV 10 2004

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

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Clerk.

Will L. Martin

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

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 19 2004**

A05D0064. Hill v. The State

Gary L. Hill filed this application for discretionary appeal seeking review of the trial court's denial of his motion for new trial. The motion for new trial was filed within 30 days after entry of the judgment of conviction and sentencing. The trial court denied the motion for new trial by order entered on September 13, 2004. This application for discretionary appeal was timely filed on October 8, 2004. However, an order denying a timely motion for new trial is directly appealable. OCGA § 5-6-34 (a) and OCGA § 5-6-38 (a).

Under OCGA § 5-6-35 (j), when a timely application for discretionary appeal is filed in a case that is subject to direct appeal under OCGA § 5-6-34 (a) but not subject to discretionary appeal under OCGA § 5-6-35 (a), and the applicant has not filed a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. Accordingly, this application is GRANTED.

Hill shall have ten days from the date of this order to file a notice of appeal with the superior court. OCGA § 5-6-35 (g). The clerk of the superior court is instructed 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* **OCT 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.*

Will. L. Mait; JR, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 21 2004**

A05D0065. ROY RICHARDSON v. THE STATE.

Roy Richardson seeks an appeal from a probation revocation order entered August 31, 2004. Richardson's application for discretionary appeal was docketed in this court October 13, 2004, forty-three days after the revocation 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 Richardson 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. Therefore, the application is hereby ordered DISMISSED.

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

C. Jill L. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 03 2004**

A05D0066. WILLIE RHODES v. THE STATE.

Willie Rhodes filed an application for discretionary appeal of the order, entered September 13, 2004, revoking his probation. The above-captioned application is granted only as to the following issue: Whether the trial court erred in sentencing Rhodes to serve three (3) years in a State Detention Center for violating the general terms of his probation, other than by commission of a new felony offense, in view of the two-year confinement limitation in OCGA § 42-8-34.1 (c). The parties shall address in their appellate briefs, the effect, if any, of sentencing Rhodes to serve in a “State Detention Center” rather than in a “probation detention center.” See OCGA §§ 42-8-34.1 (c), 42-8-35.4; *Syms v. State*, 257 Ga. App. 521 (571 SE2d 514) (2002).

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

NOV 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.

[Handwritten Signature] Clerk.

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

ATLANTA, **OCT 29 2004**

The Court of Appeals hereby passes the following order:

A05D0067. EVA M. EPTING v. ASHLEY EVANS.

Ashley Evans filed an action for change of custody, modification of visitation and contempt against his former wife, Eva M. Epting. She counterclaimed for change of custody and an increase in child support. After the trial court entered orders resolving the issues of custody and child support, the mother filed an application with this Court, seeking a discretionary appeal. But she has failed to include with her application an order resolving the father's contempt claim. This Court, therefore, does not have jurisdiction to review this application.

"Generally, an order is final and appealable when it leaves no issues remaining to be resolved, constitutes the court's final ruling on the merits of the action, and leaves the parties with no further recourse in the trial court." *Thomas v. Douglas County*, 217 Ga. App. 520 (457 SE2d 835) (1995). The father's claim for contempt apparently remains pending for decision; thus, the judgment for which an appeal is sought is not the final judgment in the case. Because the order appealed from is not a final order, the mother 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 (408 SE2d 103) (1991). Because the mother failed to follow the interlocutory appeal procedures, this Court lacks jurisdiction to entertain this application, which is hereby DISMISSED.

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

OCT 29 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, NOVEMBER 02, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0068
WEBSTER R. POPE ET AL V. BOARD OF COMMISSIONERS
OF FULTON 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.

71006
1998CV03569

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

NOV 02 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, Jr.

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

ATLANTA, NOVEMBER 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0069

SHEILA BYRD V. THE STATE

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

92006

SU04CR1208J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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 above written.*

Clerk.

Will. L. Mart; JR

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

ATLANTA, NOVEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0070
JOHN OXENDINE V. HIRSCH FRIEDMAN

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.

93006
2004CV84871

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

Clerk.

Will L. Martin

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

ATLANTA, NOVEMBER 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0071

WILLIAM ROBERT HEVEDER V. HERSHEL GUTHRIE ET AL

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

99006

2003V0170

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

NOV 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. Mart; R

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 10, 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 **S05C0601**

WILLIAM ROBERT HEVEDER, JR. v. HERSHEL GUTHRIE et al.

Clerk, Supreme Court of Georgia

Case No. A05D0071

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 16 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 09 2004

A05D0072. GILBERT ROWLAND THOMAS v. THE STATE.

Gilbert Rowland Thomas was convicted of burglary, terroristic threats, and theft by taking. The judgment of conviction was affirmed in *Thomas v. State*, 254 Ga. App. 226 (561 SE2d 444) (2002). On May 6, 2004, Thomas, acting pro se, filed a motion for disqualification and/or recusal of judge and an extraordinary motion for new trial. On August 24, 2004, the trial court entered an order denying Thomas' disqualification and/or recusal motion. On August 25, 2004, the trial court entered an order denying Thomas' extraordinary motion for new trial.

On September 7, 2004, Thomas filed a motion for reconsideration on motion for disqualification and/or recusal of judge and a motion for reconsideration on extraordinary motion for new trial. On September 17, 2004, the trial court entered an order denying both motions for reconsideration. On October 14, 2004, Thomas filed an application for interlocutory review seeking review of the order, entered on September 17, 2004.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be

filed with 30 days of the date of entry of the appealable order sought to be appealed. The denial of a motion for reconsideration is not an appealable order and does not extend the period of time for the filing of an application for discretionary appeal. See *Blackwell v. Sutton*, 261 Ga. 284 (404 SE2d 114) (1991); *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000); *Simmons v. State*, 228 Ga. App. 470 (491 SE2d 908); *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985).

Because Thomas did not file an application for discretionary appeal within 30 days of the date of entry of the order, entered August 24, 2004, denying his motion for disqualification and/or recusal or of the order, entered August 24, 2004, denying his extraordinary motion for new trial, his application is untimely. Accordingly, this Court lacks jurisdiction over Thomas's application for discretionary appeal and it is DISMISSED.

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

NOV 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.

William L. Martin, Jr., Clerk.

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

ATLANTA, DECEMBER 01, 2004

The Court of Appeals passed the following order

Case No. A05D0072

GILBERT ROWLAND THOMAS V. THE STATE

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

94-006
CR990848FR CR990849FR

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

William 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.

(404) 656-3470

Docketing Date: December 20, 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 **S05C0663**

GILBERT ROWLAND THOMAS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0072

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 27 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 01 2004**

A05D0073. KAREN C. BAUGHIER v. TONYA HASTY et al.

Karen C. Baughier has filed an application for discretionary review in this child custody case. Under OCGA § 5-6-35 (a) (2), appeals from final judgments in child custody matters require the discretionary appeal procedures. Such applications for discretionary appeal must be filed within 30 days after entry of the appealable judgment. OCGA § 5-6-35 (d). In the instant case, inasmuch as the trial court's order denying the motion for new trial was entered on September 13, 2004, the deadline for filing an application for discretionary appeal was October 13, 2004. Because this application was filed more than thirty days after entry of the order sought to be appealed, it is untimely. This Court lacks jurisdiction to consider an untimely application. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 01 2004**

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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. Maitland, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 03 2004

A05D0074. MARK EVERETT v. MICHAEL T. RAST ET AL.

Mark Everett filed this discretionary application seeking review of the trial court's denial of his motion for attorney's fees and expenses of litigation pursuant to OCGA § 50-18-73 (b). However, OCGA § 5-6-10 (a) (10) is inapplicable, because that code section only applies to appeal from attorney fees awards under OCGA § 9-15-14, not OCGA § 50-18-73. Thus the order sought to be appealed is subject to direct appeal under OCGA § 5-6-34 (a) (1). This Court will grant a timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the appellant has not timely filed a notice of appeal. In this case, Everett indicates that his discretionary application is precautionary and that he has filed a timely notice of appeal. Thus, OCGA § 5-6-35 (j) does not apply, and this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 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.*

William L. Martin, Jr. Clerk.

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

ATLANTA, NOVEMBER 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0075

EQUIPCO, LLC ET AL V. OLLIE BONAPARTE, JR.

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

98007

CV041055MO

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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, NOVEMBER 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0076

BECKY LYNN ELDER V. ROGER WAYNE DUNN, 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.

90007

04CVD2434

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

NOV 03 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.



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

ATLANTA, NOVEMBER 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0077
FRANK GATES, USA ET AL V. THOMAS RAYE

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

70007

04CV1744

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

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.

(404) 656-3470

Docketing Date: November 23, 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 **S05C0510**

FRANK GATES, USA et al. v. THOMAS RAYE

Clerk, Supreme Court of Georgia

Case No. A05D0077

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 30 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 03 2004

A05D0078. KATHY BREWTON v. CITY OF RIVERDALE.

On October 18, 2004, Kathy Brewton, acting pro se, filed an application for discretionary appeal seeking to appeal the order, entered September 15, 2004, denying her affidavit in forma pauperis to the extent that it was intended as a motion to proceed in forma pauperis. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Pursuant to this Code section, Brewton was required to file her application for discretionary appeal no later than Friday, October 15, 2004.

Brewton contends, however, that because she mailed her application, she was entitled to an additional filing time of three days pursuant to OCGA § 9-11-6 (e). The filing date of an application for discretionary appeal is not calculated from the date of service of any type of notice upon the applicant. Rather, the filing date of an application is calculated from the date of entry of the order sought to be appealed. Thus, OCGA § 9-11-6 (e), which applies only in cases where the prescribed filing time commences to run after the service of some type of notice or document upon the

party seeking to appeal, does not apply to extend the time requirement for filing an application for discretionary appeal under OCGA § 5-6-35. Compare *Akin v. Sanders*, 228 Ga. 251 (184 SE2d 660) (1971). Accordingly, Brewton's application for discretionary appeal is untimely and it is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

Will. L. Matijevic, Clerk.

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

ATLANTA, NOVEMBER 02, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0079

TONY BENTLEY V. THE STATE

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

71007

03R054

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 02 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, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 09 2004

A05D0080. BLACKSINGLES.COM, LLC v. NETCENTRIX, INC.

Blacksingles.com, LLC filed an application for discretionary appeal in this court on October 18, 2004, from an order entered on August 26, 2004, denying a motion to set aside judgment. Because Blacksingles.com, LLC failed to file an application for appeal in this court within 30 days of the order complained of as required under OCGA § 5-6-35 (d), Blacksingle.com LLC's application is hereby DISMISSED for lack of jurisdiction. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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. Martini, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 19 2004**

A05D0081. PARADISE v. THE STATE.

Bobby Paradise filed an application for discretionary appeal on October 22, 2004, from an order entered on September 20, 2004, denying his "Motion for Correction of Void and Unauthorized Sentence". Because Paradise 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. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

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

Will. L. Mait; JR Clerk.

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

ATLANTA, JANUARY 12, 2005

The Court of Appeals passed the following order

Case No. A05D0081

BOBBY PARADISE V. THE STATE

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

92-007
92CR16604

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 12, 2005*

*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. Vill. L. Martine

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, 2005

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 **S05C0820**

BOBBY PARADISE v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0081

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 31 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, **OCT 29 2004**

The Court of Appeals hereby passes the following order:

A05D0082. Aron Tyrone Tuff v. The State

Aron Tyrone Tuff seeks discretionary review of the trial court's order denying his extraordinary motion for new trial. The order Tuff seeks to appeal was entered in the trial court on August 25, 2004. This application was not filed until October 22, 2004. An application for discretionary appeal must be filed or sent by registered or certified mail within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d); Court of Appeals Rules 4; 32 (b). Because Tuff filed this application more than 30 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 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. Martz, Jr. Clerk.

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

ATLANTA, NOVEMBER 19, 2004

The Court of Appeals passed the following order

Case No. A05D0082

ARON TYRONE TUFF V. THE STATE

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

93-007
95CR210

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

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.

(404) 656-3470

Docketing Date: December 3, 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 **S05C0562**

ARON TYRONE TUFF v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0082

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 07 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0083

NORTHWEST GEORGIA BANK V. JERRY DON KILGORE ET AL

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

99007

04CV00109

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 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. Mart; 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 1, 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 **S05C0568**

NORTHWEST GEORGIA BANK V. JERRY DON KILGORE et al.

Clerk, Supreme Court of Georgia

Case No. A05D0083

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 07 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 10 2004

A05D0084. DAVID BRINSON v. THE STATE.

On June 9, 1999, David Brinson entered a negotiated Alford guilty plea to four counts of child molestation, two counts of aggravated child molestation, and one count of aggravated sodomy. Based on his guilty plea, Brinson was sentenced under the First Offender Act. On September 22, 2003, Brinson filed a motion to withdraw his guilty plea, and an order was entered dismissing that motion on October 3, 2003. On August 30, 2004, Brinson filed a second motion to withdraw his negotiated guilty plea, captioned "Defendant's Motion To Withdraw Alford Plea. On September 21, 2004, the trial court dismissed Brinson's pro se motion to withdraw Alford plea.

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

Because the second motion to withdraw the Alford guilty plea was filed and denied after the expiration of the term of court in which the sentence was entered, this Court lacks jurisdiction to consider Brinson's application. Further, OCGA § 5-6-35 (j) is inapplicable because Brinson has filed a notice of appeal of the subject order and also because this Court lacks jurisdiction to consider a direct appeal of an order denying a motion to withdraw a guilty plea filed in a term of court subsequent to the term in which sentence was entered. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 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.

William L. [Signature], Clerk.

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

ATLANTA, NOVEMBER 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0085

ATLANTA TRANSFER STATION, LLC V. JARED BAGBY ET AL

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

95008

2003CV75447

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

C. Vill. L. Mart; R

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.

(404) 656-3470

Docketing Date: December 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 **S05C0589**

ATLANTA TRANSFER STATION, LLC v. JARED BAGBY et al.

Clerk, Supreme Court of Georgia

Case No. A05D0085

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 9 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0086
JERRY T. BUCKNER V. DOUGLAS COUNTY 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.

96008

03CV01419

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

C. J. L. Martin, Jr.

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

ATLANTA, NOVEMBER 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0087

GEORGIA DEPARTMENT OF EDUCATION V. SAM NIEMEIER

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.

98008

04CV33581

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 19 2004

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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.

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

ATLANTA, NOVEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0088
MICHAEL CLAY FOSTER V. THE STATE

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

90008

01CR0225

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 22 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. Jill L. Martini

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

ATLANTA, JANUARY 18, 2005

The Court of Appeals passed the following order

Case No. A05D0088

MICHAEL CLAY FOSTER V. THE STATE

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

90-008
01CR0225

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 18, 2005*

*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. Maitre

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

ATLANTA, NOVEMBER 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0089

ROBIN C. FECH V. ATLANTIC SOUTHEAST AIRLINES ET AL

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

70008

04V01174

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

C. L. Martine

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

ATLANTA, DECEMBER 08, 2004

The Court of Appeals passed the following order

Case No. A05D0089

ROBIN C. FECH V. ATLANTIC SOUTHEAST AIRLINES ET AL

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

70-008
04V01174

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

(404) 656-3470

Docketing Date: December 22, 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 **S05C0671**

ROBIN C. FECH v. ALANTIC SOUTHEAST AIRLINES et al.

Clerk, Supreme Court of Georgia

Case No. A05D0089

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 29 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0090
JOEL WAYNE STANFORD V. CAROLYN REBECCA STANFORD
K/N/A CAROLYN REBECCA WILIS

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

97008

2003CV40310

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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.

C. Will. L. Mait; R

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

NOV 02 2004

A05D0091. LEISA MICHELLE CAWTHON v. CURTIS ALAN CAWTHON.

Curtis Alan Cawthon filed an action for change of custody, modification of child support and contempt against his former wife, Leisa Michelle Cawthon. She counterclaimed for modification of child support and contempt. After the trial court entered an order resolving the issues of child custody and contempt, the mother filed an application with this Court, seeking a discretionary appeal. But the issue of child support is pending. This Court, therefore, does not have jurisdiction to review this application.

“Generally, an order is final and appealable when it leaves no issues remaining to be resolved, constitutes the court’s final ruling on the merits of the action, and leaves the parties with no further recourse in the trial court.” *Thomas v. Douglas County*, 217 Ga. App. 520 (457 SE2d 835) (1995). The child support issue remains pending for decision; thus, the judgment for which an appeal is sought is not the final judgment in the case. Because the order appealed from is not a final order, the mother 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 (408 SE2d 103) (1991). Because the mother failed to follow the interlocutory appeal procedures, this Court lacks jurisdiction to entertain this application, which is hereby DISMISSED.

*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. Martin, JR., Clerk.

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

ATLANTA, NOVEMBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0092
JEFFREY THOMPSON ET AL V . MARK FORD

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

91008

041389424

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 29 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.

**of Appeals
of the State of Georgia**

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 29 2004**

A05D0093. JOHNSON v. THE STATE.

Carlos Johnson filed an application on October 29, 2004, seeking an appeal from an order entered on September 27, 2004, revoking his probation. Because Johnson 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 **NOV 29 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. Marti, Clerk.

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

ATLANTA,

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

A05D0094. RANDY TERRELL HALL v. THE STATE.

Randy Terrell Hall, who is proceeding pro se, filed this application for discretionary appeal from the September 7, 2004, order revoking and modifying his probation. The application was docketed in this Court on November 2, 2004.¹ An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Hall filed his application 56 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 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. L. Martin, Jr., Clerk.

¹Hall's original submission to the Court was not accepted for filing because it lacked a filing fee or sufficient pauper's affidavit in violation of Court of Appeals Rule 31 (c).

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

ATLANTA, NOVEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0095

JONITA ANDERSON V. RAYMOND L. DEAS

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

99008

0499269

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

NOV 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 above written.*

Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA, NOVEMBER 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0097

TRAVELERS INSURANCE COMPANY ET AL V. FELICIA STEVENS

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.

95009

0401064063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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 written.*

Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA, DECEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0098
LOUIS GILL V. PREHISTORIC PONDS, 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.

96009
04V144

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

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 01 2004**

A05D0099. JACKSON v. CITY OF DOUGLASVILLE.

Larry Jackson filed a complaint for declaratory and mandamus relief in the superior court with regard to the City of Douglasville's refusal to issue Jackson a special use permit to operate a solid waste transfer station on a certain tract of land. The superior court denied Jackson's request. Jackson now seeks an appeal of the superior court's decision. Because the Supreme Court has appellate jurisdiction in cases involving extraordinary remedies such as mandamus, this application is hereby transferred to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, § VI, ¶ III (5); OCGA § 9-6-28; accord *Department of Transportation et al. v. Peach Hill Properties, Inc.*, 278 Ga. 198 (599 SE2d 167) (2004); *Chu v. Augusta-Richmond County*, 269 Ga. 822 (504 SE2d 693) (1998); *Fulton County v. Bartenfield*, 257 Ga. 766 (363 SE2d 555) (1988).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 01 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, NOVEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0100
DANIEL L. WOODS V. CINDY A. WOODS

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

90009

DR980732AB DR021645AB

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 22 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. Matier

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

ATLANTA, DECEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0102

RUTHIE L. BROWN V. WHITE COUNTY BOARD OF EDUCATION

ET AL

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

97009

2004CV467DB

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 01 2004**

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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. Will. L. Martin, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 17 2004**

A05D0103. ANTHONY J. CARTER v. FAYETTE COUNTY, GEORGIA.

Anthony J. Carter, who is proceeding pro se, filed this application for discretionary appeal from an order entered on the state's request to modify probation conditions. The order modifies the conditions of Carter's probation by changing the time in which he must pay a certain fine. It does not revoke Carter's probation and in fact provides "10 days to be paid in full or revocation/warrant to be issued."

Because Carter does not seek to appeal an order revoking probation, the discretionary appeal procedures do not apply. See OCGA § 5-6-35 (a) (5). Compare *White v. State*, 233 Ga. App. 873 (505 SE2d 228) (1998) (holding that although appellant challenged subsequent sentence, not revocation of probation, underlying subject matter was probation revocation so discretionary appeal procedures applied). Thus, the case is directly appealable and the application is ordered GRANTED pursuant to OCGA § 5-6-35 (j).

Carter shall have ten days from the date of this order to file his notice of appeal. The clerk of the state 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* **NOV 17 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. Matier, Clerk.

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

ATLANTA, DECEMBER 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0104

AGOREE TURNER V. PROFESSIONAL STANDARDS COMMISSION

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

91009

04DV0209

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

*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, DECEMBER 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0105
ART FRAME, LLC., V. ARJANG SHAHBAZPOOR

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

92009

0410197434

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

William L. Martin, Jr.

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

ATLANTA, NOVEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0106

GRANT PAGE V. RENAE BAYLARD

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

031992734

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 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
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Clerk.

Will L. Martin

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 06 2004**

**A05D0107. HUNTINGTON RESTAURANTS GROUP, INC. ET AL. v.
FRANCHISE HOLDING II, LLC**

The applicants filed this application for discretionary appeal seeking review of the trial court's "Order on Plaintiff's Motion to Disburse Funds" in this garnishment action. Although the application includes a copy of the order sought to be appealed, it does not contain a stamped "filed" copy of the order as required by Court of Appeals Rule 31 (d). On November 15, 2004, this Court entered an order stating that the applicants must supplement their 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*

DEC 06 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. Martini, Clerk.

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

ATLANTA, DECEMBER 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0108

PHILLIP SCOTT CHRISTMAN V. MELANIE D. CHRISTMAN

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

94009

03CV2878C

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 13 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, Jr.

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

ATLANTA, JANUARY 06, 2005

The Court of Appeals passed the following order

Case No. A05D0108

PHILLIP SCOTT CHRISTMAN V. MELANIE D. CHRISTMAN

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

94-009
03CV2878C

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 06, 2005*

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

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

Clerk.

Will. L. Martine

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

ATLANTA, DECEMBER 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0109
GLENN R. RHODES D/B/A SOUTH AUGUSTA AUCTION CO., INC.,
V. B.R. CHRISTIAN ET AL

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

95010

2004RCCV253

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

DEC 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. Mart; 

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 07 2004**

A05D0110. PATRICK JEFFERY STUBBS v. MARCI PAIGE STUBBS.

Patrick Jeffery Stubbs filed an application seeking discretionary review of a temporary custody order entered in a divorce action. Since the order complained of arises in the context of a pending divorce action, jurisdiction to consider the merits of the application lies in the Supreme Court. Ga. Const. Art VI, Sec VI, Para. III (6). Therefore, the application is ordered TRANSFERRED to the Supreme Court for disposition.

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

C. Jill L. Martin, Clerk.

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

ATLANTA, DECEMBER 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0111
RITA HARDIN V. DOUGLAS ANDREW HARDIN

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 Juvenile Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98010

03108563 0355812 0355822

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 09 2004

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the minutes of the Court of Appeals of Georgia*

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Clerk.

Will. L. Marti, Jr.

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

ATLANTA, DECEMBER 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0112
ANTONIO DEMETRIUS LONG V. THE STATE

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

90010

01SC03856 Z87435 Z87434 Y03639

Y18965 Y21325

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 13 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,

The Court of Appeals hereby passes the following order: **DEC 01 2004**

A05D0113. LONNIE G. BOTTS v. HAZEL DORM.

Lonnie G. Botts, *pro se*, filed this application for discretionary appeal from the superior court's September 1, 2004 order which, pursuant to OCGA § 9-15-2 (d), denied the filing of Botts' complaint against Hazel Dorm. The application was docketed in this Court on November 10, 2004. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Botts filed his application 70 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 01 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, Clerk.

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

ATLANTA, DECEMBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0114
LEVOY KNIGHT ET AL V. DONALD WRIGHT

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

97010

04CV285W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 14 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.



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.

(404) 656-3470

Docketing Date: January 4, 2005

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 **S05C0704**

LEVOY KNIGHT et al. v. DONALD WRIGHT

Clerk, Supreme Court of Georgia

Case No. A05D0114

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 10 2005

Clerk, Court of Appeals of Georgia

JAN 12 2005

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

ATLANTA,

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

A05D0115. DIANE OGLESBY v. BEN OGLESBY.

Diane Oglesby filed this discretionary application from an order denying her motion to set aside a final judgment and decree of divorce. The Supreme Court, however, has exclusive jurisdiction over all divorce and alimony cases. Ga. Const. Art. 6, Sec. 6, Par. III (6). Therefore, this application is ordered TRANSFERRED to the Supreme Court.

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

William L. [Signature] Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 06 2004**

**A05D0116. LUZ DAVINA ZAMORA v. WHITFIELD COUNTY
DEPARTMENT OF FAMILY AND CHILDREN SERVICES.**

Luz Davina Zamora seeks an appeal from an order terminating her parental rights in five minor children. The termination of parental rights is not considered a matter involving domestic relations within the meaning of OCGA § 5-6-35 (a) (2). See generally *In the Interest of D. S. P.*, 233 Ga. App. 346 (504 SE2d 211) (1998). Zamora's application is therefore GRANTED as required under OCGA § 5-6-35 (j).

Zamora shall have ten days from the date of this order to filed a notice of appeal. The clerk of the juvenile 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 06 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. Marti, Jr. _____, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 15 2004**

A05D0117. McBRIDE v. THE STATE.

Embery J. McBride filed an application for appeal on November 15, 2004, from an order entered on September 10, 2004, denying his motion to correct sentence. Because McBride failed to file a sufficient¹ application for appeal within 30 days as required under OCGA § 5-6-35 (d), McBride's application is hereby *dismissed* as untimely. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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.*

C. L. Maitland, Clerk.

¹The materials included with McBride's submission show that he previously attempted to file an application for appeal in this court and that the submission was timely received, but the application was promptly returned to him by the Clerk of Court because he failed to include a copy of the order that he wished to appeal.

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: February 18, 2005

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 **S05C0926**

EMBERY J. MCBRIDE v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0117

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 23 2005

 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 19 2004**

A05D0118. Wayne Fox v. The State

Applicant Wayne Fox seeks discretionary review of the trial court's denial of his extraordinary motion for new trial. The order Fox seeks to appeal was entered in the trial court on August 16, 2004. This application was filed on November 12, 2004. An application for discretionary appeal must be filed or sent by registered or certified mail within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d); Court of Appeals Rules 4; 32 (b). Because Fox filed this application more than 30 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. Accordingly, this application is ordered DISMISSED.

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

Will. L. Martin, Jr., Clerk.

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

ATLANTA,

DECEMBER 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0119

RALPH JONES V. PATRICIA BURKS

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

99010

2003CVD733

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 06 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, NOVEMBER 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0120
ANTHONY J. CARTER V. THE STATE

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

94010

04SN0050

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

NOV 23 2004

*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; [Signature]

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

ATLANTA, DECEMBER 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0121

RONALD H. PARKER 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.

95011

03CR23261R

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 06 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.

Cheryl L. Martin

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

ATLANTA,

DEC 07 2004

The Court of Appeals hereby passes the following order:

A05D0122. NATHANIEL HODGES II v. THE STATE.

Nathaniel Hodges II filed an application on November 15, 2004, seeking an appeal from an order entered on September 20, 2004, denying his motion for probation revocation modification. Because Hodges 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 07 2004**

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hereto affixed the day and year last above written.*

Will. L. Martineau, Clerk.

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

ATLANTA, DECEMBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0123

JOHN W. ROOKER & ASSOCIATES, INC., V. LARRY PATTERSON

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.

98011

04A085608

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 14 2004**

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Clerk.

Will. L. Mart; JR

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

ATLANTA, DECEMBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0124

KITWANA HOLT V. THE STATE

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

90011

SU04CR1269J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 14 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.

P. Will. L. Martin, Jr.

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

ATLANTA

The Court of Appeals hereby passes the following order: **DEC 09 2004**

A05D0125. Tiffany A. Hampton v. Justin Saylor

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

70-011

04CI212

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

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.* **DEC 09 2004**

*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:

DEC 17 2004

A05D0126. ROBERT W. BAILEY v. TERESA K. BAILEY.

Plaintiff Robert W. Bailey filed an application for discretionary appeal seeking to appeal the order, entered October 29, 2004, by the Superior Court of Catoosa County. In 2001, Robert and Teresa Bailey, a/k/a Theresa K. Bailey, were divorced and a final judgment and decree of divorce was entered that incorporated therein a "Compromise Agreement Settling All Issues Except Divorce." Under the pertinent terms of the compromise agreement, although both parties were awarded joint custody of the parties' two minor children, Teresa Bailey was awarded physical custody of them. The compromise agreement also provided, inter alia, that Robert Bailey shall pay \$494.00 every two weeks as child support for the two children.

Subsequently, the older child, Tanner Layne Bailey, became 14 years of age; and on August 28, 2004, he made a selection of custodial parent under OCGA § 19-9-1 (a) (3) (A), choosing Robert Bailey as the parent with whom he desired to reside. On August 31, 2004, Robert Bailey filed a petition for change of custody seeking legal and physical custody of Tanner Bailey.

In his prayer for relief, Robert Bailey also sought such additional relief as the court may consider equitable and appropriate. Teresa Bailey filed a timely answer containing a prayer for relief for such additional relief as the court deems just and equitable. Before trial, the parties agreed, inter alia, that Robert Bailey would assume primary physical custody of Tanner Bailey. At the hearing, the sole issue litigated before the trial court was the issue of modification of child support.

Following the hearing, the trial court entered an order modifying the parties' final judgment and decree of divorce making Robert Bailey the primary physical

custodian of Tanner Bailey and, finding the existence of special circumstances, modified Robert Bailey's child support payments to \$1050.00 per month. Robert Bailey filed a timely application for a discretionary appeal of this order asserting that the trial court erred in calculating the amount of child support to be paid by him and in failing to order Teresa Bailey also to pay child support. The issue of custody of the children is not raised in this application.

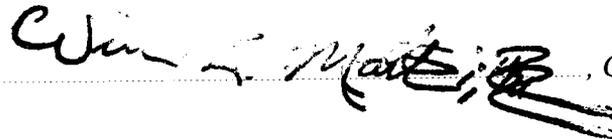
The underlying subject matter of this application is the validity of the modification of the provision contained in the parties' final judgment and decree of divorce pertaining to the amount of child support due and owing monthly by Robert Bailey. Under Article VI, Section VI, Paragraph III (6), Constitution of Georgia of 1983, the Supreme Court of Georgia shall have appellate jurisdiction over "[a]ll divorce and alimony cases." *Schmidt v. Schmidt*, 270 Ga. 461, 462 (2) (510 SE2d 810) (1999). In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (330 SE2d 706) (1985) (the purpose of alimony is to provide *support* for the needy spouse and minor children). As the only issue in this case is whether the trial court erred in modifying an award of alimony in the form of child support that was entered in a final judgment and decree of divorce, this court lacks appellate jurisdiction over this application, and the application is TRANSFERRED to the Supreme Court of Georgia. Compare *Pearson v. Pearson*, 265 Ga. 100 (454 SE2d 124) (1995); See also, *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); *Hines v. Hines*, 237 Ga. 755, 756 (1) (229 SE2d 744) (1976).

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

DEC 17 2004

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


Clerk.

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

ATLANTA, NOVEMBER 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0127
BILLY CARLTON BLACK V. THE STATE

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

71011

04RCCR456

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

NOV 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 above written.*

Clerk.

Will. L. Martine

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

ATLANTA, DECEMBER 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0128

LEWIS CLAYTON SHAW V. H. MICHAEL CHATHAM ET AL

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

91011

031554318

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 10 2004

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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. Martin, Jr.

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

ATLANTA, DECEMBER 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0129
DUTY FREE AIR & SHIP SUPPLY, INC., V. ATLANTA DUTY FREE, LLC

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.

92011

2004CV85515

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 14 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. Mant;^{Clerk}

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: DEC 01 2004

A05D0130. Parham v. The State

Allen Parham, Jr. seeks discretionary review of the trial court's denial of his motion to suppress. The trial court denied Parham's motion on October 31, 2003. Parham was convicted and sentenced by order entered on December 12, 2003. Parham now seeks to appeal the order denying his motion to suppress; however, he was required to appeal that order immediately thereafter by interlocutory appeal in accordance with OCGA § 5-6-34 (b). Parham's inclusion of a "certificate of immediate review" fails to comply with OCGA § 5-6-34 (b) in that it is untimely and it is not signed by the trial court judge. Following final judgment on December 12, 2003, Parham had thirty-days to directly appeal that judgment, including the prior denial of his motion to suppress. OCGA § 5-6-38 (a). However, Parham failed to timely file a notice of appeal. This Court lacks jurisdiction to consider this untimely application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 01 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. Martin, Jr., Clerk.

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

ATLANTA,

DEC 09 2004

The Court of Appeals hereby passes the following order:

A05D0131. NAN MARIE McCOLLUM v. JERRY DOW JONES ET AL.

Nan Marie McCollum filed this application for discretionary review from the superior court's order terminating her parental rights and granting the petition for adoption of Jerry Dow and Jeanie Jones. An order terminating parental rights is directly appealable. See *In re S.N.S.*, 182 Ga. App. 803 (357 SE2d 127) (1987). 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 filed a notice of appeal.

In this case, however, McCollum has indicated in her application that she filed a timely notice of appeal in the Superior Court of Cobb County, which was confirmed by the Clerk of this Court. Thus, OCGA § 5-6-35 (j) does not apply. This application is therefore ordered DISMISSED.

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

DEC 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. Martin, JR., Clerk.

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

ATLANTA, DECEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0132

DAVID J. DORSEY V. THE STATE

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

94011

1997CR1717A 2002CR665A 1997CR349A 1997CR753A

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 22 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, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

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

A05D0133. RICHARD J. BECKER v. MARILYN SMILEY et al.

In this nuisance action, plaintiffs filed a motion for a temporary restraining order seeking to restrain defendant Richard J. Becker from operating both a sports shooting range and a shooting preserve on 40 acres he leased from Kathryn N. Mote. Following a hearing wherein the court considered the affidavits of noise experts and testimony from two plaintiffs about the existence of a nuisance, the superior court issued an order denying the motion as to the sports shooting range; however, with regard to the shooting preserve, the court held that “the operation of the Defendant Becker's carrying on of a shooting preserve constitutes a nuisance, and as there is no bar which would prohibit any such finding as to the operation of a shooting preserve, and as the plaintiffs have no adequate remedy at law if an injunction is not granted, Defendant Becker is enjoined from operating a shooting preserve on the 'Mote' parcel until further order of this Court.” Becker has filed this application for discretionary review of the above-cited portion of the court's order.

Based on these facts, it appears that the limitations on defendant's conduct ordered by the superior court after the evidentiary hearing was in substance an interlocutory injunction rather than a temporary restraining order with a 30-day duration. OCGA § 9-11-65 (b); see *Glynn County Bd. of Tax Assessors v. Haller*, 273 Ga. 649 (2) (543 SE2d 699) (2001); *Dolinger v. Driver*, 269 Ga. 141, 142 (1) (498 SE2d 252) (1998). The grant of an interlocutory injunction is subject to direct appeal. OCGA § 5-6-34 (a) (4). 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 filed a timely notice of appeal. Accordingly, this application is

GRANTED. Becker shall have ten (10) days from the date of this order to file a notice of appeal. OCGA § 5-6-35 (g). The Clerk of the Superior Court of Lumpkin County 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 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.

Will L. Martz, Clerk.

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

ATLANTA, DECEMBER 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0134

JAMES C. SCHUSTER V. HENRY COUNTY, GEORGIA, ET AL

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

96012

04CV1299M

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

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

ATLANTA, JANUARY 10, 2005

The Court of Appeals passed the following order

Case No. A05D0134

JAMES C. SCHUSTER V. HENRY COUNTY, GEORGIA, ET AL

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

96-012
04CV1299M

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 10, 2005*

*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, DECEMBER 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0135
JONITA ANDERSON V. RAYMOND L. DEAS

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.

98012

04CV99399

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

*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.

Will. L. Martin, Jr.

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

ATLANTA, DECEMBER 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0136
CHRISTOPHER LLOYD RIGGS V. CARETH BROWN

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

90012

02CV00357 02CV00358

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 20 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. Martini

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

ATLANTA, DECEMBER 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0137
CHRISTOPHER LLOYD RIGGS V. CARETH BROWN

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

90013

02CV00357 02CV00358

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 20 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, DECEMBER 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0138
OTTO GOGOLIN V. ROGER RODDEN 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.

70012

04GR021122Y

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 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.

Will. L. Matz, Jr.

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

ATLANTA,

DEC 03 2004

The Court of Appeals hereby passes the following order:

A05D0139. OWNBEY ENTERPRISES, INC. v. BRUCE MATTOX.

On November 29, 2004, Ownbey Enterprises, Inc. filed an application for discretionary appeal of the order, entered September 20, 2004, denying its motion to set aside default judgment and motion to open default. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with the clerk of this Court within 30 days of the date of the entry of the order, decision or judgment sought to be appealed.

This Court lacks jurisdiction to consider an untimely application for discretionary appeal. *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000). This Court also lacks authority to grant an extension of time for the filing of an application for discretionary appeal even if extenuating circumstances precluded its timely filing. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848); Court of Appeals Rule 31 (e). Because Ownbey Enterprises, Inc. did not timely file this application within 30 days of the date of entry of the order sought to be appealed, it is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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.*

C. W. L. Mattox, JR., Clerk.

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

ATLANTA, DECEMBER 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0140
JOEL WAYNE STANFORD V. CAROLYN REBECCA STANFORD
K/N/A CAROLYN REBECCA WILLIS

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

71012

2003CV40310

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 13 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, DECEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0141
MICHAEL WADE WHITE 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.

91012
86495M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 22 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. Martineau

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

ATLANTA, DECEMBER 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0142

LAMAR THRIFT V. CHAMPION/INTERNATIONAL PAPER/SCHAFFER COMPANIES

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

92012

04V0451

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 28 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. ^{Clerk} Martin

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

ATLANTA, DECEMBER 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0143

ROBIN NICKELS ET AL V. FLOYD COUNTY BOARD OF EDUCATION

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

93012

04CV34977

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 22 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:

DEC 09 2004

A05D0144. IN THE INTEREST OF C. S., A CHILD.

The applicant filed this application for discretionary review from the juvenile court's order denying her motion for new trial, which was nominated as a motion to vacate or modify designated felony commitment order. Such an order, however, is directly appealable. See, e.g., *In the Interest of B. S. H.*, 236 Ga. App. 879 (514 SE2d 70) (1999). 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 filed a notice of appeal.

In this case, however, the applicant has indicated in her application that she filed a timely notice of appeal in the Juvenile Court of Chatham County, which was confirmed by the Clerk of this Court. Thus, OCGA § 5-6-35 (j) does not apply. This application is therefore ordered DISMISSED.

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

DEC 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. Maitland, Clerk.

 Court of Appeals
of the State of Georgia

ATLANTA, DECEMBER 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0145

WARREN PASCHAL V. THE STATE

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

94012

SU97CR6565

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

DEC 29 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

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 24, 2005

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 **S05C0815**

WARREN PASCHAL v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0145

Court of Appeals of Georgia

Notice of Petition for Certiorari
filed in office

JAN 28 2005

 Clerk, Court of Appeals of Georgia

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

ATLANTA, DECEMBER 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0146
MATTIE L. PRATT V. OHNO AMERICA, INC., ET AL

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

95013

NONE

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

DEC 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.

C. Vick. L. Mante; RB

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

ATLANTA, JANUARY 06, 2005

The Court of Appeals passed the following order

Case No. A05D0146

MATTIE L. PRATT V. OHNO AMERICA, INC., ET AL

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

95-013
NONE

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 06, 2005*

*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. Mattingly

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

ATLANTA, JANUARY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0147
METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY
V. HOYLE BRIDGES

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.

96013

2004CV91188

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 06 2005

*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, JANUARY 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0148

DAVID MASSEY V. BUTTS 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.

98013

2003V915

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 05 2005

*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. Maitz, Jr.

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

ATLANTA, DECEMBER 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0149
SHERI L. OKUN V. ANGELA MCNULTY

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.

70013
04CV116084

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 28 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, III

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

ATLANTA, DECEMBER 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0150
SHERI L. OKUN V. DREW WINFRED EDWARDS

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.

70014

04CV112544

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

DEC 28 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 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0151
YALONDA FLANAGAN V. THE STATE

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

97013

2004CR1313 1998CR0701 2003CR0806

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 06 2005**

*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, Jr.

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

ATLANTA, DECEMBER 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0152
SIDNEY WILLIAMS, III V. THE STATE

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

71013

03B21051

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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.

Will. L. Martine

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

ATLANTA, JANUARY 04, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0153
LARRY R. WIGHT V. LINDA PEARSON

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

91013

0417231

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 04 2005**

*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. Matting



SUPREME COURT OF GEORGIA
Case No. S05D0512

Atlanta

DEC 14 2004

RECEIVED IN OFFICE
2004 DEC 14 PM 4:16
CLERK COURT OF APPEALS OF GA.

The Honorable Supreme Court met pursuant to adjournment.

FILED IN OFFICE

The following order was passed.

DEC 14 2004

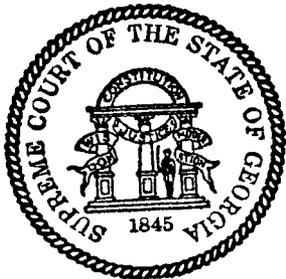
CLERK COURT OF APPEALS OF GA

RHONDA GRIDER SCOTT v. JOHN THOMAS SCOTT

From the Superior Court of Chatham County.

As the instant application for discretionary appeal of an order denying appellant's petitions for change of custody and for visitation does not involve a judgment for divorce and alimony, the appeal hereby is transferred to the Court of Appeals. See Carter v. Foster, 247 Ga. 26 (273 SE2d 614) (1981); Munday v. Munday, 243 Ga. 863 (257 SE2d 282) (1979).

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



I 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.

Shirley M. Kuleh
Clerk

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

ATLANTA, JANUARY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0154
RHONDA GRIDER SCOTT V. JOHN THOMAS SCOTT

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

95015

DR040733AB DR030761AB

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 06 2005

*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: February 15, 2005

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 **S05C0899**

RHONDA GRIDER SCOTT v. JOHN THOMAS SCOTT

 Clerk, Supreme Court of Georgia

Case No. A05D0154

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 16 2005

Clerk, Court of Appeals of Georgia



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

ATLANTA, JANUARY 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0155

JOANN DOPSON V. BERNARD & ASSOCIATES, P.C.

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

93013

~~04799345~~
01A799345

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 10 2005

*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 R. McIntire

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: DEC 28 2004

A05D0156. DAVID WARREN HOBBS v. JEFFREY O. FINCHER.

David Warren Hobbs filed this application seeking a discretionary appeal of the superior court's November 11, 2004 order denying his motion to set aside an earlier order for failure of notice per OCGA § 9-11-60 (g). Generally, orders denying motions to set aside filed under OCGA § 9-11-60 (g) are directly appealable. See *Leventhal v. Mosely*, 264 Ga. 891 (453 SE2d 455) (1995). Further, 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 filed a notice of appeal. Here, however, Hobbs' discretionary application is not otherwise timely.

Hobbs sent his discretionary application to this Court via certified mail on November 26, 2004, but failed to include the \$80.00 in costs required pursuant to Rules 4 and 5 of this Court. A check covering those costs was mailed to this Court and received on December 16, 2004. "The clerk is prohibited from receiving the application for appeal . . . unless the costs have been paid[.]" OCGA § 5-6-4. Therefore, Hobbs' application was not filed until December 16, 2004, when payment of costs was received. An application for discretionary appeal must be filed within 30 days of the order complained of. OCGA § 5-6-35 (d). Because Hobbs failed to pay costs in this matter on or before December 13, 2004, his application is not timely and this Court is without jurisdiction to consider his submission. Accordingly, OCGA § 5-6-35 (j) is not applicable, and Hobbs' application for discretionary appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 28 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. Matz, Clerk.

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

ATLANTA, JANUARY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0157
CITY OF ATLANTA, GEORGIA V. ROBERT HARPER 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.

94013

2004CV85981

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 06 2005

*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: **JAN 06 2005**

A05D0158. DEBORAH DAVIS v. BIO-LAB, INC. et al.

Plaintiff Deborah Davis filed the above-captioned application for discretionary appeal with the Supreme Court of the State of Georgia asserting various theories under which that Court would have appellate jurisdiction over this case. The Supreme Court considered those issues and concluded that it did not have appellate jurisdiction over this application and transferred it to this Court. In its order, the Supreme Court expressly ruled that “[t]he only orders upon which the application for appellate review can be based are the Oct. 26 order sustaining Bio-Lab's objection to applicant's proposed voluntary dismissal of its class action, and the Nov. 5 order denying the motion for reconsideration of that order.”

The order of October 26, 2004 and the order of November 5, 2004, denying Davis's motion for reconsideration, are interlocutory orders that are not subject to review by this Court in the absence of a timely certificate of immediate review. OCGA § 5-6-34 (b); see *Turner v. Harper*, 231 Ga. 175, 176 (200 SE2d 748) (1973). Deborah Davis requested a certificate of immediate review of the order of October 26,

2004, and the trial court denied her request in its order entered November 5, 2004. An order denying a request for a certificate of immediate review is not itself an appealable order. *Price v. State*, 237 Ga. 352 (227 SE2d 368) (1976); *G. M. J. v. State of Ga.*, 130 Ga. App. 420 (203 SE2d 608) (1973). Because Davis has not obtained a timely certificate of immediate review, this Court does not have appellate jurisdiction to review the interlocutory orders of October 26 and November 5. Accordingly, this application is DISMISSED.

*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. Martineau, Clerk.

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

ATLANTA, JANUARY 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0159
KATHY RUDD V. VERNON CASTLEBERRY

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

96014

2004DR023040

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 10 2005**

*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: **DEC 30 2004**

A05D0160. CLIFFORD TYRONE WILLIAMS v. THE STATE.

Clifford Tyrone Williams filed an application on December 17, 2004, seeking an appeal from an order entered on November 16, 2004, denying his motion to modify judgment and sentence. Because Williams failed to file his application for appeal within 30 days of the entry of the order complained of, 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 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. L. [Signature], Clerk.

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

ATLANTA, JANUARY 19, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0161
GRYPHON DOMESTIC IV, LLC., ET AL V. APP INTERNATIONAL
FINANCE COMPANY, ET AL

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

90014

2004CV88439

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 19 2005

*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.



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

ATLANTA, JANUARY 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0162
NORTH ATLANTA SCAN ASSOCIATES, INC., V. GEORGIA DEPARTMENT
OF COMMUNITY HEALTH, 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.

97014
2004CV89690

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 12 2005**

*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. Martineau

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

ATLANTA, JANUARY 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0163
CLEVELAND LEE GOOLSBY, JR., V. THE STATE

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

71014

ST04CR2211

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 10 2005

*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 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0164
RAYMOND CONNOLLY V. JEAN BOGART

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

91014

04VS067500



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 12 2005

*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; [Signature]



Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 06 2005**

A05D0165. CHRISTOPHER BARNETT v. THE STATE.

Christopher Barnett filed this discretionary application from the trial court's November 19, 2004, order revoking his probation. The application was mailed by certified mail using only a metered postmark. A metered postmark cannot be considered by this Court as an official postmark for purposes of determining timeliness of filing. Court of Appeals Rule 4. Consequently, the application may only be deemed filed on the date it was actually received by the Court, December 21, 2004.

An application for discretionary review must be filed with this Court within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Here, the 30th day was Sunday, December 19, 2004. Therefore, Barnett had until Monday, December 20, 2004, to file his application to appeal. The application filed Tuesday, December 21, 2004, is one day late. Accordingly, Barnett's application is untimely, this Court lacks jurisdiction and the application is hereby DISMISSED.

*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 06 2005**

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

Will. L. Matz, Jr. *WLM* Clerk.

Case was deleted - 02-07-05

was changed to Interlocutory
Application

A0510165

Judge has Free case.
per Shelia

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

ATLANTA, JANUARY 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0166
REGINALD WATKINS V. ELIZABETH WATKINS

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

92014

2001CV34600

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 14 2005

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

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

Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 11 2005**

A05D0167. JACKSON v. THE STATE.

Joseph Lee Jackson seeks an appeal from an order denying his “Extraordinary Motion for New Trial, Exception Filing Out of Term”. The denial of an extraordinary motion for new trial is subject to the discretionary appeal procedure. OCGA § 5-6-35 (a) (7). The State contends, however, that the order complained of is not in substance the denial of an extraordinary motion for new trial because such a motion is not available to a defendant who enters a guilty plea. *Davis v. State*, 274 Ga. 865 (561 SE2d 119) (2002). We agree. Since the discretionary appeal procedure does not apply here and since he shows that he has already filed a notice of appeal in the superior court, Jackson’s application for appeal is hereby *dismissed* as superfluous.

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta **JAN 11 2005**

*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

The Court of Appeals hereby passes the following order:

JAN 11 2005

A05D0168. GREG C. GRIFFITH v. CRYSTAL GRIFFITH

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

99-014

2003CV79645

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

JAN 11 2005

*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. Matier, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 20 2005**

A05D0169. FRANKIE SEAGRAVES v. THE STATE.

Frankie Seagraves was convicted of rape, burglary, and aggravated assault. This Court affirmed the conviction in *Seagraves v. State*, 191 Ga. App. 207 (381 SE2d 523) (1989). We later dismissed another direct appeal from an order denying his “Extraordinary Motion to Arrest Judgment Pursuant to OCGA § 17-9-4 and OCGA § 9-11-60 Claim Void Judgment and Lack of Subject Matter Jurisdiction.” We then dismissed an application for discretionary appeal seeking review of an order denying three motions by Seagraves. He has now filed a direct appeal from an order denying a “Motion to Arrest a Void Sentence/Expungement of Record.”

Because Seagraves raises no issues that could entitle him to another appeal in this Court, we lack jurisdiction to consider it. See *Daniels v. State*, 244 Ga. App. 522, 523 (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). Seagraves “is not entitled to another bite at the apple by way of a second appeal.” *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001). When a defendant attempts a second appeal of the same judgment of conviction, “it is improper and

should be dismissed.” *Miller v. State*, 277 Ga. 372 (589 SE2d 108) (2003).
Accordingly, this appeal is DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 20 2005

*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, FEBRUARY 04, 2005

The Court of Appeals passed the following order

Case No. A05D0169

FRANKIE SEAGRAVES V. THE STATE

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

94-014
7950G

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 04, 2005*

*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. 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: February 22, 2005

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 **S05C0969**

FRANKIE THOMAS SEAGRAVES v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0169

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 02 2005

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 14 2005

A05D0170. MOCHA DELITES, INC. v. PRAKESH PATEL.

Mocha Delites filed a timely application for discretionary appeal of the order captioned, "Temporary Restraining Order," entered November 23, 2004, in Civil Action File No. 04CV11992-5; it also filed a timely notice of appeal in the superior court seeking a direct appeal of the same order.

Plaintiff Prakesh Patel purchased a Mocha Delites franchise from defendant Mocha Delites, Inc. Subsequently, a dispute arose between the parties regarding the terms of the franchise agreement and Patel's operation of the stores. On November 10, 2004, Patel filed suit against Mocha Delites, Inc., asserting claims of breach of contract, breach of duty of good faith, injunctive relief, and attorney fees. In the injunctive relief claim Patel alleged that he was "entitled to an injunction prohibiting Mocha Delites from terminating [his] rights to operate the Business or otherwise interfering in [his] rights to operate the business."

Subsequently, Patel filed an emergency motion for temporary restraining order and injunctive relief seeking an order temporarily restraining "[d]efendants, and their agents, servants, employees, officers and attorneys, and all other persons in active concert or participation with any of them . . . , from and against any and all efforts and actions to foreclose on or interfere in any way with [Patel's] operation of his two Mocha Delites stores on the Georgia Perimeter College Campus in Clarkston." Following a five-day evidentiary hearing, the trial court entered an order, captioned "Temporary Restraining Order."

Pursuant to the Temporary Restraining Order, "[d]efendants, and their agents, servants, employees, guarantors, officers and attorneys, and all other persons in active concert or participation with any of them . . . , are hereby temporarily restrained from and against any and all efforts and actions to foreclose on or interfere in any way with Patel's operation of his Mocha Delights stores on the Georgia Perimeter College Campus in Clarkston pending further order of this Court."

It is the substance and function an order and not its name that is controlling in determining its classification and effect. See *Dolinger v. Driver*, 269 Ga. 141, 142

(1)(498 SE2d 252) (1998). If the order sought to be appealed is in effect a temporary restraining order then this application must be dismissed because the order is interlocutory and can only be appealed following the interlocutory application procedures under OCGA § 5-6-34 (b). See *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991).

Although the order sought to be appealed is captioned "Temporary Restraining Order," it was entered following a lengthy adversary hearing and in effect granted all the relief sought in the emergency motion. Where a temporary restraining order is entered after a lengthy adversary hearing and effectively grants plaintiff all of the relief sought, it is directly appealable as it in substance operates as a preliminary injunction. *Dolinger v. Driver*, supra at 269 Ga. 142 (1); see *Glynn County Board of Tax Assessors v. Haller*, 273 Ga. 649 (1) (543 SE2d 699) (2001); *Geld-Halden Indus. v. Parr*, 237 Ga. 773 (229 SE2d 620) (1976); OCGA § 5-6-34 (a) (4).

Because the order sought to be reviewed is subject to direct appeal and *Mocha Delites, Inc.*, has filed a timely notice of appeal in the superior court seeking an appeal of the order, the above-captioned application for discretionary appeal is DISMISSED. The clerk of the Superior Court of DeKalb County shall attach a copy of this order to the appellate record when the case is forwarded on direct appeal.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 14 2005

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, JANUARY 13, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0171

LANE RICHARD GARLAND V. BOR-UNIVERSITY OF GEORGIA

ET AL

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

98015

CE0401317063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 13 2005**

*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...

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

ATLANTA, FEBRUARY 04, 2005

The Court of Appeals passed the following order

Case No. A05D0171

LANE RICHARD GARLAND V. BOR-UNIVERSITY OF GEORGIA
ET AL

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

98-015
CE0401317063

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 04, 2005*

*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. Martz, 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: February 24, 2005

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 **S05C0942**

LANE R. GARLAND v. BOR UNIVERSITY OF GEORGIA et al.

Clerk, Supreme Court of Georgia

Case No. A05D0171

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 25 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, JANUARY 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0172
KENNETH DWIGHT HUNTER V. THE STATE

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

90015

1S00CR023T 1S00CR052T

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 21 2005

*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; R

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

ATLANTA, JANUARY 27, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0173

CHRIS STOVALL V. THE STATE

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

70015

040254

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 2005

*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. L. Maiti

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

ATLANTA, JANUARY 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0174

BROCK BUILT, LLC V. TOM COFFIN AS CITY ARBORIST ET AL

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

97015

2003CV76638

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 31 2005**

*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, JANUARY 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0175
GAYLE STEVENSON V. CHRISTOPHER MARINE

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

71015

2003CV65396

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 21 2005**

*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, JANUARY 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0176
K MART CORPORATION ET AL V. LETTIE WRIGHT

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

91015

15104CV0558

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

JAN 28 2005

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

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

Clerk.

Will. L. Marti, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 12 2005**

A05D0177. CHRISTOPHER HAYES v. THE STATE.

Christopher Hayes seeks an appeal from an order denying his “motion to terminate probation” and substitute “motion to terminate probation.” Hayes’ motions are in substance mere motions for reconsideration of the June 2, 2004, revocation of his probation. The denial of a motion for reconsideration is not subject to appellate review. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Therefore, this application is hereby *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 12 2005**

*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, FEBRUARY 03, 2005

The Court of Appeals passed the following order

Case No. A05D0177

CHRISTOPHER HAYES V. THE STATE

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

92-015
909059242

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 03, 2005*

*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.

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: February 14, 2005

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 **S05C0902**

CHRISTOPHER HAYES v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0177

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 16 2005

Clerk, Court of Appeals of Georgia



SUPREME COURT OF GEORGIA
Case No. S05D0470.

Atlanta

DEC 01 2004

CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

NOV - 2 AM 2:06

RECEIVED IN OFFICE

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES CROMARTIE v. STUFF MAGAZINE et al.

Appellant, a pro se prisoner, filed a notice of appeal in the superior court and a certificate of probable cause in this Court seeking review of the superior court's order entered September 29, 2004 in which the court refused to sanction the filing of his civil tort action against several defendants, finding both a lack of venue and that the complaint on its face showed a complete absence of any justiciable issue of law or fact. See OCGA § 9-15-2 (d). As there appears to be no basis upon which this Court would have jurisdiction over this action in which appellant seeks to recover damages for wounded feelings, it is ordered that the appeal be and it is hereby transferred to the Court of Appeals of Georgia.

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.

Lynn M. Hutchinson, Chief Deputy Clerk

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 10 2005**

A05D0178. JAMES CROMARTIE v. STUFF MAGAZINE ET AL.

James Cromartie filed an application on January 4, 2005, seeking an appeal from an order entered on September 29, 2004, refusing to sanction the filing of a petition initiating a civil action. Because Cromartie failed to file his application for appeal within 30 days of the entry of the order complained of, 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 **JAN 10 2005**

*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 R. McIntire
....., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 12 2005**

A05D0179. KMART CORPORATION v. ANDERSON.

Kmart Corporation filed an application for appeal on January 3, 2005, from an order entered on December 2, 2004, stating that a workers' compensation award "is affirmed by operation of law." Based on the information contained in that order, which is not contradicted by any information in the applicant's other exhibits, the appeal to superior court was docketed on September 13, 2004, and no hearing was scheduled during the succeeding 60 days. It follows that Kmart's appeal was affirmed by operation of law on November 12, 2004. OCGA § 34-9-105 (b). "The date of entry of judgment for purposes of appeal pursuant to Code Section 5-6-35 of a decision affirmed by operation of law without action of the superior court [is] the last date on which the superior court could have taken action . . ." *Id.* at (d).

The superior court's subsequent order declaring the award affirmed by operation of law is a legal nullity presenting nothing for review. *Synthetic Industries v. Camp*, 196 Ga. App. 637 (396 SE2d 518) (1990). Because Kmart failed to file its application for appeal within 30 days of the date the award was affirmed by operation of law, the application is hereby *dismissed* for lack of jurisdiction. *Id.*

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 12 2005**

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,

JAN 14 2005

The Court of Appeals hereby passes the following order:

A05D0180. Sanson v. State Farm Fire and Casualty Company

Pamela Sanson, individually and as next friend of Melissa Sanson ("Sanson") seeks discretionary review of the trial court's "Order Denying 'Consent' Motion to Rescind Dismissal with Prejudice of Intervenors Sanson" and Order Granting State Farm Fire and Casualty Company's Motion for Judgment on the Pleadings." Sanson filed this application under OCGA § 5-6-35 (a) (8) which applies to appeals from orders under OCGA §§ 9-11-60 (d) or (e). Sanson, however, sought relief in the trial court under OCGA § 9-11-60 (g) "Clerical mistakes." Since neither order sought to be appealed comes within any of the cases requiring an application for appeal under OCGA § 5-6-35 (a), and since the orders on appeal represent the final judgment in the trial court, this case is directly appealable and this application is GRANTED pursuant to OCGA § 5-6-35 (j).

Sanson shall have ten days from the date of this order to file her 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*

JAN 14 2005

*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. Martini, Clerk.

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

ATLANTA, JANUARY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0181
GEORGIA DEPARTMENT OF NATURAL RESOURCES
V. CALVIN WILLIS

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.

95016

2004CV603

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 26 2005**

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

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

Clerk.

C. J. L. Martin

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

ATLANTA, JANUARY 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0182
NORTH AMERICAN ASSOCIATION OF SLAVIC CHURCHES & MINISTRIES
V. CITY OF NORCROSS, GEORGIA

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

96016

04A069411

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 31 2005

*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, JANUARY 25, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0183

W. KENT BISHOP V. RICHARD C. FREEMAN, III

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

98016

2004CV87995

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

JAN 25 2005

*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, FEBRUARY 10, 2005

The Court of Appeals passed the following order

Case No. A05D0183

W. KENT BISHOP V. RICHARD C. FREEMAN, III

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

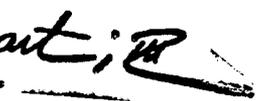
98-016
2004CV87995

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 10, 2005*

*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.

CLERK L. Mart; 

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: March 2, 2005

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 **S05C0983**

W. KENT BISHOP v. RICHARD C. FREEMAN, III

Clerk, Supreme Court of Georgia

Case No. A05D0183

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 04 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0184
CITY OF RINCON V. CAROL A. COUCH 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.

90016

2004CV90706

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 02 2005

*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,

FEBRUARY 03, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0185
TERRELL BROOKS V. CITY OF HAMPTON ET AL

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

70016

03CV2345C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 03 2005

*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: **JAN 18 2005**

A05D0186. Mark Anthony Curate v. The State

Applicant Mark Anthony Curate seeks discretionary appeal of the trial court's order dismissing his out of time motion to withdraw Alford plea. The order Curate seeks to appeal was entered on November 3, 2004. This application was not filed until January 10, 2005. 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). Curate's failure to timely file this application deprives this Court of jurisdiction to consider it. Accordingly, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **JAN 18 2005**

*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. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 31 2005**

A05D0187. CHEYENNE FRADY, JR. v. THE STATE.

Cheyenne Frady, Jr. filed this application for discretionary appeal from the superior court's order granting in part and denying his part his "Motion to Correct an Illegal/Void Sentence." The denial of a motion to vacate a void or illegal sentence is appealable as a matter of right, and a trial court can correct a void sentence at any time. See *Williams v. State*, 271 Ga. 686, 689 (1) (523 SE2d 857) (1999). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j), if the order is subject to direct appeal. Because Frady's appeal does not require a discretionary application, this application is GRANTED as required under OCGA § 5-6-35 (j). Frady 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*

JAN 31 2005

*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: JAN 20 2005

A05D0188. MIGUEL ORTIZ v. THE STATE.

Miguel Ortiz was convicted of rape, aggravated sodomy, incest, and battery. On August 7, 1996, this Court affirmed Ortiz's judgment of conviction. *Ortiz v. State*, 222 Ga. App. 432 (474 SE2d 300) (1996). On January 11, 2005, Ortiz filed an application with this Court, under OCGA § 5-6-35, seeking a discretionary appeal of the order, entered November 1, 2004, denying his extraordinary motion for new trial or in the alternative, second motion for new trial. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with the clerk of this Court or the clerk of the Supreme Court within 30 days of the date of entry of the order sought to be appealed. Because Ortiz did not file his application for discretionary appeal within 30 days of the date of entry of the order sought to be appealed, his application is untimely. Accordingly, this Court lacks jurisdiction over this application and it is DISMISSED. 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

JAN 20 2005

*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. Matier, 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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: January 28, 2005

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 **S05C0826**

MIGUEL ORTIZ v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0188

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 28 2005

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 27 2005**

A05D0189. ELMON ELMORE v. VICTOR L. WALKER ET AL.

On January 11, 2005, Elmon Elmore, a prison inmate proceeding pro se, filed an application for discretionary appeal seeking to appeal the December 8, 2004, order denying his civil complaint. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Elmore's application was filed 34 days after the order was entered. Because Elmore's application is untimely, this Court lacks jurisdiction to consider it and it is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 27 2005**

*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.

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

ATLANTA, FEBRUARY 14, 2005

The Court of Appeals passed the following order

Case No. A05D0189

ELMON ELMORE V. VICTOR L. WALKER ET AL

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

91-016
04CV0152

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 14, 2005*

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

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

Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA, FEBRUARY 03, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0190

SAMMY CAMACK V. THE STATE

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

92016

03CR4012

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 03 2005

*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 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0191
UNITED RESIDENTIAL PROPERTIES D/B/A WALDEN TRACE
APARTMENTS V. SETH AYERTY ET AL

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

93016

04A80762

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 09 2005**

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

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

Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 31 2005**

A05D0192. Esteban Vega Segura v. The State

Esteban Vega Segura filed this application for discretionary appeal seeking review of the trial court's denial of his Motion to Vacate Void Order. Segura contends the trial court's order denying an "out of time motion for new trial" is void because he filed a timely motion for new trial on October 30, 1998 which he alleges has never been ruled upon. However, the order Segura seeks to appeal does not pertain to the type of case subject to the discretionary appeal procedures of OCGA § 5-6-35. The trial court's order sought to be appealed did not deny an extraordinary motion for new trial which would have required an application under OCGA § 5-6-35 (a) (7). Because Segura's appeal does not require a discretionary application, this application is GRANTED as required under OCGA § 5-6-35 (j).

Segura 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

JAN 31 2005

*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. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

FEB 10 2005

A05D0193. NICHOLS & ASSOCIATES, INC. v. SOUTHEASTERN POLE SALES, INC.

Nichols & Associates, Inc. [Nichols] has filed this discretionary application, seeking appellate review of the denial of its motion to amend judgment pursuant to OCGA § 18-4-91 in this garnishment action. This case has a protracted history. Southeastern Pole Sales, Inc. [Southeastern] caused Nichols to be served with the garnishment action on October 22, 2001, in the State Court of Cobb County. Nichols failed to answer. The state court entered default judgment against Nichols on December 17, 2001, and a copy of the default judgment was mailed to Nichols the following day. On June 3, 2002, Nichols filed a motion to set aside judgment pursuant to OCGA § 9-11-60 (d), which the state court denied on February 18, 2003. Nichols moved for reconsideration on March 5, 2003, asserting additional grounds, which included an allegation that the default judgment had been prematurely entered. The state court denied the motion for reconsideration on March 21, 2003.

Nichols filed an application for discretionary appeal to this Court from the March 5, and March 21, 2003 orders, docketed as application A03D0278, which this Court denied on April 9, 2003. Nichols' petition for certiorari to the Supreme Court was denied on September 8, 2003.

Southeastern filed a post-judgment motion to compel discovery and for imposition of sanctions against Nichols on January 15, 2004. Nichols responded by again stating that the default judgment should have been set aside. On July 7, 2004, the state court entered a "Final Judgment" correcting the premature entry of the default judgment and holding that Nichols could no longer avail itself of the

provisions of OCGA § 18-4-91, which provides relief for garnishees from default judgments, if the garnishee moves for modification of the judgment within sixty days of receiving actual notice of the judgment. On September 3, 2004, Nichols filed a "Motion of Nichols & Associates, Inc. to Amend Judgment Under OCGA § 18-4-91," which the state court again denied on December 14, 2004. Nichols has filed an application for discretionary appeal to this Court seeking review of the December 14, 2004 order.

It is apparent from the application materials, including the trial court's orders, that the "Motion of Nichols & Associates, Inc. to Amend Judgment Under OCGA § 18-4-91" was in substance a motion for reconsideration of the court's July 7, 2004 "Final Judgment." Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment, which in this case was the "Final Judgment" entered on July 7, 2004. A motion for reconsideration does not extend the time for filing an application for discretionary appeal. See *Simmons v. State*, 228 Ga. App. 470 (491 SE2d 908) (1997). The time requirement in OCGA § 5-6-35 (d) is jurisdictional, and because Nichols failed to file a timely application for appeal, it must be DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 10 2005

*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.

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: May 4, 2005

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 **S05C1357**

NICHOLS & ASSOCIATES, INC. v. SOUTHEASTERN POLE SALES, INC.

Clerk, Supreme Court of Georgia

Case No. A05D0193

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 10 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, JANUARY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0194
ANTHONY J. CARTER V. FAYETTE COUNTY TAX ASSESSORS

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

96017

2004V1255C 2004V1256CE 2004V1257H 2004V1258E

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 26 2005**

*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...

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

ATLANTA, FEBRUARY 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0195
EVA M. EPTING V. ASHLEY EVANS

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

98017

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 09 2005**

*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, FEBRUARY 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0197

DANA PARNES V. DAVID KATZ

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.

70017

02CV56126

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 02 2005

*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:

MAR 16 2005

A05D0197. Parnes v. Katz

On January 18, 2005, Dana Parnes filed an application for discretionary appeal with this Court. On February 2, 2005, this Court granted Parnes' application. On February 14, 2005, David Katz filed a motion for reconsideration of the grant of the application. This motion was timely as it was filed on the first working day following the ten day deadline for filing a motion for reconsideration which fell on a Saturday. Apparently Parnes filed a duplicate application with the Supreme Court and failed to inform either Court of this duplicate filing. On February 11, 2005, the Supreme Court granted Parnes' discretionary application and remanded the case to the trial court for a hearing on the attorney fees issue. Due to the exercise of jurisdiction over this case by the Supreme Court, this Court lacks jurisdiction over this case. Accordingly, the motion for reconsideration filed by Katz is hereby GRANTED and the application is ordered DISMISSED for lack of jurisdiction. Any direct appeal filed pursuant to the grant of the application for discretionary appeal in this Court will be dismissed as the application was improvidently granted.

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

MAR 16 2005

*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.*

Cavill L. Matz, Clerk.

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

ATLANTA, FEBRUARY 16, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0198
BRANDON BROOKINS V. THE STATE

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

97017

2004CR127

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 16 2005**

*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: **JAN 26 2005**

A05D0199. ANGELO BERNARD BANKS v. LEEKISA O. DENNARD, ET AL.

On January 21, 2005, prisoner Angelo Bernard Banks, acting pro se, filed an application for discretionary appeal of the order, entered on December 15, 2004, denying his motion to disqualify/recuse the trial judge in Civil Action No. 04-A02373-6 and dismissing the suit. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with the clerk of the Supreme Court or Court of Appeals within 30 days of the date of entry of the order, decision, or judgment sought to be appealed. Compare OCGA § 5-6-38 (a). Because Banks failed to file his application for discretionary appeal within the requisite 30-day time period, this Court lacks jurisdiction over this application and it is DISMISSED. 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

JAN 26 2005

*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.*

Jill L. Martin, Clerk.

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

ATLANTA, FEBRUARY 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0200
DUSTIN THOMAS HEWATT ET AL V. COBB COUNTY,
GEORGIA ET AL

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

91017

041007318

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 08 2005**

*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, MARCH 01, 2005

The Court of Appeals passed the following order

Case No. A05D0200

DUSTIN THOMAS HEWATT ET AL V. COBB COUNTY,
GEORGIA ET AL

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

91-017
041007318

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 01, 2005*

*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. Mait; R

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: March 21, 2005

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 **S05C1080**

DUSTIN THOMAS HEWATT et al. v. COBB COUNTY et al.

Clerk, Supreme Court of Georgia

Case No. A05D0200

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 23 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 16, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0201

GEORGIA PACIFIC CORPORATION V. STEVEN T. CROSS 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.

92017

SU04CV222T

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 16 2005**

*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, FEBRUARY 18, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0202

THOMAS CHASE DOBBS ET AL V. SKYDIVE MONROE, INC., ET AL

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

93017

0315223

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 18 2005

*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, FEBRUARY 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0203

IN RE: ESTATE OF - CORI CHRISTOPHER TOMO (DECEASED) V.
DARRELL FLANIGAN PROPERTIES, INC

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

99017

04CV1326X

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 08 2005

*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

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

ATLANTA

The Court of Appeals hereby passes the following order: **FEB 09 2005**

A05D0204. LASZLO BOGNAR v. ESTHER MARIA SCHOFIELD.

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

94-017

04CV38917E

*Court of Appeals of the State of Georgia
Clerk's Office,* **FEB 09 2005**

*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. Matijevic, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: FEB 02 2005

A05D0205. MARCUS ELLIS FOREHAND v. THE STATE.

On January 26, 2005, Marcus Ellis Forehand filed an application for discretionary appeal seeking an appeal of an order entered July 26, 2004, finding that he had violated his probation by having impermissible contact with minor children. Forehand filed his application after his motion for out-of-time application was granted by the superior court on January 4, 2005.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order, decision or judgment sought to be appealed. The requirements of OCGA § 5-6-35 are jurisdictional and this Court cannot accept an appeal not made in compliance therewith. *Boyle v. State of Ga.*, 190 Ga. App. 734 (380 SE2d 57) (1989). Also, neither this Court nor a trial court has authority to grant an extension of time for the filing of an application for a discretionary appeal. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983); see Court of Appeals Rule 31 (f). Because this Court lacks jurisdiction over this application, it is DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* FEB 02 2005

*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,

The Court of Appeals hereby passes the following order:

FEB 03 2005

A05D0206. MARIO D. BANKS v. THE STATE.

Applicant Mario D. Banks, pro se, filed an application on February 1, 2005, seeking an appeal from an order entered on December 20, 2004, denying his out-of-time motion to withdraw guilty plea. However, Banks failed to file his application within 30 days of the entry of the order complained of, as required under OCGA § 5-6-35 (d). *Styles v. State*, 247 Ga. App. 90, 91 (537 SE2d 377) (2000). And, the application also fails to comply with the provisions of OCGA § 5-6-34 (b) in that it does not contain a certificate of immediate review and is untimely. This Court lacks jurisdiction over this application which is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 03 2005**

*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. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 16 2005**

A05D0207. PATEL v. THE STATE.

Subodhchandra T. Patel has filed an application for discretionary appeal referencing orders entered in a criminal action. Patel's exhibits reflect that a motion for out-of-time appeal was granted in the case and that a notice of appeal has been filed. Because the discretionary appeal procedure does not apply here and because Patel has already filed a notice of direct appeal in the court below, Patel's application for appeal is hereby *dismissed* as superfluous.¹

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 16 2005

*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. Mattingly, Clerk.

¹We note that Patel spends the majority of his application complaining of alleged mistreatment in jail. Patel is advised that such complaints are civil matters that should be addressed in separate civil proceedings. Since Patel cites to no order of the trial court addressing such matters and since Patel has instead offered only exhibits taken from the proceedings in his criminal case, we can only interpret his application as one seeking appellate review of his criminal conviction.

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: July 5, 2005

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 **S05C1719**

SUBODHCHANDRA T. PATEL v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0207

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

***JUL 07 2005** Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0208

ROBERTO CISNEROS V. MOHAWK INDUSTRIES, ET AL

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

90018

89604A

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 22 2005**

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

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

Clerk.

Will. L. Marti, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

FEB 04 2005

A05D0210. JAMES RUSSELL TUCKER v. THE STATE.

James Russell Tucker has filed a timely application for discretionary appeal of an order granting the state's motion to dismiss his appeal of a civil forfeiture of property action. The dismissal of an appeal by the trial court is subject to direct appeal. See *Brown v. E. I. Du Pont De Nemours & Co.*, 240 Ga. App. 893, 894 (1) (525 SE2d 731) (1999). Further, the order sought to be appealed is not subject to the discretionary appeal procedure under OCGA § 5-6-35 (a). Accordingly, Tucker's application is GRANTED pursuant to OCGA § 5-6-35 (j). Tucker 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

FEB 04 2005

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: **MAR 02 2005**

A05D0211. TRAVIS LAMAR DALE v. THE STATE.

On February 24, 2005, Travis Lamar Dale filed a motion for reconsideration of this court's February 10, 2005 order denying his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the rendition of the judgment. Dale's motion for reconsideration is thus untimely and is hereby DISMISSED.

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

MAR 02 2005
*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, MARCH 01, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0212

TRAYON THOMAS V. THE STATE

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

91018

CR030675 CR032013 CR030605

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 01 2005**

*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: **MAR 09 2005**

A05D0213. BOBBY HARDWICK v. DR. MIRIAM ATKINS ET AL.

Via a timely discretionary application, Bobby Hardwick seeks appellate review of an order entered January 7, 2005, denying his request to proceed in forma pauperis on an appeal of the dismissal of his tort action. The application for discretionary appellate review is hereby GRANTED.

Threshold questions of appellate jurisdiction with respect to whether the challenged order is subject to appellate review by this Court are reserved for decision during any forthcoming appeal and should be addressed in the briefs of the parties. In this connection, the parties may note that we have held that a trial court's findings concerning a party's indigence are not reviewable in cases where the affidavit of indigence has been traversed by an opposing affidavit. *Rolleston v. Estate of Sims*, 253 Ga. App. 182, 189 (9) (558 SE2d 411) (2002). But in this application and

response, we find no reference to any traversing affidavit. Thus, one apparent issue is whether a failure to submit an opposing affidavit as part of a challenge to an affidavit of indigency has any bearing on the reviewability of the trial court's resolution of the issue.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 09 2005**

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, III, Clerk.

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

ATLANTA, MARCH 01, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0214

DARYL BAPTISTE V. THE STATE

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

93018

96CR51498

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 01 2005**

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

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

Clerk.

Will. L. Maiti

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

ATLANTA, MARCH 18, 2005

The Court of Appeals passed the following order

Case No. A05D0214

DARYL BAPTISTE V. THE STATE

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

93-018
96CR51498

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 18, 2005*

*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: April 8, 2005

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 **S05C1194**

DARYL BAPTISTE v. THE STATE

Clerk, Supreme Court of Georgia


Case No. A05D0214

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

APR 13 2005

Clerk, Court of Appeals of Georgia



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

ATLANTA, MARCH 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0215
DENISE LYNN CARLISLE V. CHARLES SCOTT ENGER

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.

99018

041711734

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

MAR 07 2005

*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, MARCH 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0216

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.

94018

03CV166B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 14 2005

*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.

Carl L. Mart; JR

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

ATLANTA, FEBRUARY 18, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0217
JERRY WAYNE LEHMAN V. THE STATE

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

95019

04M3830

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

FEB 18 2005

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

Clerk.

Will. L. Mart; JR

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

ATLANTA, MARCH 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0218

JASON ABERCROMBIE V. LEXINGTON PRECISION CORP. ET AL

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

96019

2004SUCV839

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 07 2005

*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, Jr.

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

ATLANTA, MARCH 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0219
DEWAYNE WALKER V. THE STATE

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

98019

2004CR0088J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 09 2005**

*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, Jr.

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

ATLANTA, FEBRUARY 23, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0220
JOHN MATTHEW FOUNTAIN V. THE STATE

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

90019

02MR26T

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 23 2005**

*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, MARCH 16, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0221
MARLENE SHRYER V. DAIRY QUEEN

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

70019

05V013

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 16 2005

*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, MARCH 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0222
HUCKABEE BONDING CO., INC., ET AL V. MELANIE WELLS
AS GUARDIAN FOR GAGE & JEDIDIAH RHODES

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

97019

NONE

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 21 2005

*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

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: April 11, 2005

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 **S05C1207**

HUCKABEE BONDING CO., INC., et al. v. MELANIE WELLS, Gdrn.

Clerk, Supreme Court of Georgia

Case No. A05D0222

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

APR 12 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, MARCH 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0223
STEVE MILLOWAY V. DANIELLE L. MILLOWAY

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

71019

03A119866

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 09 2005**

*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,

MAR 22 2005

The Court of Appeals hereby passes the following order:

**A05D0224. COMPLEX ENVIRONMENTAL, INC. v. TALIAFERRO
COUNTIANS AGAINST LANDFILL.**

**A05D0225. COMPLEX ENVIRONMENTAL, INC. v. TALIAFERRO
COUNTY, GEORGIA.**

Complex Environmental, Inc. filed these discretionary applications, both of which seek appellate review of a superior court order entered January 21, 2005 upon judicial review of an administrative decision. In the underlying administrative proceeding, Complex Environmental, Inc. appealed the denial of its permit application, for a municipal landfill on real property located in Taliaferro County, by Carol A. Couch, Director of the Georgia Department of Natural Resources' Environmental Protection Division. Taliaferro County and Taliaferro Countians Against Landfills both moved to intervene in the administrative proceeding before an administrative law judge in the Office of State Administrative Hearings, but those motions were denied. On October 4, 2004, the administrative law judge entered a final order on motions for summary determination which granted in part the motion for summary determination of Complex Environmental, Inc. and denied the counter motion for summary determination of the Environmental Protection Division.

Taliaferro County and Taliaferro Countians Against Landfill then filed petitions for judicial review of the October 4, 2004 order in the Superior Court of Fulton County, and motions to intervene before the superior court. The superior court allowed these two parties to intervene and seek judicial review. Upon judicial review, the superior court held that Director Couch was not bound by a local

government verification of compliance with a waste management plan and had authority to make an independent determination that a permit application was not in compliance with a county waste management plan. The decision of the administrative law judge, based on the opposite conclusion, was reversed.

OCGA § 5-6-35 (d) requires that a copy of these applications, together with a list of those parts of the record included in the applications, shall be served upon the opposing parties as provided by law, except that the service shall be perfected at or before the filing of the applications. See also Court of Appeals Rules 1 (a) & 6. These applications are not in compliance with this requirement in that they fail to show service of the applications upon all of the opposing parties. The attached certificate of service shows that copies were served by mail upon counsel for the two interveners, but there is no showing of service upon counsel for the original opposing party, the Environmental Protection Division, its director Carol A. Couch, or the state agency of which it is a part, the Department of Natural Resources. Since this Court lacks authority to accept an appeal in the absence of compliance with the statutory provision, the acceptance of the applications for filing was inadvertent, and the applications are hereby DISMISSED for lack of jurisdiction.

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

MAR 22 2005

*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.*

W. L. Matz

....., 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: May 10, 2005

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 **S05C1374**

COMPLEX ENVIRONMENTAL, INC. v. TALIAFERRO COUNTIANS AGAINST LANDFILL

Clerk, Supreme Court of Georgia

Case No. A05D0224

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA, APRIL 20, 2005

The Court of Appeals passed the following order

Case No. A05D0225

COMPLEX ENVIRONMENTAL, INC., V. TALIAFERRO COUNTY,
GEORGIA

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

91-020
2004CV92787 2004CV91516

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 20, 2005*

*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. Maiti

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: May 10, 2005

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 **S05C1373**

COMPLEX ENVIROMENTAL, INC. v. TALIAFERRO COUNTY, GEORGIA

Clerk, Supreme Court of Georgia

Case No. A05D0225

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA, MARCH 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0226
ALWAYS CARE OF GEORGIA, INC., V. MICHAEL L. THURMOND,
IN HIS CAPACITY AS THE GEORGIA COMMISSIONER OF LABOR
ET AL

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

92019

2004CV83554

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 24 2005**

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

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

Clerk.

Will. L. Marti, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 01 2005**

**A05D0227. Thor Thompson v. James E. Donald, Commissioner, Georgia
Department of Corrections**

Thor Thompson has filed this application for discretionary appeal seeking review of the trial court's order granting James E. Donald's motion for summary judgment which effectively denied his petition for a writ of mandamus and dismissed the case. Under Ga. Const. 1983, Art. VI, Sec. VI, Par. III (5) and OCGA § 9-6-28 (a), the Supreme Court has jurisdiction over appeals involving extraordinary remedies such as mandamus. *James v. State*, 120 Ga. App. 317 (170 SE2d 303) (1969). Accordingly, this appeal is ordered TRANSFERRED to the Supreme Court.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **MAR 01 2005**

*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, MARCH 16, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0228

ROBERT P. ROGERS, JR. V. ROBERT E. EVANS

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

99019

04CV1209

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 16 2005

*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, MARCH 29, 2005

The Court of Appeals passed the following order

Case No. A05D0228

ROBERT P. ROGERS, JR. V. ROBERT E. EVANS

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

99-019
04CV1209

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 29, 2005*

*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. Maitland

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

ATLANTA, MARCH 25, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0229
HARVIE LONDON V. GS ROOFING PRODS., INC, ET AL

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

94019

2004V1409

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 25 2005**

*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, MARCH 15, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0230
JOELL RATTERMAN V. WILLIAM I. TIDWELL

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

95020

2003CV1796I

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 15 2005

*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, MARCH 18, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0231
JEREMIAH CURTIS V. NATASHA KLIMOWICZ

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.

96020
2004CV373

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 18 2005**

*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, MARCH 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0232
EARTHA JAMES V. SPRINT CORPORATION ET AL

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

98020

041908834

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

MAR 28 2005

*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

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: May 6, 2005

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 **S05C1364**

EARTHA JAMES v. SPRINT CORPORATION et al.

 Clerk, Supreme Court of Georgia

Case No. A05D0232

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office **MAY 10 2005**

 Clerk, Court of Appeals of Georgia

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

ATLANTA, MARCH 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0233
JUAN HALL V. JOANNE WALLACE-HALL

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

90020

2004CV79763

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 24 2005**

*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, APRIL 18, 2005

The Court of Appeals passed the following order

Case No. A05D0233

JUAN HALL V. JOANNE WALLACE-HALL

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

90-020
2004CV79763

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 18, 2005*

*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, 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: May 12, 2005

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 **S05C1407**

JUAN HALL v. JOANNE WALLACE-HALL

 Clerk, Supreme Court of Georgia

Case No. A05D0233

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

 Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 29 2005

A05D0234. KENNETH SMALLS v. THE STATE.

On March 1, 2005, this Court issued an order to the applicant Kenneth Smalls requiring him to submit a stamped "filed" copy of the order he sought to appeal in this case within ten days or face dismissal of the application. Smalls filed a motion seeking an extension of time to comply with this order. The stamped "filed" copy Smalls submitted, however, was timely received in this Court. Accordingly, Smalls' motion is DENIED as MOOT.

Upon consideration of Smalls' application for discretionary appeal, the application is hereby DENIED.

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

MAR 29 2005

*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, 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: April 18, 2005

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 **S05C1262**

KENNETH L. SMALLS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0234

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia


APR 20 2005

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

ATLANTA, MARCH 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0235
LESLIE NEW V. GEORGIA PEACE OFFICERS STANDARDS
AND TRAINING COUNCIL

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

97020

04V01863

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 21 2005**

*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. Matia

Court of Appeals
of the State of Georgia

ATLANTA, MARCH 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0236
WILLIAM J. WOOD V. JAMILAH SMITH 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.

71020

2004SUV34

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 17 2005**

*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. L. Martin

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

ATLANTA, MARCH 30, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0237
VINCENT EDWARD BROOKS 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.

92020

02CR005462

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

MAR 30 2005

*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,

MAR 21 2005

The Court of Appeals hereby passes the following order:

A05D0238. GOINS v. THE STATE.

Criminal defendant Roderick L. Goins filed an application for appeal on March 2, 2005, seeking review of an order entered on May 7, 2004, in response to Goins' motion for clarification of the amount of credit he was to receive for time served in the county jail awaiting trial. Because Goins' application was not filed 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

MAR 21 2005

*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. Martinez

....., Clerk.

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

ATLANTA, MARCH 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0239
STUART DAVIS V. EVA SPIVAK DAVIS

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

99020

2004V0795H

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 17 2005

*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

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

ATLANTA, MARCH 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0240

MARK DONALD ORMOND V. DAWN RENEE ORMOND 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.

94020

02CV00061

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 28 2005

*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. Mait; R

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 15 2005

A05D0241. ROBERT FRANK SMITH v. THE STATE.

Robert Frank Smith, acting pro se, filed an application for discretionary appeal seeking an appeal of the order entered January 19, 2005, denying his motion for out-of-time appeal in a criminal case. However, a denial of a motion for out-of-time appeal is directly appealable. *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999). Smith has also filed a timely notice of appeal in the trial court seeking a direct appeal of the same order sought to be reviewed in his application. Because Smith has filed a timely notice of appeal, this application cannot be granted under OCGA § 5-6-35 (j), as that statutory provision applies only when there has been no filing of a timely notice of appeal. Because Smith has initiated a timely direct appeal of an order that is directly appealable, this application is **DISMISSED** without prejudice to his right of direct appeal.

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

MAR 15 2005

*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, MAR 21 2005

The Court of Appeals hereby passes the following order:

A05D0242. DENNIS J. GERSCHICK v. ROBERT DON POUNDS.

Dennis J. Gerschick filed this application for discretionary appeal from the superior court's order denying his "Motion to Set Aside Judgment or in the Alternative Motion to Enforce Agreement." The order appealed from, however, is interlocutory because the case remains pending below. Gerschick was thus 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 (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 Gerschick failed to follow the interlocutory appeal procedures, this Court lacks jurisdiction to consider this application for appeal. See *Pinyan v. Hamby*, 176 Ga. App. 411 (336 SE2d 331) (1985); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997). Accordingly, this application is ordered DISMISSED. Robert Don Pound's Motion for Sanctions for Frivolous Appeal is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 21 2005

*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, MARCH 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0243

GRACE U. NWAOGU V. MICHAEL L. THURMOND

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

98021

041553548

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 28 2005**

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

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

Clerk.

C. Will. L. Mait; R

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

ATLANTA

The Court of Appeals hereby passes the following order:

MAR 14 2005

A05D0244. GREYHOUND LINES, INC., v. DOUGLAS S. CRUCET.

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

90-021

00GR003131A

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

MAR 14 2005

*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, MARCH 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0245
TAIQUAN ALEXANDER V. THE STATE

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

70021

CR0300336063

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

MAR 31 2005

*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. Maitland

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 30 2005**

A05D0246. ANTHONY J. CARTER v. THE STATE.

Anthony J. Carter, *pro se*, has filed an application for discretionary appeal from the trial court's order denying a motion of his wife, Syble Carter, to quash a subpoena to produce her financial records.¹ The trial court had requested the documents to determine if Carter in fact was indigent as he alleged. *In re Dekalb County Special Grand Jury Proceedings*, 252 Ga. App. 359 (555 SE2d 791) (2001), held that an order denying a motion to quash a subpoena is not a final order within the meaning of OCGA § 5-6-34 (a); thus, an appeal from such an order must be made by application, pursuant to the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b). Exceptions to this general rule do not apply where, as here, the subpoenaed records belong to a person who is an interested party. *In re Dekalb County Special Grand Jury Proceedings*, *supra*, 252 Ga. App. at 360. Carter was thus required to appeal this ruling by application for interlocutory review in accordance with the provisions of OCGA § 5-6-34 (b) by obtaining a certificate of immediate review from the trial court. Carter's failure to follow the interlocutory appeal procedure deprives

¹Carter also asserts that he is seeking review of the trial court's orders denying his motion to recuse and denying appointment of an attorney for him as an indigent. Not one of these orders, however, is included with the application; accordingly, they are not reviewable by this Court.

this Court of jurisdiction to consider his application for discretionary appeal, which is hereby ordered DISMISSED.

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

MAR 30 2005

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, MARCH 23, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0247
FAWN L. TILLER NICHOLS V. DEREK NICHOLS

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

71021

05CV00056

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 23 2005**

*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:

MAR 25 2005

A05D0248. BOBBY J. COOPER, SR. v. THE STATE.

Bobby Cooper was convicted of two counts of selling cocaine. This court affirmed the convictions in *Cooper v. State*, 265 Ga. App. 137 (592 SE2d 908) (2004). Cooper seeks an appeal from an order denying his “motion to correct a void sentence.” Cooper raises no issue in his motion that could not have been raised in his direct appeal. Moreover, he does not make the type of challenge that would support a direct appeal from the denial of a motion to correct void sentence. See *Williams v. State*, 271 Ga. 686, 689 (1) (523 SE2d 857) (1999).

Cooper alleges that the state failed to submit notice of its intent to seek aggravated punishment as required by OCGA § 17-10-2 (a). However, the requirements of OCGA § 17-10-2 are procedural, not substantive. “And the failure to adhere to such procedures, while subject to *timely* appellate review as to whether sentence was lawfully imposed, does not render sentences imposed without such procedures void so as to secure appellate review absent a legitimate claim of void sentence.” *Miller v. State*, 264 Ga. App. 801, 803-4 (592 SE2d 450) (2003) (citations omitted). Cooper “is not entitled to another bite at the apple by way of a second appeal.” *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001). His application, therefore, is hereby DISMISSED. *Miller v. State*, supra.

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

MAR 25 2005

*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, APRIL 20, 2005

The Court of Appeals passed the following order

Case No. A05D0248

BOBBY J. COOPER, SR. V. THE STATE

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

91-021
0100223

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 20, 2005*

*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,

The Court of Appeals hereby passes the following order: **MAR 24 2005**

A05D0249. LARRY F. VEAL v. ROBIN S. VEAL.

Larry F. Veal filed this discretionary application seeking an appeal from the trial court's order placing custody of the parties' minor child with Robin S. Veal. In its order, the trial court scheduled a later hearing to determine custody of the child. Thus, the order appealed from is a temporary order which did not resolve all issues in the case. Applicant was accordingly required to follow the procedures for interlocutory review as set forth in OCGA § 5-6-34 (b). *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997). The discretionary application statute does not relieve applicant from the interlocutory review requirement of a certificate from the trial court.

Because applicant did not follow the interlocutory review procedures, this Court lacks jurisdiction over this application. Therefore, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **MAR 24 2005**

*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, APRIL 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0250

BRENDA CASAS 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93021

03CR159648 04CR161102 04CR16824 04CR160824

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 07 2005

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

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

Clerk.

Will. L. Maiti

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

ATLANTA, APRIL 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0251
RICHARD MICHAEL WILLIAMS V. MICHAEL L. THURMOND
COMMISSIONER OF GEORGIA DEPARTMENT OF LABOR
ET AL

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

71024

2004CV2246J

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

APR 14 2005

*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, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 30 2005

A05D0252. CHUCK SYLVESTER A/N/F J.R.P. v. TAMEKA S. BROWN ET AL.

The applicant seeks an appeal from a child custody order entered February 11, 2005. The application for discretionary appeal was docketed in this Court March 16, 2005, 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 the applicant filed the 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. Therefore, the application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 30 2005

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

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

William L. Martin, Jr., Clerk.

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

ATLANTA, APRIL 15, 2005

The Court of Appeals passed the following order

Case No. A05D0252

CHUCK SYLVESTER A/N/F J.R.P. V. TAMEKA S. BROWN ET AL

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

94-021
04A005133

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 15, 2005*

*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,

The Court of Appeals hereby passes the following order: **MAR 24 2005**

A05D0253. JESUS ERNESTO MONTIJO v. THE STATE.

On March 15, 2005, Jesus Ernesto Montijo filed an application for discretionary appeal seeking an appeal of an order, entered February 7, 2005, denying his motion to vacate an unauthorized sentence. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the date of entry of the order, decision, or judgment sought to be appealed. Because Montijo did not file his application in this Court within 30 days of the order, entered February 7, 2005, this Court is without jurisdiction over this application and it is DISMISSED. 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 **MAR 24 2005**

*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:

MAR 23 2005

A05D0254. ELIJAH A. BAILEY v. THE STATE.

Elijah A. Bailey, a prisoner proceeding pro se, filed this application for discretionary appeal from the trial court's February 2, 2005, order denying his motion for certain documents and records. The application was docketed in this Court on March 15, 2005.¹ An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Bailey filed his application 41 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 DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 23 2005

*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.

¹Bailey'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) and a stamped "filed" copy of the trial court's order in violation of Court of Appeals Rule 31 (d).

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

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 30 2005

A05D0255. ALLEN PARHAM, JR. v. THE STATE.

Applicant Allen Parham, Jr., pro se, filed an application on March 17, 2005, seeking an appeal from an order entered February 7, 2005, denying his motion to modify sentence. However, Parham failed to file his application within 30 days of the entry of the order complained of, as required under OCGA § 5-6-35 (d). *Styles v. State*, 247 Ga. App. 90, 91 (537 SE2d 377) (2000). Therefore, this application is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 30 2005

*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:

APR 11 2005

A05D0256. COLLIER v. FORD MOTOR CREDIT CORP.

Defendant Manny Collier seeks an appeal from a money judgment totaling less than \$10,000.00 based on OCGA § 5-6-35 (a) (6). Because Collier received a zero judgment on his counterclaim, however, the judgment complained of is directly appealable. See *Robinwood, Inc. v. Baker*, 206 Ga. App. 202-203 (1) (425 SE2d 353) (1992). Accordingly, Collier's application is granted as required under OCGA § 5-6-35 (j). Collier shall have ten days from the date of this order to file his notice of appeal. The clerk of the state 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

APR 11 2005

*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, APRIL 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0257

ROSA COVIL V. ESTATE OF DONALD COVIL ET AL

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

70022

2004CV1883I

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 07 2005

*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, Jr.

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

ATLANTA, APRIL 11, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0258

RAY BELL CONSTRUCTION COMPANY ET AL V. ANGELA KING
GUARDIAN OF MINOR CHILD OF HOWARD KING

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.

97022

2004CV926

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 11 2005**

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

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

Clerk.
C. J. L. Martin

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

ATLANTA, APRIL 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0259
JO A. EARLY V. FEDERAL EXPRESS ET AL

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

71022

04CV3416

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

APR 12 2005

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

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

Clerk.

Will. L. Martin, III

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: April 27, 2005

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 **S05C1291**

JO A. EARLY v. FEDERAL EXPRESS et al.

Clerk, Supreme Court of Georgia

Case No. A05D0259

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

APR 27 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, APRIL 15, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0260

DENNIS J. GERSCHICK V. ROBERT DON POUNDS

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

91022

0010962833

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 15 2005

*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, APRIL 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0261
LOIS BROWN V. ANCHOR GLASS ET AL

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

92022

04CV27499

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 14 2005**

*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, APRIL 13, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0262
MARVIN HENRY V. THERESA STRICKLAND

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

93022

2004CV0247

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 13 2005**

*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, APRIL 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0263

GARY D. CRUSENBERRY V. WAGGONERS TRUCKING

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

99022

CE0401734063

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 12 2005**

*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, APRIL 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0264
LENA REID V. GEORGIA BUILDING AUTHORITY 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.

94022

2004CV95117

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 22 2005

*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:

APR 11 2005

A05D0265. ROBERT NELSON v. THE STATE.

Robert Nelson filed this application for discretionary appeal seeking an appeal of the trial court's "Order Denying Defendant's Motion To Vacate Unauthorized Sentence." Although the application includes a copy of the order sought to be appealed, it does not contain a stamped "filed" copy of the order as required by Court of Appeals Rule 31 (d). On March 25, 2005, this Court entered an order stating that Nelson must supplement his application with a stamped "filed" copy of the order sought to be appealed within 10 days or the application would be dismissed. Nelson responded by attempting to file another copy of the order sought to be appealed but that copy also lacked an official filing stamp establishing the date that it was filed with the clerk of the Superior Court of Chatham County. As no stamped "filed" copy of the order has been filed with this Court within the time allotted, this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 11 2005

*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,

The Court of Appeals hereby passes the following order: APR 07 2005

A05D0266. ALTON JAY CARLTON v. THE STATE.

On July 8, 1999, Alton Jay Carlton's probation was revoked. He did not file a discretionary application to appeal the probation revocation. On January 12, 2005, the Lowndes County Superior Court granted Carlton's petition for writ of habeas corpus to allow Carlton to appeal the probation revocation. On March 28, 2005, Carlton filed this application to appeal the revocation of his probation.

The application, however, is untimely. Carlton had 30 days after the grant of habeas relief in which to file his application. Because he failed to file the application within the 30-day period, this Court lacks jurisdiction over his application. *Johnson v. State*, 237 Ga. App. 677 (516 SE2d 539) (1999). The application, therefore, is hereby DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* APR 07 2005

*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, APRIL 19, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0267

ALISHA L. ANDERSON V. S.E. GA REGIONAL MEDICAL CENT

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.

98023

CE0500113063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 19 2005

*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, APRIL 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0268
DOUGLAS SIZEMORE V. THE STATE

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

90023

2003CR221

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

APR 22 2005

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

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

Clerk.

Will. L. Mait; R

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

APR 20 2005

A05D0269. Jones v. The State

Bruce T. Jones, pro se, filed this application for discretionary appeal from the trial court's order which declined to accept or rule on his motion as he is represented by counsel. Under OCGA § 5-6-35 (d), an application for discretionary appeal must include a copy of the judgment for which an appeal is sought, and Court of Appeals Rule 32 (b) requires that copy to be stamped "filed." Jones' application, however, did not contain a stamped "filed" copy of the order he seeks to appeal. Thus, on March 30, 2005, this Court ordered him to submit a stamped "filed" copy of the judgment appealed within ten days and emphasized that the application would be dismissed if it was not physically received by that deadline. Jones, however, submitted another copy of the order which does not contain a stamped "filed" date thereon. Accordingly, this application is ordered *dismissed*. Court of Appeals Rule 7

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 20 2005

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

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

William L. Martin, Jr., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

JUN 02 2005

A05D0269. Jones v. The State

On May 25, 2005, Bruce T. Jones filed a motion for reconsideration of this court's April 20, 2005 order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the rendition of the judgment. Jones' motion for reconsideration is thus untimely and is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 02 2005**

*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: **APR 18 2005**

A05D0270. GREENBRIAR DEVELOPMENT SERVICES, INC., D/B/A THE ATRIUM v. GARY LEE PITTS

Gary Lee Pitts sued Greenbriar Development Services, Inc., d/b/a The Atrium [Greenbriar] for damages for personal injury. Greenbriar failed to file a timely answer, and the trial court entered a default judgment against it. Greenbriar moved to set aside this judgment, which the trial court denied. On March 3, 2005, the trial court entered a final judgment in the case, reiterating that it would not set aside the default judgment and awarding \$25,472 in special damages, \$25,000 in damages for pain and suffering, post-judgment interest and court costs to Pitts. Greenbriar filed this application for discretionary appeal from the trial court's final judgment.

This is an appeal from a final judgment. See *Lanier v. Foster*, 133 Ga. App. 149, 153 (3) (210 SE2d 326) (1974). It is not an appeal from the denial of the motion to set aside, as contemplated by OCGA § 5-6-35 (a) (8), 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. Because Greenbriar's appeal does not require a discretionary application, this application is GRANTED as required under OCGA § 5-6-35 (j). Greenbriar 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.¹

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 18 2005**

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. Murrin, Jr., Clerk.

¹We note that Greenbriar previously filed a notice of appeal in this case, docketed as appeal A05A1420, which it voluntarily withdrew on April 15, 2005.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

APR 07 2005

A05D0271. AURELIO HERNANDEZ v. THE STATE.

Aurelio Hernandez, acting pro se, has filed a timely application for discretionary appeal seeking to appeal an order denying his “Motion to Vacate Unauthorized Sentences.” The denial of a motion to correct a void sentence is directly appealable. *Williams v. State*, 271 Ga. 686, 688-689 (1) (523 SE2d 857) (1999). Accordingly, Hernandez’s application is GRANTED pursuant to OCGA § 5-6-35 (j).

Hernandez 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

APR 07 2005

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

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

Will. L. Mart; [Signature], Clerk.

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

ATLANTA, MAY 06, 2005

The Court of Appeals passed the following order

Case No. A05D0272

SAMUEL A. BUSH V. LAURIE COLLINS

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

91-023
04A005590

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 06, 2005*

*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.

Willie L. Matiza

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

ATLANTA, APRIL 29, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0273
MUAMER BEJDIC V. GEVITY HR / ATLANTA ET AL

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

92023

2004CV94085

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

APR 29 2005

*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. 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: May 13, 2005

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 **S05C1403**

MUAMER BEJDIC v. GEVITY HR/ATLANTA CAPTIAN STEAMER et al.

 Clerk, Supreme Court of Georgia

Case No. A05D0273

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

 Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 28 2005**

A05D0274. HOPE v. THE STATE.

Craig Hope filed an application on April 4, 2005, seeking an appeal from an order entered on March 2, 2005, denying motions filed following the revocation of Hope's probation. Because Hope failed to file his application with this court within 30 days of the order complained of as required, the application is hereby *dismissed* for lack of jurisdiction. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

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

APR 28 2005

*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: **APR 19 2005**

A05D0275. Greulich v. The State

Vincent A. Gruelich, a prisoner proceeding pro se, filed this application for discretionary appeal from the trial court's February 14, 2005, order denying his "Motion for Appointment of Counsel, Request to Proceed in Forma Pauperis, Motion to Declare Mere Nullity and Void Judgment and Motion to Hold Void Judgment Mere Nullity and to Expunge Such Void Judgment." The application was docketed in this Court on April 5, 2005. Greulich's original submissions were to the Supreme Court which transferred the application to this case. However, the application was not accepted for filing because it lacked a filing fee or sufficient pauper's affidavit in violation of Court of Appeals Rule 31 (c). Gruelich filed a pauper's affidavit in this Court on April 5, 2005 which became the filing date given to this application.

An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Greulich filed his application more than 30 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. For this reason, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 19 2005

*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, MAY 12, 2005

The Court of Appeals passed the following order

Case No. A05D0275

VINCENT A. GREULICH V. THE STATE

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

99-023
02CR12744

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 12, 2005*

*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.



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: May 23, 2005

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 **S05C1486**

VINCENT A. GREULICH v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0275

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 27 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 15 2005**

A05D0276. REGINALD JAMES MASON v. THE STATE

Reginald James Mason filed this application for discretionary appeal from the denial of his "Motion to Set Aside Conviction." Because Mason was convicted of murder, his application is hereby TRANSFERRED to the Supreme Court for disposition, as required by *State v. Thornton*, 253 Ga. 524 (322 SE2d 711) (1984).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 15 2005**

*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. Vill. L. Mait, Jr., Clerk.

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

ATLANTA, APRIL 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0277
LOGIE W. TALLEY, JR. V. UNIFUND CCR PARTNERS ASSIGNEE
OF FIRST USA BANKS

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

95024

55981

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 21 2005

*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, APRIL 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0278

LISA WILLIAMS BROWN V. DERRIC TERRENTINE

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

96024

03CV92238

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 22 2005

*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

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.

(404) 656-3470

Docketing Date: May 12, 2005

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 **S05C1392**

LISA WILLIAMS BROWN v. DERRIC TERRENTINE

Clerk, Supreme Court of Georgia

Case No. A05D0278

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 19 2005**

A05D0279. LINDA PEARSON v. TAMEKA S. BROWN ET AL.

On April 8, 2005, Linda Pearson filed an application seeking discretionary review of a child custody order. The order sought to be appealed was filed on February 11, 2005. An application for discretionary appeal must be filed within 30 days of the order appealed from. OCGA § 5-6-35 (d). The failure to file a timely application deprives this Court of jurisdiction to consider the appeal.

The application maintains that an order signed by the juvenile court has granted an extension of time for the filing of the application pursuant to OCGA § 5-6-39. However, while a trial court has authority under OCGA § 5-6-39 to grant a 30 day extension of time for filing a notice of appeal, no comparable authority exists for granting an extension of time to file an application for discretionary appeal. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983).

Therefore, the application was untimely and this Court lacks jurisdiction to consider it. For this reason, the application is hereby DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **APR 19 2005**

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

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

Will. L. Mart..., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

MAY 09 2005

A05D0280. HANCOCK v. HABERSHAM COUNTY, GEORGIA, et al.

Carol S. Hancock seeks an appeal from a final order entered in what her complaint describes as “an action for judicial review of a zoning decision and for declaratory and injunctive relief, or, in the alternative, for writ of mandamus, arising from the Habersham County Board of Commissioners’ decision to approve a Tall Structure Permit to allow construction and operation of a 250 foot telecommunications tower on a tract of land located on Hancock Road in the Low Intensity Land Use district.” In her application Hancock argues, among other things, that mandamus is the appropriate remedy in this type of case and that the superior court erred in failing to issue a writ of mandamus requiring denial of the permit. The respondents also argue that a mandamus action is the appropriate procedure for Hancock to follow in this type of case, citing *Fulton County v. Congregation of Anshei Chesed*, 275 Ga. 856 (572 SE2d 530) (2002). Because Hancock petitioned for a writ of mandamus, because that petition was expressly denied by the superior court, and because both applicant and respondents argue that the extraordinary remedy of mandamus is the appropriate remedy for Hancock to seek in this type of case, Hancock’s application is hereby *transferred* to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, § VI, ¶ III (5); OCGA § 9-6-28.

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

MAY 09 2005

*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, MAY 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0281
JAMES LEE HANDLEY V. THE STATE

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

70024

99CR69

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY 05 2005**

*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. Mat; TB

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: May 25, 2005

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 **S05C1483**

JAMES LEE HANDLEY v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0281

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 27 2005

 Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 20 2005**

A05D0282. THURMAN CHARLES COLLINS v. THE STATE.

Thurman Charles Collins seeks an appeal from an order entered June 4, 2003, revoking his probation. Collins alleges that on March 10, 2005, the trial court entered an order purporting to grant him an out-of-time appeal. He did not, however, include a copy of this order with the application; accordingly, this Court cannot consider it in reviewing this application for appeal. Collins filed his application for discretionary appeal on April 11, 2005. This Court lacks jurisdiction to consider Collins' application because it was not filed within 30 days of the entry of the probation revocation order, as required by OCGA § 5-6-35 (d). The application is thus **DISMISSED** for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582, 582-583 (420 SE2d 393) (1992).

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

APR 20 2005

*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:

APR 20 2005

**A05D0283. MELVIN JAMES WILLIAMS v. PARKWAY PHYSICIANS
PRACTICE COMPANY.**

On April 11, 2005, Melvin James Williams, acting pro se, filed an application for discretionary appeal of the order, entered October 8, 2004 and the order, entered November 30, 2004, denying his motion to set aside the Order of October 8, 2004. Under OCGA § 5-6-35 (d), an application for discretionary appeal shall be filed with the clerk of the Supreme Court or the clerk of the Court of Appeals within 30 days of the date of entry of the order sought to be appealed.

Also, under *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994), the underlying subject matter of an appeal generally controls when determining the proper appellate procedure. The underlying subject matter of this suit pertains to the validity of a discovery order, and the underlying civil action is still pending before the trial court. Accordingly, Williams could perfect an appeal of these orders only by complying with the procedural requirements for interlocutory appeal under OCGA § 5-6-34 (b). See *Scruggs v. Georgia Department of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991).

For each of these reasons, this Court lacks jurisdiction over this discretionary application and it is DISMISSED.

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

APR 20 2005

*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, APRIL 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0284
MICHAEL D. STOKES V. LAURA A. STOKES

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

91024

0510083999



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 28 2005

*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, MAY 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0285

LEISA MICHELLE CAWTHON V. CURTIS ALAN CAWTHON

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

92024

04V433

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 10 2005

*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, Jr.

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

ATLANTA, MAY 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0286
DIANN BRANTLEY V. AMOCO FABRICS ET AL

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

93024

2004SUV490

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 12 2005

*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. Matia

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

ATLANTA, MAY 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0287
CORY A. BEARD V. JEANNETTE H. BUTTS

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

99023
4066A

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

*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: May 20, 2005

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 **S05C1443**

COREY A. BEARD v. JEANNETTE H. BUTTS

Clerk, Supreme Court of Georgia

Case No. A05D0287

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 23 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 29 2005**

**A05D0288. WILLARD ROYAL RICKERSON, III v. CURTIS JOHNSON,
WARDEN, WILCOX STATE PRISON**

Because this application for discretionary appeal is from an order denying Willard Royal Rickerson, III's motion to set aside the judgment in his habeas corpus case, the appeal is TRANSFERRED to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4).

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

APR 29 2005

*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, MAY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0289
HEIDI LIPPS V. HITACHI KOKI USA ET AL

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

94024

X05CV0024

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY - 6 2005

*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. Martinez

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

ATLANTA, APRIL 29, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0290
PATRICK G. MILLER V. THE STATE

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

95025

04R042

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 29 2005

*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. L. Miller

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: May 12, 2005

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 **S05C1393**

PATRICK G. MILLER v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0290

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

 Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0291
JOE GONZALES 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.

96025

02CR21307AR3

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 09 2005

*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, MAY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0292
RICKY GERALD WADE V. THE STATE

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

98025

01CR217M 02CR261S 02CR327M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY - 6 2005

*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.

Willie L. Matz

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

ATLANTA, MAY 11, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0293
LUCIOUS L. JOHNSON V. THE STATE

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

70025

96CR420

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 11 2005

*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.

W. 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: June 6, 2005

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 **S05C1520**

LUCIOUS L. JOHNSON v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0293

Court of Appeals of Georgia

Notice of Petition for Certiorari

JUN 09 2005

filed in office

Clerk, Court of Appeals of Georgia



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

ATLANTA,

MAY 13 2005

The Court of Appeals hereby passes the following order:

A05D0294. MICHAEL WERNER v. KATHERINE HARRIS.

Michael Werner filed this discretionary application seeking review of the trial court's order granting Katherine Harris' motion for OCGA § 9-15-14 attorneys fees. The order states that "[b]y her Motion, [Harris] seeks a determination as to [Werner's] liability for attorney fees, not as to the amount of fees." The order accordingly reserved the issue of the amount of the fees for determination at a later time.

Generally, a party must follow the discretionary appeal procedures to appeal the award of OCGA § 9-15-14 attorneys fees. OCGA § 5-6-35 (a) (10). Because the case remains pending in the trial court, however, no final judgment has been entered, and Werner was thus required to follow the interlocutory appeal procedures. OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). Werner's failure to follow the interlocutory appeal procedures deprives this Court of jurisdiction to consider this application. Accordingly, this application is DISMISSED.

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

MAY 13 2005

*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.



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

ATLANTA, MAY 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0295
NORTH GEORGIA CREDIT SERVICES, INC., V. REBECCA
BERRY ET AL

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

71025

04C134242

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY - 6 2005**

*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

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

ATLANTA,

The Court of Appeals hereby passes the following order:

MAY 10 2005

A05D0296. LERON ROGERS v. MELISHA ROGERS.

Leron Rogers seeks an appeal from an order of contempt of the parties' final divorce decree. Because the ruling complained of directly addresses enforcement of the non-custodial provisions of a final divorce decree, Rogers' application is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); 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

MAY 10 2005

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

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

, Clerk.

Will. L. Mat; R

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

ATLANTA, MAY 20, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0297
AGNES LAPLANT V. SHAW INDUSTRIES, INC

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

92025

90156B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 20 2005**

*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. Martz, Jr.

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

ATLANTA, MAY 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0298
STANLEY GRANTHAM ET AL V. EBERHARDT GRANTHAM
CONTRACTING, INC.

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

93025

2005CV1757

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 24 2005**

*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.

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: June 13, 2005

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 **S05C1581**

STANLEY GRANTHAM et al. v. EBERHARDT GRANTHAM CONTRACTING, INC.,
et al.

 Clerk, Supreme Court of Georgia

Case No. A05D0298

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 14 2005

Clerk, Court of Appeals of Georgia



Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAY 04 2005

A05D0299. Rice v. Rice

Mark Rice filed this application for discretionary appeal in this divorce action seeking review of the trial court's temporary order on child support and alimony. However, the Supreme Court has exclusive jurisdiction over appeals in divorce cases. Ga. Const. of 1983, Art VI, Sec. VI, Par III (6). Orders specifically relating to the parties pending divorce are within the appellate jurisdiction of the Supreme court. See, e.g., *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996) (temporary alimony order in pending divorce proceeding). Therefore, this Court lacks jurisdiction to consider this discretionary application which is ordered TRANSFERRED to the Supreme Court.

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

MAY 04 2005

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

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

William L. Martin, JR., Clerk.

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

ATLANTA, MAY 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0300

ROGER RODDEN V. OTTO GOGOLIN

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

94025

04GR017390G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 31 2005

*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. Mart...

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 26 2005**

**A05D0301. LOUISE WALLEN SNUGGS v. JOHN WALLEN SNUGGS, SR.,
ET AL.**

Plaintiff James Mason Snuggs, Sr., brought suit against his father, John Wallen Snuggs, Sr., and his mother, Louise Wallen Snuggs. John Wallen Snuggs, Sr., filed an answer in which he alleged a cross-claim against Louise Wallen Snuggs. James Mason Snuggs, Sr., filed a motion for summary judgment against John Wallen Snuggs, Sr. The trial court granted the motion. John Wallen Snuggs, Sr., subsequently filed a motion for partial summary judgment against Louise Wallen Snuggs, and the trial court granted the motion. Louise Wallen Snuggs filed a motion to set aside the grant of partial summary judgment and the trial court denied the motion to set aside but "affirmed" its prior order granting partial summary judgment against Louise Wallen Snuggs. Louise Wallen Snuggs filed a notice of appeal and the trial court dismissed the notice of appeal without sanctions.

Louise Wallen Snuggs filed a timely application for discretionary appeal seeking an appeal of the order dismissing her appeal. The underlying order sought to be appealed in this case is the order denying Louise Wallen Snuggs' motion to set aside the grant of partial summary judgment entered against her in favor of co-defendant John Wallen Snuggs, Sr. The trial court has not entered any final order in this case directly adjudicating the claim of James Wallen Snuggs, Sr., against Louise Wallen Snuggs.

Because the trial court has not formally adjudicated the liability claim of James Mason Snuggs, Sr., against his mother Louise Wallen Snuggs that claim remains pending in the trial court and thus, Louise Wallen Snuggs' notice of appeal, in

substance, sought to appeal an interlocutory matter. OCGA § 9-11-54 (b); see OCGA § 5-6-34 (a) and (b). The appeal of a dismissal of such a notice of appeal can only be accomplished by compliance with the interlocutory procedures set forth in OCGA § 5-6-34 (b), and not by filing an application for discretionary appeal under OCGA § 5-6-35. See *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991).

Accordingly, this Court is without jurisdiction over this appeal and it is DISMISSED. Any party to this suit may file a timely direct appeal of a subsequent order that adjudicates the liability claim of James Mason Snuggs against his mother, Louise Wallen Snuggs, and leaves no further claims pending before the trial court. See generally OCGA § 5-6-34 (a) and (d).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY 26 2005**

*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, JUNE 17, 2005

The Court of Appeals passed the following order

Case No. A05D0301

LOUISE WALLEN SNUGGS V. JOHN WALLEN SNUGGS, SR., ET AL

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

95-026
99CV0913

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 17, 2005*

*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.



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

ATLANTA, MAY 13, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0302
CABINETS BY DESIGN, ET AL V. LAURENCE HANNAN

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

96026

2005CV97859

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

MAY 13 2005

*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, MAY 25, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0303

SHIRLEY C. BROCK V. ROADHOUSE GRILL, INC., ET AL

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

98026

2005CV3517

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

MAY 25 2005

*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

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: June 13, 2005

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 **S05C1582**

SHIRLEY C. BROCK v. ROADHOUSE GRILL, INC., et al.

 Clerk, Supreme Court of Georgia

Case No. A05D0303

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 14 2005

 Clerk, Court of Appeals of Georgia

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

ATLANTA,

JUN 03 2005

The Court of Appeals hereby passes the following order:

**A05D0304. TWM, INC. D/B/A NORRELL STAFFING SERVICES ET AL v.
SHUMEKIA SMITH**

The applicant having filed a notice of withdrawal of this discretionary application, the same is hereby GRANTED.

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

JUN 03 2005

*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. [Signature], Clerk.

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

ATLANTA, JUNE 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0305

JERRA BROWN V. THE STATE

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

70026

03CR53 03CR102

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 02 2005

*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...

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

ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 24 2005**

A05D0306. NIMROD LOUIS v. THE STATE.

Nimrod Louis, *pro se*, filed an application for discretionary appeal in the Supreme Court, which was docketed April 22, 2005. The application seeks review of the trial court's March 3, 2005 order denying Louis' extraordinary motion for new trial. The Supreme Court transferred the case to this Court for disposition on May 6, 2005.

The application, however, is untimely. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Louis filed his application in the Supreme Court more than thirty days after entry of the March 3, 2005 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* **MAY 24 2005**

*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.

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.

(404) 656-3470

Docketing Date: June 13, 2005

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 **S05C1588**

NIMROD LOUIS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0306

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 17 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 20, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0307

MAURICE BALDWIN V. THE STATE

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

71026

96F025

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 20 2005**

*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. Vill. L. Martin

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

ATLANTA, JUNE 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0308
GREG C. GRIFFITH V. CRYSTAL GRIFFITH

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

91026

2003CV79645

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

JUN 07 2005

*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...

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

ATLANTA, JUNE 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0309

ANDREW, MERRITT, REILLY & SMITH, LLP V. REMOTE ACCOUNTING
SOLUTIONS, 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.

92026

04CV106

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 02 2005

*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. Maitland

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

JUN 03 2005

A05D0310. WILLIAMS v. COOPER.

Attorney Rita Tucker Williams has filed an application for appeal from an order granting a sua sponte award of attorney's fees against her under OCGA § 9-15-14 (b).¹ The order complained of also disposes of respondent's motion for attorney's fees under OCGA § 19-6-2 against Williams' client. Such an award is effectively an award of alimony. *Scott v. Scott*, 251 Ga. 619 (308 SE2d 177) (1983). The order also amends the earlier contempt order with respect to the exact amount of prejudgment interest owed by applicant's client. Assuming without deciding that the specific issue Williams complains of is within this court's jurisdiction, appellate jurisdiction over the remaining issues, which may still be subject to review by cross appeal in the event this application is granted, properly lies in the Supreme Court. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); see *Hallman v. Emory University*, 225 Ga. App. 247, 248 (483 SE2d 362) (1997) (physical precedent only); see also *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979) (holding in an analogous context that "an application for contempt to enforce the divorce decree is ancillary to, and an incident of, the divorce action, and jurisdiction to hear an appeal of this nature is in this court"); compare *Kluge v. Renn*, 226 Ga. App. 898 (487 SE2d 391) (1997) (abusive litigation action brought subsequent to underlying divorce case treated as a new action not within the divorce and alimony jurisdiction of the Supreme Court). Because the order taken as

¹We note that it appears that the trial court decided sua sponte to award attorney's fees under OCGA § 9-15-14 without providing notice within 45 days of the resolution of the underlying contempt action that an award under that statute was being contemplated.

a whole is within the appellate jurisdiction of the Supreme Court, Williams's application for appeal 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.*

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

Jill L. Martz, Jr., Clerk.

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

ATLANTA, MAY 25, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0311
MERCED MARTINES V. WORLEY & SONS CONSTRUCTION

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.

99026

2005CV429J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 25 2005**

*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: **MAY 26 2005**

A05D0312. KHOSROW DANESHGARI v. SUSAN DANESHGARI

Khosrow Daneshgari filed an application for discretionary appeal to this Court seeking review of the trial court's April 13, 2005 order denying his motion to set aside the parties' final judgment and decree of divorce on the ground of fraud. The Supreme Court, however, has exclusive jurisdiction over all divorce and alimony cases. Ga. Const. Art. 6, Sec. 6, Par. III (6). Therefore, this application is ordered TRANSFERRED to the Supreme Court.

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

MAY 26 2005

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

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

Will. L. Martin, JR., Clerk.

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

ATLANTA,

JUNE

02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0313
DEMETRI LEWIS V. TRACEY STAFFORD

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

95027

03CV33088

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

JUN 02 2005

*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

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: June 22, 2005

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 **S05C1635**

DEMETRI LEWIS v. TRACEY STAFFORD

Clerk, Supreme Court of Georgia

Case No. A05D0313

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 28 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 27, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0314

ROBERT FLEMING V. THE STATE

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

96027

01R161

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 27 2005**

*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. Mat; R

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

ATLANTA, JUNE 06, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0315
ATLANTA PUBLIC SCHOOLS V. LIONEL GOODE

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

98027

2005CV97328

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 06 2005

*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.

Jill L. Martineau

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

ATLANTA, JUNE 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0316
STEPHEN M. RAINS V. TRACY J. BONNER

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

90027

CE0500319063 CE0400261063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 07 2005

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the minutes of the Court of Appeals of Georgia*

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

Clerk.

William L. Martin, Jr.

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

ATLANTA, JUNE 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0317
CURTIS EUGENE JAMES V. THE STATE

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

70027

2005CR088

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 02 2005

*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, Jr.

 Court of Appeals
of the State of Georgia

ATLANTA, JUNE 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0318
WILLIAM THOMAS GIBBS, III V. THE STATE

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

97027

97B007311

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

JUN 07 2005

*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

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: June 27, 2005

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 **S05C1657**

WILLIAM THOMAS DIXON GIBBS, III v. THE STATE

 Clerk, Supreme Court of Georgia

Case No. A05D0318

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 28 2005

Clerk, Court of Appeals of Georgia



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

ATLANTA, MAY 25, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0319
CRESCENT HEIGHTS LENOX D/B/A LENOX HEIGHTS, LP ET AL
V. KATHIE KULIKOWSKI

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

71027

2002CV49327

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 25 2005

*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, JUNE 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0320

FABIAN KING V. THE STATE

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

91027

02CR187

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 08 2005

*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, JUNE 03, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0321

JOSEPH FULTON V. THE STATE

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

92027

91B05362

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 03 2005**

*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

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: June 17, 2005

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 **S05C1617**

JOSEPH FULTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0321

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 21 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0322
OFFICIAL MORTGAGE & INVESTMENTS, INC., V. DEPARTMENT
OF BANKING AND FINANCE, STATE OF GEORGIA

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

93027

05CV15032

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 17 2005

*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, Jr.

[Handwritten mark]

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

ATLANTA, JUNE 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0323

IN RE: E.S.N. , A CHILD

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

99027

56031428 2003V0027

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 07 2005

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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.

William L. Martin, Jr.

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

ATLANTA, JUNE 20, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0324

DENNY J. CUZZORT, SR., ET AL V. KEVEN J. GEHRING ET AL

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

94027

2003CV983S

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 20 2005**

*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, JUNE 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0325
JESSE L. WILLIAMS V. THE STATE

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

95028

99CR49094

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 02 2005

*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.

E. L. Maitland

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

ATLANTA, JUNE 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0326
JOANN WHIPPLE V. DAVID J. MACDONALD

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

96028

04CV16218

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 14 2005**

*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, JUNE 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0327

CHRISTOPHER DAVID RIMES V. KENNETH V. RIMES ET AL

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

98028

DR031799FR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 14 2005

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

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

Clerk.

Will. L. Mait; R

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 22 2005**

A05D0328. SMITH v. SMITH.

Shona M. Smith brought suit against Douglas O. Smith for divorce and for damages based on incidents of domestic violence. The superior court bifurcated the proceeding. After the divorce proceeding was concluded defendant Smith moved the trial court to dismiss the remaining tort claims based on the theory that the same alleged acts of domestic violence alleged in support of plaintiff's tort claims were also used to enhance her recovery in the divorce case. The motion to dismiss was denied, as was Smith's motion for a certificate of immediate review. Smith nevertheless filed an application for discretionary appeal, alleging that the order complained of is appealable under the collateral order doctrine. We find no merit in applicant's contention. The rejection of an affirmative defense in an action for damages may be effectively reviewed, if necessary, after final judgment. Because we conclude that in the absence of a certificate of immediate review we are without jurisdiction to consider Smith's application, the application is hereby *dismissed* as premature. *Scruggs v. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 22 2005**

*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.

(404) 656-3470

Docketing Date: July 12, 2005

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 **S05C1772**

DOUGLAS O. SMITH v. SHONA M. SMITH

Clerk, Supreme Court of Georgia

Case No. A05D0328

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 13 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 01 2005**

A05D0329. Satisfaction and Service Housing, Inc. v. Southtrust Bank, Inc.

Applicant Satisfaction and Service Housing, Inc. ("Satisfaction") seeks discretionary review of the trial court's order which granted Southtrust Bank, Inc.'s motion for summary judgment. Although the case remains pending below against Randy and Linda Morris, an order granting summary judgment on any issue or as to any party is subject to direct appeal. OCGA §9-11-56 (h); see *Culwell v. Lomas & Nettleton Company*, 242 Ga. 242, 243 (248 SE2d 641) (1978). Satisfaction has not filed a notice of appeal in this case. Accordingly, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j). Satisfaction shall have ten days from the date of this Order to file its notice of appeal. The clerk of the superior court is directed to include a copy of this Order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 01 2005**

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

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

Will. L. Martin, JR.

, Clerk.

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

ATLANTA, JUNE 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0330
FREDRIC ALLEN MOORE V. GLENDA ELAINE MOORE N/K/A
HYATT

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

97028

04CV01045

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 17 2005

*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, Jr.

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

ATLANTA, JUNE 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0331

ALVIN L. HILL D/B/A BAYBERRY REMODELING V. THOMAS

A. FORCE, JR., ET AL

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

71028

05SV00061

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 07 2005

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

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

Clerk.

C. Jill L. Marti

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

ATLANTA, JUNE 23, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0332
OCONEE AREA HOME CARE SERVICES INC., ET AL
V. JAMES LEROY BURTON 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.

91028

05HV118J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 23 2005

*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, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

JUN 02 2005

A05D0333. CLIFFORD DE LOUIS v. ALICE (“ALICIA”) D. SHEPPARD.

Clifford de Louis filed this application for discretionary appeal seeking review of a stalking protective order entered after notice and a hearing, and which enjoined and restrained applicant from certain conduct for a period of 12 months. The order appealed from constitutes an injunction subject to direct appeal under OCGA § 5-6-34 (a) (4). Because the order is directly appealable, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j). Clifford de Louis shall have 10 days from the date of this order 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*

JUN 02 2005

*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, JUNE 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0334

TRACY MARCENELLE V. MATTHEW R. MARCENELLE

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

93028

DR030689BA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 22 2005**

*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. Martine

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

ATLANTA, JUNE 20, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0335

TONY PRATHER V. THE STATE

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

99028

02CR147

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 20 2005**

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

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

Clerk.

Will. L. Martin, Jr.

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

ATLANTA, JUNE 29, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0336

JOSE QUESADA V. SHAPIRO PACKING COMPANY ET AL

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

94028

2005RCCVO145

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 29 2005

*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...

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

ATLANTA,

The Court of Appeals hereby passes the following order: JUN 17 2005

A05D0337. THE STATE v. CAROLYN C. COVINGTON.

On June 2, 2005, the State filed an application seeking an appeal of the order entered April 27, 2005, granting Carolyn C. Covington's motion to suppress. Regardless of whether this case is subject to direct appeal or appeal by application, it is untimely. OCGA §§ 5-6-34 (b), 5-6-35 (d), 5-6-38 (a). Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 17 2005

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

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

William L. Martin, Jr., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 14 2005**

A05D0338. CHEYENNE FRADY, JR. v. THE STATE.

Cheyenne Frady, Jr. filed an application for appeal on June 2, 2005, from an order entered March 9, 2005 denying his "motion to expunge criminal record." Because Frady failed to file his application for appeal within 30 days as required under OCGA § 5-6-35 (d), the application is untimely and is hereby *dismissed* for lack of jurisdiction.¹ *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **JUN 14 2005**

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

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

Will. L. Mart..., Clerk.

¹The Court acknowledges that Frady states that he has requested a copy of the order denying his motion for reconsideration to show that he has timely filed the instant application. The denial of a motion for reconsideration is not subject to appeal, however. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Nor does it extend the time allowed for filing an application for discretionary appeal. OCGA § 5-6-35 (d); see also *In the Interest of A. R. B.*, 209 Ga. App. 324-325 (1) (433 SE2d 411) (1993) (physical precedent only). Therefore, even if Frady had included a copy of the order denying his motion for reconsideration, the outcome would be the same.

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

ATLANTA, JUNE 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0339
RONALD M. ADAMS V. THE COASTAL MARSHLANDS PROTECTION
COMMITTEE DEPARTMENT OF NATURAL RESOURCES ET AL

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

98029

CE0500151063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 22 2005

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

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

Clerk.

Will. L. Martin, III

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

ATLANTA,

The Court of Appeals hereby passes the following order:

JUN 29 2005

A05D0340. ERVIN v. BOARD OF COMMISSIONERS OF GWINNETT COUNTY, GEORGIA.

Anthony Ervin seeks an appeal from the denial of a “motion for new trial” filed in response to an order entered September 21, 2004, reversing in part a decision of the Merit System Board of Gwinnett County. Respondent argues in part that because there was no trial or taking of original evidence in this proceeding, which the superior court described as an “appeal by way of application for writ of certiorari,” it follows that Ervin’s motion was in substance a mere motion for reconsideration. We must agree. The denial of such a motion is not appealable in its own right, nor does the filing of such a motion extend the time for filing an application for appeal under OCGA § 5-6-35 (d). See *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 Ervin did not timely apply for an appeal from the superior court’s final order of September 2004 and because his subsequent motion did not otherwise extend the time to file such an application, Ervin’s application for appeal is *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta **JUN 29 2005**

*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: **JUL 14 2005**

A05D0340. ERVIN v. BOARD OF COMMISSIONERS OF GWINNETT COUNTY, GEORGIA.

This court dismissed Anthony Ervin’s application for appeal as untimely filed after concluding that his “motion for new trial” was not valid for purposes of extending the time for filing an application for appeal under OCGA § 5-6-35 (d). On motion for reconsideration Ervin essentially argues that, because a trial by jury is technically authorized in certiorari proceedings, this gives validity to his motion for new trial for purposes of extending the time for filing an application for appeal. We disagree. Even assuming that the proceeding the superior court treated as an “appeal” qualifies as a “trial” from which a motion for new trial could theoretically have been made, Ervin fails to demonstrate that he made any particular argument in his motion related to the determination of substantive facts by the court below. This is true even though Ervin cited the general grounds in his motion. See *Bank South Mortgage, Inc. v. Starr*, 208 Ga. App. 19, 20 (429 SE2d 700) (1993). Ervin’s motion for reconsideration is therefore *denied*.

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta **JUL 14 2005**

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

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

William L. Martin, Jr., Clerk.

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

ATLANTA, JUNE 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0341
THOMAS COVENANT VICKERS V. THE STATE

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

70029

99CR0190

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 17 2005**

*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:

JUL 07 2005

A05D0342. TIMOTHY D. FRANKLIN v. STEVE CHEATWOOD.

By order dated June 8, 2005, this Court ordered Timothy D. Franklin to supplement his application for discretionary appeal with a stamped "filed" copy of the order he seeks to appeal. It appears, however, that the copy of the order included with his application demonstrates that it was in fact filed in open court, which satisfies this Court's Rule 31 (d). Accordingly, this Court's June 8, 2005 order is VACATED.

Upon considering Franklin's application for discretionary appeal on the merits, the application is hereby DENIED.

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

JUL 07 2005

*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. L. Mait, Jr., Clerk.

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

ATLANTA, JUNE 15, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0343

JAMES C. SHORT V. THE STATE

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

71029

CR012256BA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 15 2005

*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

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

ATLANTA,

JUN 23 2005

The Court of Appeals hereby passes the following order:

**A05D0344. WILLIAM R. McNEESE v. GEORGIA DEPARTMENT OF
HUMAN RESOURCES ex rel. BRITTANY McNEESE.**

William R. McNeese filed this application for discretionary appeal from the April 15, 2005, order finding him in contempt of court for failing to pay child support. The application was docketed in this Court on June 6, 2005.¹

An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because McNeese filed his application 52 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. For this reason, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 23 2005**

*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.

¹McNeese's application was twice rejected for filing. The first time, the stamped filed copy of the order being appealed lacked the signature of the judge in violation of Court of Appeals Rule 31 (d). The second time, McNeese failed to include a certificate of service in violation of Court of Appeals Rule 6.

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

ATLANTA, JULY 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0345

MINNIE G. BOSWELL HOSPITAL ET AL V. ADDIE STEMBRIDGE

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

92029

05CV135

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 08 2005

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

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

Clerk.

Will. L. Mait, Jr.

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

ATLANTA, AUGUST 22, 2005

The Court of Appeals passed the following order

Case No. A05D0346

MIRCEA COMAN V. SUNRISE STUCCO, INC., ET AL

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

93-029
05A43812

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 22, 2005*

*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

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUN 22 2005

A05D0347. Donald Carten, Sr. v. Phyllis Woods

Applicant Donald Carten, Sr. filed an application for discretionary appeal seeking review of the trial court's order concerning child support following a change in custody. In 1995, Carten and Phyllis Woods were divorced and a final judgment and decree of divorce was entered awarding sole custody of the three minor children to Woods. On August 9, 2004, Carten filed a motion for change of custody after his son, Donald Carten, Jr, who was 14 years old, requested to live with his father. The trial court awarded Carten custody of his son and that issue is not disputed. After awarding Carten custody of his son, the trial court modified the amount of child support Carten had to pay to be based upon two children instead of three. However, the trial court did not require Woods to pay child support to Carten. The trial court specifically stated that it found no special circumstances existed in the award of child support. The trial court then found that all other provisions of the Final Order of Divorce remain the same.

The sole issue raised in this application is whether the trial court erred in calculating the amount of child support owed. The issue of custody is not raised in this application. Thus, the underlying subject matter of this application is the validity of the modification of the provision contained in the parties' final judgment and decree of divorce pertaining to the amount of child support due and owing monthly by Carten. Under Article VI, Section VI, Paragraph III (6), Constitution of Georgia of 1983, the Supreme Court of Georgia shall have appellate jurisdiction over "[a]ll divorce and alimony cases." *Schmidt v. Schmidt*, 270 Ga. 461, 462 (2) (510 SE2d 810) (1999). In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450,

451 (330 SE2d 706) (1985) (the purpose of alimony is to provide *support* for the needy spouse and minor children). As the only issue in this case is whether the trial court erred in modifying an award of alimony in the form of child support that was entered in a final judgment and decree of divorce, this court lacks appellate jurisdiction over this application, and the application is TRANSFERRED to the Supreme Court of Georgia. See S05D0639; *Pearson v. Pearson*, 265 Ga. 100 (454 SE2d 124) (1995).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 22 2005

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

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

Will. L. Martin, Jr., Clerk.

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

ATLANTA, JUNE 29, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0348
MARTIN MARIETTA MATERIALS, INC., D/B/A MARTIN MARIETTA
AGGREGATES, ET AL V. WILLIE DIGGS

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

94029

2005CV0234

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 29 2005

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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; JR

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

ATLANTA, JUNE 28, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0349
GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX. REL.
TIFFANY PRATER V. DEBBIE A. PRATER 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.

95030

05CV14555

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

JUN 28 2005

*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. Maitland

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

ATLANTA, JUNE 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0350

BRADLEY LANE V. THE STATE

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

96030

02CR258

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 14 2005

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the minutes of the Court of Appeals of Georgia*

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

Clerk.

William L. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 21 2005**

A05D0351. MARK ANDREW LOFTUS v. SALLY MALAN.

Mark Andrew Loftus filed an application for discretionary appeal in this custody modification action. The only stamped, filed order Loftus included with his application was entered November 17, 2004.¹ Loftus' application was docketed in this Court June 10, 2005. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Loftus filed his application 205 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. For this reason, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 21 2005**

*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.

¹In his application, Loftus refers to a May 11, 2005, order on a motion to quash and motion for new trial, but that order is not included in the application. See Court of Appeals Rule 31 (d).

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

ATLANTA, JULY 07, 2005

The Court of Appeals passed the following order

Case No. A05D0351

MARK ANDREW LOFTUS V. SALLY MALAN

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

98-030
2003CV67145 2004CV89763

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 07, 2005*

*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: July 27, 2005

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 **S05C1892**

MARK ANDREW LOFTUS v. SALLY MALAN

 Clerk, Supreme Court of Georgia

Case No. A05D0351

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

 JUL 28 2005 Clerk, Court of Appeals of Georgia

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

ATLANTA, JULY 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0352
MOCK & MANN CONSTRUCTION, INC V. JOHN MICHAEL MILLER
CONSTRUCTION, INC., ET AL

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

90030

05A025481

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 07 2005

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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...

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 12 2005**

A05D0353. Interfinancial Midtown, Inc. v. Choate Construction Company

Applicant Interfinancial Midtown, Inc. (“Interfinancial”) filed this application for discretionary appeal seeking review of the trial court's award of attorney fees pursuant to OCGA § 9-15-14. Generally, a party must follow the discretionary appeal procedures to appeal the award of OCGA § 9-15-14 attorneys fees. OCGA § 5-6-35 (a) (10). However, because this case remains pending in the trial court, no final judgment has been entered, and Interfinancial is thus required to follow the interlocutory appeal procedures. OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). Interfinancial’s failure to follow the interlocutory appeal procedures 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* **JUL 12 2005**

*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.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

JUL 08 2005

A05D0354. BENNIE WALKER v. RALPH KEMP.

On June 17, 2005, Bennie Walker filed this application for discretionary appeal from the superior court's May 15, 2005 order denying his petition for writ of habeas corpus. Ordinarily, this Court will transfer an appeal from the denial of a petition for writ of habeas corpus to the Supreme Court for disposition. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4). This application, however, is untimely. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Walker filed his application more than thirty days after entry of the order he seeks to appeal, it is untimely and we thus lack jurisdiction to consider it. For this reason, the application will not be transferred to the Supreme Court and is instead hereby ordered DISMISSED pursuant to Court of Appeals Rule 32 (c).

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

JUL 08 2005

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

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

Will. L. Mantz, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 09 2005**

A05D0354. BENNIE WALKER v. RALPH KEMP.

On August 4, 2005, Bennie Walker filed a "Motion to File for Reconsideration Out-of-Time," seeking an extension of time to file a motion for reconsideration of this Court's July 8, 2005 order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed within 10 days from the rendition of the judgment. It also provides that "[n]o extension of time shall be granted except for providential cause on written application made before the expiration of 10 days." Because Walker failed to make his application for an extension within 10 days of the July 8, 2005 order dismissing his application for discretionary appeal, he has failed to meet the prerequisites for obtaining an extension. Accordingly, Walker's motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 09 2005

*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. Matzke, Clerk.

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

ATLANTA, JUNE 27, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0355
BILLY EUGENE SANDFORD V. WILLIAMS BROTHERS TRUCKING
ET AL

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

71030

15105CV0200

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 27 2005

*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:

JUL 08 2005

A05D0356. R. SHANE JONES v. CECIL KEY PAVING, INC.

On June 20, 2005, R. Shane Jones filed this discretionary application seeking review of the superior court's May 17, 2005, denial of his motion to set aside a default judgment. An application for discretionary appeal must be filed within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Since Jones filed his application 34 days after the entry of the order complained of, the application is untimely and this Court lacks jurisdiction to consider it. Therefore, the application is hereby DISMISSED.

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

JUL 08 2005

*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, JULY 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0357
DEBRA ROBERTS V. THE JONES CO./FLASH FOODS/COVENANT
ADMIN.

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.

92030

0586CA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 07 2005**

*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; R

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

ATLANTA, JULY 14, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0358
FRANKLIN K. KELSEY V. GEORGIA DEPARTMENT FO HUMAN
RESOURCES

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

93030

05V232

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 14 2005

*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, JULY 12, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0359
SOUTHERN HARVEST INSURANCE AGENCY, INC., ET AL
V. TERRY WILSON

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

99030

05DV0068

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 12 2005

*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

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 25 2005**

A05D0360. DENNIS KEYS v. GRETCHEN ROBERTSON.

On July 14, 2005, Dennis Keys filed a motion for reconsideration of this Court's June 29, 2005 order denying his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed within ten days from the rendition of the judgment. The certified mail and commercial overnight delivery rules do not apply to motions for reconsideration. See Rule 4. Keys' motion for reconsideration is thus untimely and is hereby DISMISSED.

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

JUL 25 2005
*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, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 07 2005**

A05D0361. THIRD BEDFORD PINE APTS., LTD. v. TAQUSIA GIBSON.

On June 20, 2005, plaintiff Third Bedford Pine Apts., Ltd. filed an application for discretionary appeal of the state court's order entered May 19, 2005, denying its motion to dismiss the appeal of defendant Taqusia Gibson and entering judgment in favor of Gibson in a dispossessory action.

This dispossessory action was commenced by plaintiff in magistrate court. On October 14, 2004, the magistrate court entered an order directing that a writ of possession be issued in favor of plaintiff; however, the parties were not notified of the entry of the order. On November 15, 2004, Gibson filed a motion to set aside the judgment of the magistrate court. On December 14, 2005, the magistrate court granted the motion to set aside and re-entered its order directing that the writ of possession be issued. On December 15, 2004, Gibson filed an appeal in state court of the order of December 14, 2005. Plaintiff filed a cross appeal and motion to dismiss appeal. On May 19, 2005, the state court entered an order denying plaintiff's motion to dismiss appeal and entered judgment in favor of Gibson as to the dispossessory action. It is from this order that plaintiff seeks a discretionary appeal.

The underlying subject matter of this application is a dispossessory action, and the underlying subject matter generally controls over the relief sought in determining the proper procedure to follow on appeal. *Rebich v. Miles*, 264 Ga. 467, 469 (448 SE2d 192) (1994). Under OCGA § 44-7-56, an appeal from any judgment by the trial court in a dispossessory proceeding must be filed within seven days of the date the judgment was entered. *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521, 523 (521 SE2d 456) (1999); accord *America Net, Inc. v. U. S. Cover, Inc.*, 243 Ga. App. 204

(532 SE2d 756) (2000). Third Bedford Pine Apts., Ltd. failed to file its application for discretionary appeal with this Court within seven days of the date of the order entered May 19, 2005. This Court will not permit the applicant to utilize the discretionary appeal statute to circumvent the requirements of OCGA § 44-7-56. Accordingly, this application is DISMISSED.

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

JUL 07 2005

*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:

JUN 28 2005

A05D0362. CHARLIE BRANNER, JR. v. THE STATE.

On June 21, 2005, Charlie Branner, Jr. filed a pro se application seeking review of the superior court's April 15, 2005, denial of his "Motion for Out of Time Appeal." An application for discretionary appeal must be filed within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Since Branner filed his application 67 days after the entry of the order complained of, the application is untimely and this Court lacks jurisdiction to consider it. Therefore, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 28 2005

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. Martini

, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 13 2005**

A05D0363. WILLEM WINKEL ET AL. v. DIANE MALONEY

Applicants Willem and Joan Winkel filed this application for discretionary appeal seeking review of the trial court's denial of attorney fees pursuant to OCGA § 9-15-14. Generally, a party must follow the discretionary appeal procedures to appeal the award or denial of OCGA § 9-15-14 attorney fees. OCGA § 5-6-35 (a) (10). However, the materials provided in support of this application show that at the time applicants moved for attorney fees, the action remained pending below against other defendants. The application fails to show any order of finality, pursuant to OCGA § 9-11-54 (b), with respect to applicants dismissal as defendants in the case below. Neither does the application show the entry of a final judgment so that the case is no longer pending below. OCGA § 5-6-34 (a) (1). Under Court of Appeals Rule 31 (b), the burden is upon the applicants to provide materials sufficient to apprise this Court of the appellate issues. Since the last indication provided by the application is that the case remains pending in the trial court, we must conclude that applicants were required to follow the interlocutory appeal procedures. OCGA § 5-6-

34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). Applicants' failure to follow the interlocutory appeal procedures deprives this Court of jurisdiction to consider this application. Therefore, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 13 2005

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

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

Will. L. Mant, Jr., Clerk.

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

ATLANTA, JULY 13, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0364
CHRISTOPHER GIBSON 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.

90031

SU01CR1704

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

JUL 13 2005

*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, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 28 2005**

A05D0365. MATTHEW D. CUYLER v. PAMELA ANDERSON ET AL.

Matthew D. Cuyler, who is proceeding pro se, has filed this application for discretionary appeal from two orders, one denying a certificate of immediate review and the other granting summary judgment to defendant Pamela Anderson. An order granting summary judgment is subject to direct appeal. OCGA § 9-11-56 (h); see *Culwell v. Lomas & Nettleton Company*, 242 Ga. 242, 243 (248 SE2d 641) (1978). Because it does not appear that the judgment at issue here is subject to the discretionary appeal procedure, Cuyler's application is hereby *granted* as OCGA § 5-6-35 (j) requires. Cuyler 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 **JUN 28 2005**

*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: **JUL 07 2005**

A05D0366. ELIZABETH SUTTON v. JAMES SUTTON.

Elizabeth Sutton seeks an appeal from an order denying her motion for contempt of the parties' final divorce decree and consent judgment. Because the ruling complained of directly addresses enforcement of the non-custodial provisions of a final divorce decree, the application is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); 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 **JUL 07 2005**

*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, JULY 15, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0367
VISTA POINTE HOLDINGS, LLC V. A.S. KLEEMAN & ASSOCIATES, INC.
ET AL

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

71031

04C023622

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

JUL 15 2005

*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, JULY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0368
MOHAWK INDUSTRIES, INC., ET AL V. SARA E. SMITH

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

91031

90528

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 26 2005

*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

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

 Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 15, 2005

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 **S05C1998**

MOHAWK INDUSTRIES, INC., et al. v. SARA SMITH

 Clerk, Supreme Court of Georgia

Case No. A05D0368

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 16 2005

 Clerk, Court of Appeals of Georgia

Court of Appeals
of the State of Georgia

ATLANTA, AUGUST 12, 2005

The Court of Appeals passed the following order

Case No. A05D0369

ALBERTA SMITH V. THE STATE

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

92-031
03SC05822

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 12, 2005*

*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.

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 1, 2005

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 **S06C0060**

ALBERTA SMITH v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0369

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SFP 09 2005

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 04 2005**

A05D0370. BRIAN BRETZING v. DONALD BARROWS, WARDEN, et al

On June 20, 2005, this court received a pleading entitled "Permission to Appeal" from Brian Bretzing, pro se. The pleading merely recited that Bretzing had filed a complaint in the Lowndes County Superior Court and that the lower court had dismissed the complaint on June 1, 2005. The pleading contained no argument, had no attachments and did not comply with either Court of Appeals Rule 30 (b) and (d) or Rule 31 (b) and (d).

As a result, the Clerk of this court returned the pleading to Bretzing on June 20, 2005, provided him with a copy of this court's rules, and advised him that a discretionary appeal under OCGA § 5-6-35 required that a stamped file copy of the order he sought to appeal be attached. He also informed Bretzing that he should attach any other matters he deemed necessary.

Bretzing, however, did not return his application to this court until July 5, 2005. Because Bretzing did not file his application to appeal within 30 days of June 1, 2005, the date of the order dismissing his complaint, as required by OCGA § 5-6-35 (d), his application must be dismissed for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582

(420 SE2d 393) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 04 2005**

*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.

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.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: August 22, 2005

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 **S05C2054**

BRIAN BRETZING v. DONALD BARROWS, Warden, et al.

Clerk, Supreme Court of Georgia

AUG 23 2005

Case No. A05D0370

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA,

JUL 25 2005

The Court of Appeals hereby passes the following order:

A05D0371. Herrington v. Whitlock

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be DENIED. Respondent's motion for frivolous appeal penalty is likewise DENIED.

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

JUL 25 2005

*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: **JUL 15 2005**

**A05D0372. JUANITA W. JENKINS-FIELDS v. SANDER M. HOLLANDER,
A/K/A SANDRE M. HOLLANDER ET AL.**

Juanita W. Jenkins-Fields, plaintiff below, has filed a timely application for discretionary appeal seeking to appeal an order granting summary judgment to all the defendants in this slip and fall case. The order is a final judgment under OCGA § 5-6-34 (a) (1), and no provision of OCGA § 5-6-35 (a) is applicable in this case. Thus, Jenkins-Fields was not required to file an application for discretionary appeal. Accordingly, this application is GRANTED pursuant to OCGA § 5-6-35 (j). Jenkins-Fields 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 **JUL 15 2005**

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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, JULY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0373
CAROL LYNN SIPPEL, A/K/A CAROLE LYNN MCNEELY V.
JOHN ALTON MCNEELY

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

95032

04CV00312

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 26 2005**

*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: **JUL 27 2005**

A05D0374. JEFFERY DEWAYNE LAND, JR. v. THE STATE.

Jeffery Dewayne Land, Jr. seeks an appeal from an order denying his "Motion for Sentence Modification." Land contends in part that the trial court erred in imposing both of his firearms offense sentences consecutive to one aggravated assault sentence when OCGA § 16-11-106 (b) requires that firearms offense sentences be consecutive to the offense underlying that conviction. See *Owens v. State*, 271 Ga. App. 365 (609 SE2d 670) (2005). As held in *Jones v. State*, 278 Ga. 669 (604 SE2d 483) (2004), the denial of a motion contending that the court has imposed a sentence that the law does not allow is directly appealable. Accordingly, Land's application is hereby *granted* as required under OCGA § 5-6-35 (j).

Land 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* **JUL 27 2005**

*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, JULY 27, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0375
A.A. PROFESSIONAL BAIL ET AL 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98032
03D02796

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 27 2005**

*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

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

ATLANTA, AUGUST 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0376
STEPHEN A. CARLSON 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.

90032
295F15

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 02 2005**

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

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

Clerk.

Will. L. Martin, Jr.

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

ATLANTA, JULY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0377

BETTY BAILEY ET AL V. ELLA MCNEALY EXECUTRIX OF THE HEIRS
OF GEORGE DAVIS SR.

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.

70032

05CV268

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 26 2005**

*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, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 26 2005**

A05D0378. DENNIS L. CARR v. THE STATE.

Dennis L. Carr, *pro se*, filed this application for discretionary review, seeking an appeal from the superior court's April 18, 2005 order denying his motion for out of time appeal and extraordinary motion for new trial. The application was docketed in this Court on July 12, 2005,¹ eighty-five 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 Carr 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. Therefore, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 26 2005**

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.

¹Carr sent the application originally on May 6, 2005. The application did not include a certificate of service, and although the application contained the order Carr sought to appeal, it was not signed by the judge. Accordingly, by letter dated May 11, 2005, the Clerk of this Court informed Carr that the application would not be docketed without a stamped-filed copy of the order signed by the judge and a certificate demonstrating service on opposing counsel.

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

ATLANTA, JULY 21, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0379
ROBERT ALCALA V. THE STATE

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

71032

00CR5473

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

JUL 21 2005

*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. Mait; JR

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

ATLANTA, AUGUST 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0380
WARREN COLLINS V. THE STATE

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

91032

01R9368 01R9126

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

AUG 05 2005

*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.

W. L. Martin, Jr.

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

ATLANTA, AUGUST 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0381

TAMMY SUE CASTRO V. DEWEY HOUSTON BRUMMETT

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.

92032

2003V403

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 09 2005

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

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

Clerk.

Will. L. Mait, Jr.

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

ATLANTA, AUGUST 11, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0382
JOSEPH CECIL SEGO, 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.

93032

2004CR01629

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

AUG 11 2005

*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, Jr.

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

ATLANTA, AUGUST 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0383
UNIVERSAL FOREST PRODUCTS ET AL V. KRISTINIA NICHOLSON
ET AL

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

99032

05CV3541

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 02 2005

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

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

Clerk.

Will. L. Mait, Jr.

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

ATLANTA, AUGUST 16, 2005

The Court of Appeals passed the following order

Case No. A05D0383

UNIVERSAL FOREST PRODUCTS ET AL V. KRISTINIA NICHOLSON
ET AL

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

99-032
05CV3541

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 16, 2005*

*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; R

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 6, 2005

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 **S06C0039**

UNIVERSAL FOREST PRODUCTS et al. v. KRISTINIA NICHOLSON et al.

Clerk, Supreme Court of Georgia

Case No. A05D0383

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 08 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 11, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0384
COBB COUNTY SCHOOL DISTRICT V. VERA HITT

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

94032

051368218

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 11 2005

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

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

Clerk.

Will. L. Martin, Jr.

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

ATLANTA, JULY 26, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0385
BRANCH BANKING & TRUST COMPANY V. MICHAEL GEBRE

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

95033

03SV01019

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 26 2005**

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

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

Clerk.

Will. L. Martin, Jr.

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

ATLANTA, AUGUST 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0386

ENOC BARRAZA V. THE STATE

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

96033

SU05CR0480

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 09 2005

*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: **JUL 28 2005**

A05D0387. CHARLES WATKINS JR. v. THE STATE.

On July 19, 2005, Charles Watkins, Jr., pro se, filed this discretionary application seeking review of the denial of his extraordinary motion to set aside the judgment of conviction in a criminal prosecution for child molestation that was affirmed in an unpublished opinion of this Court. See Case No. A94A1931, decided January 12, 1995. Because Watkins raises no issues that could entitle him to another appeal in this Court, we lack jurisdiction to consider it. See *Daniels v. State*, 244 Ga. App. 522, 523 (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). Watkins "is not entitled to another bite at the apple by way of a second appeal." *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001). When a defendant attempts a second appeal of the same judgment of conviction, "it is improper and should be dismissed." *Miller v. State*, 277 Ga. 372 (589 SE2d 108) (2003). Therefore, this application is DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 28 2005*

*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 14, 2005

Honorable Court of Appeals hereby passes the following order:

A05D0387. CHARLES WATKINS JR v. THE STATE.

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

98-033

93B006911

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 14 2005

*I certify that the above is a true extract from
minutes 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.



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

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 03 2005**

A05D0387. CHARLES WATKINS JR v. THE STATE.

Upon consideration of a second motion for reconsideration, it is ordered that it be dismissed due to the absence of an order permitting the filing of a second motion for reconsideration. Court of Appeals Rule 37 (d).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **OCT 03 2005**

*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.

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.

(404) 656-3470

Docketing Date: October 11, 2005

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 **S06C0262**

CHARLES WATKINS, JR. v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0387

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 14 2005

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0388

DERRICK GRAYSON ET AL V. ATLANTA POSTAL CREDIT UNION

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

90033

89V24485

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 17 2005**

*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,

The Court of Appeals hereby passes the following order: **AUG 03 2005**

A05D0389. Uzomba v. Duru

Chris Uzomba seeks an appeal from the trial court's order finding him in willful contempt of the child support provisions of the parties' final divorce decree. Because the ruling complained of directly addresses enforcement and/or modification of the non-custodial provisions of a final divorce decree, Uzomba's application is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); *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 **AUG 03 2005**

*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.

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

ATLANTA, AUGUST 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0390
BEATRIZ CERVANTES V. WAYNE FARMS ET AL

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

97033

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 10 2005**

*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: JUL 28 2005

A05D0391. STEVE MIZE v. REGIONS BANK.

Defendant Steve Mize, acting pro se, has filed an application seeking a discretionary appeal of the post judgment order of the Superior Court of Hart County, entered June 30, 2005, ordering Mize to respond to the interrogatories and request for production of documents filed by plaintiff Regions Bank and "taking under advisement the issue of whether or not to impose sanctions or to award attorney fees." The order sought to be appealed reflects on its face that issues are still pending before the superior court and accordingly, the order is an interlocutory order.

Appeals from interlocutory order must comply with the application procedures set forth in OCGA § 5-6-34 (b). And, the discretionary-application statute does not relieve an applicant who seeks review of an interlocutory order, from the requirement to obtain a timely certificate of immediate review under OCGA § 5-6-34 (b). *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. App. 587, 588 (1) (408 SE2d 103) (1991). Because Mize has not complied with the interlocutory application procedures of OCGA § 5-6-34 (b), this Court is without jurisdiction over this application and it is DISMISSED. See *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997); *American Express Co. v. Yondorf*, 169 Ga. App. 498 (313 SE2d 756) (1984).

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.*

William L. Maitland, Clerk.

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

ATLANTA, AUGUST 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0392

ATLANTA INDEPENDENT SCHOOL SYSTEM V. AARON TOOKES

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

91033

2002CV47514

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 05 2005**

*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

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 25, 2005

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 **S05C2104**

ATLANTA INDEPENDENT SCHOOL SYSTEM v. AARON TOOKES

Clerk, Supreme Court of Georgia

Case No. A05D0392

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 22 2005**

A05D0393. KARLA BELLI LEAVENWORTH v. ROBERT W. LEAVENWORTH.

Karla Belli Leavenworth has filed an application seeking a discretionary appeal of a trial court's order denying her motion to dismiss the respondent's motion to enforce a prior custody ruling from a divorce action. In its order, the trial court scheduled a later hearing on respondent's petition for contempt. Thus, the order appealed from is a temporary order which did not resolve all issues in the case. Applicant was accordingly required to follow the procedures for interlocutory review as set forth in OCGA § 5-6-34 (b). *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997). The discretionary application statute does not relieve applicant from the interlocutory review requirement of a certificate from the trial court.

Apparently the applicant has requested a certificate of immediate review and the trial court has refused to grant the certificate. Generally, the appellate courts will not review the discretion of the trial court to grant or refuse a certificate for immediate

review of interlocutory rulings. *Houser v. State*, 234 Ga. 209 (214 SE2d 893) (1975). Nonetheless, the Supreme Court has crafted an exception to the requirement of a certificate applicable under certain limited circumstances. *Waltrip v. Head*, 272 Ga. 572, 575 (532 SE2d 380) (2000). This application, however, fails to show that any of the limited circumstances to which the exception may be applicable are present in this case. Therefore, adherence to the general rule is required. See *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (3) (2001). The applicant's failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) deprives this Court of jurisdiction to consider this application, which is hereby DISMISSED.

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

AUG 22 2005

*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, AUGUST 19, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0394
LESTER G. DALLAS V. FLYING J, 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.

93033
CE0500642063

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 19 2005**

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

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

Clerk.

Will. L. Mait, Jr.

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

ATLANTA, AUGUST 02, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0395
BARBARA CHRISTINE SMITH V. THE STATE

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

99033

SU05CV0127

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 02 2005**

*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.

[Handwritten Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 19 2005**

**A05D0396. KENNETH MERRELL KNOTT ET AL. v. ABF FREIGHT
SYSTEM, INC. ET AL.**

Kenneth Merrell and Annette Knott filed this application for appeal, seeking review of the trial court's order denying their motion to reduce the fee of a certain expert witness in their pending lawsuit. The discovery ruling they seek to appeal, however, is not a final judgment in the case. Thus, they were required to file an application for interlocutory appeal pursuant to OCGA § 5-6-34 (b). For this Court to have jurisdiction to consider an application for interlocutory appeal, a certificate of immediate review must be filed with the trial court within ten days after entry of the order sought to be appealed. *Id.*; *Turner v. Harper*, 231 Ga. 175, 176 (200 SE2d 748) (1973). The Knotts allege that they requested a certificate of immediate review, but the trial court never ruled on their request. Nonetheless, their failure to have a certificate of immediate review timely filed with the trial court deprives this Court of jurisdiction to consider this application, which is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 19 2005

*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. Mantz, Jr.

, Clerk.

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

ATLANTA, AUGUST 09, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0397
SCOTT RILEY V. JACKIE M. HARRIS

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.

95034

200515104

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 09 2005

*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 10, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0398

COBB COUNTY, GEORGIA ET AL V. VININGS ASSOCIATES II, LLC
ET AL

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

96034

041920724

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 10 2005

*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.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

 Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 30, 2005

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 **S06C0014**

COBB COUNTY et al. v. VININGS ASSOCIATES II, LLC, et al.

Clerk, Supreme Court of Georgia

Case No. A05D0398

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office


SEP 02 2005
SEP 02 2005

Clerk, Court of Appeals of Georgia



CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

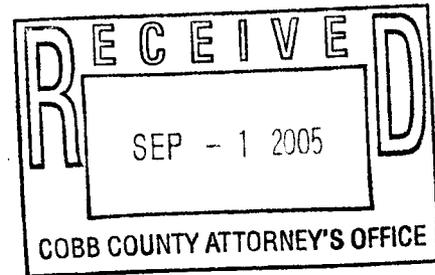
Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

(404) 656-3470

Sherie M. Welch, Clerk

Docketing Date: August 30, 2005

Joseph B. Atkins
Cobb County Attorney's Office
100 Cherokee Street, Suite 595
Marietta, GA 30090-0000



Case No. S06C0014

COBB COUNTY, GEORGIA et al. v. VINNINGS ASSOCIATES II, LLC, et al.

A Petition for Certiorari in Court of Appeals Case No. A05D0398 has been docketed in the Supreme Court today and assigned the case number shown above.

Responses to petition for certiorari are encouraged and should be filed within **twenty** days of docketing (See Rule 42).

Sherie M. Welch, Clerk

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

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 10 2005**

A05D0399. MCGILL HOMES, INC. v. LOUIE S. WEAVER.

McGill Homes, Inc. filed an application for discretionary appeal in this Court on July 26, 2005, from an order entered on June 24, 2005, denying a motion to vacate an arbitration award and affirming the arbitration award in its entirety. Because McGill Homes, Inc. failed to file the application for appeal in this Court within 30 days of the order complained of 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 377) (2000).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **AUG 10 2005**

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

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

Will. L. Martin, Jr. , Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order:

AUG 23 2005

A05D0399. MCGILL HOMES, INC. v. LOUIE S. WEAVER.

Via an order entered on August 10, 2005, this application was dismissed based on a conclusion that it was not timely filed. Applicant McGill Homes, Inc. filed a timely motion for reconsideration of that determination. The motion for reconsideration is granted, and it is hereby ordered that the above referenced dismissal order is vacated and the application is reinstated.

Applicant seeks review of a final order denying a motion to vacate an arbitration award. See generally OCGA § 9-9-13. The underlying case is not subject to the discretionary appeal procedure of OCGA § 5-6-35, and because applicant apparently has not filed a notice of appeal seeking a direct appeal of the final order sought to be reviewed, this application is ordered granted under OCGA § 5-6-35 (j).

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

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

AUG 23 2005

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

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

William L. Martin, JR., Clerk.

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

ATLANTA, AUGUST 17, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0400
JIMMY HART 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.

90034
05R3129

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

AUG 17 2005

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

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

Clerk.

Will. L. Martin, Jr.

Court of Appeals
of the State of Georgia

ATLANTA, AUGUST 23, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0401
MARQUIS SANFORD V. THE STATE

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

70034

58084

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 23 2005

*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. Martz

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

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 23 2005**

A05D0402. VICTORIA A. MOSES v. KELVIN D. KING.

Victoria A. Moses filed this application for discretionary appeal from the superior court's order changing physical custody of the parties' minor child to Kelvin D. King. In that order, the trial court also granted Moses's motion for new trial on the issue of allowing the child's testimony to be recorded. An order granting in part and denying in part a motion for new trial is not a final judgment within the meaning of OCGA § 5-6-34 (a) (1). *MTW Investment Company v. Alcovy Properties, Inc.*, 223 Ga. App. 230, 231 (447 SE2d 395) (1996). Appeal of the order is therefore subject to the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b). *Rockdale Awning &c. Co. v. Kerbow*, 210 Ga. App. 119, 121 (2) (435 SE2d 619) (1993). Because Moses failed to follow the interlocutory appeal procedure as required, this discretionary application is hereby **DISMISSED** for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 23 2005**

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

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

William L. Martin, JR. , Clerk.

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

ATLANTA, AUGUST 05, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0403

GEORGE A. WEST, III V. EAGLE EXCAVATION, INC ET AL

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

71034

CV050781

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 05 2005

*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: **AUG 05 2005**

A05D0404. DAVID CHARLES SUTTON v. THE STATE.

On August 1, 2005, David Charles Sutton filed this application for discretionary appeal from the superior court's May 24, 2005 order denying his "Motion to Grant Relief Demanded Due to Judgment by Default," in his mandamus action. Ordinarily, this Court will transfer an appeal in a mandamus action to the Supreme Court for disposition. See Ga. Const. 1983, Art. VI, Sec. VI, Par. III (5). This application, however, is untimely. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Sutton filed his application more than 30 days after entry of the order he seeks to appeal, it is untimely and we thus lack jurisdiction to consider it. For this reason, the application will not be transferred to the Supreme Court and is instead hereby DISMISSED pursuant to Court of Appeals Rule 32 (c). The Court observes that Sutton's direct appeal from the same order was transferred to the Supreme Court on July 13, 2005.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 05 2005**

*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, AUGUST 30, 2005

The Court of Appeals passed the following order

Case No. A05D0404

DAVID CHARLES SUTTON V. THE STATE

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

91-034
05A018446

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 30, 2005*

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

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

Clerk.

C. Will. L. Martin, JR.

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

ATLANTA, AUGUST 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0405
SCOTT GRAHAM ET AL V. JAMES H. HUTSON ET AL

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

92034

98A31702

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 24 2005**

*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:

AUG 25 2005

A05D0406. DAVIS v. STONE.

Donnella Davis filed an application for appeal on August 2, 2005, from an order entered on June 16, 2005, granting primary custody of the parties' minor child to respondent. Because Davis failed to file her application within 30 days of the order complained of as required under OCGA § 5-6-35 (d), her 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

AUG 25 2005

*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. Martz, Jr., Clerk.

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

ATLANTA, AUGUST 16, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0407
TONY G. COLBERT V. MOUNT VERNON MILLS ET AL

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

99034

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

AUG 16 2005

*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: **AUG 19 2005**

A05D0408. JEFFREY CLAY MOORE v. THE STATE.

Jeffrey Clay Moore pled guilty to aggravated assault on February 20, 2005. He was sentenced to 15 years, to serve five in prison with the remainder on probation. In August 2000, the trial court revoked two years of Moore's probation for technical and non-violent misdemeanor probation violations. On August 15, 2002, the court revoked six years of Moore's probation on the basis of the new violent misdemeanor offense of simple assault. Moore subsequently filed a motion to modify sentence, which the trial court denied on November 20, 2004, on the basis that the sentence imposed was proper. Moore appealed this order, docketed in this Court as direct appeal A05A1469, which this Court dismissed on April 6, 2005, on the basis that the notice of appeal was not timely filed.

Moore filed another motion to correct illegal sentence, which the trial court dismissed on July 6, 2005, on the basis that Moore had not affirmatively shown service on the appropriate parties. He then filed another motion to correct illegal sentence, which the trial court dismissed on July 13, 2005, on the basis that the motion was substantively the same as the motion dismissed by order dated July 6, 2005, which became the law of the case. Moore, *pro se*, has filed an application for discretionary appeal to this Court from the July 13, 2005, order of the trial court.

The denial of a motion to correct a void sentence is directly appealable, *Williams v. State*, 271 Ga. 686, 689 (523 SE2d 857) (1999), and "[a] sentence is void if the court imposes punishment that the law does not allow." *Crumbley v. State*, 261

Ga. 610, 611 (1) (409 SE2d 517) (1991). However, it appears that in none of Moore's motions challenging his sentence does he actually assert that his sentence was not one that the law allows. Instead, he only takes issue with the procedure employed in imposing the sentence. Thus, his complaints are not subject to appeal because he is not challenging rulings on whether the sentence is void. *Jones v. State*, 278 Ga. 669, 670-671 (604 SE2d 483) (2004). Moore otherwise raises no issue that suggests either his sentence is a legal nullity. See *Reynolds v. State*, 272 Ga. App. 91, 95 (3) (611 SE2d 750) (2005). Moore's second and third attempts challenging the sentence imposed by the trial court for violation of his probation were thus improper. Likewise, Moore's application to this Court seeking to appeal the orders dismissing these motions is not permitted. See *Miller v. State*, 277 Ga. 372 (589 SE2d 108) (2003). He "is not entitled to another bite at the apple." *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001). Therefore, this application is DISMISSED.

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

AUG 19 2005

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

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

William L. Martin, Jr., Clerk.

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

ATLANTA, AUGUST 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0409
MICHAEL L. WASHINGTON V. CHARA CODY

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

95035

2004V239

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 24 2005**

*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, AUGUST 22, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0410
STEVE A. CLOER V. DEBORAH A. CLOER

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

96035

04A70016

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

AUG 22 2005

*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,

The Court of Appeals hereby passes the following order: **AUG 10 2005**

A05D0411. WILLIAM B. EGELAND v. LISA EGELAND.

This application seeks review of an order resolving child custody issues in a still pending divorce case. As there has been no determination and direction for entry of judgment pursuant to OCGA § 9-11-54 (b), and no compliance with the interlocutory appeal procedures of OCGA § 5-6-34 (b), this Court is without jurisdiction over this application and it is DISMISSED. See *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997); *Carlisle v. Travelers Ins. Co.*, 195 Ga. App. 21 (392 SE2d 344) (1990).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 10 2005**

*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. Mart; R, Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: SEP 07 2005

A05D0412. TAYLOR v. THE STATE.

Alonzo B. Taylor filed an application for appeal on August 5, 2005, from an order denying Taylor's pro se "Motion to Vacate Illegal Conviction and Sentence" entered on or about March 21, 2005.¹ Because Taylor failed to file his application within 30 days 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 SEP 07 2005

*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. V. L. Martin, Clerk.

¹We note that Taylor's direct appeal from the same conviction and sentence was previously affirmed. *Taylor v. State*, 266 Ga. App. 818 (598 SE2d 122) (2004).

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

ATLANTA, AUGUST 24, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0413
FULTON COUNTY BOARD OF EDUCATION V. THEODORE WOLF

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

70035

2004CV94540

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 24 2005

*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 above written.*

Clerk.

William L. Martin, Jr.

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

ATLANTA, AUGUST 30, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0414
WAL-MART STORES, INC., ET AL V. ANGELITA WILLRICH

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

97035

2005CV1131

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 30 2005

*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. Matier, JR.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

AUG 17 2005

A05D0415. LAURA AMPEL v. PHILLIP AMPEL ET AL.

A05D0416. DAVID FRIEDMAN, ESQ. v. PHILLIP AMPEL ET AL.

Laura Ampel and her former attorney, David Friedman, each filed applications for discretionary appeal of the trial court's Order Denying Joint Motion to Vacate and Re-Enter The Final Order On Post-Judgment Motions, entered July 8, 2005. The suit underlying this application is a divorce action in which a final judgment and decree of divorce was entered, on February 21, 2005, granting Laura Ampel and Phillip Ampel a divorce *a vinculo matrimonii*.

Subsequently, Friedman, acting on behalf of Ampel, filed various post-judgment motions. Phillip Ampel contested these motions and filed, inter alia, a motion for attorney fees under OCGA § 9-15-14. On May 19, 2005, the trial court entered a Final Order On Post-Judgment Motions denying all of Laura Ampel's post-judgment motions, including her motion for new trial, and awarding attorney fees, under OCGA § 9-15-14 (a) and (b), against Laura Ampel and Friedman. Laura Ampel and Friedman attempted to file an application for discretionary appeal seeking an appeal of the order of May 19, 2005, but the application was not filed within the time prescribed under OCGA § 5-6-35 (d).

Laura Ampel and Friedman then filed a Joint Motion To Vacate And Re-Enter The Final Order On Post-Judgment Motions. On July 8, 2005, the trial court entered an Order Denying Motion To Vacate And Re-Enter The Final Order On Post-Judgment Motions. In its ruling denying the Joint Motion, the trial court clarified that Friedman was appealing the order entered on May 19, 2005; and that Laura Ampel was appealing the order entered on May 19, 2005, "the underlying Final Judgment and

Decree entered on February 21, 2005," as well as the earlier order, entered on January 4, 2005, denying her motions for transcript.

The applications in A05D0415 and A05D0416 are inextricably connected, and the underlying subject matter of both of these applications is a suit for divorce. 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). Under Article VI, Section VI, Paragraph III (6), Georgia Constitution of 1983, the Supreme Court is vested with appellate jurisdiction over all divorce and alimony cases. Accordingly, these applications are TRANSFERRED to the Supreme Court for disposition.

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

AUG 17 2005

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

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

Will. L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 17 2005**

A05D0415. LAURA AMPEL v. PHILLIP AMPEL ET AL.

A05D0416. DAVID FRIEDMAN, ESQ. v. PHILLIP AMPEL ET AL.

Laura Ampel and her former attorney, David Friedman, each filed applications for discretionary appeal of the trial court's Order Denying Joint Motion to Vacate and Re-Enter The Final Order On Post-Judgment Motions, entered July 8, 2005. The suit underlying this application is a divorce action in which a final judgment and decree of divorce was entered, on February 21, 2005, granting Laura Ampel and Phillip Ampel a divorce *a vinculo matrimonii*.

Subsequently, Friedman, acting on behalf of Ampel, filed various post-judgment motions. Phillip Ampel contested these motions and filed, inter alia, a motion for attorney fees under OCGA § 9-15-14. On May 19, 2005, the trial court entered a Final Order On Post-Judgment Motions denying all of Laura Ampel's post-judgment motions, including her motion for new trial, and awarding attorney fees, under OCGA § 9-15-14 (a) and (b), against Laura Ampel and Friedman. Laura Ampel and Friedman attempted to file an application for discretionary appeal seeking an appeal of the order of May 19, 2005, but the application was not filed within the time prescribed under OCGA § 5-6-35 (d).

Laura Ampel and Friedman then filed a Joint Motion To Vacate And Re-Enter The Final Order On Post-Judgment Motions. On July 8, 2005, the trial court entered an Order Denying Motion To Vacate And Re-Enter The Final Order On Post-Judgment Motions. In its ruling denying the Joint Motion, the trial court clarified that Friedman was appealing the order entered on May 19, 2005; and that Laura Ampel was appealing the order entered on May 19, 2005, "the underlying Final Judgment and

Decree entered on February 21, 2005," as well as the earlier order, entered on January 4, 2005, denying her motions for transcript.

The applications in A05D0415 and A05D0416 are inextricably connected, and the underlying subject matter of both of these applications is a suit for divorce. 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). Under Article VI, Section VI, Paragraph III (6), Georgia Constitution of 1983, the Supreme Court is vested with appellate jurisdiction over all divorce and alimony cases. Accordingly, these applications are TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 17 2005**

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

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

Will. L. Mart, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: SEP 02 2005

A05D0417. DOUGLAS JOHNSON v. THE STATE.

Douglas Johnson, a prisoner proceeding pro se, filed this application for discretionary appeal from the trial court's June 22, 2005 order denying his motion to challenge his sentence. The application was docketed in this Court on August 9, 2005.¹ An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Johnson filed his application 48 days after entry of the order he seeks to appeal, it is untimely and hereby is DISMISSED for lack of jurisdiction.

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

SEP 02 2005
*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.

¹Johnson's original submission was not accepted for filing because he did not include a filing fee or sufficient pauper's affidavit in violation of Court of Appeals Rule 31 (c). See OCGA § 5-6-4.

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

ATLANTA, SEPTEMBER, 28 2005

Honorable Court of Appeals hereby passes the following order:

A05D0417. DOUGLAS JOHNSON v. THE STATE.

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed .

91-035

8912

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 28 2005

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

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

Clerk.

C. Will. L. Mait; JR

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.

(404) 656-3470

Docketing Date: October 20, 2005

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 **S06C0352**

DOUGLAS JOHNSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A05D0417

Court of Appeals of Georgia

Notice of Petition for Certiorari

OCT 28 2005

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0418
TWM, INC. D/B/A NORRELL STAFFING ET AL V. MICHAEL MORRIS

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

92035

2005CV0384

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 08 2005

*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, Jr.

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

ATLANTA, SEPTEMBER 01, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0419

HENRY JENKINS, JR. V. ENTERPRISE LEASING COMPANY OF GEORGIA

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

93035

03A73865

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 01 2005

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

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

Clerk.

Will. L. Mait; JR

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

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 24 2005**

A05D0420. Amendala v. Loffredo

Applicant Richard Amendala filed this discretionary application seeking review of the trial court's order in this action brought by Judith Marie Loffredo for non-compliance with an order issued in a contempt action arising out of a child support dispute. The issue of custody is not raised in this action. Because the ruling complained of directly addresses enforcement and/or modification of the non-custodial provisions of a final divorce decree, Amendala's application is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); *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*

AUG 24 2005

*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. W. L. Mait, Jr., Clerk.

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

ATLANTA, AUGUST 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0421
MIA LUKE V. PETE LUKE

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

94035
2004CV0197

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 31 2005**

*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. W. L. Martin

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

ATLANTA, AUGUST 31, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0422
DIANE DOWNS V. DONALD PELFREY ET AL

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

95036
2004D0104

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 31 2005**

*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. Mant; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 22 2005**

A05D0423. JOSEPH A. COLEMAN v. FELITA L. COLEMAN.

Joseph A. Coleman has filed this discretionary application to appeal the award of temporary custody and child support to Felita L. Coleman in the parties' divorce action.¹ Because the case is pending below, Coleman was required to follow the interlocutory appeal procedures of OCGA § 5-6-34 (b).² *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991); *Gray v. Springs*, 224 Ga. App. 427 (481 SE2d 3) (1997). Coleman's failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) deprives this Court of jurisdiction to consider his application, which is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 22 2005

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. L. Maitland, Clerk.

¹Coleman filed his application in the Supreme Court, which transferred it here on the ground that because "there is no final judgment of divorce," the case did not invoke the Supreme Court's subject matter jurisdiction.

²The Court observes that the superior court denied Coleman's request for a certificate of immediate review. The denial of an application for a certificate of immediate review is not an appealable judgment. *Price v. State*, 237 Ga. 352 (227 SE2d 368) (1976). Compare *Waldrip v. Head*, 272 Ga. 572, 574 (1) (532 SE2d 380) (2000).

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

ATLANTA, SEPTEMBER 08, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0424
LIBERTY COUNTY BOARD OF EDUCATION ET AL V. DONNA DASHER

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

98036

2005SUV6926

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 08 2005

*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 08 2005

A05D0425. HOWARD v. THE STATE.

Ernest Lee Howard seeks an appeal from an order denying his "Motion to Arrest Void Sentence". Howard's direct appeal was affirmed by this court in *Howard v. State*, 192 Ga. App. 813 (386 SE2d 667) (1989). Because we conclude that what Howard seeks here is effectively an unauthorized second appeal challenging his convictions, the application is improper and is therefore *dismissed* for lack of jurisdiction. *Jones v. State*, 278 Ga. 669 (604 SE2d 483) (2004); *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001).

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

SEP 08 2005

*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. L. Martin

, Clerk.

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

ATLANTA, OCTOBER 13, 2005

The Court of Appeals passed the following order

Case No. A05D0425

ERNEST HOWARD V. THE STATE

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

90-036
89CR07253

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 13, 2005*

*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. V. L. Maitland

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 30 2005**

A05D0426. Howard v. The State.

Roderick Howard seeks discretionary review of the trial court's order denying his motion to dismiss his indictment and his notice of appeal. Howard contends the indictment against him violates his Sixth Amendment right to a speedy trial and should be dismissed. The order Howard seeks to appeal was signed on July 8, 2005 and filed on July 26, 2005. As part of his application, Howard submitted a Notice of Appeal of the order he seeks to appeal which indicates, according to the certificate of service, that it was also submitted to the trial court on July 12, 2005. However, the trial court has not docketed the notice of appeal. A defendant has the right to directly appeal from the pre-trial denial of either a constitutional or statutory speedy trial claim. *Callaway v. State*, 275 Ga. 332 (567 SE2d 13) (2002).

Under OCGA § 5-6-35 (j), when a timely application for discretionary appeal is filed in a case that is subject to direct appeal under OCGA § 5-6-34 (a) but not subject to discretionary appeal under OCGA § 5-6-35 (a), and the applicant does not have a timely filed notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. Accordingly, this application is GRANTED. The clerk of the superior court is instructed to file of record the Notice of Appeal submitted by Howard within ten days from the date of this order. The clerk of the superior court is instructed to include a copy of this order in the appeal record transmitted to this court.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 30 2005**

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 07, 2005

The Court of Appeals hereby passes the following order:

APPLICATION NO. A05D0427
DAVID ELMORE ET AL V. CLARENCE HAYES, JR.

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

97036

0410193840

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

SEP 07 2005

*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. V. L. Mait; JR