

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

ATLANTA, SEPTEMBER 6, 2007

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

**A08D0001. QUATARSHA S. WILLIAMS v. CURTIS A. JONES, JR.**

It appearing the order of this Court issued September 5, 2007 denying application for discretionary appeal is incorrect due to clerical error. It is hereby ordered that said order is vacated. It is further ordered that the order attached hereto be substituted.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta September 6, 2007*

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

*Willi Z. Mantz*

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

ATLANTA,

SEPTEMBER 06, 2007

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

APPLICATION NO. A08D0001

QUATARSHA S. WILLIAMS V. CURTIS A. JONES, 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.

95001

2007PO02781

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 06 2007**

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the minutes of the Court of Appeals of Georgia*

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*Clerk.*

*Willi E. Mant: [Signature]*

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

ATLANTA, AUGUST 22, 2007

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

APPLICATION NO. A08D0002

WILLIE LANIER V. THE STATE

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

96001

2004FE108



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* AUG 22 2007

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the minutes of the Court of Appeals of Georgia*

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

Clerk.

*Will. L. Martinez*

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

ATLANTA,

SEPTEMBER 05, 2007

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

APPLICATION NO. A08D0003

LARRY FOSTER V. THE STATE

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

98001

SU07CV0895



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 05 2007**

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

*Clerk.*

*Willie L. Martinez*

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

ATLANTA,

SEPTEMBER 10, 2007

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

APPLICATION NO. A08D0004

CORTEZ ANTHONY THOMPSON V. THE STATE

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

90001

2005CR01289



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 10 2007

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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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, AUG 21 2007

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

## **A08D0005. MARK RICE v. KATHLEEN A. RICE**

Mark Rice filed this application for discretionary appeal seeking review of the trial court's order denying his petition to modify child support and granting some of Kathleen Rice's counterclaims for contempt. Under the Georgia Constitution of 1983, Art VI, Sec. VI, Par. III (6), the Supreme Court has 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 subject matter in this case involves child support this Court lacks jurisdiction to consider this application. See *Davidson v. Callaway*, 274 Ga. 813 (559 SE2d 728) (2002); *Keeler v. Keeler*, 263 Ga. 151 (430 SE2d 5) (1993). Further, a contempt action seeking to enforce any portion of a divorce decree, other than child custody, is ancillary to divorce and alimony and falls within the Supreme Court's jurisdiction over divorce and alimony cases. *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Accordingly, this application is TRANSFERRED to the Supreme Court of Georgia.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 21 2007**

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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*, Clerk.

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

ATLANTA, SEPTEMBER 11, 2007

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

APPLICATION NO. A08D0006  
NELL FISCHETTE V. TROY DRIGGERS

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

93001

CE0300326



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* SEP 11 2007

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Will. L. Martin*

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

ATLANTA,            OCTOBER    23, 2007

*The Court of Appeals passed the following order*

Case No. A08D0006

NELL FISCHETTE V. TROY DRIGGERS

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    OCT 23, 2007*

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

*Will L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, September 5, 2007

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

## **A08D0007. BRUCE TIMOTHY JONES v. THE STATE.**

This is the third application for discretionary appeal filed by Bruce T. Jones. The first application was returned because it did not contain a certificate of service or a stamped filed copy of the order Jones was attempting to appeal. His second application likewise failed to contain a filed stamped copy of the order on appeal and was also dismissed. See A07D0095 (November 28, 2006). Court of Appeals Rule 31 (d) clearly states that “[d]iscretionary appeals must contain a stamped ‘filed’ copy of the trial court’s order from which the appeal is sought.” Further, Jones previously filed a direct appeal from the order denying his motion for out-of-time appeal which this Court dismissed because it was untimely and because Jones did not comply with the discretionary appeal requirements since the underlying subject matter of the appeal was the revocation of Jones’ probation. See A07A0113 (September 6, 2006).

In this third application, Jones again failed to include a file stamped order and was directed to file a copy of such order within ten days. He did not do so. Because Jones failed to comply with this Court’s rules and the mandatory statutory requirements, this application is ordered DISMISSED.



L/C: CR860666

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

**SEP 05 2007**

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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. Martinez*

, Clerk.

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

ATLANTA, SEPTEMBER 19, 2007

*The Court of Appeals passed the following order*

Case No. A08D0007

BRUCE TIMOTHY JONES V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta SEP 19, 2007*

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

*Will L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

*Docketing Date: October 04, 2007*

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 **S08C0220**

BRUCE TIMOTHY JONE v. THE STATE

Clerk, Supreme Court of Georgia

OCT 12 2007

Case No. A08D0007

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, AUG 30 2007

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

**A08D0008. THE GEORGIA STATE BOARD OF PHYSICAL THERAPISTS v.  
TYE ANTHONY MARR.**

The Georgia State Board of Physical Therapists' withdrawal of this application  
is GRANTED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* AUG 30 2007

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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.*

*[Handwritten Signature]* Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 4, 2007

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

## **A08D0009. CLARENCE LOGUE v. THE STATE.**

Clarence Logue seeks discretionary review of an April 12, 2007, order revoking his probation. An application for discretionary review must be submitted within 30 days of the date the relevant order is entered. OCGA § 5-6-35 (d). Logue first filed his application for discretionary review on July 25, 2007. Because Logue failed to submit his discretionary application within 30 days of the April 12 order, his application is untimely. This Court lacks jurisdiction to consider untimely discretionary applications, and, therefore, the instant application is hereby ordered DISMISSED.



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

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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.*

*Willie L. Martinez*

, Clerk.

L/C: CR040622

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

ATLANTA,

SEPTEMBER 13, 2007

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

APPLICATION NO. A08D0010

LEVY M. RENTZ, JR., ET AL V. DENNIS WORTHAM

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

70001

06V228



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 13 2007**

*I certify that the above is a true extract from  
the minutes of 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. Mant*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** November 26, 2007

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 **S08C0499**

TOMMY PEARSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0011

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 28 2007

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 18 2007**

**A08D0011. PEARSON v. THE STATE**

The Motion for Reconsideration filed in the above-referenced matter is hereby **DISMISSED** as untimely. Motions for Reconsideration or Notices of Intent to Apply for Certiorari must be filed within ten (10) days of the date of the order or decision disposing of the case in this Court. Rules 37(b) and 38(a).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **OCT 18 2007**

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

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hereto affixed the day and year last above written.*

*Will. L. Mat... , Clerk.*



# Court of Appeals of the State of Georgia

ATLANTA, September 5, 2007

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

## **A08D0011. TOMMY PEARSON v. THE STATE**

Tommy Pearson filed this application for discretionary appeal seeking to appeal three orders issued by the trial court: the denial of his motion to request evidence for revoking probation; the denial of his out-of-time application to appeal revoked probation; and the denial of his motion for reconsideration and to vacate the May 2, 2007 order denying his motion to withdraw his guilty plea. All the orders Pearson seeks to appeal were entered in the trial court on June 8, 2007. This application was filed in the Supreme Court on July 30, 2007. An application for discretionary appeal must be filed within thirty days of the order sought to be appealed. OCGA § 5-6-35 (d). Because Pearson filed this application more than 30 days after entry of the orders he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. Therefore, this application is ordered DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 05 2007**

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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.*

*Willie L. Martin*

, Clerk.

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

ATLANTA,

SEPTEMBER 14, 2007

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

APPLICATION NO. A08D0012

MONIQUE WALKER V. GEORGIA REAL ESTATE COMMISSION

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

94001

2007CV132195



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 14 2007

*I certify that the above is a true extract fromd  
the minutes of the Court 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... [Signature]*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** October 01, 2007

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 **S08C0182**

MONIQUE WALKER v. GEORGIA REAL ESTATE COMMISSION

Clerk, Supreme Court of Georgia

Case No. A08D0012

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 04 2007 - sent to S.C.

Clerk, Court of Appeals of Georgia

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

ATLANTA,

SEPTEMBER 17, 2007

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

APPLICATION NO. A08D0013  
KENYATTA CAMPBELL V. THE STATE

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

95002

SU05CR1571



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 17 2007**

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Will. L. Martin*

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

ATLANTA, SEPTEMBER 04, 2007

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

APPLICATION NO. A08D0014

WACO KEAN V. GINA MARSHALL

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.

96002

06CV1585



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 04 2007**

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the minutes of the Court of Appeals of Georgia*

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

Clerk.

*Will. L. Martinez*

L/C: 06CV1585

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

ATLANTA, SEPTEMBER 12, 2007

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

APPLICATION NO. A08D0015  
KEVIN STALLWORTH V. THE STATE

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

98002

2006CR00065



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 12 2007

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*Clerk.*

*Will. L. Martin*

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

ATLANTA,

SEPTEMBER 13, 2007

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

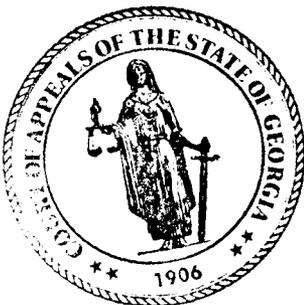
APPLICATION NO. A08D0016

RANDY WILLIAMS V. THE STATE

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

90002

43296



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 13 2007

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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.*

A handwritten signature in black ink, appearing to read "W. L. Mat...".

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

ATLANTA,

SEPTEMBER 17, 2007

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

APPLICATION NO. A08D0017  
LAYTON DEAN JEREMIAH V. THE STATE

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

97002

98B38913



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

SEP 17 2007

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*Clerk.*

*Willi L. Mat... [Signature]*

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

ATLANTA,

SEPTEMBER 19, 2007

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

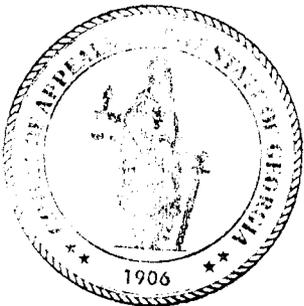
APPLICATION NO. A08D0018

CHARLES LLOYD FRANKS V. THE STATE

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

93002

05CR1014



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 19 2007

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Clerk.

*Will L. Martin*

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

ATLANTA,

SEPTEMBER 17, 2007

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

APPLICATION NO. A08D0019  
SUSAN L. BROCHIN V. GARY S. BROCHIN

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.

71002

04CV3939



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 17 2007**

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

*Willi L. Mat...A*

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

ATLANTA, SEPTEMBER 20, 2007

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

APPLICATION NO. A08D0020  
THE FULTON-DEKALB HOSPITAL AUTHORITY D/B/A GRADY HEALTH  
SYSTEM V. THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH

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

92002

2006CV116198

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 20 2007**

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Clerk.

*Will L. Martin*



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

ATLANTA,

SEPTEMBER 17, 2007

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

APPLICATION NO. A08D0021

REGINALD MOODY V. THE STATE

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

99002

2003454



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 17 2007**

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*Clerk.*

*Will. L. Martin*

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

ATLANTA,

SEPTEMBER 19, 2007

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

APPLICATION NO. A08D0022

JAMES M. WHITEHEAD V. LORA ANN PEAVY

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.

70002

2002V9822



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 19 2007

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*Clerk.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* OCT 01 2007

**A08I0021, A08D0023. WHITE v. VON ERCK (two applications).**

Robert E. White filed an application in the superior court seeking the arrest of a person named Xavier Von Erck. White alleged that Von Erck engaged in conduct constituting the solicitation or attempted solicitation of the crimes of child molestation and/or statutory rape. After a hearing the superior court entered a detailed order explaining its decision not to issue a warrant for Von Erck's arrest based on the information provided by White.

As a precautionary measure White filed separate applications for appeal from the superior court's order, one under the interlocutory appeal procedure, OCGA § 5-6-34 (b), and the other under the discretionary appeal procedure, OCGA § 5-6-35. We conclude, however, that neither appellate procedure is applicable in this case. Because the superior court disposed of the only issue White put before it, the order complained of is clearly final for appeal purposes. It follows that the interlocutory appeal procedure does not apply here. Moreover, because none of the provisions of OCGA § 5-6-35 (a) address the underlying subject matter of the order complained of, the discretionary appeal procedure is likewise inapplicable here.

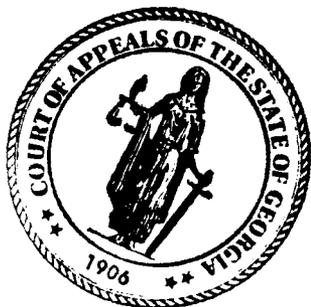
Ordinarily when this court determines that an application for appeal is not required to appeal the decision complained of, we grant the application as a matter of course. OCGA § 5-6-35 (j); see *Spivey v. Hembree*, 268 Ga. App. 485, 486 (n. 1) (602 SE2d 246) (2004). But such action is unnecessary here since we conclude that White lacks standing to appeal the superior court's decision by any means.

The opportunity for persons such as White to apply for and to provide information establishing probable cause for the issuance of an arrest warrant against

another based on an alleged violation of penal laws is provided for under OCGA § 17-4-40. Under the authority of that Code section White has been afforded the opportunity as a concerned citizen to bring Von Erck's alleged criminal wrongdoing to the superior court's attention in an effort to prompt his arrest. We conclude, however, that nothing in OCGA § 17-4-40 affords White a cognizable interest in the outcome of a proceeding initiated by him under that Code section.

In a related context the Supreme Court has held that "[a] citizen does not have a judicially cognizable interest in the prosecution or nonprosecution of another and, hence, lacks standing to contest the prosecuting authority's policies when the citizen is neither prosecuted nor threatened with prosecution. [Cit.]" *Scanlon v. State Bar of Ga.*, 264 Ga. 251, 253 (443 SE2d 830) (1994); see also *Bartlett v. Caldwell*, 265 Ga. 52 (452 SE2d 744) (1995). Since White has no cognizable interest in a prosecution against Von Erck, it follows that he likewise has no cognizable interest in compelling Von Erck's arrest on criminal charges.

Because we conclude that White lacks standing to pursue an appeal in this matter by any means, his applications for appeal are hereby *dismissed* for lack of jurisdiction.<sup>1</sup>



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

OCT 01 2007

I certify that the above is a true extract from  
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Witness my signature and the seal of said court  
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*Will. L. Martinez*, Clerk.

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<sup>1</sup>Because we base our decision on lack of standing, we need not consider at this time whether a judge's refusal to issue an arrest warrant can ever be the subject of a direct appeal under any circumstances. See generally OCGA § 5-7-1; compare *Chisholm v. Cofer*, 264 Ga. 512 (448 SE2d 369) (1994) (involves attempted filing of a petition for a writ of mandamus in the superior court to compel the magistrate court to issue an arrest warrant after the magistrate court refused to issue the warrant).

# Court of Appeals of the State of Georgia

ATLANTA, SEP 13 2007

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

## **A08D0024. THE ATLANTA JOURNAL CONSTITUTION ET AL. v. CHESTER THONGINTRA**

The Atlanta Journal Constitution and Crawford & Company (the "Journal") filed this application for discretionary appeal seeking to appeal a decision by the superior court which affirmed a decision by the Appellate Division of the State Board of Workers' Compensation. The order sought to be appealed was entered on July 31, 2007. This application was deemed filed on August 31, 2007 when it was received by this Court as the certified mail did not comply with Court of Appeals Rule 4 (c) (2). An application for discretionary appeal must be submitted within 30 days of the date the order sought to be appealed is entered. OCGA § 5-6-35 (d). The Journal's application for discretionary appeal was docketed in this Court 31 days after the July 31, 2007 order of which it complains. Accordingly, the Journal's application is untimely. Because this Court lacks jurisdiction to consider untimely applications, this application is ordered DISMISSED.



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

SEP 13 2007

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

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

*Willie L. Martinez*, Clerk.

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

ATLANTA,            OCTOBER    05, 2007

*The Court of Appeals passed the following order*

Case No. A08D0024

THE ATLANTA JOURNAL CONSTITUTION ET AL V. CHESTER THONGINTRA

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    OCT 05, 2007*



*I certify that the above is a true extract from  
the minutes of 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

(404) 656-3470

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

**Docketing Date:** October 25, 2007

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 **S08C0316**

ATLANTA JOURNAL CONSTITUTION et al. v. CHESTER THONGINTRA

Clerk, Supreme Court of Georgia

Case No. A08D0024

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: **SEP 25 2007**

**A08D0025. PRESLEY T. LOMAX v. ANNE J. LOMAX.**

Presley T. Lomax filed this application for discretionary review from the superior court's order on his petition for modification of child support. No issue of child custody is involved in this case; the sole and underlying issue raised in this application is the amount of child support owed. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has 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. See, e.g., OCGA § 19-6-19 (a); *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 underlying subject matter in this case involves child support, this court lacks appellate jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is TRANSFERRED to the Supreme Court of Georgia.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

**SEP 25 2007**

I certify that the above is a true extract from  
the minutes of 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,

SEPTEMBER 18, 2007

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

APPLICATION NO. A08D0026  
DEONTAVIOUS GLOVER V. THE STATE

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

95003

04R364



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 18 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 27, 2007

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

APPLICATION NO. A08D0027  
BENJAMIN ALEXANDER SMITH V. THE STATE

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

96003

57928



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 27 2007

*I certify that the above is a true extract fromd  
the minutes of the Court 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... [Signature]*

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

ATLANTA, SEPTEMBER 25, 2007

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

APPLICATION NO. A08D0028  
BIBB COUNTY BOARD OF EDUCATION V. MARY MANUEL

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

98003

07CV47339



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

**SEP 25 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

SEP 11 2007

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

**A08D0029. COOK v. COOK.**

The above styled application for discretionary appeal in a divorce case was mistakenly delivered to this court for docketing on September 6, 2007. The application is unambiguously directed to the attention of the Supreme Court and the applicant clearly intended that the submission be docketed with that Court. The application is therefore *transferred* to the Supreme Court for initial consideration. The prior order of this court directing applicant to submit a stamped "filed" copy of the order complained of is hereby *vacated* and may be disregarded. But see Rule 33 of the Rules of the Supreme Court.<sup>1</sup>



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 11 2007

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

*Witness my signature and the seal of said court  
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*Willie L. Mat... , Clerk.*

---

<sup>1</sup>"Applications for discretionary appeal shall contain a jurisdictional statement and have attached a stamped copy of the trial court's order to be appealed, showing the date of filing. A transcript is not necessary, but affidavits, exhibits and relevant portions of the transcript should be attached to the application to demonstrate to the Court what the record will show if the application is granted. See Rule 17."

# Court of Appeals of the State of Georgia

ATLANTA,

SEP 12 2007

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

## **A08D0030. RONNIE E. MCCOY v. IRAIDA M. MCCOY**

Ronnie E. McCoy seeks a discretionary appeal from an order of the superior court entered in a contempt action brought by Iraida McCoy for failure to comply with the provisions of the parties' final divorce decree. Under the Georgia Constitution of 1983, Art VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." *Schmidt v. Schmidt*, 270 Ga. 461, 462 (2) (510 SE2d 810) (1999). Further, "an appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over 'divorce and alimony cases.' [Cits.]" *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Accordingly, McCoy's application is TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 12 2007

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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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,            OCTOBER    09, 2007

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

APPLICATION    NO.            A08D0031

SCOTTIE DUPREE V. THE STATE

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

93003

2003FE212



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 09 2007**

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

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

*Clerk.*

*Willie L. Matiza*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* SEP 24 2007

**A08D0032. CLARA HENDERSON et al. v. BRENTIS HENDERSON.**

Clara Henderson, the caveator to a will, alleged that the signature of the testator was a forgery. Prior to trial, she sought to obtain an expert opinion to that effect but her expert was unable to determine conclusively that the signature was a forgery. Shortly before trial, Clara Henderson submitted a proposed pretrial order that did not identify any expert on either the “will call” or “may call” list. A few days later, her counsel informed Brentis Henderson’s counsel that no expert would be called to support the forgery claim. At trial, Clara Henderson offered only her own testimony and that of the decedent’s son on the issue of forgery.<sup>1</sup> The probate court found “[c]aveator’s conduct in pursuing her claim and during the presentation of the evidence indicates that her allegation of forgery lacked substantial justification.” The probate court then sanctioned both Clara Henderson and her attorney, finding them jointly liable for Brentis Henderson’s attorney fees in the amount of \$3,500 and jointly liable for \$4,600, the cost of Brentis Henderson’s expert witness.

The state constitution confers jurisdiction upon the Supreme Court over appeals in “[a]ll cases involving wills.” Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (3). The Supreme Court has explained that “‘all cases involving wills’ means those cases in which the will’s validity or meaning is in question.” *In re Estate of Gwendolyn H. Lott*, 251 Ga. 461 (306 SE2d 920) (1983). By claiming the testator’s signature was

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<sup>1</sup> According to Clara Henderson, the propounder’s expert testified at trial that he “was not able to arrive at a conclusion as to whether [the testator] was the writer of the initials” and was not able to rule out the possibility that the so-called will had not been properly executed.

a forgery, Henderson attacked the underlying validity of the will. See *Heard v. Estate of Lovett*, 273 Ga. 111 (1) (538 SE2d 434) (2000) (propounder, not caveator, has non-shifting burden to prove testator's signature is genuine). Whether Clara Henderson's challenge to the will brought as caveator was so lacking in substantial justification as to justify the imposition of sanctions and whether the probate court failed to recognize the propounder's burden of proving the genuineness of the testator's signature are issues that fit squarely within the ambit of the Supreme Court's jurisdiction in "all cases involving wills." Therefore, this application is TRANSFERRED to that Court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 24 2007

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

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

*Willie L. Martinez*, Clerk.

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

ATLANTA,

SEPTEMBER 27, 2007

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

APPLICATION NO.        A08D0033  
DAPHNE R. BROWN V. ROBERT L. SPRINGSTON

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

99003

05CV2541



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 27 2007**

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

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

*Clerk.*

*Willi L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, SEP 17 2007

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

**A08D0034. CHARLES L. ORR v. SAVANNAH ELECTRIC AND POWER  
COMPANY ET AL.**

Charles L. Orr filed this discretionary application on September 8, 2007, seeking review of an order dated November 15, 2005. Because Orr failed to file his application within 30 days of the November 2005 order, it is untimely. OCGA § 5-6-35 (d). As such, this Court lacks jurisdiction to consider the application and it is therefore DISMISSED.



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

**SEP 17 2007**

*I certify that the above is a true extract from  
the minutes of 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,            OCTOBER    09, 2007

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

APPLICATION NO.            A08D0035  
NELL FISCHETTE V. READDICK SHEET METAL WORKS OF GLYNN,  
INC.

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

91003

CE0300326063



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 09 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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,            OCTOBER    26, 2007

*The Court of Appeals passed the following order*

Case No. A08D0035

NELL FISCHETTE V. READDICK SHEET METAL WORKS OF GLYNN,  
INC.

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    OCT 26, 2007*



*I certify that the above is a true extract from  
the minutes of 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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* SEP 25 2007

## **A08D0036. FRANK FODOR v. SALMEH FODOR**

Frank Fodor filed a petition for downward modification of the child support award in his final divorce decree. Salmeh Fodor filed a motion for judgment on the pleadings or in the alternative for summary judgment. The trial court granted the motion for summary judgment finding an insufficient basis for a downward modification of child support. Frank Fodor seeks discretionary review of the trial court's order.

There was no issue of custody involved in this case; thus, the sole underlying issue involved in this application concerns the amount of child support owed. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." 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 underlying subject matter in this case involves child support, this Court lacks appellate jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511

SE2d 167) (1999). Accordingly, this application is TRANSFERRED to the Supreme Court of Georgia.

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

SEP 25 2007

*I certify that the above is a true extract from  
the minutes of 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. McIntosh*, Clerk.



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

ATLANTA,                      OCTOBER      04, 2007

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

APPLICATION NO.            A08D0037  
UNITED GROCERY OUTLET ET AL V. RUBY BENNETT

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.

95004

07CI1850



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*            OCT 04 2007

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

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,                      OCTOBER      09, 2007

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

APPLICATION NO.            A08D0038  
ANTHONY GREENE V. DEPARTMENT OF COMMUNITY HEALTH

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.

96004  
2006CV126985



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 09 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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,            OCTOBER    04, 2007

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

APPLICATION NO.        A08D0039  
CITY OF ATLANTA ET AL V. TERRY COOK

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

98004

2007CV135886



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 04 2007**

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

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

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **SEP 25 2007**

**A08D0040. DEIBY ACEVEDO v. YONGMI KIM F/K/A YONGMI ACEVEDO.**

Deiby Acevedo seeks discretionary review of an order of the superior court entered in a contempt action brought by the respondent involving the child support provisions of the parties' final divorce decree. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over 'divorce and alimony cases.' [Cits.]" *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Acevedo's application is therefore ordered TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 25 2007**

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

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

*Willie L. Martinez*, Clerk.

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

ATLANTA,                      OCTOBER      03, 2007

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

APPLICATION NO.            A08D0041

RONNIE J. HALL V. THE STATE

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

97004

SU05CR1045



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 03 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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      OCT 09 2007

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

A08D0042. MARIA SALAZAR v. MICHAEL L. THURMOND, ET AL .

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

93-004

05CV1653



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

OCT 09 2007

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

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

*Willie L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

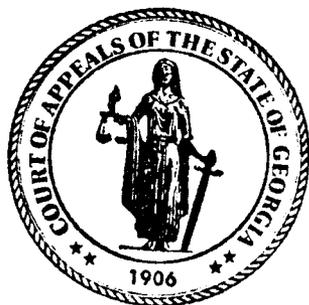
ATLANTA,

*The Court of Appeals hereby passes the following order:* **SEP 28 2007**

**A08D0043. MYCHELE BYERSON A/K/A MYCHELE DUNLAP v. THE STATE.**

On July 31, 2007, Mychele Byerson a/k/a Mychele Dunlap, *pro se*, submitted an "Appeal Motion" to the Georgia Supreme Court, seeking an appeal from the superior court's July 12, 2007 order revoking her probation. The "Appeal Motion" is in substance an application for discretionary appeal under OCGA § 5-6-35 (a) (5). On August 29, 2007, the Supreme Court transferred the application to this Court. By letter dated August 31, 2007, however, the Clerk of this Court returned the application to Byerson on the basis that she failed to include with the application a filing fee or sufficient pauper's affidavit in violation of Court of Appeals Rule 31 (c) and OCGA § 5-6-4. Byerson refiled the application with sufficient pauper's affidavit in this Court on September 14, 2007.

An application for discretionary appeal, however, must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Byerson filed her application in this Court more than thirty days after entry of the order she seeks to appeal, the application is untimely. This Court lacks jurisdiction to consider an untimely application. This application is therefore DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 28 2007**

*I certify that the above is a true extract from the minutes of 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,

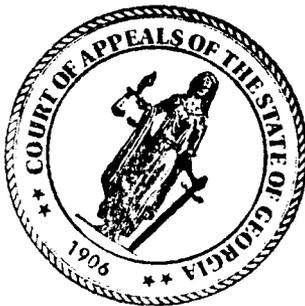
*The Court of Appeals hereby passes the following order:*

**OCT 16 2007**

**A08D0044. FRANKLIN JONES v. NANCY SMITH.**

In a post-divorce action, Nancy Smith filed a motion for contempt against her former husband, Franklin G. Jones. Jones filed a motion to recuse the assigned judge. After a different judge denied the motion, Jones filed this application for discretionary appeal to seek review of the order denying his motion to recuse.

The denial of a motion to recuse is not a final judgment and an appeal of such an order requires compliance with the interlocutory appeal procedures of OCGA § 5-6-34 (b). *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002). Jones' failure to comply with the interlocutory appeal procedures deprives this Court of jurisdiction to consider this application. Therefore, the application is ordered DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **OCT 16 2007**

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

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

*Will L. Mat... , Clerk.*

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

ATLANTA,            NOVEMBER 09, 2007

*The Court of Appeals passed the following order*

Case No. A08D0044

FRANKLIN JONES V. NANCY SMITH

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    NOV 09, 2007*

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hereto affixed the day and year last above written.*

*Clerk.*



*Willie L. Martin*

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

ATLANTA,                      OCTOBER    11, 2007

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

APPLICATION    NO.                      A08D0045

FXM, P.C. ET AL V. PROCTOR HUTCHINS, P.C., ET AL .

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

99004

67GR036674



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 11 2007**

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*Clerk.*

*Willi L. Martinez*

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

ATLANTA,            NOVEMBER 07, 2007

*The Court of Appeals passed the following order*

Case No. A08D0045

FXM, P.C. ET AL V. PROCTOR HUTCHINS, P.C., ET AL .

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    NOV 07, 2007*

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

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, September 24, 2007

A08I0037. J & E BUILDERS, INC. v. RC DEVELOPMENT, INC.

The Honorable Court of Appeals hereby passes the following order:

It appearing the DISCRETIONARY application A08D0046 was incorrectly filed due to clerical error, it is hereby ordered that said application is hereby changed to an INTERLOCUTORY application with the case number A08I0037 as stated above.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **SEP 24 2007**  
*I certify that the above is a true extract from*  
*the minutes of 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. McIntosh*

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

ATLANTA,                      OCTOBER    18, 2007

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

APPLICATION NO.            A08D0047

THE SURGERY CENTER, LLC, V. HUGHSTON SURGICAL INSTITUTE, 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.

91004

SU2006CV3608



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 18 2007**

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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.*

*Willi L. Martin*

# Court of Appeals of the State of Georgia

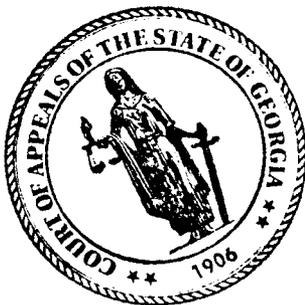
ATLANTA,

SEP 28 2007

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

**A08D0048. CAPTAIN F. J. SCHWINDLER, JR. et al. v. THE SPIRIT OF SAVANNAH FOUNDATION et al.**

Captain F. J. Schwindler, Jr. and Lieutenant A. C. Schwindler, pro se, filed this application for discretionary appeal seeking review of the trial court's order denying their Motion to Set Aside Judgment and Orders and Motion for Reconsideration/New Trial. OCGA § 5-6-35 (d) requires the filing of an application with the Clerk of this Court "within 30 days of the entry of the order, decision, or judgment complained of." OCGA § 5-6-35 (c) requires the application to contain a copy of the order or judgment being appealed. The order the Schwindlers seek to appeal was entered in the trial court on July 31, 2007. This application was filed on September 19, 2007, more than 30 days after entry of the order sought to be appealed. Thus, this application is untimely. The Schwindlers' failure to comply with the discretionary appeal requirements deprives this Court of jurisdiction to consider this application. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000). Accordingly, this application is ordered DISMISSED.



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

SEP 28 2007

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hereto affixed the day and year last above written.*

*Will L. Martinez*, Clerk.

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

ATLANTA,                      OCTOBER                      19, 2007

*The Court of Appeals passed the following order*

Case No. A08D0048

CAPTAIN F.J. SCHWINDLER, JR., ET AL V. THE SPIRIT OF SAVANNAH  
FOUNDATION ET AL

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    OCT 19, 2007*

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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*

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

ATLANTA,            OCTOBER    17, 2007

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

APPLICATION NO.            A08D0049  
NAZARETH, LLC ET AL V. CITY OF MARIETTA

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.

95005

0715839



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 17 2007**

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*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, OCT 10 2007

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

## **A08D0050. JESSE A. GLASS et al. v. PHILLIP D. FAIRCLOTH.**

Jesse A. Glass and Jacob A. Glass, the caveators to a will offered for probate in the Estate of Sherwin Glass, alleged that the testator lacked the requisite testamentary capacity to create the second codicil and that the second codicil was procured by undue influence. The Glasses also opposed the appointment of Phillip D. Faircloth, the propounder of the will, as executor. See *Bailey v. Edmundson*, 280 Ga. 528, 529 (1) (630 SE2d 396) (2006); *Harper v. Harper*, 281 Ga. 25 (635 SE2d 711) (2006).

After finding the caveators' claims lacked "any justiciable issue of law or fact and [the claims] are not substantially justified," the probate court granted Faircloth's motion for sanctions under OCGA § 9-15-14 and entered an award in excess of \$102,000 in attorney fees against the caveators.

The state constitution confers jurisdiction upon the Supreme Court over appeals in "[a]ll cases involving wills." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (3). As the Supreme Court has explained, "'all cases involving wills' means those cases in which the will's validity or meaning is in question." *In re Estate of Gwendolyn H. Lott*, 251 Ga. 461 (306 SE2d 920) (1983). By claiming the decedent lacked the requisite testamentary capacity and the second codicil was the product of undue influence, the Glasses were attacking the underlying validity of the will. See *Lillard v. Owens*, 281 Ga. 619, 620 (1) (641 SE2d 511) (2007); *McCormick v. Jeffers*, 281 Ga. 264, 267 (3) (637 SE2d 666) (2006).

Whether the caveators' challenges to the second codicil of the will and to the appointment of Faircloth as executor were so lacking in substantial justification as to

support the imposition of sanctions are issues that fit squarely within the ambit of the Supreme Court's jurisdiction in "all cases involving wills." Therefore, this application is TRANSFERRED to that Court for disposition.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **OCT 10 2007**

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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. Mat... , Clerk.*

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

ATLANTA,                    OCTOBER    12, 2007

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

APPLICATION    NO.            A08D0051  
ROBERT GROSZ ET AL V. ANTONIO ORTA

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

98005

06CV51526



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **OCT 12 2007**

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the minutes of the Court of Appeals of Georgia*

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*Clerk.*

*Will. L. Martinez*

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

ATLANTA,            OCTOBER    12, 2007

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

APPLICATION    NO.            A08D0052  
ROBERT GROSZ   ET AL V. LINDA SUE BONILLA ET AL

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

98006

06CV51526

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 12 2007**

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Clerk.

*Will. L. Martinez*



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

ATLANTA,            OCTOBER    22, 2007

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

APPLICATION    NO.            A08D0053  
CHARLIE WRIGHT V. MARY BARNETT

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

90005

04CV104493



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 22 2007**

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*Clerk.*

*Will. L. Martin*

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

ATLANTA,                      OCTOBER      22, 2007

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

APPLICATION NO.            A08D0054  
SATILLA HEALTH SERVICES, INC., V. MARY T. LONG

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

97005

07V0581



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **OCT 22 2007**

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*Clerk.*

*Willie L. Martin*

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

ATLANTA,                      OCTOBER      23, 2007

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

APPLICATION    NO.            A08D0055  
LONNIE GENE KLUTTZ, JR., V. TARGET STORES

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

93005

2007V88736



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      OCT 23 2007

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

*Clerk.*

*Will. L. Mat...*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* OCT 05 2007

## **A08D0056. RICKY EUGENE PATTERSON v. THE STATE.**

Ricky Eugene Patterson seeks an appeal from the trial court's denial of his motion to correct a void sentence. This application for discretionary appeal follows this Court's earlier affirmance of Patterson's conviction after a jury found him guilty of voluntary manslaughter and reckless conduct in the shooting death of a young man. See *Patterson v. State*, 269 Ga. App. 328 (604 SE2d 569) (2004). In this application, Patterson contends the trial court erred by failing to exercise the discretion afforded it in OCGA §§ 17-10-1 and 17-10-7 (a) in sentencing him to serve twenty years.

The denial of a motion to correct a void sentence is directly appealable, *Williams v. State*, 271 Ga. 686, 689 (1) (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). Nevertheless, our Supreme Court has held that

[w]hen the sentence imposed falls within the statutory range of punishment, the sentence is not void and is not subject to post-appeal modification beyond that provided in OCGA § 17-10-1 (f). Upon the expiration of the period provided in OCGA § 17-10-1 (f), post-appeal pleadings filed in the sentencing court seeking sentence modification must set forth why the sentence is void, i.e., how it imposes punishment the law does not allow. Assertions taking issue with the procedure employed in imposing a valid sentence or questioning the fairness of an imposed sentence do not allege a sentence is void and therefore are not a means for post-appeal, post-§ 17-10-1 (f) sentence modification. We take this opportunity to clarify that the direct appeal authorized by *Williams* is limited to that taken from a sentencing court's

ruling on a pleading which asserts the sentence imposed punishment the law does not allow. Rulings on pleadings asserting erroneous procedure or unfair treatment are not subject to direct appeal because they are not rulings on whether the sentence is void. Rather, a petition for writ of habeas corpus is the means for seeking sentence review for such allegations. See *Saleem v. Forrester*, 262 Ga. 693 (424 SE2d 623) (1993). See also *Collins v. Sttea*, 277 Ga. 586 (591 SE2d 820) (2004), where we held a defendant whose conviction had been affirmed on direct appeal was not entitled to file a direct appeal from the denial of a post-conviction motion contending the judgment of conviction was voidable.

*Jones v. State*, 278 Ga. 669, 670-671 (604 SE2d 483) (2004).

In this appeal, Patterson does not assert that the sentence imposed was one that the law does not allow, nor could he. OCGA § 16-5-2 (b) provides that “[a] person who commits the offense of voluntary manslaughter, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years.” Thus Patterson’s sentence fell within the statutory range. Accordingly, this application is DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      OCT 05 2007

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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.*

*Willie L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 24, 2007

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

## **A08D0057. HOWARD HAMMOND v. THE STATE.**

Howard Hammond has filed a discretionary application to seek review of an order that denied his extraordinary motion for new trial. The copy of the order submitted in his application, however, is not stamped as filed in superior court. Thus, Hammond failed to include a stamped "filed" copy of the order at issue as required by Court of Appeals Rule 31 (d).

On September 26, 2007, this Court ordered Hammond to supplement his application with a stamped "filed" copy of the order sought to be appealed within ten days or face the sanction of dismissal of his application. No stamped "filed" copy of the order has been filed within the additional time allowed. Therefore, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **OCT 24 2007**

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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.*

*Willi Z. Mant* , Clerk.

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

ATLANTA,            OCTOBER    11, 2007

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

APPLICATION    NO.            A08D0058

CAROLINA TOBACCO CO., V. THURBERT BAKER, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL OF GEORGIA

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

99005

2007CV127932

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

OCT 11 2007

*I certify that the above is a true extract fromd  
the minutes of the Court 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,                      OCTOBER                      17, 2007

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

APPLICATION NO.                      A08D0059  
KENNETH R. COSTLEY V. ANITA L. COSTLEY

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

70005

051885240



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

OCT 17 2007

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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. Mat...*

# Court of Appeals of the State of Georgia

ATLANTA, OCT 24 2007

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

**A08D0060, A08D0061. HYER v. HYER (two applications).**

Leland I. Hyer has filed an application for appeal in this court from an order modifying child support obligations originally established as part of the parties' final divorce decree. Hyer filed a second application for appeal from an order disposing of a contempt action related to Hyer's obligations under the parties' final divorce decree. Hyer advises in a footnote in each application that "[d]ue to a confusing and unsettled body of law concerning whether the Georgia Supreme Court or the Court of Appeals has jurisdiction over appeals concerning questions of domestic relations law, Petitioner has filed his Applications for Discretionary Appeal in both the Georgia Supreme Court and the Georgia Court of Appeals." Hyer is advised that it is neither necessary nor useful under any circumstances for an appealing party to present identical applications to this court and to the Supreme Court. Under these circumstances this court will not consider even the preliminary matter of which appellate court has jurisdiction to consider either or both of these applications. We instead defer to the Supreme Court, which has the same issues before it in their Application Nos. S08D0145 and S08D0146. Because these same applications are pending before the Supreme Court, Hyer's applications to this court are hereby *dismissed* as superfluous. If the Supreme Court concludes that this court has appellate jurisdiction over one or both of the applications now before it, we will address those applications in due course upon transfer to this court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* OCT 24 2007

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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.*

*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, OCT 24 2007

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

**A08D0060, A08D0061. HYER v. HYER (two applications).**

Leland I. Hyer has filed an application for appeal in this court from an order modifying child support obligations originally established as part of the parties' final divorce decree. Hyer filed a second application for appeal from an order disposing of a contempt action related to Hyer's obligations under the parties' final divorce decree. Hyer advises in a footnote in each application that "[d]ue to a confusing and unsettled body of law concerning whether the Georgia Supreme Court or the Court of Appeals has jurisdiction over appeals concerning questions of domestic relations law, Petitioner has filed his Applications for Discretionary Appeal in both the Georgia Supreme Court and the Georgia Court of Appeals." Hyer is advised that it is neither necessary nor useful under any circumstances for an appealing party to present identical applications to this court and to the Supreme Court. Under these circumstances this court will not consider even the preliminary matter of which appellate court has jurisdiction to consider either or both of these applications. We instead defer to the Supreme Court, which has the same issues before it in their Application Nos. S08D0145 and S08D0146. Because these same applications are pending before the Supreme Court, Hyer's applications to this court are hereby *dismissed* as superfluous. If the Supreme Court concludes that this court has appellate jurisdiction over one or both of the applications now before it, we will address those applications in due course upon transfer to this court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* OCT 24 2007

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hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

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

ATLANTA,                      OCTOBER        18, 2007

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

APPLICATION NO.            A08D0062  
JEROME KLUBECK, ET AL V. ENTERTAINMENT CORPORATION OF AMERICA  
ET AL

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

94005

2004CV96611

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 18 2007**

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*Clerk.*

*Willie L. Martin*



# Court of Appeals of the State of Georgia

ATLANTA, OCT 23 2007

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

**A08D0063. JAIRUS MOORE v. THE STATE.**

On September 28, 2007, Jairus Moore filed this application for discretionary appeal from an order entered on July 9, 2007, dismissing Moore's "Motion for Correction of a Void Sentence." To be timely, an application for discretionary appeal must be filed with the clerk of the appropriate appellate court within 30 days of entry of the order, judgment or decision at issue. OCGA § 5-6-35 (d). Moore's application was not filed until 81 days after entry of the order he seeks to appeal, and it is thus untimely. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). 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 23 2007

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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.*

*Willie L. Moore*

, Clerk.

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

ATLANTA,            OCTOBER    22, 2007

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

APPLICATION    NO.            A08D0064  
HOMEOWNERS MORTGAGE OF AMERICA, INC., CHASE HOME FINANCE,  
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 STATE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96006

07A662



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 22 2007**

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

*Willie L. Martin*

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

ATLANTA,            OCTOBER    22, 2007

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

APPLICATION NO.        A08D0065  
JAMES CLAYTON JOYE V. THE STATE

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

90006

2005255



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 22 2007**

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

*Will L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

OCT 09 2007

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

## **A08D0066. TELLY STYLES v. THE STATE.**

Telly Styles, who is proceeding pro se, has filed a timely application for discretionary appeal seeking to appeal an order denying his motion to correct a void sentence. 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). Styles' application is therefore GRANTED under OCGA § 5-6-35 (j). Styles shall have ten days from the date of this order to file his notice of appeal with the superior court. The clerk of 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* OCT 09 2007

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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*, Clerk.

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

ATLANTA,                      OCTOBER    31, 2007

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

APPLICATION    NO.            A08D0067  
WILLIAM H. MARSH, JR., V. THE STATE

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

93006  
00CR531



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 31 2007**

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Willi L. Martinez*

CLERK'S OFFICE  
SUPREME COURT of GEORGIA  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470  
Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** November 20, 2007

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 **S08C0480**

WILLIAM H. MARSH, JR. v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0067

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, NOVEMBER 02, 2007

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

APPLICATION NO. A08D0068  
LAFARGE NORTH AMERICA ET AL V. BOBBY GRADDY

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

71006

07A059592



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **NOV 02 2007**

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*Clerk.*

*Willie L. Martin*

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

ATLANTA,            OCTOBER    24, 2007

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

APPLICATION NO.            A08D0069  
CHERYL THOMAS DBA RIBBONS & ROSES/THE BRIDAL SHOP  
BOUTIQUE OF SAVANNAH V. ANDREA S. BENTON

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

92006

SPCV071113

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta            **OCT 24 2007**

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*Clerk.*

*Willie L. Martin, Jr.*

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

ATLANTA,                      OCTOBER    24, 2007

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

APPLICATION NO.            A08D0070  
RONALD ANDERSON V. THE GEORGIA DEPARTMENT OF HUMAN  
RESOURCES, EX REL, ET AL

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

99006

07CV01724



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 24 2007**

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

*Clerk.*

*Will L. Martin*

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

ATLANTA,                      OCTOBER      19, 2007

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

APPLICATION NO.            A08D0071  
TEONTRY JOHNSON V. THE STATE

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

70006

2004CR225

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **OCT 19 2007**



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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. Martin*

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

ATLANTA, NOVEMBER 02, 2007

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

APPLICATION NO. A08D0072  
B. MERRELL, INC V. POLLY RHODES

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

94006

SC2006CV654



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 02 2007

*I certify that the above is a true extract fromd  
the minutes of the Court 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... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

NOV 01 2007

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

**A08D0073. ANTHONY v. THE STATE.**

Willie D. Anthony filed an application for appeal to this Court from an order denying a petition for a writ of mandamus. Because Anthony's petition cannot be described as a mere motion filed in a pending criminal case, and because the Supreme Court has appellate jurisdiction in cases involving extraordinary remedies, this application is hereby TRANSFERRED to the Supreme Court for disposition. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (5); OCGA § 9-6-28.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 01 2007

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,                      NOVEMBER    01, 2007

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

APPLICATION    NO.                      A08D0074

JAMES REED BETHEL V. JANET K. STALLING F/K/A JANET K. BETHEL

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

96007

07A05030

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*                      **NOV -1 2007**

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Willi Z. Mant; [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

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

**OCT 18 2007**

**A08D0075. LISA JACKSON v. THE STATE.**

On October 10, 2007, Lisa Jackson filed this application for discretionary appeal from an order entered on June 9, 2006, denying her "Extraordinary Motion to Withdraw Guilty Plea." To be timely, an application for discretionary appeal must be filed with the clerk of the appropriate appellate court within 30 days of entry of the order, judgment or decision at issue. OCGA § 5-6-35 (d). Jackson's application was not filed until 488 days after entry of the order she seeks to appeal, and it is thus untimely. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). 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 18 2007**

*I certify that the above is a true extract from  
the minutes of 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,

NOV 08 2007

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

## **A08D0075. LISA JACKSON v. THE STATE.**

Lisa Jackson has filed a motion for reconsideration of this Court's order dismissing her application for discretionary appeal on the basis that it was untimely filed. Jackson maintains that for months, she requested the trial court to provide her with a copy of its order so that she could pursue a timely appeal, but the court failed to do so. Regardless of the reason given, however, this Court is without jurisdiction to consider an untimely application for appeal. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Assoc., Inc.*, 167 Ga. App. 257-258 (1) (306 SE2d 22) (1983); *Wal-Mart Stores, Inc. v. Parker*, 283 Ga. App. 708, 708-209 (642 SE2d 387) (2007). If Jackson's appeal rights have been frustrated due to clerical error in the superior court, her remedy would be to seek to have the order set aside and re-entered in the manner described in *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980). Because this Court does not have jurisdiction, however, the motion for reconsideration is DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 08 2007

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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.*

*Willie L. Martinez*, Clerk.

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

ATLANTA,                      NOVEMBER 01, 2007

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

APPLICATION NO.            A08D0076  
GEORGE IVEY V. SHANITA L. PEARSON

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

90007

06CV0220

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*            **NOV -1 2007**

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

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

*Clerk.*

*Willi L. Mat: [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, OCT 25 2007

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

**A08D0077. DWAYNE LANDERS v. THE STATE.**

On October 9, 2007, Dwayne Landers filed this application for discretionary appeal of the August 28, 2007 order denying his "Motion to Release the Defendant from a Judgment Utterly Void."<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Landers filed his application 42 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. The application is, therefore, DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* OCT 25 2007

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



---

<sup>1</sup>Landers' original submission was not accepted for filing because it lacked 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,                      NOVEMBER 02, 2007

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

APPLICATION NO.            A08D0078

SCOTT APPLING V. DAWN TATUM

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.

93007

06A078973

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 02 2007**



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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.*

*W. L. Martin*

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

ATLANTA,                      NOVEMBER 13, 2007

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

APPLICATION NO.            A08D0079  
SONJA BANKS V. AJC INTERNATIONAL, INC.

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

71007

2004CV86519



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 13 2007**

*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.*

*Willie L. Martin*

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

ATLANTA, NOVEMBER 09, 2007

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

APPLICATION NO. A08D0080  
SAMUEL WILSON V. PROFESSIONAL STANDARDS COUNCIL

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

92007

2006CV122855



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 09 2007**

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

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

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, OCT 22 2007

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

## **A08D0081. WILLIE GEORGE JOHNSON v. THE STATE.**

Willie George Johnson, *pro se*, filed this application for discretionary appeal seeking review of the trial court's denial of his "Motion for Out of Time Appeal and Amended Motion for New Trial," in which Johnson had sought to challenge his January 26, 1995 murder conviction. In *State v. Thornton*, 253 Ga. 524 (1) (322 SE2d 711) (1984), the Supreme Court directed that we transfer appeals from all murder convictions to that Court. Accordingly, this application is TRANSFERRED to the Supreme Court.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta OCT 22 2007

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

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

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 02 2007

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

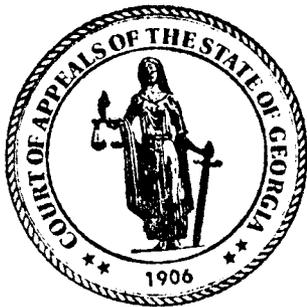
**A08D0082. PAMELA MCGINNIS SMALLWOOD v. MARY NICHOLE DAVIS.**

Pamela Smallwood has applied for discretionary review to appeal an adoption order that terminated her parental rights to her biological daughter. Because it is well-settled that the discretionary appeal procedures do not apply when the underlying issue is the termination of parental rights, this application is *GRANTED* as required under OCGA § 5-6-35 (j). See *In the Interest of D. S. P.*, 233 Ga. App. 346, 347 (1) (504 SE2d 211) (1998); see also *In the Interest of C. M. L.*, 260 Ga. App. 502, 503 (2) (580 SE2d 276) (2003). Smallwood 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 the Court of Appeals.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta NOV 02 2007

*I certify that the above is a true extract from  
the minutes of 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,

OCT 19 2007

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

**A08D0082. PAMELA MCGINNIS SMALLWOOD v. MARY NICHOLE DAVIS.**

The above application was filed in this Court on October 17, 2007. Contrary to the Rules of this Court, the application was not securely bound at the top nor was it filed as an original and two copies. Additionally, the order being appealed was not a stamped filed copy of the original order.

Pursuant to *Hood v. State*, S07G0412 (September 24, 2007), the Supreme Court has deemed these amendable defects. However, this Court is constrained by OCGA § 5-6-35 to issue an order granting or denying the application within 30 days of the date it is filed with this Court.

Therefore, the applicant is hereby ordered and directed to supply the Court of Appeals of Georgia with an application, an original and two copies, which has been bound securely at the top pursuant to the Rules of this Court, and which, again, pursuant to the Rules of this Court, contains a stamped filed copy of the order or judgment that is being appealed.

If the applicant does not comply with these directives within 10 days of the date of this order, the application shall stand dismissed. For purposes of this order, the application must be physically filed in this Court within 10 days. The Court's Certified Mailing Rule, Rule 4, shall not apply in this instance.



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

OCT 19 2007

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,                      OCTOBER    24, 2007

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

APPLICATION    NO.                      A08D0083  
BRUCE JONES V. JERRY ROTHSCHILD, ET AL

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

91007

CV071519



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 24 2007**

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

(404) 656-3470

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

*Docketing Date: November 13, 2007*

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 **S08C0433**

BRUCE JONES v. JERRY ROTHSCHILD et al.

Clerk, Supreme Court of Georgia

Case No. A08D0083

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,                      NOVEMBER 07, 2007

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

APPLICATION NO.            A08D0084  
CASTLEBERRY'S FURNITURE ET AL V. CARL D. HARRIS

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

94007

07CV83381



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

**NOV 07 2007**

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

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

*Clerk.*

A handwritten signature in black ink, appearing to read "W. L. Martinez", is written over the printed name "Clerk.".

# Court of Appeals of the State of Georgia

ATLANTA, NOV 19 2007

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

**A08D0085. OLARSCH v. NEWELL**  
**A08A0013. OLARSCH v. NEWELL**

Jeffrey Olarsch filed a new civil action consisting only of a pauper's affidavit and a "Rule 60 Motion to Vacate" an award of attorney fees in another case. In this application he seeks to appeal the trial court's denial of the motion and affidavit, contending that the award of fees was improper and that the trial court abused its discretion in denying his pauper's affidavit without a hearing. Asserting that this court has the inherent and equitable power to control the matters before it, he asks us to "correct the error of the clerk of the trial court by not transmitting the 'limited' record up for this appeal."

Although Olarsch filed this application pursuant to OCGA § 5-6-34 (a) (7), that statute provides that a direct appeal may be taken from "[a]ll judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders." The trial court's order denying his "Rule 60" motion does not fall within that category.

Pretermitted whether a new civil action was the correct vehicle to challenge the fee award, a review of the motion reveals that Olarsch was seeking to set aside the award. The motion, however, fails to meet the requirements for a motion to set aside under OCGA § 9-11-60 (d) in that it does not allege "(1) [l]ack of jurisdiction over the person or the subject matter; (2) [f]raud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or (3) [a] nonamendable defect which appears upon the face of the record or pleadings." OCGA § 9-11-60 (d); *Harris v. State*, 278 Ga. 280, 282 (600 SE2d 592) (2004). After a

review of the application, we must conclude that Olarsch's motion was not the proper vehicle to address the validity of the fee award. Further, a review of the application and the related direct appeal in A08A0013 reveals that Olarsch is already appealing the dismissal of his appeal of the fee award. The application for appeal is DENIED.

Consequently, Olarsch's motions to consolidate the two cases are denied, as is his motion to stay in A08D0085. As to the motion to stay the appeal in A08A0013 until this court rules on Olarsch's pauper's affidavit is also DENIED. This court cannot review the trial court's factual findings that the plaintiff is not a pauper. *Saylor v. Emory University*, 187 Ga. App. 460 (370 SE2d 625) (1988). Under OCGA § 9-15-2 (b), the trial court may inquire into the truth of the affidavit of indigence, and while the statute says the court may order that costs be paid "after a hearing," this court has held that a hearing is not required. *Morris v. DOT*, 209 Ga. App. 40 (432 SE2d 638) (1993). Here, the trial court held that its previous attorney fee award showed "a complete absence of any justiciable issue of law or fact which would allow plaintiff to proceed as an indigent." Because the court found that the plaintiff was not indigent based on information the court gained during the trial of the case, we cannot review that finding.

Olarsch's untimely motion and amended motion for reconsideration of our October 3, 2007 order is DENIED.

Newell's motion to compel Olarsch to serve copies of his pleadings to Newell's correct address is GRANTED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 19 2007**

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

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

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

JAN 23 2008

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

## **A08D0085. OLARSCH v. NEWELL**

Appellant Jeffrey Olarsch seeks reconsideration of this Court's order of November 19, 2007, denying his application for a discretionary appeal, his motion to consolidate this case with Case No. A08A0013 (a direct appeal of the dismissal of his appeal), and his motion to stay the appeals until this Court ruled on his pauper's affidavit. Upon further review, it appears that the application seeks review of a judgment awarding attorney fees and costs of litigation pursuant, at least in part, to OCGA § 9-15-14.

Under *Rolleston v. Huie*, 198 Ga. App. 49 (400 SE2d 349) (1990), a post-judgment award of attorney fees may be directly appealed without regard to the discretionary appeal procedures, where there is a pending "direct appeal" taken from the underlying judgment. Because Olarsch was entitled to bring this appeal under OCGA § 5-6-34 (a), the motion for reconsideration is GRANTED, this Court's order denying this application is VACATED, and the application is REINSTATED. Because Olarsch was entitled to bring this appeal under OCGA § 5-6-34 (a), this application is GRANTED under OCGA § 5-6-35 (j). That portion of this Court's order denying Olarsch's motion to consolidate this appeal with A07A0013 is also vacated, and the motion is hereby GRANTED.

That portion of this court's order of November 19, 2006, denying the appellee's motion to dismiss and denying his motion to stay the appeal still stands.

Olarsch 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.

04cv353, 07cv452



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 23 2008**

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

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

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 07 2007

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

## **A08D0086. IN RE: THE ESTATE OF MILDRED WILLEEN HOLTZCLAW.**

Sue Holtzclaw Dispain, a beneficiary of the estate of Mildred Willeen Holtzclaw, filed this application for discretionary appeal seeking review of an order of the probate court granting her motion for payment of OCGA § 9-15-14 attorney fees from the estate, and denying her motion to deny the executor's reimbursement of expenses incurred in defense of Dispain's petition for accounting and final settlement of the estate. Dispain contends that because the executor, Sara Waters, breached her fiduciary duty to the estate, Waters individually should be required to pay Dispain's attorney fees, as opposed to the estate, and she should be denied reimbursement of her expenses incurred in defense of this action.

Although appeals from awards of OCGA § 9-15-14 attorney fees are subject to the discretionary appeal requirements set forth in OCGA § 5-6-35 (a) (10), this case also involves the denial of Dispain's motion to deny Waters reimbursement of expenses in defense of the petition for accounting and final settlement of the estate, which issue is directly appealable. See OCGA § 53-7-104; *In re Estate of Garmon*, 254 Ga. App. 84 (561 SE2d 216) (2002). Accordingly, this application is GRANTED pursuant to OCGA § 5-6-35 (j). Dispain shall have ten days from the date of this order to file her notice of appeal. The clerk of the probate 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* NOV 07 2007

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hereto affixed the day and year last above written.*

*Will. L. Martinez*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, NOV 02 2007

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

## **A08D0087. CEDRIC THOMAS v. THE STATE.**

The State Board of Pardons and Parole granted Cedric Thomas parole on May 3, 2005, but revoked it on May 15, 2007, on the ground that Thomas failed to comply with certain conditions of that parole. On October 25, 2007, Thomas filed this application for discretionary appeal seeking review of that parole revocation.

OCGA § 5-6-35 (a) (5) authorizes discretionary appeal of orders revoking probation, but that Code section does not apply to *parole* revocations. Whereas the revocation of probation is a judicial function which can be reviewed by this Court, the revocation of parole is an executive function which is not subject to such review.

Under the separation of powers doctrine, we lack jurisdiction to review Thomas' challenge to the revocation of his parole.<sup>1</sup> The Georgia Constitution provides that "the State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles." Ga. Const. 1983, Art. IV, Sec. II, Par. II. Moreover, OCGA § 42-9-1 emphasizes the separation of the executive, legislative, and judicial branches of government, and provides that "no other body is authorized to usurp or substitute its functions for the functions imposed by this chapter upon the [State Board of Pardons and Paroles]."

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<sup>1</sup>*Harper v. State*, 262 Ga. App. 136, 137 (586 SE2d 336) (2003). See also, OCGA § 42-9-1.

Because this Court has no power to review the revocation of Thomas' parole, this application for discretionary appeal is DISMISSED.<sup>2</sup>



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

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hereto affixed the day and year last above written.*

*Will L. Mat... , Clerk.*

---

<sup>2</sup>We note that Thomas' proper remedy would be through a petition for habeas corpus.

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

ATLANTA,                      NOVEMBER    26,    2007

*The Court of Appeals passed the following order*

Case No. A08D0087

CEDRIC THOMAS V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    NOV 26, 2007*

*I certify that the above is a true extract from  
the minutes of 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. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** December 17, 2007

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 **S08C0629**

CEDRIC THOMAS v. THE STATE

Clerk, Supreme Court of Georgia

DEC 20 2007

Case No. A08D0087

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,                      NOVEMBER 09, 2007

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

APPLICATION NO.            A08D0088

THE STATE OF GEORGIA ET AL V. CORNER LOT, INC., ET AL

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

98008

06V791



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 09 2007**

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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, NOV 14 2007

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

## **A08D0089. VERNELL WYLEY v. THE STATE.**

Vernell Wyley seeks an appeal from an order denying his "Motion to Vacate the Verdict and Sentence or Judgment of the Court." Wyley's conviction for child molestation and enticing a child for indecent purposes was affirmed by this court in *Wyley v. State*, 259 Ga. App. 348 (577 SE2d 32) (2003).

On July 28, 2006, this court dismissed Wyley's Appeal No. A06A2350 as untimely. The order complained of in that appeal was an order of the superior court effectively rejecting Wyley's challenge to the legality of his sentence. In his current application for appeal Wyley seeks to appeal an order denying a challenge to the legality of his conviction. He contends he is entitled to post-conviction relief because his conviction is based on perjured testimony.

Because Wyley offers no claim of error in his application that has not already been disposed of or otherwise waived by him in prior appellate proceedings, his application for discretionary appeal is *dismissed* for lack of jurisdiction. *Jordan v. State*, 253 Ga. App. 510 (559 SE2d 528) (2002); see also *Jackson v. State*, 273 Ga. 320 (540 SE2d 612) (2001); compare *Williams v. State*, 271 Ga. 686, 688-689 (1) (523 SE2d 857) (1999).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 14 2007

*I certify that the above is a true extract from the minutes of 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. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, NOV 01 2007

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

**A08D0090. DEREK JOHNSON v. THE STATE.**

Derek Johnson, pro se, seeks discretionary review of the August 16, 2007, order revoking his probation. Johnson's application for review, however, was not docketed in this Court until October 26, 2007. Because Johnson's application was filed more than 30 days after the date of the order he seeks to appeal, the application is untimely. OCGA § 5-6-35 (d). This Court lacks jurisdiction to consider untimely applications for discretionary review. Therefore, Johnson's application is ordered DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* NOV 01 2007

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

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

*Willie L. Martin*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, NOV 21 2007

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

**A08D0090. DEREK JOHNSON v. The STATE.**

Derek Johnson's Nunc Pro Tunc Extraordinary Motion for Reconsideration is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 21 2007

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*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 26 2007

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

**A08D0091. BIDEZ, f/k/a Fuller v. McBURNETT.**

Victoria Esther Fuller Bidez filed this application for appeal with the Supreme Court on October 15, 2007, seeking an appeal from a child custody order entered on September 12, 2007. The Supreme Court transferred the application to this court for disposition. Because the application was not timely filed within 30 days of the order complained of, this court lacks jurisdiction to consider the submission and it is therefore *dismissed* for lack of jurisdiction. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).<sup>1</sup>



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta NOV 26 2007

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*Will L. Martin*, Clerk.

---

<sup>1</sup>In a reply brief Bidez essentially acknowledges that her application was not timely filed, but argues that she only became aware of the date of the superior court's order on October 15, 2007. Nevertheless, this court cannot disregard the mandatory requirements of OCGA § 5-6-35 (d). If Bidez has been unfairly deprived of her right to apply for an appeal because the superior court failed to mail her a copy of the order complained of in a timely fashion, then her remedy lies in the superior court. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Assoc., Inc.*, 167 Ga. App. 257 (306 SE2d 22) (1983).

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

ATLANTA,                      NOVEMBER 14, 2007

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

APPLICATION NO.            A08D0092  
ARTHUR WELLS V. WANDA HAWKINS, CLERK

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

92008

2002CRW034



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 14 2007**

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*Clerk.*

*Willie L. Martin*

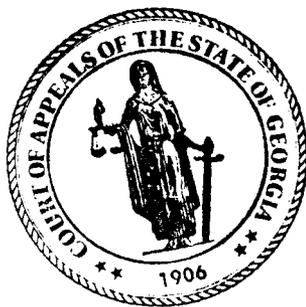
# Court of Appeals of the State of Georgia

ATLANTA, NOV 02 2007

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

## **A08D0093. DAVID GERALD CHEVALIER v. KATHLEEN CHEVALIER.**

David Gerald Chevalier filed this application for discretionary review from the superior court's order requiring him to pay unpaid child support and finding him in willful contempt of the parties' final divorce decree. No issue of child custody is involved in this case; the sole and underlying issue raised in this application is the amount of child support owed. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has 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. See, e.g., OCGA § 19-6-19 (a); *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 underlying subject matter in this case involves child support, this Court lacks appellate jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is TRANSFERRED to the Supreme Court of Georgia.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta NOV 02 2007

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*Willie L. Mat...*, Clerk.

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

ATLANTA,                      NOVEMBER 26, 2007

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

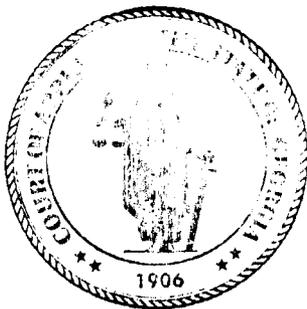
APPLICATION NO.            A08D0094

CLOUGH MARKETING SERVICES, INC., V. WACHOVIA SECURITIES, LLC

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

70008

07GC01828



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 26 2007**

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*Clerk.*

*Willie L. Martin*

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

ATLANTA, NOVEMBER 20, 2007

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

APPLICATION NO. A08D0095

PATRICK SEAN MCGONIGAL V. DEBORAH A. MCGONIGAL

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.

91008

06A10664



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **NOV 20 2007**

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*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, NOV 07 2007

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

## **A08D0096. MICHAEL FRAZIER v. THE STATE.**

Michael Frazier, pro se, seeks discretionary review of an order entered on September 17, 2007. Frazier's application for review, however, was not docketed in this Court until October 31, 2007. Because Frazier's application was filed more than 30 days after the date of the order he seeks to appeal, the application is untimely. OCGA § 5-6-35 (d). This Court lacks jurisdiction to consider untimely applications for discretionary review. Therefore, Frazier's application is ordered DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 07 2007

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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.*

*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 20 2007

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

**A08D0097. WALL, III, et al. v. THURMAN.**

Plaintiff Marshall Raymond Wall, III, and attorney James M. Finkelstein seek an appeal from an order awarding attorney's fees to the Chief Magistrate of Lee County, Georgia, James R. Thurman. Wall brought suit against Thurman individually and in his official capacity in December 2006, seeking a writ of mandamus, a writ of prohibition, as well as injunctive relief and damages under 42 USC § 1983. The applicants contend, among other things, that Wall voluntarily dismissed his action due to failing health and that the complaint was otherwise meritorious. The order complained of also reiterates that applicant Finkelstein is barred from filing any action in any superior court until the award of attorney's fees is satisfied,<sup>1</sup> and that he is barred from filing further complaints in Lee County without prior approval of a superior court judge. Because this application involves the viability of the extraordinary and equitable remedies sought by Wall in the underlying case, as well as the propriety of the restraints imposed on Finkelstein in this matter, it would appear that this court is without appellate jurisdiction to give meaningful consideration to all of the applicants' claims of error. The application is therefore *transferred* to the Supreme Court for initial consideration. Ga. Const. of 1983, Art. VI, § VI, ¶ III (2) and (5); OCGA § 9-6-28.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 20 2007

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*Willie L. Mat... , Clerk.*

---

<sup>1</sup>While this restraint was imposed in a prior order, we note that compliance was effectively a legal impossibility prior to the entry of the order complained of here.

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

ATLANTA, NOVEMBER 26, 2007

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

APPLICATION NO. A08D0098  
CITIBANK USA, N.A., ET AL V. BART L. GRAHAM

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

96009

2005CV109444



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 26 2007**

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*Clerk.*

*Will L. Martin*

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

ATLANTA,            DECEMBER 14, 2007

*The Court of Appeals passed the following order*

Case No. A08D0098

CITIBANK USA, N.A., ET AL V. BART L. GRAHAM

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    DEC 14, 2007*

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the minutes of the Court of Appeals of Georgia.*

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*Clerk.*

*Will L. Mat... [Signature]*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** January 03, 2008

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 **S08C0706**

CITIBANK USA, N.A. et al. v. BART L. GRAHAM

Clerk, Supreme Court of Georgia

Case No. A08D0098

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JAN 07 2008

Clerk, Court of Appeals of Georgia

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

ATLANTA,                      NOVEMBER 26, 2007

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

APPLICATION NO.            A08D0099

GEORGIA DEPARTMENT OF COMMUNITY HEALTH ET AL V. FULTON-  
DEKALB HOSPITAL AUTHORITY D/B/A GRADY HEALTH SYSTEM 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.

98009

2006CV111757



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **NOV 26 2007**

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*Clerk.*

*Will. L. Mat...*

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

ATLANTA,                      NOVEMBER 28, 2007

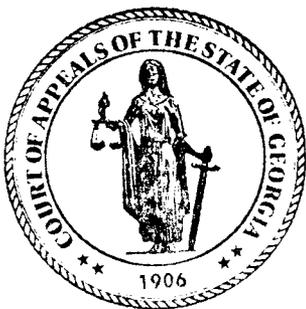
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A08D0100  
DORIAN BYRDSOONG V. MARY ROCHELLE MCKINNEY

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

90009

07A02079



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

**NOV 28 2007**

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*Clerk.*

*Willi L. Martin*

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

ATLANTA, NOVEMBER 13, 2007

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

APPLICATION NO. A08D0101  
PAUL MICHAEL MASSELLI V. MAYDEL MASSELLI-MONTERO  
A/K/A MAYDEL MARTIN MASSELLI

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

97009

05A03113



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 13 2007**

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hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

NOV 08 2007

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

**A08D0102. LATOYNA JOHNSON v. HOUSING AUTHORITY OF SAVANNAH.**

Latoyna Johnson filed an application for discretionary appeal on October 29, 2007, seeking review of a writ of possession entered on October 19, 2007. Appeals in dispossessory actions must be filed within seven days after entry of the order at issue. OCGA § 44-7-56; *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999). Because Johnson's application was filed more than seven days after entry of the order she seeks to appeal, the application is untimely and it is therefore DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 08 2007

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*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 29 2007

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

## **A08D0103. JACKSON v. THE STATE.**

Inmate Alton D. Jackson seeks an appeal from an order denying his motion for reconsideration of an order denying his request to proceed as a pauper with respect to a motion for out-of-time appeal. It is well-settled, however, that a motion for reconsideration is not an appealable order. *Smith v. Ticor Title Ins. Co. &c.*, 200 Ga. App. 534, 536 (3) (408 SE2d 833) (1991). Because Jackson seeks an appeal from a non-appealable order, his application for appeal is hereby *dismissed* for lack of jurisdiction.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta NOV 29 2007

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*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 09 2007

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

**A08D0104. BENNIE JAMES WALKER v. THE STATE.**

Bennie James Walker seeks discretionary review of the trial court's order denying several motions filed by Walker. The order Walker seeks to appeal was entered in the trial court on September 27, 2007. This application for discretionary appeal was filed 36 days later on November 2, 2007. Because Walker's application was filed more than 30 days after the date of the order he seeks to appeal, the application is untimely. OCGA § 5-6-35 (d). This Court lacks jurisdiction to consider untimely applications for discretionary review. Accordingly, Walker's application is ordered DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

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*Will L. Martin*, Clerk.



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

ATLANTA,            NOVEMBER 30, 2007

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

APPLICATION NO.        A08D0105  
EDILBERTO VENTURA D/B/A VENTURA PUNCHOUT ET AL  
V. OSCAR HERNANDEZ SILVERIO

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

99009

07106309



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta    **NOV 30 2007**

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Clerk.

*Will L. Martin*

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

ATLANTA,            DECEMBER 20, 2007

*The Court of Appeals passed the following order*

Case No. A08D0105

EDILBERTO VENTURA D/B/A VENTURA PUNCHOUT ET AL  
V. OSCAR HERNANDEZ SILVERIO

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    DEC 20, 2007*

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Clerk.

*Will L. Martin*

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

ATLANTA,            NOVEMBER 27, 2007

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

APPLICATION NO.        A08D0106  
CITY OF STOCKBRIDGE, GEORGIA V. REGINA M. MEEKS, ET AL

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

70009

05CV2865



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

**NOV 27 2007**

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

Clerk.

*Willie L. Martin*

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

ATLANTA,            DECEMBER 14, 2007

*The Court of Appeals passed the following order*

Case No. A08D0106

CITY OF STOCKBRIDGE, GEORGIA V. REGINA M. MEEKS, ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    DEC 14, 2007*

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*Clerk.*

*Will L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

NOV 28 2007

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

## **A08D0107. CHARLES DALTON v. THE STATE.**

Charles Dalton seeks to appeal the denial of his motion for reconsideration of an order denying a motion for new trial, new counsel and a transcript and the denial of his “notice of motion for default of the court not properly timely answering defendant’s motion for reconsideration.” We lack jurisdiction.

The denial of Dalton’s “motion for default” is not appealable because the trial court has ruled on Dalton’s motion for reconsideration. Therefore, any appeal of the denial of the motion for default is moot. A denial of a motion for reconsideration is not itself appealable. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Nor does a motion for reconsideration extend the time for filing a discretionary application. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Here, the trial court’s order denying Dalton’s motion for new trial, new counsel and a transcript – the order properly appealed from – was entered 130 days prior to the date this application was filed. An application for discretionary appeal must be filed within 30 days of the order appealed from. OCGA § 5-6-35 (d). Because the application is untimely and moot, this Court lacks jurisdiction to consider it. Therefore, the application is DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 28 2007

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*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, NOV 08 2007

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

**A08D0108. TOMMY PHILLIPS IV v. MINTER AND ASSOCIATES ET AL.**

Tommy Phillips IV, *pro se*, filed this timely application for discretionary appeal seeking review of an October 4, 2007, order granting summary judgment to Appellee Hewitt, Katz & Stepp. 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). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Phillips has filed a notice of appeal, his application is hereby GRANTED.

Phillips 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* NOV 08 2007

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*Willie L. Minter*, Clerk.

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

ATLANTA,                      NOVEMBER 30, 2007

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

APPLICATION NO.            A08D0109

DOUGLAS MITTLEIDER ET AL V. M. HENRY DAY, JR., ET AL

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

95010

07EV001830

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 30 2007**

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

*Clerk.*

*Willi Z. Mat; [Signature]*

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

ATLANTA,                      NOVEMBER 15, 2007

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

APPLICATION NO.            A08D0110  
MATTHEW D. CUYLER V. CHILD SUPPORT ENFORCEMENT OF  
ROCKDALE COUNTY ET AL

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

96010

2007CV1628



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

**NOV 15 2007**

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*Clerk.*

*William L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, NOV 19 2007

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

## **A08D0111. CONFESOR CHAPARRO v. THE STATE.**

Confesor Chaparro, a prison inmate proceeding pro se, filed this application for discretionary appeal from a September 14, 2007 order denying his motion to set aside his conviction and sentence. Chaparro's application was docketed in this Court November 5, 2007.<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Chaparro 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. The application is therefore DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* NOV 19 2007

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*Will L. Martin*, Clerk.

---

<sup>1</sup> The Clerk of this Court refused to accept Chaparro's original submission for filing because it lacked a filing fee or sufficient pauper's affidavit in violation of OCGA § 5-6-4 and Court of Appeals Rule 31 (c). By letter dated October 18, 2007, the Clerk of this Court returned the original submission to Chaparro, who refiled the application with sufficient pauper's affidavit in this Court on November 5, 2007.

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

ATLANTA, NOVEMBER 27, 2007

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

APPLICATION NO. A08D0112  
KELLI E. FORD V. ROBERT HANNA

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.

90010

07A06861



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 27 2007**

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*Clerk.*

*Willi L. Martin*

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

ATLANTA,            DECEMBER 03, 2007

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

APPLICATION NO.        A08D0113  
MONTEREY COMMUNITY COUNCIL ET AL V. DEKALB COUNTY  
PLANNING COMMISSION

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

97010

05CV36848



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 03 2007**

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hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, NOV 26 2007

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

**A08D0114. MAURICE FRANKS v. THE STATE.**

All applications for discretionary review must be filed within 30 days of the entry date of the order sought to be appealed. OCGA § 5-6-35 (d). Maurice Franks filed this application on November 6, 2007. All of the orders attached to Franks' application were entered more than 30 days prior to November 6. Therefore, Franks' application is untimely. Because this Court lacks jurisdiction to consider untimely discretionary applications, Franks' application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 26 2007

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

*Will L. Martin*, Clerk.

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

ATLANTA,            DECEMBER 10, 2007

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

APPLICATION NO.        A08D0115  
DOUGLAS MEDLIN V. BRENDA MEDLIN

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.

71010  
2006V85387



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 10 2007**

*I certify that the above is a true extract fromd  
the minutes of 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,            DECEMBER 03, 2007

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

APPLICATION NO.        A08D0116

DWAIN LEE KIRKLAND V. CHRISTOPHER K. TAMPLIN ET AL

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

92010

05FV828



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 03 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 06, 2007

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

APPLICATION NO.        A08D0117

MILAN MACEK V. THE STATE

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

99010

2007CR2193



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 06 2007**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, DEC 04 2007

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

## **A08D0118. GEORGE COLBERT v. THE STATE.**

Inmate George Colbert has filed this pro se application to seek discretionary review of the denial of his motion for an out-of-time appeal.

In November 2001, in the middle of his trial, Colbert entered a guilty plea to kidnaping, aggravated assault, armed robbery, and theft of a motor vehicle. Thereafter, Colbert moved to withdraw his guilty plea. The trial court denied the motion and Colbert filed a direct appeal. In that appeal, Colbert claimed, inter alia, that he should have been allowed to withdraw his guilty plea due to ineffective assistance of counsel at trial. Finding no reversible error, this Court affirmed. *Colbert v. State*, 264 Ga. App. 519 (591 SE2d 364) (2003).

Nearly six years after pleading guilty to those crimes, Colbert filed a pro se "Motion for Out-of-Time Appeal." The trial court denied the motion, noting that Colbert had filed multiple motions seeking to withdraw his guilty plea and had repeatedly claimed that "his guilty plea was entered unconstitutionally resulting from ineffective assistance of counsel." Stating that it had previously considered and ruled upon these same grounds, the trial court found the motion frivolous and lacking any legal basis.

In seeking additional review, Colbert failed to raise any issues that could entitle him to another appeal in this Court; therefore, we lack jurisdiction to consider this application. 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). 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)). The trial court did not err in denying the motion for out-of-time appeal. Colbert’s application is therefore ordered DISMISSED.

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

DEC 04 2007

*I certify that the above is a true extract from  
the minutes of 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,            JANUARY    11, 2008

*The Court of Appeals passed the following order*

Case No. A08D0118

GEORGE COLBERT V. THE STATE

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 11, 2008*



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

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

*Clerk.*

*Will. L. Martinez*

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

ATLANTA,            DECEMBER 04, 2007

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

APPLICATION NO.            A08D0119

GEMINI TRAFFIC SALES, INC., ET AL V. KENNETH WALKER

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

91010

A07CV1044

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 04 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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... [Signature]*

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

ATLANTA,            DECEMBER 04, 2007

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

APPLICATION NO.        A08D0120

MEDICAL CENTER OF CENTRAL GEORGIA V. GABRIEL D. STEWART

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.

94010

07CV47608



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 04 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 13, 2007

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

APPLICATION NO.        A08D0121

BOBBY PRICE V. THE STATE

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

95011

97CR14423



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

**DEC 13 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, NOV 30 2007

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

## A08D0122. SHERI RICHARDSON v. MICHAEL RICHARDSON

Sheri Richardson seeks discretionary review of the trial court's order which canceled a Writ of Fieri Facias issued by the clerk of court in favor of Ms. Richardson. Michael Richardson filed a motion to cancel the fi fa. The trial court granted Mr. Richardson's motion. The fi fa was entered pursuant to a temporary award of support in the parties' divorce case. Thus, the issue on appeal is ancillary to, and an incident of, the parties' final judgment and decree of divorce. *Iannicelli v. Iannicelli*, 169 Ga. App. 155 (311 SE2d 850) (1983). Because the order complained of directly addresses an interpretation of non-custodial provisions of the parties' divorce decree, Ms. Richardson's application is *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *White v. White*, 274 Ga. 884, 885 (2) (561 SE2d 801) (2002).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 30 2007

*I certify that the above is a true extract from  
the minutes of 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... A*, Clerk.



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

ATLANTA,            DECEMBER 13, 2007

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

APPLICATION NO.            A08D0123  
DANCO FINANCIAL, INC., V. PERRY CALHOUN ET AL

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

98011

07GC092312



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

**DEC 13 2007**

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

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

*Clerk.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, NOV 28 2007

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

**A08D0124. JOHN W. LOWE v. THE STATE.**

On November 16, 2007, John W. Lowe filed this application for discretionary appeal of a July 17, 2007 order that revoked his probation. An application for discretionary appeal must be filed within 30 days of the entry of the order sought to be reviewed. OCGA § 5-6-35 (d). Because Lowe filed this application 122 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. The application is, therefore, DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 28 2007

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

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

*Willie L. Martin*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, DEC 06 2007

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

**A08D0125. HOWARD HAMMOND v. THE STATE.**

Howard Hammond has filed a discretionary application seeking review of an order that denied his extraordinary motion for new trial. The copy of the order Hammond submitted with his application, however, is not stamped as filed in superior court. Thus, Hammond failed to include a stamped "filed" copy of the order at issue as required by Court of Appeals Rule 31 (d).

On November 16, 2007, this Court ordered Hammond to supplement his application with a stamped "filed" copy of the order sought to be appealed within ten days or face the sanction of dismissal of his application. Hammond has not filed a stamped "filed" copy of the order within the additional time allowed. Therefore, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* DEC 06 2007

*I certify that the above is a true extract from  
the minutes of 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 06, 2007

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

APPLICATION NO.            A08D0126

MITCHEL DANIELS V. DEPARTMENT OF COMMUNITY HEALTH

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

93011

2007CV132001



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 06 2007**

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

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,            DECEMBER 19, 2007

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

APPLICATION NO.        A08D0127  
INFINITE ENERGY, INC., V. RON COTTRELL

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.

71011

07C05055



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 19 2007**

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

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

*Clerk.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

NOV 28 2007

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

**A08D0128. SANDRA J. THORINGTON v. CHARLES WHITNEY KNOLL**

Sandra J. Thorington seeks discretionary review of an order of the superior court entered in a contempt action brought by Charles Whitney Knoll involving an interpretation of the settlement agreement incorporated into the parties' final divorce decree. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over 'divorce and alimony cases.' [Cits.]" *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Thorington's application is therefore ordered TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 28 2007

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,            DECEMBER 13, 2007

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

APPLICATION NO.        A08D0129

IN RE: RAY C. BEASLEY, NATURAL FATHER OF ANSLEY ANN  
COOK

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

99011

1B07DR134



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 13 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 07, 2007

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

APPLICATION NO.        A08D0130  
STEPHEN MARK HALL V. THE STATE

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

70011

2006CR0432

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta        DEC -7 2007*

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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.*

*Willi L. Mant; *

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

ATLANTA,            DECEMBER 13, 2007

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

APPLICATION NO.        A08D0131

RODNEY L. SKINNER V. MICHAEL L. THURMOND 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.

91011

07132992



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta    DEC 13 2007*

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

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

*Clerk.*  
*Willie L. Mat... [Signature]*

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

ATLANTA,

DECEMBER 20, 2007

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

APPLICATION NO. A08D0132

CRISTI MOCCIA V. RALPH MOCCIA

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

94011

2007CV128544



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 20 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, DEC 14 2007

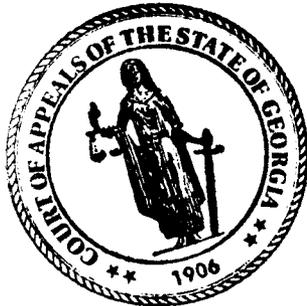
*The Court of Appeals hereby passes the following order:*

A08D0133. LUCAS JOEY SHEPHERD v. THE STATE

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

95-012

05CR21655



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

DEC 14 2007

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,            DECEMBER 04, 2007

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

APPLICATION NO.        A08D0134  
JAMES MICKEY WALDEN V. THE STATE

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

96012

02SUCR127



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 04 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 27, 2007

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

APPLICATION NO.            A08D0135  
WINSTON HUDSON V. FOREST VILLAS CONDOMINIUM ASSOCIATION,  
INC.

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

98012

06C14528

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta            **DEC 27 2007**

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

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

Clerk.

*Willi Z. Mart; *

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

ATLANTA,            DECEMBER 19, 2007

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

APPLICATION NO.        A08D0136  
KELLY ANFUSO V. WILLIAM W. MULLIN

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

90012

04CV2335



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **DEC 19 2007**

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

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,            JANUARY    22, 2008

*The Court of Appeals passed the following order*

Case No. A08D0136

KELLY ANFUSO V. WILLIAM W. MULLIN

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 22, 2008*



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

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

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, **DEC 06 2007**

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

**A08D0137. KUNMI OLULEYE v. WAYNE FRAZIER.**

Kunmi Oluleye filed this timely application for discretionary appeal seeking to appeal an order granting summary judgment to Wayne Frazier in Oluleye's action alleging wrongful eviction and to Frazier on his counterclaim. 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). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal.

Since it does not appear that Oluleye has filed a notice of appeal, this application is hereby GRANTED. Frazier's motion to dismiss the application is DENIED.

Oluleye 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* **DEC 06 2007**

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

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

*Willie L. Matz*, Clerk.



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

ATLANTA,            DECEMBER 18, 2007

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

APPLICATION NO.        A08D0138

KEITH JOHNSON V. THE STATE

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

93012

2003CR327



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 18 2007**

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

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

*Clerk.*

*Willie L. Martin*

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

ATLANTA,            DECEMBER 19, 2007

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

APPLICATION NO.        A08D0139

WILLIS HARDEN ET AL V. BANKS COUNTY BOARD OF COMMISSIONERS  
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.

71012

06CV452



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 19 2007**

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

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

*Clerk.*

*Willis L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **DEC 18 2007**

## **A08D0140. CHARLES EDWARD WILSON, JR. v. THE STATE**

Charles Edward Wilson, Jr. filed this application for discretionary appeal seeking review of the trial court's order denying his motion to terminate probation and motion for immediate release. On May 27, 2005, Wilson pled guilty to the offense of interfering with a public utility and was sentenced to 12 months' probation and a fine of \$513.00. On July 27, 2005, Wilson's probation officer, Joey Mullens, filed a warrant for Wilson's arrest for failure to report as instructed and failure to pay as instructed. On or about September 4, 2007, Wilson filed a motion to terminate probation and for immediate release contending his probation was never tolled pursuant to OCGA § 42-8-36 (a) and that it had expired prior to the filing of the petition for revocation of his probation. On or about September 20, 2007, Mullens filed a petition for revocation of Wilson's probation. On September 20, 2007, a hearing was held and the trial court did not find Wilson violated his probation, but ordered him released back to supervision as previously instructed. On November 2, 2007, the trial court found that Wilson's probation was properly tolled with the signing of the probation warrant and the motion to terminate probation and motion for immediate release was denied. It is this order Wilson seeks to appeal.

Because the trial court did not revoke Wilson's probation, and Wilson does not seek an appeal from an order revoking his probation, the discretionary appeal provisions of OCGA § 5-6-35 (a) (5) are inapplicable to this case. Further, since the trial court ruled on the petition for revocation of Wilson's probation, and there is no evidence in the application or the response that a petition for revocation of Wilson's probation remains pending in the trial court, the order on appeal is not interlocutory.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal.

Since it does not appear that Wilson has filed a notice of appeal, this application is hereby GRANTED. Wilson shall have ten days from the date of this order to file a notice of appeal with the state court. The state 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*

**DEC 18 2007**

*I certify that the above is a true extract from the minutes of 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,                    DECEMBER 19, 2007

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

APPLICATION NO.            A08D0141  
THE LAMAR COMPANY, L.L.C., V. CITY OF SANDY SPRINGS BOARD OF  
ZONING APPEALS, ET AL

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

99012

2007CV133898



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 19 2007**

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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,            DECEMBER 20, 2007

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

APPLICATION NO.        A08D0142

RICHARD SEAN GALLAHER V. MARY TERESE BREAUX, F/K/A

MARY TERESE GALLAHER

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

70012

061027242



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 20 2007**

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

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

ATLANTA,            JANUARY    07, 2008

*The Court of Appeals passed the following order*

Case No. A08D0142

RICHARD SEAN GALLAHER V. MARY TERESE BREAU, F/K/A  
MARY TERESE GALLAHER

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 07, 2008*

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

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

*Clerk.*

*Will. L. Martin*

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

ATLANTA,            DECEMBER 13, 2007

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

APPLICATION NO.        A08D0143  
JENNIFER L. FREI V. JOHN FREI

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

2007V161

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 13 2007**

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



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

ATLANTA,            DECEMBER 21, 2007

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

APPLICATION NO.            A08D0144  
PAMELA C. CARLSON V. MATTHEW E. CARLSON

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

94012  
031509540

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta            DEC 21 2007*

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

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

*Clerk.*

*Willi L. Mant; [Signature]*

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

ATLANTA,            JANUARY    25, 2008

*The Court of Appeals passed the following order*

Case No. A08D0144

PAMELA C. CARLSON V. MATTHEW E. CARLSON

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 25, 2008*



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

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

*Clerk.*

*Will L. Martin*

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

ATLANTA,            DECEMBER 14, 2007

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

APPLICATION NO.        A08D0145  
WARREN SKILLERN V. ROBERT PARIS ET AL

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

95013

07CV45215



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*        **DEC 14 2007**

*I certify that the above is a true extract fromd  
the minutes of the Court 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 14, 2007

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

APPLICATION NO.        A08D0146

FRANKLIN JONES V. NANCY SMITH

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

96013

04DR4073



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 14 2007**

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

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

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAY 08 2008**

**A08D0146. FRANKLIN JONES v. NANCY SMITH**

On April 21, 2008, Franklin Jones filed a motion for reconsideration of this Court's January 2, 2008 order denying his discretionary application for appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed with the Clerk of Court within 10 days from the rendition of the judgment. Jones' motion for reconsideration is untimely and is therefore DISMISSED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAY 08 2008**

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

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



*Willie L. Martin*, Clerk.

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

ATLANTA,                      JANUARY      07, 2008

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

APPLICATION NO.            A08D0147  
LOWELL FREDERICK YOUNG V. THE STATE

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

98013

00CR1252



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

**JAN 07 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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    03, 2008

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

APPLICATION    NO.            A08D0148  
DEBORAH K. STOKER V. PAUL SEVERIN

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.

90013  
07G4090



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*                    **JAN 03 2008**

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

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

ATLANTA,                      JANUARY                      02, 2008

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

APPLICATION NO.                      A08D0149  
JASON LEON FAUST V. THE STATE

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

97013

SU07CR1431



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*                      **JAN 02 2008**

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

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

*Clerk.*

*Willi L. Mat... [Signature]*

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

ATLANTA,            JANUARY    04, 2008

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

APPLICATION NO.            A08D0150

JOHN JACKSON V. FIRSTLINE CORPORATION, ET AL

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

93013

2007CV1993

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta    **JAN 04 2008**



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

JAN 30 2008

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

**A08D0150. JOHN JACKSON v. FIRSTLINE CORPORATION, ET AL**

Upon consideration of John Jackson's Motion for Reconsideration, it is ordered that it be hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 30 2008

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,                      JANUARY      04, 2008

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

APPLICATION    NO.            A08D0151

CRAIG BROWN 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.

71013

07R0153

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 04 2008**

*I certify that the above is a true extract fromd  
the minutes of 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,            JANUARY    09, 2008

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

APPLICATION NO.        A08D0152

GAIL PARKER V. SANDY DUNCAN

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

92013

05CV12919



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 09 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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. Matiza*

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

ATLANTA,            JANUARY    04, 2008

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

APPLICATION    NO.            A08D0153  
CRAIG BROWN 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.

71014

2007R10113



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

**JAN 04 2008**

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

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

*Clerk.*

*Willi L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, **DEC 20 2007**

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

**A08D0154. BARRY PATE v. THE STATE.**

On December 10, 2007,<sup>1</sup> Barry Pate, a prison inmate proceeding *pro se*, filed a discretionary application in this Court seeking to appeal a November 2, 2007, order denying his motion for forensic DNA testing. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Pate filed his 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. OCGA § 5-6-35 (d). Therefore, Pate's application is DISMISSED.



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

**DEC 20 2007**

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

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

*Willie L. Martin*, Clerk.

---

<sup>1</sup>Pate's original submission was not accepted for filing because it lacked a filing fee or sufficient pauper's affidavit in violation of OCGA § 5-6-4.

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

ATLANTA,            JANUARY    17, 2008

*The Court of Appeals passed the following order*

Case No. A08D0154

BARRY PATE V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 17, 2008*

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

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

*Clerk.*

*Will. L. Martin*

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

ATLANTA,                      JANUARY                      03, 2008

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

APPLICATION NO.                      A08D0155

ZURI WARE V. THE STATE

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

70013

2003FE392



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 03 2008**

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

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

*Clerk.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    09, 2008

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

APPLICATION    NO.            A08D0156  
RICKY CHARLES MANTOOTH V. THE STATE

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

91013

50032



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 09 2008**

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

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

*Clerk.*

*Willi L. Mant*

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

ATLANTA,                      JANUARY      09, 2008

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

APPLICATION NO.            A08D0157

MIKE DIXON V. THE STATE

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

94013

2007R118



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 09 2008**

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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.*

*Willie L. Martin*

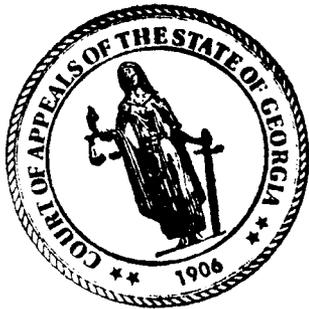
# Court of Appeals of the State of Georgia

ATLANTA, **JAN 14 2008**

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

**A08D0158. SMITH v. MANN.**

Upon review of the above styled application, the application is hereby *denied*.  
Upon review of the respondent's motion for sanctions, the motion is likewise *denied*.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 14 2008**

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

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

*Will L. Matz*, Clerk.

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

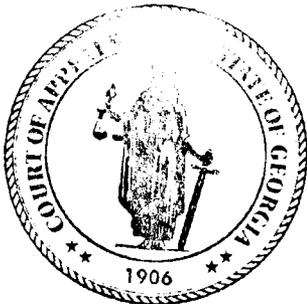
ATLANTA,            JANUARY    31, 2008

*The Court of Appeals passed the following order*

Case No. A08D0158

JENNIFER SMITH V. STEVEN MANN

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 31, 2008*

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

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,                      JANUARY      10, 2008

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

APPLICATION NO.            A08D0159  
CHARLES LOWERY V. LEASE PURCHASE II, INC

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

96014

07S01509



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 10 2008**

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

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

ATLANTA,                      JANUARY      07, 2008

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

APPLICATION NO.            A08D0160  
RENALDO PORTER V. RALPH M. WALKE ET AL

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

98014

200713905



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta      **JAN 07 2008**

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

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

Clerk.

*Willie L. Martin*

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

ATLANTA,                    JANUARY    08, 2008

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

APPLICATION NO.            A08D0161  
HINER TRANSPORT, INC., V. JIMMIE D. JETER

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.

90014

2003CV66657



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 08 2008**

*I certify that the above is a true extract fromd  
the minutes of 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,                      JANUARY      04, 2008

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

APPLICATION NO.            A08D0162  
FXM, P.C., ET AL V. PROCTOR HUTCHINS, P.C., ET AL

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

97014

07GR036074



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

**JAN 04 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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    10, 2008

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

APPLICATION NO.            A08D0163

KENNY BONDS V. THE STATE

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

93014

06CR1452



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 10 2008**

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

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,            JANUARY    16, 2008

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

APPLICATION    NO.            A08D0164

DEKALB COUNTY BOARD OF EDUCATION V. TRACY SINGLETON

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.

92014

07CV10903

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 16 2008**



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

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

*Clerk.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    09, 2008

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

APPLICATION    NO.            A08D0165  
EAGLE INTERIORS, INC., ET AL V. FARON SEGARS

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.

99014  
07FV892

1095



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **JAN 09 2008**

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

**JAN 10 2008**

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

**A08D0166. JOSEPH T. POKALSKY v. LORI L. POYNER.**

Joseph T. Pokalsky seeks a discretionary appeal from an order of the superior court entered in a contempt action brought by Lori L. Poyner in which she alleged Pokalsky violated provisions of the parties' final divorce decree not involving custody of their children. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over 'divorce and alimony cases.' [Cits.]" *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Pokalsky's application is therefore TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 10 2008**

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

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

*Willie L. Mat... , Clerk.*

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

ATLANTA,                      JANUARY      15, 2008

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

APPLICATION NO.            A08D0167  
HOG CONSTRUCTION, INC., V. RAY HARP

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

91014

051728718



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 15 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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    08, 2008

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

APPLICATION NO.        A08D0168

ATLANTA PLAYERS, INC., D/B/A PLAYERS BILLIARDS V. SAMUEL S.  
OLENS ET AL

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

94014

0414533



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 08 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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    07, 2008

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

APPLICATION    NO.            A08D0169  
ANTONIO DEMETRICE DANIELS V. THE STATE

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

95015

04CR069



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

**JAN 07 2008**

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

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

*Clerk.*

*Willie L. Mat... [Signature]*

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

ATLANTA,            JANUARY    17, 2008

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

APPLICATION NO.        A08D0170

W LYNN LASSETER, ET AL V. CITY OF MOULTRIE, GEORGIA

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

96015

07CV5206

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 17 2008**

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

# Court of Appeals of the State of Georgia

ATLANTA, **JAN 11 2008**

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

**A08D0171. DESTINY K. COLEMAN v. THE STATE.**

Destiny K. Coleman filed this application for discretionary appeal seeking review of the trial court's order denying his "Motion to Set Aside Judgment," "Amended Motion to Set Aside Judgment," and "Motion to Recuse." After reviewing the procedural history of Coleman's case, the trial court considered Coleman's motion to be a motion to withdraw the guilty plea upon which he was sentenced. However, because the sentence imposed was not void and the motion was filed after the term of court in which the judgment of conviction was rendered, the motion to withdraw the guilty plea was denied, and Coleman seeks to appeal that decision. However, the denial of a motion to withdraw a guilty plea is directly appealable. *Downs v. State*, 270 Ga. 310 (509 SE2d 40) (1998). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal.

Since it does not appear that Coleman has filed a notice of appeal, this application is hereby GRANTED. Coleman 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 11 2008**

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

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

*Willie L. Martin*, Clerk.



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

ATLANTA,                      JANUARY                      22, 2008

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

APPLICATION NO.                      A08D0172

LESLIE BODI V. OLGA GAVRILOVA

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

90015

0416955



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*                      **JAN 22 2008**

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*Clerk.*

*Willi L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, **JAN 22 2008**

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

**A08D0173. OLGA GAVRILOVA v. LESLIE BODI.**

Olga Gavrilova seeks discretionary review of an order dismissing Leslie Bodi's petition for temporary protective order. Bodi filed a petition seeking relief under the Family Violence Act. Gavrilova's attorney learned of the petition and thus was present for the hearing on the matter. The court denied the relief Bodi sought in an order dated October 27, 2007, but also ruled that the denial of the *ex parte* relief did not demand dismissal of the case, but rather that OCGA § 19-13-3 (c) required that another hearing be scheduled. That code section provides

Within ten days of the filing of the petition under [the Family Violence Act] or as soon as practical thereafter, but in no case later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

A hearing was scheduled for November 20, 2007, but the court continued the case because neither party had been served. The case was rescheduled for December 18, 2007; however, on December 13, 2007, Gavrilova's attorney informed the court that pursuant to the last sentence of OCGA § 19-13-3 (c), the case was dismissed by

operation of law because no hearing was held within 30 days of the original ex parte hearing. The trial court agreed and entered an order on December 20, 2007, reflecting the dismissal of Bodi's petition.

Gavrilova seeks an appeal, arguing that the trial court erred in dismissing the case on technical grounds after the court refused to grant the ex parte relief sought by Bodi. The original order, however, was entered on October 27, 2007. It follows that Bodi's petition was dismissed by operation of law under OCGA § 19-13-3 (c) on November 26, 2007. The order entered by the superior court on December 20, 2007, is a non-appealable nullity that does not serve to extend the time for filing an application for appeal to this court. Because Gavrilova did not file her application within 30 days after Bodi's petition was dismissed by operation of law, her application is untimely and is therefore DISMISSED for lack of jurisdiction. OCGA § 5-6-35 (d); accord *Coronet Carpets v. Reynolds*, 199 Ga. App. 383 (405 SE2d 103) (1991).

07cv2291



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **JAN 22 2008**

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*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, FEB 19 2008

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

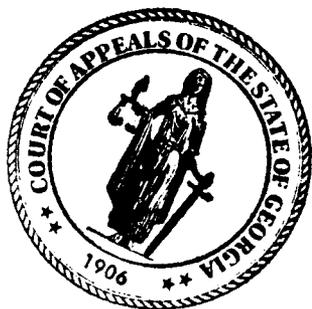
## **A08D0173. OLGA GAVRILOVA et al. v. LESLIE BODI.**

Olga Gavrilova and Phillip Norrey have filed a motion for reconsideration of this Court's January 22, 2008 order dismissing application A08D0173 on the basis that it was untimely filed. Upon review, it appears that the application was in fact timely filed and the application was improperly dismissed on this ground.

The application must nonetheless stand dismissed on the separate ground of mootness. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights. *Kappers v. DeKalb County Bd. of Health*, 214 Ga. App. 117 (446 SE2d 794) (1994). The trial court in this case denied the *ex parte* relief Leslie Bodi sought, finding completely in the applicants' favor, and the entire matter was eventually dismissed by operation of law. Thus, the applicants cannot be characterized as aggrieved parties. Yet they filed this application contending the trial court should have dismissed Bodi's petition on the merits, not on a technicality.

"Mootness is a question of court policy based on the theory that courts do not give opinions on abstract propositions of law that do not involve an actual controversy between parties. The existence of an actual controversy is fundamental to a decision on the merits by an appellate court." *In the Interest of I. S.*, 278 Ga. 859, 861 (607 SE2d 546) (2005) (Citations and punctuation omitted). No actual controversy remains in this case. In limited circumstances, if an issue is capable of repetition yet evades review, that issue is not viewed as moot. *Baca v. Baca*, 256 Ga. App. 514, 515-516 (1) (568 SE2d 746) (2002). But here, reversal of the trial court would be of no practical benefit to the applicants, and the action does not fall within the class of cases

which would inevitably evade review. *Kappers*, supra at 118. That being the case, the issue is moot, and mootness is a mandatory ground for dismissal. OCGA § 5-6-48 (b) (3); *Collins v. Lombard Corp.*, 270 Ga. 120, 121 (1) (508 SE2d 653) (1998). The motion for reconsideration is accordingly **DENIED**.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **FEB 19 2008**

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

*Will. L. Martin*, Clerk.

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

ATLANTA,                    JANUARY    17, 2008

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

APPLICATION    NO.            A08D0174  
NATALIE CAMILLE DAVIS V. THE STATE

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

97015

CR031370



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta.*

**JAN 17 2008**

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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,            JANUARY    10, 2008

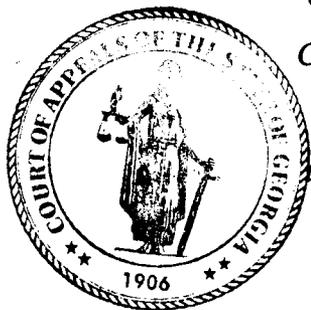
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A08D0175  
FLEETWOOD SECURITY & ELECTRONICS, INC. ET AL  
V. DAREN J. EMERY

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

93015

07CV3820



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 10 2008**

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

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, JAN 14 2008

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

**A08D0176. BROWN v. THE STATE.**

Willie James Brown filed an application for appeal on December 31, 2007, from an order entered on September 24, 2007, denying his extraordinary motion for new trial. Because Brown's application was not filed within 30 days of the order complained of as required under OCGA § 5-6-35 (d), Brown's 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 14 2008

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

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

*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 28, 2008

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

## **A08D0176. BROWN v. THE STATE.**

Willie James Brown filed an application for appeal on December 31, 2007, from an order entered on September 24, 2007, denying his extraordinary motion for new trial. This court dismissed the application as untimely. On motion for reconsideration Brown argues that his application was delayed due to difficulties in obtaining a stamped "filed" copy of the trial court's order. This does not change the Court's analysis. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Assoc., Inc.*, 167 Ga. App. 257 (306 SE2d 22) (1983). If Brown's right to apply for an appeal was frustrated due to the trial court's failure to send him a copy of the order, his remedy is to petition the trial court to vacate and re-enter the order as a means of correcting the problem. *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980). Because the Court is without jurisdiction to consider this untimely application on the merits, Brown's motion for reconsideration is *denied*.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 28 2008**

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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.*

*Willie L. Martinez*, Clerk.

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

ATLANTA,                    JANUARY    31, 2008

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

APPLICATION    NO.            A08D0177  
KELLY D. BROWN V. REGINALD J. WILLIAMS

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

92015

2003CV03183



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 31 2008**

*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. McIntosh*

# Court of Appeals of the State of Georgia

ATLANTA, **JAN 29 2008**

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

**A08D0178. CHARLES G. WILLIAMS, III v. GEORGIA PROFESSIONAL  
STANDARDS COMMISSION.**

Upon consideration of the application for discretionary appeal, it is ordered that the application be hereby DENIED.

The applicant has filed an emergency motion pursuant to Court of Appeals Rule 40 (b), seeking a stay of the superior court's December 14, 2007 order pending this Court's decision on the application for discretionary appeal. Our disposition of this case, however, renders this issue moot. Accordingly, the applicant's emergency motion under Rule 40 (b) is hereby DENIED as moot.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 29 2008**

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

*Will. L. Martin*, Clerk.

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

ATLANTA,                      JANUARY      30, 2008

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

APPLICATION NO.            A08D0179  
JIMMY GRAHAM ET AL V. JEAN MCGUIRE

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

70015

2005CV95828



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

**JAN 30 2008**

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*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**

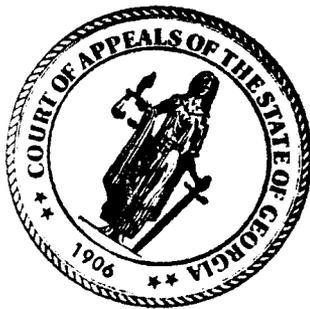
ATLANTA, MARCH 11, 2008

*The Court of Appeals passed the following order*

Case No. A08D0179

JIMMY GRAHAM ET AL V. JEAN MCGUIRE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 11, 2008*

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

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

*Clerk.*

*Willie L. Matz*

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

ATLANTA,                    JANUARY    17, 2008

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

APPLICATION    NO.            A08D0180  
AUSTIN HAYES V. CITY OF ATLANTA, GA., 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.

91015  
2007CV136917

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

**JAN 17 2008**

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hereto affixed the day and year last above written.*

*Clerk.*

*Willi L. Martin*



# Court of Appeals of the State of Georgia

ATLANTA,

JAN 25 2008

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

**A08D0181. ERIC SMITH v. THE STATE.**

Eric Smith, a prison inmate proceeding *pro se*, filed a discretionary application in this Court seeking to appeal two orders, both filed October 19, 2007, denying his motions to arrest a void judgment and for out-of-time appeal. Smith's application was docketed in this Court on January 7, 2008. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Smith filed his application more than 30 days after entry of the orders he seeks to appeal, the application is untimely. This Court lacks jurisdiction to consider untimely applications for discretionary review. Therefore, Smith's application is DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JAN 25 2008

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

*Will L. Martin*, Clerk.

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

ATLANTA,                      FEBRUARY 01, 2008

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

APPLICATION NO.            A08D0182  
MARY CARLENE CROSBY V. THE STATE

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

95016

06M2784

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 01 2008**



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*Clerk.*

*Willie L. Martin*

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

ATLANTA,                      JANUARY                      31, 2008

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

APPLICATION NO.                      A08D0183

DWAIN LEE KIRKLAND V. CHRISTOPHER K. TAMPLIN ET AL

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

96016

05MV977



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*                      **JAN 31 2008**

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*Clerk.*

*Willi L. Martin*

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

ATLANTA,            JANUARY    31, 2008

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

APPLICATION NO.            A08D0184

DWAIN LEE KIRKLAND V. RUBY KIRKLAND, EXECUTOR ET AL

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

98016

04MV584



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 31 2008**

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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.*

*W. L. Mat...*

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

ATLANTA,                      JANUARY      30, 2008

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

APPLICATION NO.            A08D0185  
VALERIE ANN COX V. JEFFREY SCOTT RIEBE

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

97016

CE0500888

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **JAN 30 2008**



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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. Mat...*

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

ATLANTA,                      FEBRUARY 19, 2008

*The Court of Appeals passed the following order*

Case No. A08D0185

VALERIE ANN COX V. JEFFREY SCOTT RIEBE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 19, 2008*

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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*

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

ATLANTA,                      JANUARY      30, 2008

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

APPLICATION NO.            A08D0186  
KEVIN MORRILL V. MICHAEL THURMOND, COMMISSIONER,  
GEORGIA DEPARTMENT OF LABOR

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

93016

2006CV126711



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JAN 30 2008**

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Clerk.

*Will. L. Martinez*

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

ATLANTA,                      FEBRUARY 01, 2008

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

APPLICATION NO.            A08D0187

GEORGIA DEPARTMENT OF PUBLIC SAFETY ET AL V. RICHARD  
DALE EDWARDS

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

71016

2007CV1057



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 01 2008**

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*Clerk.*

*Willi L. Martin*

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

ATLANTA,                      FEBRUARY 06, 2008

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

APPLICATION NO.            A08D0188  
RICHARD PHILLIPS V. THE STATE

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

92016

98CR273



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **FEB 06 2008**

*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 written.*

*Clerk.*

*Will. L. Martin*

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

ATLANTA,            JANUARY    30, 2008

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

APPLICATION NO.            A08D0189  
GENNARO SALVATORE GALTIERI, JR., V. STACY DENISE O'DELL  
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.

99016

06CV45204



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 30 2008**

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*Clerk.*

*Willie L. McIntosh*

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

ATLANTA,            FEBRUARY 07, 2008

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

APPLICATION NO.        A08D0190  
JOHN M. HADDEN V. HAIG POINT CLUB

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

70016

06SV02021



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 07 2008**

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*Clerk.*

*Will. L. Martin*

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

ATLANTA,            FEBRUARY 05, 2008

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

APPLICATION NO.        A08D0191  
MARIO CONRAD MELTON V. THE STATE

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

91016

00CR163



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **FEB 05 2008**

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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*

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

ATLANTA,            FEBRUARY 05, 2008

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

APPLICATION NO.        A08D0192  
DWIGHT TRACEY DAVIS V. THE STATE

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

94016

1996CR1610

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **FEB - 5 2008**



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

*Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, **JAN 29 2008**

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

## **A08D0193. DOUGLAS CLARENCE DUNCAN v. THE STATE.**

In 1988, a Butts County jury found Douglas Clarence Duncan guilty of armed robbery and kidnapping with bodily injury. He was sentenced to two consecutive terms of life imprisonment. In 2007, Duncan filed four *pro se* motions in the Butts County Superior Court, including a motion for out-of-time appeal in which he alleged that his lawyer never told him that he had a right of direct appeal to this court. The superior court ruled that it lacked jurisdiction to entertain Duncan's motions, and it returned them unfiled. Duncan now seeks discretionary review.

This case does not fall within any of the categories listed in OCGA § 5-6-35 (a) requiring an application for discretionary review. Because the superior court's order is directly appealable, we hereby GRANT Duncan's application for appeal. See OCGA § 5-6-35 (j). If he has not already filed one, Duncan shall have ten days from the date of this order to file his notice of appeal in 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 29 2008**

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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. Martinez*, Clerk.

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

ATLANTA,                      FEBRUARY 12, 2008

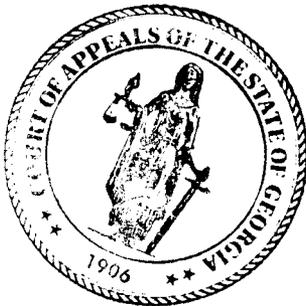
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A08D0194  
KENNETH D. SEARLES V. PAULA R. LONG

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

96017

07CV71942



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 12 2008**

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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,                      FEBRUARY 11, 2008

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

APPLICATION NO.            A08D0195

ISAAC M. JONES V. TURNER CONSTRUCTION CO., ET AL

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

98017

2007CV142824



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 11 2008**

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Willi L. Martin*

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

ATLANTA,                      FEBRUARY 14, 2008

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

APPLICATION NO.            A08D0196  
WELLSTAR HEALTH SYSTEM V. MARGARET COLE

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

90017

0719956

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



**FEB 14 2008**  
*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*Willie L. Mat... [Signature]*

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

ATLANTA,                      FEBRUARY 12, 2008

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

APPLICATION NO.            A08D0197  
EMILIANO ZAPATA-BRETADO V. TAMMY CURRY D/B/A CHILDRES  
CONSTRUCTION COMPANY ET AL

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

97017

2007CV142509



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**EEB 12 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, **JAN 31 2008**

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

**A08D0198. JERRY W. HOWARD v. THE STATE.**

Jerry W. Howard, a prisoner proceeding pro se, filed this application for discretionary appeal from an order entered November 2, 2007. The application was docketed in this court January 18, 2008.

An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Howard filed his application 77 days after entry of the order he seeks to appeal, the application is untimely and is DISMISSED for lack of jurisdiction.

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

**JAN 31 2008**

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

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



*Willie L. Martinez*, Clerk.

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

ATLANTA,                      FEBRUARY 11, 2008

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

APPLICATION NO.            A08D0199

PHILLIP GREGORY MARTIN V. FRONTIER LEASING CORP

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

71017

2007CV134888



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 11 2008**

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

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

ATLANTA,                      FEBRUARY 18, 2008

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

APPLICATION NO.            A08D0200

DERAIMUS WALKER V. THE STATE

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

92017

C017110

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 18 2008**

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

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

*Clerk.*

*Willi L. Martinez*



# Court of Appeals of the State of Georgia

ATLANTA, January 28, 2008

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

## **A08D0201. SHEDRICK TATE v. THE STATE**

On January 22, 2008<sup>1</sup> Shedrick L. Tate, a prison inmate proceeding *pro se*, filed this discretionary application seeking to appeal an August 29, 2007, order denying his motion to receive credit for time served. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Tate filed his 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. OCGA § 5-6-35 (d). Accordingly, Tate's application is ordered DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **JAN 28 2008**

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

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

*Willie L. Martinez*

, Clerk.

---

<sup>1</sup>Tate's original submission on September 20, 2007 and second submission on December 6, 2007 were not accepted for filing for failure to provide a proper certificate of service.

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

ATLANTA,                      FEBRUARY 18, 2008

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

APPLICATION NO.            A08D0202

MICHELLE HODGE ET AL V. DDR-MDT SHOPS AT TURNER HILL, LLC

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

70017

07CV10160



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 18 2008**

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

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

*Clerk.*

*Willi L. Martinez*

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

ATLANTA,                      FEBRUARY 22, 2008

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

APPLICATION NO.            A08D0203  
WAYCROSS MOLDED PRODUCTS ET AL V. RUSSELL MAYO

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

91017

07V0866



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 22 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, **FEB 07 2008**

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

**A08D0204. PHILLIP WADE PAGE v. THE STATE.**

On December 26, 2007, Phillip Wade Page filed an application for discretionary appeal challenging the August 6, 2007 order denying his motion to correct a void sentence.<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Page filed his application 142 days after entry of the order he seeks to appeal, the application is untimely and is DISMISSED for lack of jurisdiction.

1985CR48447



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **FEB 07 2008**

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

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

*Will. L. Mat... , Clerk.*

---

<sup>1</sup>Wade filed his application with the Supreme Court of Georgia, which transferred it to this Court on January 25, 2008.

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

ATLANTA,                      FEBRUARY 19, 2008

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

APPLICATION NO.            A08D0205

CAREY FARR V. SEAN WILLIAMS

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

95018

07A07354



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 19 2008**

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

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

*Clerk.*

*Willi L. Mat... A*

# Court of Appeals of the State of Georgia

ATLANTA, FEB 20 2008

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

**A08D0206. ALCON ASSOCIATES, INC. v. JHW, INC.**

Alcon Associates, Inc. ("Alcon"), seeks an appeal from an order of the state court entered on December 17, 2007,<sup>1</sup> denying its traverse in a garnishment action. Alcon filed its application on January 28, 2008, 42 days after the filing of the order denying its traverse. Because Alcon failed to file its application for appeal within 30 days of the entry of the order complained of, its application is *dismissed* as untimely filed. 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* FEB 20 2008

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

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

*Willie L. Martin*, Clerk.

---

<sup>1</sup>Relying on a novel interpretation of OCGA § 9-11-58 (b), Alcon argues that the order filed on December 17 was not "entered" until December 27, the date its own counsel gratuitously filed a civil case disposition form on the prevailing party's behalf. We disagree for essentially the same reasons offered in the state court's order for rejecting Alcon's challenge to the validity of the judgment in the underlying case. We may safely assume that the order denying Alcon's traverse was filed prematurely by the clerk for the reasons stated in Alcon's application. Nevertheless, the signed order was filed and became a part of the record in this case on December 17. We conclude that for purposes of appeal it is necessarily the date of "filing with the clerk of a judgment, signed by the judge" that controls under the current version of OCGA § 9-11-58 (b).

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

ATLANTA,                      FEBRUARY 14, 2008

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

APPLICATION NO.            A08D0207

BARBARA BUCHANAN V. PROPEX FABRICS, INC., ET AL

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

98018

07CV904



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

**FEB 14 2008**

*I certify that the above is a true extract fromd  
the minutes of 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,

FEBRUARY 14, 2008

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

APPLICATION NO. A08D0208  
RICHARD L. HOLDER V. CITY OF ATLANTA ET AL

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

90018

2007CV131939



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 14 2008**

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

FEB 21 2008

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

**A08D0209. DEBBIE LINDSEY v. K-MART ET AL.**

Debbie Lindsey seeks to appeal an order of the superior court affirming a ruling of the appellate division of the State Board of Workers' Compensation. Regarding such appeals, OCGA § 34-9-105 (b) provides in part that "the decision of the board shall be considered affirmed by operation of law if no order of the court dispositive of the issues on appeal has been entered within 20 days of the date of the hearing."

The superior court's order reflects that the hearing took place on December 11, 2007. The superior court did not enter its order until January 7, 2008, 27 days after the hearing. It follows that Lindsey's appeal was affirmed by operation of law on January 1, 2008, the twenty-first day following the hearing, *Pine Timber Trucking Co. v. Teal*, 230 Ga. App. 362 (496 SE2d 270) (1998), and it is this date that controls for purposes of filing a timely application for appeal. OCGA § 34-9-105 (d). The subsequent order of the superior court is a mere nullity. *Synthetic Industries v. Camp*, 196 Ga. App. 637 (396 SE2d 518) (1990).

Lindsey filed this application February 1, 2008, 31 days after the final disposition in the superior court, and it is therefore untimely. OCGA § 5-6-35 (d). Accordingly, the respondents' motion to dismiss the application is GRANTED and the application is ordered DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 21 2008

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,            FEBRUARY 21, 2008

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

APPLICATION NO.        A08D0210

HAROLD CHISM V. FULTON COUNTY PERSONNEL BOARD ET AL

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

93018

2007CV132901



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **FEB 21 2008**

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

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

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, FEB 28 2008

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

**A08D0211. YOUNG v. THE STATE.**

Gregory Paul Young has applied for discretionary review of the trial court's dismissal of his "Motion to Vacate Sentence and To Exercise Constitutional Rights." Young included with his application a copy of an order dismissing his motion, but Young's copy bears no file-stamp. The clerk's office in the Superior Court of Carroll County, however, has confirmed that the order was filed on December 24, 2007. This application was filed on January 30, 2008. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Young filed his application 37 days after entry of the order he seeks to appeal, the application is untimely and is DISMISSED for lack of jurisdiction.

03CR054

*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.*



*Willie L. Martin*, Clerk.

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

ATLANTA, MARCH 05, 2008

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

APPLICATION NO. A08D0212

MARK HOUSE V. THE STATE

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

92018

04SC12406



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 05 2008**

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

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

*Clerk.*

*Willi L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, FEB 18 2008

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

**A08D0213. IN THE INTEREST OF: S. H., Z. H., Z. H., CHILDREN(MOTHER)  
A08D0214. IN THE INTEREST OF: S. H., Z. H., Z. H., CHILDREN (FATHER)**

Linda L. Hull and Craig Hull have filed these discretionary applications seeking to appeal the trial court's denial of their "Motion to Set Aside March 5, 2007 Consent Termination of Parental Rights, Extension of Custody, Judicial Review, Permanency and Protective Order" and motions for New Trial and dismissing the motion to reconsider the matter. The Hulls' parental rights were terminated by a consent order entered on March 26, 2007. An untimely notice of appeal was filed on April 26, 2007.

The Hulls' motion states that it is a motion to set aside; however, the Hulls allege none of the grounds for setting aside a judgment under OCGA § 9-11-60 (d). They allege neither a lack of jurisdiction over the person or the subject matter; nor fraud, accident, or mistake or the acts of the adverse party unmixed with their own negligence or fault; nor a nonamendable defect which appears upon the face of the record or pleadings. The Hulls' motion is in substance nothing more than a motion for reconsideration, which does not extend the time for filing a notice of appeal. *Smith v. Ticor Title Ins. Co. &c.*, 200 Ga. App. 534, 536 (3) (408 SE2d 833) (1991).

The Hulls also filed a motion for new trial; however, no trial ever took place in this case as the Hulls consented to the entry of the "March 5, 2007 Consent Termination of Parental Rights, Extension of Custody, Judicial Review, Permanency and Protective Order." Because there was no trial or taking of original evidence in this proceeding, the Hulls' motion for new trial was in substance a mere motion for reconsideration. A motion for reconsideration is not appealable in its own right, nor does it extend the time for appealing from the final judgment previously entered in the

case. *Bell v. Cohran*, 244 Ga. App. 510 (536 SE2d 187) (2000).

Because the Hulls did not timely appeal the final order of March 26, 2007 and because their motions for reconsideration did not otherwise extend the time to file such an appeal, these applications are DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 18 2008**

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

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

*Willie L. Matz* Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, FEB 18 2008

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

**A08D0213. IN THE INTEREST OF: S. H., Z. H., Z. H., CHILDREN (MOTHER)  
A08D0214. IN THE INTEREST OF: S. H., Z. H., Z. H., CHILDREN (FATHER)**

Linda L. Hull and Craig Hull have filed these discretionary applications seeking to appeal the trial court's denial of their "Motion to Set Aside March 5, 2007 Consent Termination of Parental Rights, Extension of Custody, Judicial Review, Permanency and Protective Order" and motions for New Trial and dismissing the motion to reconsider the matter. The Hulls' parental rights were terminated by a consent order entered on March 26, 2007. An untimely notice of appeal was filed on April 26, 2007.

The Hulls' motion states that it is a motion to set aside; however, the Hulls allege none of the grounds for setting aside a judgment under OCGA § 9-11-60 (d). They allege neither a lack of jurisdiction over the person or the subject matter; nor fraud, accident, or mistake or the acts of the adverse party unmixed with their own negligence or fault; nor a nonamendable defect which appears upon the face of the record or pleadings. The Hulls' motion is in substance nothing more than a motion for reconsideration, which does not extend the time for filing a notice of appeal. *Smith v. Ticor Title Ins. Co. &c.*, 200 Ga. App. 534, 536 (3) (408 SE2d 833) (1991).

The Hulls also filed a motion for new trial; however, no trial ever took place in this case as the Hulls consented to the entry of the "March 5, 2007 Consent Termination of Parental Rights, Extension of Custody, Judicial Review, Permanency and Protective Order." Because there was no trial or taking of original evidence in this proceeding, the Hulls' motion for new trial was in substance a mere motion for reconsideration. A motion for reconsideration is not appealable in its own right, nor does it extend the time for appealing from the final judgment previously entered in the

case. *Bell v. Cohran*, 244 Ga. App. 510 (536 SE2d 187) (2000).

Because the Hulls did not timely appeal the final order of March 26, 2007 and because their motions for reconsideration did not otherwise extend the time to file such an appeal, these applications are DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 18 2008**

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

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

*Willie L. Martin*, Clerk.

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

ATLANTA,                      FEBRUARY 20, 2008

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

APPLICATION NO.            A08D0215  
CONTINENTAL PET TECHNOLOGIES, INC. V. JUANA SANDOVAL  
PALACIAS

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

70018

07CV3798



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 20 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, MAR 03 2008

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

## A08D0216. DARRELL E. BROWN v. THE STATE

Darrell E. Brown filed this "Application for Certificate of Probable Cause" seeking review of the trial court's order denying his motion for sentence reconsideration/modification. Brown was convicted of two counts of aggravated assault, three counts of aggravated battery, kidnapping with bodily injury, and possession of a knife during the commission of a felony. Brown's conviction was affirmed on appeal by this Court. *Brown v. State*, 275 Ga. App. 99 (619 SE2d 789) (2005).

The denial of Brown's motion for sentence reconsideration/modification is not subject to appellate review. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). A motion to amend sentence lies within the discretion of the trial court, and so long as the sentence imposed is within the statutory limits, we will not disturb it. *Jackson v. State*, 238 Ga. App. 559, 560 (2) (520 SE2d 11) (1999). Since the record does not show that the sentence imposed punishment the law does not allow, Brown is not entitled to another appeal. Thus, we lack jurisdiction and this application is ordered DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 03 2008

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

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

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 18 2008**

**A08D0216. DARRELL E. BROWN v. THE STATE.**

On April 4, 2008, Darrell E. Brown filed a motion for reconsideration of this Court's March 3, 2008 order dismissing his discretionary application for appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed with the Clerk of Court within 10 days from the rendition of the judgment. Browns' motion for reconsideration is untimely and is therefore DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 18 2008**

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

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

*Willie L. Martinez*, Clerk.

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

ATLANTA,                      FEBRUARY 25, 2008

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

APPLICATION NO.            A08D0217  
DARRELL NESBIT ET AL V. DALE NESBIT

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.

94018

2005CV96372



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 25 2008**

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

*Willi L. Martin*

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

ATLANTA,                      FEBRUARY 27, 2008

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

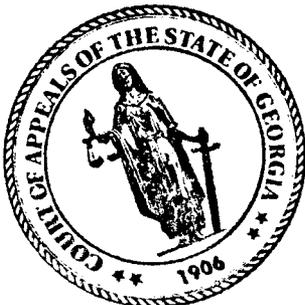
APPLICATION NO.            A08D0218

TENNECO AUTOMOTIVE, INC., ET AL V. MARY FRANCES DYE

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

95019

07HV1135



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 27 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, FEB 28 2008

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

## **A08D0219. MEREDITH v. JOHNSON.**

Pro se applicant Jim Meredith states that he and a third party purchased a piece of land at a tax sale, and that after eleven years of trying to move respondent Diane Johnson from the property he filed an action against her to remove her from the property. Meredith prevailed at trial, but the trial court granted Johnson's motion for judgment notwithstanding the verdict. Meredith has filed an application for discretionary appeal from this order. Because the scant exhibits included with Meredith's application reveal no apparent basis for concluding that the order complained of should be subject to the discretionary appeal procedure, the application is hereby *granted* as required under OCGA § 5-6-35 (j). Meredith 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 28 2008

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

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

*Will L. Martin* Clerk.

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

ATLANTA,                      FEBRUARY 22, 2008

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

APPLICATION NO.            A08D0220

TIMOTHY J. HELFRICH V. LAURIE B. ROBINSON, F/K/A LAURIE BETH  
HELFRICH

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

98019

05CV002963



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 22 2008**

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

# Court of Appeals of the State of Georgia

ATLANTA, FEB 28 2008

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

## **A08D0221. IN THE INTEREST OF: G. M. S. O., A CHILD (MOTHER).**

Stacy Clayton filed this application for discretionary appeal seeking review of the Juvenile Court of Camden County's order terminating her parental as to her biological child, Geovonie Mackaveli Shakur Oliver. The petition giving rise to the order issued in this case was filed on October 2, 2007.

In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to parental termination of rights appeals and child custody appeals. Act 264, H. B. No. 369 (the "Act"). Before the changes, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures "become effective January 1, 2008." Section 8 of the implementing legislation provides for application of the new Act to "all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008"<sup>1</sup>(emphasis added).

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application for discretionary appeal in a termination of parental rights case is inapplicable to this

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<sup>1</sup>Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and the termination of parental rights case as both were changed in the same amendment.

case. Thus, this case is directly appealable.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Clayton has filed a notice of appeal, this application is hereby GRANTED. Clayton shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile 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 28 2008**

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

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

*Will L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, FEB 28 2008

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

## **A08D0222. IN THE INTEREST OF: C. J. L. C., A CHILD.**

Chelsea Cagle filed this application for discretionary appeal seeking review of the Juvenile Court of Bartow County's order terminating her parental as to her biological child, Christopher James Lee Cagle. The petition giving rise to the order issued in this case was filed on October 22, 2007.

In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to parental termination of rights appeals and child custody appeals. Act 264, H. B. No. 369 (the "Act"). Before the changes, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures "become effective January 1, 2008." Section 8 of the implementing legislation provides for application of the new Act to "all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008"<sup>1</sup>(emphasis added).

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application for discretionary appeal in a termination of parental rights case is inapplicable to this

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<sup>1</sup>Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and the termination of parental rights case as both were changed in the same amendment.

case. Thus, this case is directly appealable.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Cagle has filed a notice of appeal, this application is hereby GRANTED. Cagle shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is instructed to include a copy of this order in the record transmitted to this Court.

0701481

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

**FEB 28 2008**

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

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

*Willie L. Martin*, Clerk.



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

ATLANTA,                      FEBRUARY 27, 2008

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

APPLICATION NO.            A08D0223

CHARLIE JORDAN V. THE STATE

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

93019

SU07CR1107



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 27 2008**

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

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

*Clerk.*

*Willie L. Martin*

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

ATLANTA, MARCH 03, 2008

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

APPLICATION NO. A08D0224  
CHRIS YAGER V. JERRY WALKER ET AL

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

71019

06CV3442



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 03 2008**

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

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

*Clerk.*

*Willi L. McIntire*

# Court of Appeals of the State of Georgia

ATLANTA, FEB 13 2008

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

**A08D0225. TADASHA PETTWAY SIMPSON v. EZEKIEL TALISMAN  
PETTWAY**

The above Discretionary Application was docketed in this Court on February 7, 2008. Contemporaneously with the docketing of the application, the movant filed a Motion for Extension of Time in which to have a trial transcript transcribed and filed with her application.

No extensions of time are permitted for this Court's consideration of an Application for Discretionary Appeal. See Court of Appeals Rule 31(f). The Court of Appeals shall issue an order granting or denying such application within 30 days of the date on which the application was filed. OCGA §5-6-35(f).

In light of the Court's rule and the applicable Code Section, the Motion for Extension is hereby DENIED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB 13 2008

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

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



Clerk.

*W. L. Martin*

92-019

COPY

COURT OF APPEALS  
STATE OF GEORGIA

TADASHA PETTWAY SIMPSON,

Applicant.

vs.

EZEKIEL TALISMAN PETTWAY,

Defendant.

APPLICATION NO. **A08D0225**

**FILED IN OFFICE**

**FEB 07 2008**

**CLERK, COURT OF  
APPEALS OF GEORGIA**

**MOTION FOR EXTENSION OF TIME**

Submitted by:

Constance Manigo Daise  
CONSTANCE MANIGO DAISE, LLC  
Attorney for Applicant  
Georgia Bar Number 203233

147 North Main Street  
Suite B  
Jonesboro, Georgia 30236  
(770) 471-4811

COURT OF APPEALS

STATE OF GEORGIA

TADASHA PETTWAY SIMPSON,

Applicant,

vs.

EZEKIEL TALISMAN PETTWAY,

Defendant.

APPLICATION NO.  
\_\_\_\_\_  
\_\_\_\_\_

**MOTION FOR EXTENSION OF TIME**

**COMES NOW**, TADASHA SIMPSON PETTWAY, Applicant and files this motion pursuant to O.C.G.A. § 5-6-39 and shows this Honorable Court as follows:

1.

Applicant shows that jurisdiction is properly in this Court because this case is not one over which the Supreme Court has jurisdiction under the Georgia Constitution, Article VI, § VI, Paragraphs II & III.

2.

Applicant has timely filed her Application for Appellate Review.

3.

Applicant will need more time to fully develop her Application for Appellate Review and Enumeration of Errors because she does not have the transcript of the hearing.

4.

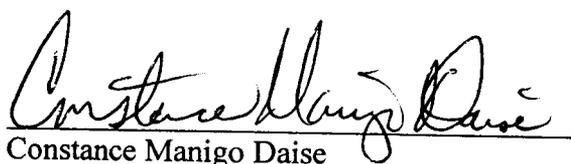
Applicant's attorney requested the transcript from the Court Reporter on January 15, 2008. The transcript is lengthy and possibly more than three hundred pages long due to the extensive four and one half hours hearing.

WHEREFORE, Applicant prays:

- (a) That summons and process issue as required by law;
- (b) That applicant be given more time to have the transcript transcribed;
- (c) That applicant be given more time to fully develop her enumerations of error with argument and citation of authority after she has had the transcript transcribed; and

For all such other relief that the Court may consider equitable and appropriate.

Respectfully submitted,



Constance Manigo Daise  
CONSTANCE MANIGO DAISE, LLC  
Attorney for Applicant  
Georgia Bar No. 203233

147 North Main Street  
Suite B  
Jonesboro, Georgia 30236  
(770) 471-4811

COURT OF APPEALS

STATE OF GEORGIA

TADASHA PETTWAY SIMPSON,

Applicant,

vs.

EZEKIEL TALISMAN PETTWAY,

Defendant.

APPLICATION NO.

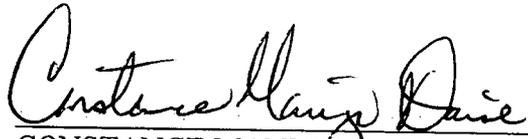
\_\_\_\_\_

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following, CHARLES J. VRONO, in the foregoing matter with a copy of the **MOTION FOR EXTENSION OF TIME** by placing in the U.S. Mail with proper postage to the following address:

Charles J. Vrono  
Steinberg and Vrono, P.C.  
973 Forest Parkway  
Forest Park, Georgia 30297

This the 7<sup>th</sup> day of February, 2008.



CONSTANCE MANIGO DAISE, LLC  
Constance Manigo Daise  
Attorney for Applicant  
Georgia State Bar No. 203233

147 N. Main Street  
Suite B  
Jonesboro, Georgia 30236  
(770) 471-4811

• • •



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

ATLANTA, MARCH 05, 2008

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

APPLICATION NO. A08D0225

TADASHA SIMPSON PETTWAY V. EZEKIEL TAILSMAN PETTWAY

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

92019

2005CV03076

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 05 2008**

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

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

*Clerk.*

*Willie L. Martinez*



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

ATLANTA, MARCH 03, 2008

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

APPLICATION NO. A08D0226  
CHERYL L. HUFF V. PAWNSMART, INC

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

70019

07C10120



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 03 2008**

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

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

*Clerk.*

*Willie L. Martin*

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

ATLANTA, MARCH 26, 2008

*The Court of Appeals passed the following order*

Case No. A08D0226

CHERYL L. HUFF V. PAWNSMART, INC

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 26, 2008*

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

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

*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, FEB 29 2008

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

**A08D0227. IN THE INTEREST OF: B. M. L. AND A. T. L., CHILDREN  
(MOTHER).**

Robin Mannary filed this application for discretionary appeal seeking review of the Juvenile Court of Camden County's order terminating her parental as to her biological children, Samantha Marie Lorusso and Anthony Thomas Lorusso. The petition giving rise to the order issued in this case was filed on October 11, 2007.

In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to parental termination of rights appeals and child custody appeals. Act 264, H. B. No. 369 (the "Act"). Before the changes, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures "become effective January 1, 2008." Section 8 of the implementing legislation provides for application of the new Act to "all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008"<sup>1</sup>(emphasis added).

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application

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<sup>1</sup>Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and the termination of parental rights case as both were changed in the same amendment.

for discretionary appeal in a termination of parental rights case is inapplicable to this case. Thus, this case is directly appealable.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Mannary has filed a notice of appeal, this application is hereby GRANTED. Mannary shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is instructed to include a copy of this order in the record transmitted to this Court.

0700454      0700455

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **FEB 29 2008**

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

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



*William L. Martin*, Clerk.

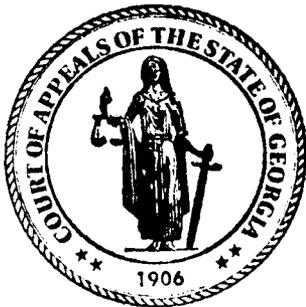
# Court of Appeals of the State of Georgia

ATLANTA, FEB 28 2008

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

**A08D0228. ALLEN ALPHONZO ADAMS v. THE STATE.**

Allen Alphonzo Adams filed this application for discretionary appeal seeking review of the trial court's order denying his motion to reduce/modify his sentence. The order Adams seeks to appeal was entered in the trial court on December 19, 2007. This application was filed on February 8, 2008. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Adams filed his application 51 days after entry of the order he seeks to appeal, the application is untimely and is DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 28 2008**

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

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

*Willie L. Mat...*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, FEB 27 2008

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

**A08D0229. VICKIE D. DAUGHERTY BAKER v. JIMMY HAROLD BAKER.**

Vickie D. Daugherty Baker has filed this application for discretionary appeal to challenge the denial of her motion for reconsideration of a final judgment and decree of divorce.<sup>1</sup> Specifically, Baker seeks prejudgment interest she contends is due on certain sums that she asserts are liquidated as they were provided for in the parties' antenuptial agreement.

We observe that Baker styled her motion as a motion for new trial and motion for reconsideration. Although the denial of a motion for new trial is an appealable judgment, OCGA § 5-6-38 (a), Baker expressly asserts in her application that she "dismissed her Motion for New Trial, but retained her Motion for Reconsideration." The denial of a motion for reconsideration is not an appealable judgment. *Stone v. Dawkins*, 192 Ga. App. 126, 127 (384 SE2d 225) (1989).

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<sup>1</sup> Baker filed her application in the Supreme Court of Georgia, which transferred it here, finding that "[t]he order sought to be appealed cannot be considered a proper application to appeal the final judgment and decree of divorce," and that "the issues raised do not relate to alimony, but only to property division." But see, e.g., *Blige v. Blige*, S07F1817 (2008 Ga. LEXIS 44) (Jan. 28, 2008); *Plachy v. Plachy*, 282 Ga. 614 (652 SE2d 555) (2007); *Grissom v. Grissom*, 282 Ga. 267 (647 SE2d 1) (2007); *Mathis v. Mathis*, 281 Ga. 865 (642 SE2d 832) (2007). See also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). ("[T]he Supreme Court *shall* have appellate jurisdiction of" certain specified "classes of cases," including, without limitation, "[a]ll divorce and alimony cases.") (Emphasis supplied.)

In her amendment to her motion for reconsideration,<sup>2</sup> Baker cites OCGA § 9-11-60 (g) and requests correction of a clerical mistake in the judgment so as to provide for the prejudgment interest. Denials of motions to set aside under OCGA § 9-11-60 (g) are appealable judgments. See *Cambron v. Canal Ins. Co.*, 246 Ga. 147 (269 SE2d 426) (1980). Adding a category of damages, such as prejudgment interest, however, is not the correction of an obvious mere clerical error or omission, but a substantive change in the judgment and therefore may not be done under the provisions of OCGA § 9-11-60 (g). *Capital Cargo v. Port of Port Royal*, 261 Ga. App. 803 (584 SE2d 54) (2003).

For these reasons, we lack jurisdiction over this application, which is accordingly DISMISSED.

00CV55



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 27 2008**

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

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

*Will L. Mat...*, Clerk.

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<sup>2</sup> In the application, Baker refers to the pleading as an amendment, but the pleading is captioned, "Defendant's Cross Motion for Reconsideration."

# Court of Appeals of the State of Georgia

ATLANTA, FEB 21 2008

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

## **A08D0230. YARBOROUGH v. THE STATE.**

Raymond Eugene Yarborough has applied for discretionary review of the trial court's order revoking the balance of his probation. An application for discretionary appeal must be filed within thirty days of the order sought to be appealed. OCGA § 5-6-35 (d). The order that Yarborough seeks to appeal was entered on December 12, 2006, but Yarborough did not file this application until February 8, 2008. Consequently, this application is untimely, and we lack jurisdiction to consider it.

Yarborough relies on a January 9, 2008 order of the trial court granting his motion for an out-of-time appeal, but an out-of-time discretionary appeal is not authorized by OCGA § 5-6-35 or any other code section. The trial court had no authority to extend the time for filing a discretionary appeal. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). We therefore DISMISS this application. Yarborough is advised that he may have a remedy through a petition for a writ of habeas corpus. See *Kreps v. Gray*, 234 Ga. 745 (218 SE2d 1) (1975).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 21 2008**

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

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

*Willie L. Martinez*, Clerk.

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

ATLANTA, MARCH 13, 2008

*The Court of Appeals passed the following order*

Case No. A08D0230

RAYMOND EUGENE YARBOROUGH V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 13, 2008*

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

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

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 06 2008**

## **A08D0231. FARRAR v. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS.**

John E. Farrar seeks an appeal from an order denying his "MOTION TO SET ASIDE ORDER DISMISSING PETITIONER'S MOTION FOR RECONSIDERATION", his "MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE", as well as his "MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE BASED UPON ALLEGED IRREGULARITIES." The underlying subject matter of this application is an appeal to the superior court under OCGA § 50-13-19 of the Georgia Administrative Procedure Act from a decision of the respondent to impose sanctions against Farrar. The superior court affirmed the decision on April 23, 2007, and Farrar applied to this court for additional appellate review. Farrar's Application No. A07D0307 was denied by this court by order entered on June 11, 2007. Farrar's application to the Supreme Court for a writ of certiorari was denied on September 24, 2007. This matter is no longer subject to further appellate review by this court or to "reconsideration" of any kind by the superior court acting in its appellate capacity. Farrar's application for appeal is therefore *dismissed* as moot.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **MAR 06 2008**

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

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

*Will. L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, FEB 28 2008

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

## **A08D0232. IN THE INTEREST OF: D. W., C. W., AND J. W., CHILDREN**

Anissa R. Patton, Child Advocate Attorney and counsel for the minor children involved in this case, filed this application for discretionary appeal seeking review of the Juvenile Court of Fulton County's order dismissing the petition for termination of parental rights as to the mother of the children, Taurean Natasha Wood. The petition giving rise to the order issued in this case was filed on August 9, 2007.

In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to parental termination of rights appeals and child custody appeals. Act 264, H. B. No. 369 (the "Act"). Before the changes, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures "become effective January 1, 2008." Section 8 of the implementing legislation provides for application of the new Act to "all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008"<sup>1</sup>(emphasis added).

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application

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<sup>1</sup>Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and the termination of parental rights case as both were changed in the same amendment.

for discretionary appeal in a termination of parental rights case is inapplicable to this case. Thus, this case is directly appealable. Further, the Act only applies to “[a]ppeals from orders terminating parental rights.” OCGA § 5-6-35 (a) (12). Since this case involves an order denying a petition to terminate Wood’s parental rights, it would not be subject to the statutory change.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Patton has filed a notice of appeal, this application is hereby GRANTED. Patton shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is instructed to include a copy of this order in the record transmitted to this Court.

07TP07140 07TP07141 07TP07143

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

**FEB 28 2008**

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

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



*Will. L. Martin*, Clerk.

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

ATLANTA, MARCH 05, 2008

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

APPLICATION NO. A08D0233  
LAURENS COUNTY BOARD OF EDUCATION ET AL V. WALTER  
DEWBERRY

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.

97020

20071436



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 05 2008**

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

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

ATLANTA, MARCH 12, 2008

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

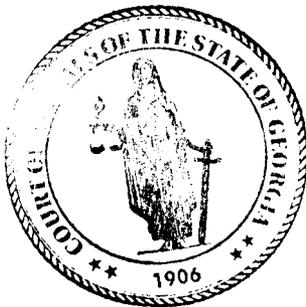
APPLICATION NO. A08D0234

KYLE WHITE V. THE STATE

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

93020

0595186



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 12 2008**

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

*Witness my signanture 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, MARCH 10, 2008

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

APPLICATION NO. A08D0235

JAMES A. RAWLINS V. THE GEORGIA DEPARTMENT OF HUMAN  
RESOURCES, EX REL JAMES AUSTIN RAWLINS

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

06CV165



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 10 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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. Mat... [Signature]*

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

ATLANTA, MARCH 05, 2008

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

APPLICATION NO. A08D0236

SCOTT C. MITCHELL V. ELIZABETH W. MITCHELL

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

92020

2006CV117543



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 05 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, MARCH 12, 2008

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

APPLICATION NO. A08D0237  
ROBERT ANTHONY GEORGE V. THE STATE

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

99020

2004CR000435



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 12 2008**

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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.*

*Willie L. Mat... A*

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

ATLANTA, MARCH 11, 2008

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

APPLICATION NO. A08D0238

DEWAYNE L. BANKS V. THE STATE

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

70020

2005R097



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 11 2008**

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the minutes of the Court of Appeals of Georgia*

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

*Clerk.*

*William L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 19 2008**

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

**A08D0239. GENE GRIFFIN, D/B/A GRIFFIN TRUCK SALVAGE v.  
RANDALL WAITS ET AL.**

Applicant Gene Griffin, d/b/a Griffin Truck Salvage, seeks a discretionary appeal from an order denying his motion to set aside a default. The order granting the respondents' motion to strike Griffin's answer and entering default also provided that the respondents could reschedule the matter for a hearing on damages at a later date. Our review of the application and response indicates that the issue of damages remains pending below; thus, no final judgment has been entered in the case. Accordingly, Griffin was required to follow the interlocutory appeal procedure of OCGA § 5-6-34 (b). His failure to do so deprives this Court of jurisdiction to consider this application for discretionary appeal, which is accordingly **DISMISSED**. *Ravan Construction Co. v. Smith*, 239 Ga. App. 885 (522 SE2d 293) (1999); see also *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991) (discretionary appeal statute, OCGA § 5-6-35, does not supersede the more stringent requirements of OCGA § 5-6-34 (b), where applicable).



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

**MAR 19 2008**

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

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

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*      **APR 22 2008**

**A08D0239. GENE GRIFFIN, D/B/A GRIFFIN TRACK SALVAGE v.  
RANDALL WAITS ET AL.**

Respondents Randall Waits and Kenview Corporation have filed a motion for reconsideration of this Court's March 29, 2008 order dismissing the application on the basis that the order appealed from was interlocutory, and thus, the applicant was required to follow the interlocutory appeal procedure. The respondents have demonstrated that the order appealed from is, in fact, the final judgment in the case. Therefore, the motion for reconsideration is **GRANTED**, this Court's March 29, 2008 order dismissing the application is **VACATED**, and discretionary application A08D0239 is **REINSTATED**.

Upon consideration of the application for discretionary appeal on the merits, the application is **DENIED**.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **APR 22 2008**

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

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



*Willie L. Martin*, Clerk.

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

ATLANTA, MARCH 14, 2008

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

APPLICATION NO. A08D0240  
THE HARTFORD UNDERWRITERS INSURANCE COMPANY V.  
COUNTRY ESTATES PRODUCTS, INC.

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

94020

05VS091669



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 14 2008**

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

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

*Clerk.*

*Willie L. Martinez*

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

ATLANTA, MARCH 31, 2008

*The Court of Appeals passed the following order*

Case No. A08D0240

THE HARTFORD UNDERWRITERS INSURANCE COMPANY V.  
COUNTRY ESTATES PRODUCTS, INC.

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAR 31, 2008*

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

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

*Clerk.*

*Willie L. Matiza*

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

ATLANTA, MARCH 13, 2008

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

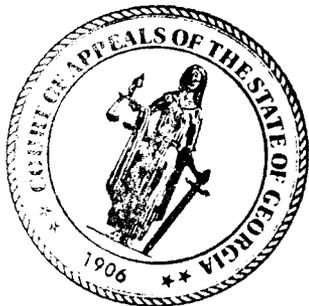
APPLICATION NO. A08D0241

LORI TODD STRICKLAND V. WILLIAM CHRISTIAN INGRAM

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

95021

DR050398



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 13 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, MARCH 13, 2008

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

APPLICATION NO. A08D0242  
BRENDA MCANALLY V. CITY OF WARNER ROBINS

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

96021

2007V89040



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 13 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 20, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0243  
GOODY PRODUCTS ET AL V. GREGORY ROGERS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98021

07CV3633



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 20 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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, FEB 28 2008

*The Court of Appeals hereby passes the following order:*

**A08D0244. NATHANIEL SIMS v. THE STATE.**

Nathaniel Sims, a prison inmate proceeding pro se, filed this application for discretionary appeal from a January 7, 2008 order denying his "Motion to Set Aside Judgment." Sims' application was docketed in this Court on February 19, 2008. An application for discretionary appeal must be filed within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d). Because Sims filed his application 43 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.

2003CR1233

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB 28 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.



**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 14, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0245

SEAN BLASS V. ATLANTA PUBLIC SCHOOL SYSTEM

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97021

006V119712

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 14 2008**



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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.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 21, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0246  
WILLIAM C. LITTLE V. SHELLEY R. LITTLE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93021

070396



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

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the minutes of the Court of Appeals of Georgia*

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hereto affixed the day and year last above above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 17 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0247. D'MORRIO JONES v. THE STATE.**

D'Morrio Jones has filed an application for appeal from an order denying his motion to vacate sentence. An order denying a motion to correct a void sentence is independently appealable only where the sentence imposed is alleged to be greater than the maximum sentence allowed by law. *Jones v. State*, 278 Ga. 669, 670-671 (604 SE2d 483) (2004). Jones does not allege that his sentence is greater than the maximum allowed by law. Therefore, his application for appeal from a non-appealable order is DISMISSED for lack of jurisdiction



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 17 2008**  
*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

, Clerk.

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

APR 07 2008

*The Court of Appeals hereby passes the following order:*

**A08D0247. D'MORRIO JONES v. THE STATE.**

On March 31, 2008, D'Morrio Jones filed a motion for reconsideration of this Court's March 17, 2008 dismissing his discretionary application for appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed with the Clerk of Court within 10 days from the rendition of the judgment. Jones' motion for reconsideration is untimely and is therefore DISMISSED.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

APR 07 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 18 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0248. HAROLD TURNER v. THE STATE.**

Harold Turner filed this application for discretionary appeal seeking review of the trial court's denial of his motion to vacate his sentence and to exercise his constitutional rights. 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 February 25, 2008, this Court ordered Turner to supplement his application with a stamped "filed" copy of the order sought to be appealed within 10 days or the application would be dismissed. No stamped "filed" copy of the order has been filed within the time allowed. Therefore, this application is DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 21 2008**

*The Court of Appeals hereby passes the following order:*

## **A08D0249. BAKER v. BAKER.**

On February 27, 2008, this Court dismissed Vickie D. Daugherty Baker's Application No. A08D0229 from an order denying her motion for reconsideration of a final judgment and decree of divorce. This Court dismissed that application on the ground that the denial of a motion for reconsideration is not an appealable order, citing *Stone v. Dawkins*, 192 Ga. App. 126, 127 (384 SE2d 225) (1989). Jimmy Harold Baker has likewise filed an application for discretionary appeal from the same order, which also denied his "request for credits." We assume without deciding that Baker's request, which was incorporated within his response to Vickie Daugherty's motion for reconsideration, meets the technical requirements of a "motion" under OCGA § 9-11-7 (b). Baker's post judgment request is based on circumstances that existed at the time that the divorce decree was entered. It follows that the order complained of is effectively a motion for reconsideration of the final divorce decree to the extent that it omitted the credits referenced in Baker's post-judgment motion. Because we conclude that the order complained of is at most the denial of a mere motion for reconsideration, and because the order of the Supreme Court transferring Baker's application to this court effectively resolves all issues that must otherwise be raised by "a proper application to appeal the final judgment and decree of divorce," Baker's application is hereby DISMISSED for lack of jurisdiction.

00CV55



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAR 21 2008**

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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.*

*Willie L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 11 2008**

*The Court of Appeals hereby passes the following order:*

## **A08D0250. ALTHEA MILEY ET AL. v. THORNBURG MORTGAGE HOME LOANS, INC.**

On December 27, 2007, the superior court in this case issued a writ of possession to Thornburg Mortgage Home Loan, Inc. Althea Miley filed her notice of appeal from this order on December 28, 2007. The appeal has been docketed in this Court as Appeal No. A08A1034. Thornburg Mortgage Home Loan, Inc. then filed a motion to compel payment of rent into the court, which the superior court granted on December 28, 2007. Miley then filed this timely application for discretionary appeal from that order.

Appeals from cases involving dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less must be brought by application for discretionary review, and not by direct appeal. OCGA § 5-6-35 (a) (3). This Code section, however, is inapplicable to this case. Thus, Miley was not required to file an application for discretionary review. This application is therefore GRANTED pursuant to OCGA § 5-6-35 (j). Miley shall have ten 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 record transmitted to the Court of Appeals.

07D56191



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 11 2008**

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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.*

*Willie L. M... [Signature]*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 21, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0251  
DEMETRICE HOUSTON V. PROFESSIONAL STANDARDS  
COMMISSION

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

99021

2007CV141856



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

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*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 17, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0252  
WELLSTONE MILLS ET AL V. CLARISSIE RUCKER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

70021

NONE



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 17 2008**

*I certify that the 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.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 21, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0253

ATLANTIC TOWER SERVICES ET AL V. PATRICK D. BURGESS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91021

0718734



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

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*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 11, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0254

DEBORAH WILLIAMS V. CONAGRA POULTRY OF ATHENS, INC.,  
ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94021

SU07CV2791



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 11 2008**

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*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 19 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0255. BICKFORD, f/k/a Cisneros v. CISNEROS.**

On February 12, 2008, this court dismissed Audra J. Bickford's direct appeal from a custody order entered on November 28, 2007, due to Bickford's failure to follow the discretionary appeal procedure as required in domestic relations cases. On February 21, 2008, 85 days after entry of the custody order complained of, Bickford filed the above styled application for discretionary appeal. Because Bickford's application was not filed within 30 days of the order complained of as required under OCGA § 5-6-35 (d), it is hereby *dismissed* for lack of jurisdiction. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

SU06DR225



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 19 2008**

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*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 19 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0256. CITY OF ATLANTA MUNICIPAL COURT v. RONALD  
ALSOBROOK.**

The City of Atlanta (Municipal Court) seeks discretionary review of the superior court's order denying its motion to dismiss for failure to file a Petition for Writ of Certiorari yet dismissing Ronald Alsobrook's appeal for failure to file enumerations of error or a transcript from the municipal court proceeding. However, because the issue the City seeks to appeal is moot, this Court lacks jurisdiction to consider this application. This court will dismiss an appeal where it affirmatively appears that a decision would be of no benefit to the complaining party. *Kappers v. DeKalb County Bd. of Health*, 214 Ga. App. 117 (446 SE2d 794) (1994). Accordingly, this application is ordered DISMISSED.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 19 2008**

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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. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAR 19 2008**

**A08D0257. RICHARD SEAN GALLAHER v. MARY TERESE BREAUX,  
F/K/A MARY TERESE GALLAHER.**

In application A07D0117, Richard Sean Gallaher sought review of an order of the Cobb Superior Court, contending that Mary Terese BreauX's attempt to domesticate a Florida divorce decree did not satisfy OCGA § 19-9-85, the provision of the Uniform Child Custody Jurisdiction Enforcement Act that dictates the procedure for registering foreign custody determinations. He also asserted that the Cobb Superior Court lacked subject matter jurisdiction to modify the custody provisions of the decree. This Court granted that application, and Gallaher filed a notice of appeal. The appeal was docketed in this Court as appeal A07A1603, but this Court dismissed it on April 26, 2007, on the basis that the notice of appeal was not timely filed.

Gallaher subsequently filed a motion for new trial raising the issues of subject matter and personal jurisdiction. That motion was denied on November 20, 2007. On November 30, 2007, he filed an application for discretionary appeal to this Court, docketed as application A08D0142, to contest that order. This Court denied that application on December 20, 2007. From that order, Gallaher filed a petition for certiorari to the Supreme Court, which is pending as Supreme Court Case S08C0826.

Gallaher has now filed this application for discretionary appeal. Included with the application is a copy of a January 28, 2008 rule nisi order resetting the case for a compliance hearing on March 10, 2008. Other orders included with the application are earlier rule nisi orders and an order temporarily removing the case from the court's calendar. Gallaher does not suggest he is appealing from any of these orders. Instead,

he argues that because the trial court lacks jurisdiction to consider the case, this Court should reverse.

This Court, however, lacks jurisdiction to consider this application. First, Gallaher has failed to comply with OCGA § 5-6-35 (b) and (c) by failing to specify an order that he seeks to appeal and by failing to include with his application a copy of an order he seeks to appeal. Moreover, Gallaher is raising identical jurisdictional arguments that he raised previously in application A07D0117 granted by this Court. But Gallaher failed to file a timely notice of appeal from the grant of his application. See OCGA § 5-6-35 (g). His application was therefore dismissed, making the judgment in that case, in effect, unappealed. A judgment unappealed from becomes final and is *res judicata* as to the same issues sought to be raised in the present case, and Gallaher's current attempt to raise these arguments before this Court is thus barred. *Nally v. Bartow County Grand Jurors*, 280 Ga. 790, 791 (3) (633 SE2d 337) (2006); accord *Norris v. Norris*, 281 Ga. 566, 567-568 (2) (642 SE2d 34) (2007); *Northwest Social and Civic Club, Inc. v. Franklin*, 276 Ga. 859 (583 SE2d 858) (2003). For these reasons, this application is **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 19 2008**

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*Witness my signature and the seal of said court  
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*Willie L. Martinez*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 14, 2008

*The Court of Appeals passed the following order*

Case No. A08D0257

RICHARD SEAN GALLAHER V. MARY TERESE BREAU, F/K/A  
MARY TERESE GALLAHER

Upon consideration of the motion for reconsideration filed  
in this case, it is ordered that it be hereby denied.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 14, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

MAR 26 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0258. WILLIAM JACKSON GILBERT v. THE STATE.**

While facing a 57-count indictment, William Jackson Gilbert entered a negotiated guilty plea in November 1999 to three counts of sexual exploitation of children, four counts of child molestation, and two counts of aggravated child molestation. He was sentenced to 60 years to serve 40 years in confinement.

After review, this Court affirmed Gilbert's conviction and sentence in *Gilbert v. State*, 245 Ga. App. 544 (538 SE2d 104) (2000). In January 2008, the trial court denied Gilbert's "Motion to Vacate Void Sentence and Conviction." Gilbert has now filed a pro se application for discretionary review to appeal that ruling.

"In general, a motion to vacate a sentence is not an appropriate remedy in a criminal case after the term in which the judgment was entered has passed." *Hill v. State*, 249 Ga. App. 776, 777 (1) (552 SE2d 430) (2001). 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). In this case, however, we found the punishment imposed was authorized by law. *Gilbert*, supra, 245 Ga. App. at 545 (1).

In seeking additional review, Gilbert has not raised any issues that could entitle him to another appeal in this Court. 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 previously been reviewed by appeal). Nor has Gilbert made the type of challenge that would support a direct appeal from the denial of a motion to correct a void sentence. See *Williams v. State*, 271 Ga. 686, 689 (1) (523 SE2d 857) (1999). 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 ordered  
DISMISSED.

LC#  
1999C25492



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 26 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 21, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0259

GEORGIA DEPARTMENT OF DRIVER SERVICES V. BENJAMIN FIERMAN

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71022

2007CA626

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willie L. Martin*



# Court of Appeals of the State of Georgia

ATLANTA, **MAR 04 2008**

*The Court of Appeals hereby passes the following order:*

## **A08D0260. S'TURGEON v. THE STATE.**

Paul S'turgeon seeks discretionary review of the superior court's order denying his motion for discharge and acquittal based on the state's alleged failure to honor his speedy trial demands. The denial of a motion for acquittal based on a demand for a speedy trial is directly appealable. See *Callaway v. State*, 275 Ga. 332 (567 SE2d 13) (2002); *Hubbard v. State*, 254 Ga. 694 (333 SE2d 827) (1985). Because the superior court's order is directly appealable, we hereby GRANT S'turgeon's application for appeal. See OCGA § 5-6-35 (j). If he has not already filed one, S'turgeon shall have ten days from the date of this order to file his notice of appeal in 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* **MAR 04 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 26, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0261  
CEDRIC B. PICKARD V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99022

2000R140



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAR 26 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** April 11, 2008

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 **S08C1279**

CEDRIC B. PICKARD V. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0261

APR 11 2008

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,

MAR 17 2008

*The Court of Appeals hereby passes the following order:*

**A08D0262, A08D0266. IN THE INTEREST OF R. H. & S. M.**

In June 2005, the Juvenile Court of Fulton County entered an order terminating the parental rights of the natural mother of R. H. and S. M. and the natural father of S. M. In March 2006, the mother filed a motion for an out-of-time appeal, or in the alternative, to vacate and re-enter the June 2005 order. The juvenile court promptly entered an order granting the mother an out-of-time appeal. The order did not grant the mother's requested alternative remedy of vacating and re-entering the June 2005 order.<sup>1</sup>

The mother and father both filed motions for new trial.<sup>2</sup> In May 2007, the juvenile court entered an order denying both motions. In December 2007, the mother and father filed separate motions for relief from the court's May 2007 order under OCGA § 9-11-60 (g), on the ground that they had not received notice of that order. The juvenile court granted both motions, vacated its May 2007 order denying their motions for new trial, and issued a new order, dated February 1, 2008, denying the motions for new trial.

In Application No. A08D0262, the mother seeks discretionary review of the termination of her parental rights. The mother also has filed a notice of appeal. In

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<sup>1</sup> It is not clear from the materials submitted whether the father ever sought permission for an out-of-time appeal, or whether the court granted such permission to the father.

<sup>2</sup> The mother's motion was filed within 30 days of the order granting her permission for an out-of-time appeal. The father's motion was filed more than two months after the order granting the mother permission for an out-of-time appeal.

Application No. A08D0266, the father seeks discretionary review of the termination of his parental rights.

As an initial matter, we address the proper appellate procedure in these cases. In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to appeals in parental rights termination and child custody cases. Act 264, H. B. No. 369 (the “Act”). Before the changes, appeals in parental rights termination cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in parental rights termination cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures “become effective January 1, 2008.” Section 8 of the implementing legislation provides for application of the new Act to “all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008”<sup>3</sup> (emphasis added).

Because the petitions giving rise to the orders sought to be appealed here were *filed* before January 1, 2008, the appellate change set forth in the Act requiring an application for discretionary appeal in parental rights termination cases does not apply. Thus, these cases are directly appealable. In directly appealable cases where the party seeking appeal has filed a timely application for discretionary appeal, we normally grant the application pursuant to OCGA § 5-6-35 (j) and allow the party to pursue a direct appeal.

The applications in this case, however, are not timely. The order terminating the parents’ parental rights was entered on June 7, 2005, yet these applications were not filed until March 3, 2008. A notice of appeal must be filed within 30 days after entry of the decision complained of, unless the party seeking appeal has filed a timely motion for new trial. OCGA § 5-6-38 (a). A motion for new trial that was not filed within 30 days of the decision complained of, however, is void and does not toll the

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<sup>3</sup> Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and parental rights termination cases as both were changed in the same amendment.

time for filing the notice of appeal. *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990). The trial court's order granting the mother permission for an out-of-time appeal was ineffective, as the Supreme Court has held that the grant of an out-of-time appeal is ineffective in civil cases. See *Woodall v. Woodall*, 248 Ga. 172 (281 SE2d 619) (1981).

Accordingly, these applications are hereby DISMISSED for lack of jurisdiction.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **MAR 17 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

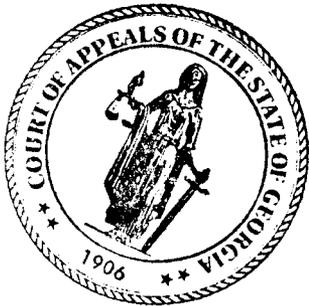
ATLANTA, JULY 02, 2008

*The Court of Appeals passed the following order*

Case No. A08D0262

IN THE INTEREST OF : R. H. AND S. M., CHILDREN ( MOTHER )

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 02, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 14, 2008

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 **S08C1818**

IN RE: R. H. & S. M., children

Clerk, Supreme Court of Georgia

Case No. A08D0262

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 16 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 21, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0263  
CLEO D. MAGBY V. RONALD FREEMAN ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91022

2007CV03992



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willi L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

*Docketing Date: April 21, 2008*

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 **S08C1336**

CLEO D. MAGBY v. RONALD FREEMAN et al.

Clerk, Supreme Court of Georgia

Case No. A08D0263

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**APR 25 2008**

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 27 2008

## **A08D0264. IN THE INTEREST OF A. D. and J. R., children.**

Amy Dyer, the biological mother of A. D. and J. R., filed this application for discretionary appeal to seek review of an order terminating her parental rights to these two children. The termination petition giving rise to the order issued in this case was filed on July 20, 2007.

In 2007, the Georgia General Assembly amended OCGA §§ 5-6-34 and 5-6-35 of the Appellate Practice Act (“Act”) with respect to termination of parental rights appeals and child custody appeals. Before the amendments, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). OCGA § 5-6-35 (a) (12) purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. However, OCGA § 5-6-34 of the Act, as amended, states that the new procedures “become effective January 1, 2008.” Section 8 of the implementing legislation of H. B. 369 provides for the application of the changes to “all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008.”<sup>1</sup> (Emphasis supplied.)

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application

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<sup>1</sup> Although no effective date for cases involving the termination of parental rights was specifically stated, clearly the legislature intended for the same effective date to apply to both custody cases and the termination of parental rights case as both were changed in the same legislation amending the controlling appellate procedures.

for discretionary appeal in a termination of parental rights case is inapplicable to this case. Thus, this case is directly appealable.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Since it does not appear that Dyer has filed a notice of appeal, this application is hereby GRANTED. Dyer shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is instructed to include a copy of this order in the record transmitted to this Court.

LC#  
07DE00160



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 27 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

MAR 13 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0265. PAUL S'TURGEON v. TAMMY T. S'TURGEON.**

Paul S'turgeon filed this discretionary application seeking to appeal a January 8, 2008 Family Violence Twelve Month Protective Order. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because S'turgeon filed his application on February 28, 2008, more than 30 days after entry of the order he seeks to appeal, it is untimely.

We acknowledge that S'turgeon filed a "Request to File an Out of Time Appeal," in which he explained the delay in the filing of his application. However, an out-of-time discretionary application is not authorized by OCGA § 5-6-35 or any other code section. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001) (holding this Court lacks the authority to grant an extension of time for the filing of an application for discretionary appeal); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983) (holding the trial court lacks authority for granting an extension of time for the filing of an application for discretionary appeal).

This Court lacks jurisdiction to consider an untimely application. OCGA § 5-6-35 (d). Accordingly, S'turgeon's application is DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 13 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Wick L. Martin* Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

MAR 17 2008

*The Court of Appeals hereby passes the following order:*

**A08D0262, A08D0266. IN THE INTEREST OF R. H. & S. M.**

In June 2005, the Juvenile Court of Fulton County entered an order terminating the parental rights of the natural mother of R. H. and S. M. and the natural father of S. M. In March 2006, the mother filed a motion for an out-of-time appeal, or in the alternative, to vacate and re-enter the June 2005 order. The juvenile court promptly entered an order granting the mother an out-of-time appeal. The order did not grant the mother's requested alternative remedy of vacating and re-entering the June 2005 order.<sup>1</sup>

The mother and father both filed motions for new trial.<sup>2</sup> In May 2007, the juvenile court entered an order denying both motions. In December 2007, the mother and father filed separate motions for relief from the court's May 2007 order under OCGA § 9-11-60 (g), on the ground that they had not received notice of that order. The juvenile court granted both motions, vacated its May 2007 order denying their motions for new trial, and issued a new order, dated February 1, 2008, denying the motions for new trial.

In Application No. A08D0262, the mother seeks discretionary review of the termination of her parental rights. The mother also has filed a notice of appeal. In

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<sup>1</sup> It is not clear from the materials submitted whether the father ever sought permission for an out-of-time appeal, or whether the court granted such permission to the father.

<sup>2</sup> The mother's motion was filed within 30 days of the order granting her permission for an out-of-time appeal. The father's motion was filed more than two months after the order granting the mother permission for an out-of-time appeal.

Application No. A08D0266, the father seeks discretionary review of the termination of his parental rights.

As an initial matter, we address the proper appellate procedure in these cases. In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to appeals in parental rights termination and child custody cases. Act 264, H. B. No. 369 (the “Act”). Before the changes, appeals in parental rights termination cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in parental rights termination cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures “become effective January 1, 2008.” Section 8 of the implementing legislation provides for application of the new Act to “all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008”<sup>3</sup> (emphasis added).

Because the petitions giving rise to the orders sought to be appealed here were *filed* before January 1, 2008, the appellate change set forth in the Act requiring an application for discretionary appeal in parental rights termination cases does not apply. Thus, these cases are directly appealable. In directly appealable cases where the party seeking appeal has filed a timely application for discretionary appeal, we normally grant the application pursuant to OCGA § 5-6-35 (j) and allow the party to pursue a direct appeal.

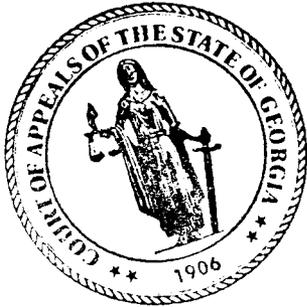
The applications in this case, however, are not timely. The order terminating the parents’ parental rights was entered on June 7, 2005, yet these applications were not filed until March 3, 2008. A notice of appeal must be filed within 30 days after entry of the decision complained of, unless the party seeking appeal has filed a timely motion for new trial. OCGA § 5-6-38 (a). A motion for new trial that was not filed within 30 days of the decision complained of, however, is void and does not toll the

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<sup>3</sup> Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and parental rights termination cases as both were changed in the same amendment.

time for filing the notice of appeal. *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990). The trial court's order granting the mother permission for an out-of-time appeal was ineffective, as the Supreme Court has held that the grant of an out-of-time appeal is ineffective in civil cases. See *Woodall v. Woodall*, 248 Ga. 172 (281 SE2d 619) (1981).

Accordingly, these applications are hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAR 17 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin* , Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 02, 2008

*The Court of Appeals passed the following order*

Case No. A08D0266

IN THE INTEREST OF : R. H., AND S. M. , CHILDREN ( FATHER )

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 02, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 28, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0267  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., V.  
WILDWOOD DEVELOPERS, INC

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

96023

06CV190

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* MAR 28 2008

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*



*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 25, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0268

JAYNA JAMES V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98023

04CR57228



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 25 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** April 14, 2008

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 **S08C1286**

JAYNA DENISE JAMES v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0268

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

Sent to S.C.  
APR 15 2008

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**MAR 31 2008**

**A08D0269. JOHN S. POUNDS v. CARRIE LYNN URBAN F/K/A CARRIE LYNN POUNDS.**

On February 22, 2007, the Fulton Superior Court entered a final order relating to custody of the parties' minor children. John S. Pounds filed a motion for reconsideration, or in the alternative, motion for new trial and emergency motion for a temporary restraining order, all of which the trial court denied in a single order on July 31, 2007. Pounds filed an "Application for Appellate Review," nominally directed to this Court, but in fact filed in the Fulton Superior Court on September 10, 2007.

Pounds has now filed in this Court an application for discretionary appeal seeking to appeal the earlier orders of the Fulton Superior Court, along with a request for permission to file an out-of-time application for discretionary appeal. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Pounds filed his application on March 5, 2008, more than thirty days after entry of the orders he seeks to appeal, it is untimely.

Moreover, an out-of-time discretionary application is not authorized by OCGA § 5-6-35 or any other Code section. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001) (holding this Court lacks authority to grant an extension of time for the filing of an application for discretionary appeal).

This Court lacks jurisdiction to consider an untimely application. OCGA § 5-6-35 (d). Accordingly, Pounds' application is **DISMISSED**.

LC#  
06CV118762



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 31 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martin*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 28, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0270  
GORDON TRENT AUSTIN V. PMG ACQUISITION, LLC, D/B/A THE TIMES-  
GEORGIAN ET AL

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

97023

02V002045

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 28 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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,

MAR 26 2008

*The Court of Appeals hereby passes the following order:*

**A08D0271. IN THE INTEREST OF R.F., A.F., C.F., S.F. AND G.F.,  
CHILDREN.**

The mother of these deprived children seeks to appeal the order denying her motion to modify her child support obligation. The juvenile court found the children to be deprived and ordered the mother to pay \$500 per month per child to their custodians. She sought a downward modification of the obligation but the juvenile court denied her motion. She then filed this application.

Because deprivation cases are neither child custody nor domestic relations cases within the purview of OCGA § 5-6-35 (a) (2), a right of direct appeal lies from final orders in such cases.<sup>1</sup> *In the Interest of J.P.*, 267 Ga. 492 (480 SE2d 8) (1997). And the order the mother seeks to appeal appears to be a final order as it does not appear that any issue remains to be resolved.<sup>2</sup>

Accordingly, the mother's application is GRANTED as required under OCGA

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<sup>1</sup>In 2007, the Georgia Legislature amended OCGA § 5-6-35 as to appeals of orders terminating parental rights. Act 264, H. B. No. 369 (the "Act"). Before the changes, orders terminating parental rights were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to require an application for discretionary appeal to appeal such orders. OCGA § 5-6-35 (a) (12). Although deprivation proceedings are part of the termination process, by its terms subsection (12) only applies to "[a]ppeals from orders terminating parental rights," not orders finding deprivation.

<sup>2</sup>See OCGA § 5-6-34 (a) (1); *R. J. Reynolds Tobacco Co. v. Fischer*, 207 Ga. App. 292, 293 (427 SE2d 810) (1993).

§ 5-6-35 (j). The mother shall have ten days from the date of this order to file her notice of appeal in the juvenile court. The clerk of the juvenile court is instructed to include a copy of this order in the record transmitted to this court.

LC#

045834

045835

0450836

045838



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 26 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

**MAR 21 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0272. KEVIN SOWELL v. LESLIE SOWELL.**

The trial court dismissed Kevin Sowell's divorce action for want of prosecution. Sowell moved to set aside the dismissal, but the trial court denied his motion. Sowell now seeks discretionary review in this Court. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." *Schmidt v. Schmidt*, 270 Ga. 461, 462 (2) (510 SE2d 810) (1999). Therefore, this case is TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 21 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*      **APR 07 2008**

**A08D0273. GUTSTEIN v. COBB COUNTY SCHOOL DISTRICT, et al.**

Claimant Donald Gutstein seeks an appeal from an order of the superior court purporting to affirm an award of the appellate division of the State Board of Workers' Compensation in favor of the employer. OCGA § 34-9-105 (b) provides in part that "if the court does not hear the case within 60 days of the date of docketing in the superior court, the decision of the board shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 60 days has been continued to a date certain by order of the court." Respondent shows that Gutstein's appeal was docketed in the superior court on September 6, 2007, and it appears undisputed that no action was taken on the appeal within 60 days after that date which would prevent Gutstein's appeal from being affirmed by operation of law under OCGA § 34-9-105 (b). As such, the subsequent order of the superior court is a legal nullity that cannot support an appeal on the merits. See *Synthetic Indus. v. Camp*, 196 Ga. App. 637 (396 SE2d 518) (1990). Because Gutstein failed to file his application within 30 days of the affirmance of his appeal in the superior court by operation of law on November 5, 2007, his application is hereby *dismissed* for lack of jurisdiction.

LC#  
0717608



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 07 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**MAR 21 2008**

## **A08D0274. JIM NORMAN AKERS v. THE STATE.**

On February 10, 1999, Jim Norman Akers entered a non-negotiated guilty plea to child molestation and statutory rape. He was sentenced to fifteen years, seven years to serve and eight years on probation. On October 2, 2006, Akers' probation officer filed a petition for modification/revocation of Akers' probation. On November 16, 2006, the trial court revoked Akers' probation and ordered him to serve the remainder of his sentence in a State penal institution.<sup>1</sup> On September 11, 2007, Akers filed a motion to pursue an out-of-time appeal and motion for new trial which was granted on December 12, 2007.<sup>2</sup> On December 18, 2007, Akers filed a motion for new trial which was subsequently withdrawn on February 5, 2008. Akers filed this application for discretionary appeal on March 6, 2008.

No discretionary application pursuant to OCGA § 5-6-35 (a) (5), or motion for new trial with respect to the revocation order, was filed within 30 days of the date of entry of the revocation order. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of the order, decision or judgment sought to be appealed. The requirements of OCGA § 5-6-35 are

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<sup>1</sup>Akers attached a copy of the petition for modification/revocation of his probation; however, he failed to attach a copy of the final order by the trial court revoking his probation. Therefore, the date and sentence stated in this order are as set forth in the application.

<sup>2</sup>Such dates are as set forth in the trial court's Rule NISI Rescheduling Hearing order attached to the application as the motion and order are not attached to the application.

jurisdictional and this Court cannot accept an appeal not made in compliance therewith. *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Akers' failure to comply with the discretionary appeal requirements deprives this Court of jurisdiction to consider this application.

Also, this Court's lack of jurisdiction is not remedied by the December 12, 2007 order of the superior court purporting to grant leave for a motion for new trial to pursue an out of time appeal. Neither this Court nor a trial court has authority to grant an extension of time for the filing of an application for discretionary appeal. *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983); Court of Appeals Rules 16 (c) and 31 (f). Therefore, this application is ordered DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 21 2008**

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Will. L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 09 2008**

**A08D0275. JEKYLL ISLAND REVITALIZATION GROUP ET AL. v.  
JEKYLL ISLAND STATE PARK AUTHORITY ET AL.**

Upon consideration of the application for discretionary appeal, the application is **DENIED**.

Linger Longer Development Co., Southeast LandCo Acquisition Fund, LLC, and Southeast LandCo LLC have filed a motion to dismiss and a motion to show authority. Our disposition of this case, however, renders these issues moot. Accordingly, the motion to dismiss and the motion to show authority are hereby **DENIED** as moot.

LC#  
2007CV142947



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**APR 09 2008**  
*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*William L. Martinez*, Clerk.

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** April 29, 2008

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 **S08C1370**

JEKYLL ISLAND REVITALIZATION GROUP et al. v. JEKYLL ISLAND STATE PARK AUTHORITY et al.

Clerk, Supreme Court of Georgia

Case No. A08D0275

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

*Sent to S. C.*  
**MAY 02 2008**

Clerk, Court of Appeals of Georgia



**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 31, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0276  
COBB COUNTY ET AL V. ANNOX SELF STORAGE # 1, 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.

94023

0612334



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 31 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 27, 2008

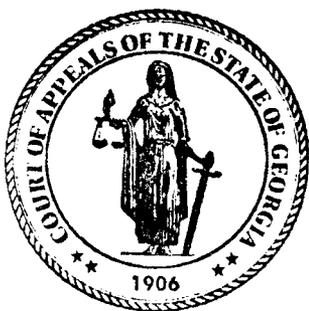
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0277  
KAREN M. BEARD V. PAVOL HNILICA ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95024

05A366



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 27 2008**

*I certify that the above is a true extract fromd  
the minutes of 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. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAR 21 2008**

**A08D0278. SCOTT HESS v. THE STATE.**

While Scott Hess was on probation for a drug-related crime, the state charged him with a new felony – possession of methamphetamine – and also sought to revoke his probation on the ground that he had committed the new felony. Hess filed a motion to suppress, arguing that the search leading to the discovery of the methamphetamine was unlawful. The trial court denied the motion to suppress. In a stipulated bench trial, the trial court found Hess guilty of possession of methamphetamine and also revoked his probation. Hess filed a motion for new trial, which the court denied.

Hess now seeks discretionary review of the revocation of his probation. See OCGA § 5-6-35 (a) (5) (appeals from orders revoking probation must follow discretionary procedure). Hess has also filed a notice of appeal in the superior court with respect to the new felony conviction. That direct appeal has not yet been docketed in this Court. Hess states in his application, however, that he intends to raise the exact same issue in the direct appeal that he raises here – the validity of the search that led to the discovery of the methamphetamine.

The interest of judicial economy would best be served by considering Hess's challenge to his probation revocation at the same time that we consider his direct appeal on the new crime. Therefore, this application for discretionary appeal is GRANTED. Hess shall have ten 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 record transmitted to the Court of Appeals.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAR 21 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 01, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0279  
YOLANDA HAMPTON V. KENNETH NESMITH

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.

98024

06CV4442

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 01 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*



**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 26, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0280  
TARA FOODS ET AL V. BEVERLY JOHNSON

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.

90024

07CV3429



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 26 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court 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,

*The Court of Appeals hereby passes the following order:*

**MAY 15 2008**

**A08D0281. DANIEL A. SPOTTSVILLE v. RANDY TILLMAN ET AL.**

On April 29, 2008, Daniel A. Spottsville, *pro se*, filed a motion for reconsideration of this Court's March 27, 2008 order dismissing his application for discretionary appeal on the basis that it was untimely. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed with the Clerk of Court within ten days from the rendition of the judgment. Spottsville's motion for reconsideration was filed thirty-three days after this Court entered the order of dismissal. The motion is thus untimely. This Court accordingly is without jurisdiction to rule on Spottsville's motion for reconsideration, which is **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 15 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 02, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0282  
JOHNNY HAYGOOD ET AL V. PHIL TILLEY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93024

2008CV327



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 02 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

APR 24 2008

*The Court of Appeals hereby passes the following order:*

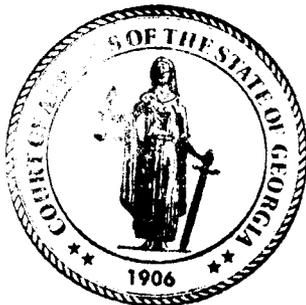
**A08D0282. JOHNNY HAYGOOD and DONNA HAYGOOD v. PHIL TILLEY.**

Appellants' application for discretionary review was denied by this court on April 2, 2008, and their direct appeal of the trial court's order granting a temporary restraining order has been docketed and is now pending in this court, this emergency motion for supersedeas is now moot. Accordingly, the motion is denied.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta* APR 24 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Will L. Mat...*, Clerk.



**SUPREME COURT OF GEORGIA**

Case No. S08D1023

Atlanta March 12, 2008

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**FILED IN OFFICE**

MAR 12 2008

CLERK COURT OF APPEALS OF GEORGIA

CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GEORGIA  
*[Handwritten signature]*

08 MAR 12 PM 3:48

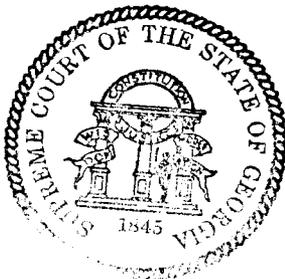
RECEIVED IN OFFICE

SUNDAY N. UDOINYION et al. v. JOHN ALBERT ROBERTS et al.

From the Superior Court of Fulton County.

In this legal malpractice action the trial court denied applicants' "motion for new trial, reconsideration and evidential oral hearing" on January 28, 2008. After obtaining an extension of time from this Court, the Udoinyions filed an application to appeal on March 3, 2008. Applicants do not set forth a basis for invoking this Court's subject matter jurisdiction and none appears in the record. Ga. Const. of 1983, Art. VI, Sec. VI, Para. II-III. Therefore, the Court hereby transfers the application to the Court of Appeals.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta



I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*[Handwritten signature: Janette Edson]*

,Deputy Clerk

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 24, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0283

SUNDAY N. UDOINYION ET AL V. JOHN ALFRED ROBERTS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71024

07VS0112547



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 24 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willi L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** April 14, 2008

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 **S08C1292**

SUNDAY N. UDOINYION et al. v. JOHN ALFRED ROBERTS

Clerk, Supreme Court of Georgia

Case No. A08D0283

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Sent to S.C.  
APR 16 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MARCH 31, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0284  
CITY OF ATLANTA ET AL V. FLOYD . REEVES

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92024

2007CV141545



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 31 2008**

*I certify that the above is a true extract fromd  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 09, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0285  
THE PANTRY, INC., ET AL V. NANCY ANN CARNEY

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

99024

07CV04775



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 09 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 04, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0286  
WENDY B. HARRIS V. PEACH COUNTY BOARD OF COUNTY  
COMMISSIONERS

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.

70024

08V0031



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 04 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

MAR 25 2008

*The Court of Appeals hereby passes the following order:*

## A08D0287. DAVID CHARLES SUTTON v. THE STATE.

David Charles Sutton, *pro se*, filed this application for discretionary appeal from an order denying his “Motion to Vacate Void and Illegal Sentence and Conviction Pursuant to OCGA § 17-9-4 Based Upon Conspiracy to Secure Sentence and Conviction Jurisdiction.” Sutton has already challenged his conviction by direct appeal to this Court, and the judgment was affirmed. *Sutton v. State*, 236 Ga. App. 363 (511 SE2d 888) (1999). This Court’s affirmance is *res judicata*. *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991).

Since Sutton’s first appeal, this Court has denied or dismissed Sutton’s other unauthorized appeals and applications for discretionary appeal, as follows: A03A1633, A04A1703, A04D0129, A04D0290, A05A0890, A05A1721, A05A2091, A05D0404, A06D0401, and A07A1819. As in these appeals and applications to appeal, Sutton again fails to raise any issue that could not have been raised in his first appeal, and he otherwise fails to raise any issue suggesting either his conviction or his sentence is a legal nullity. Accordingly, this application is **DISMISSED** for lack of jurisdiction.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

MAR 25 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 21, 2008

*The Court of Appeals passed the following order*

Case No. A08D0287

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.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 21, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 10 2008**

**A08D0288. CITY OF ATLANTA et al. v. GIRLS GALORE, INC. d/b/a 24K Club.**

The City of Atlanta and Shirley Franklin in her official capacity as Mayor of the City of Atlanta filed this application for discretionary appeal to seek review of the superior court's order that denied the petition for a writ of certiorari sought by Girls Galore, Inc. d/b/a 24K Club ("24K Club"). The superior court found that Mayor Franklin's action in suspending the 24K Club's license to serve alcoholic beverages for 180 days was administrative in nature and not a judicial decision that fit within the ambit of OCGA § 5-4-1 (a) which authorizes the writ of certiorari "for the correction of errors committed by any inferior judicatory or any person exercising judicial powers."

Pretermitted analysis of the dispositive legal issue – whether Mayor Franklin was fulfilling administrative duties or was exercising judicial or quasi-judicial powers when she suspended the 24K Club's license, this application is premature. When the 24K Club filed its suit against the City and Mayor Franklin in superior court, the 24K Club sought declaratory and injunctive relief and damages and also petitioned for writs of certiorari and mandamus. The order now sought to be appealed only resolved the issue of the petition for the writ of certiorari and the other issues remain pending in superior court. Because the order at issue is interlocutory and the City failed to comply with the interlocutory appeal requirements set forth in OCGA § 5-6-34 (b),

this Court lacks jurisdiction to consider this application. Accordingly, the City's application for discretionary appeal is ordered DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **APR 10 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martinez* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 03 2008**

## **A08D0289. MINNIE TURNIPSEED v. FREDDY TURNIPSEED.**

Minnie Turnipseed seeks discretionary review of the juvenile court's order modifying custody. In the order, the juvenile court returned the case to the superior court "for determination of all remaining issues, including the issue of visitation." It is apparent, therefore, that issues remain pending and the juvenile court's order is not the final judgment in the case. *Fulton County Dept. of Family & Children Svcs. v. Perkins*, 244 Ga. 237 (259 SE2d 427) (1978). Turnipseed was accordingly 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.<sup>1</sup> *Id.*; *Scruggs v. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991). Her failure to do so deprives this Court of jurisdiction to entertain this application. The application is therefore *DISMISSED*.

LC#

00407J00914 06CV11823



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **APR 03 2008**

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

, Clerk.

*Will L. Martin*

---

<sup>1</sup> We observe that newly enacted OCGA § 5-6-34 (a) (11) applies in child custody cases initiated after January 1, 2008. This case was initiated before then.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 03, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0290  
DANIEL MARTIN PARKS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96025

01CR410



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 03 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, March 28, 2008

*The Court of Appeals hereby passes the following order:*

**A08D0291. VISION CORRECTION GROUP, INC., v. MEDOWS, et al.**

Vision Correction Group, Inc., filed the above styled application for appeal with this court from an order denying mandamus relief. Because the Supreme Court has appellate jurisdiction in cases involving extraordinary remedies, the motion to transfer the application filed by respondent The Emory Clinic, Inc., is hereby *granted* and this application is hereby *transferred* to the Supreme Court. 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* **MAR 28 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Matz* \_\_\_\_\_, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 15, 2008

*The Court of Appeals hereby passes the following order:*

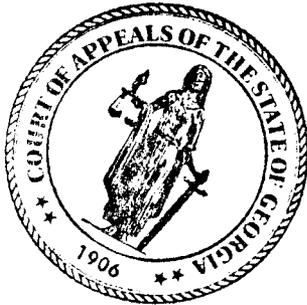
APPLICATION NO. A08D0292

ORAL MILES V. GEORGIA BAPTIST MEDICAL CENTER ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90025

2007CV143163



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 15 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 17, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0294  
IN THE INTEREST OF : K. T. , CHILD ( FATHER )

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

93025

07CV1107



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 17 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Matz*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 18, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0295

ERIC L. REGISTER ET AL V. ROSWELL HOLDINGS, LLC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71025

2005CV103517



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

APR 18 2008

*The Court of Appeals hereby passes the following order:*

**A08D0296. DIANE JOHNSON v. JIM MEREDITH.**

Diane Johnson seeks discretionary review of the trial court's denial of her motion for attorney's fees under OCGA § 9-15-14. The court's order denying her motion was entered on February 15, 2008. Johnson filed a motion for reconsideration, which the court denied on March 13, 2008. Johnson filed this application on March 20, 2008.

An application for discretionary appeal must be filed within 30 days of the order appealed from. OCGA § 5-6-35 (d). But Johnson filed this application 34 days after the trial court's February 15 order denying her motion for attorney's fees. Although Johnson moved for reconsideration, the denial of a motion for reconsideration is not itself appealable. See *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Nor does a motion for reconsideration extend the time for filing a discretionary application. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Because this application is untimely, we lack jurisdiction to consider it, and it is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* APR 18 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order. APR 21 2008

**A08D0297. AMERICAN REBAR & WIRE, INC., ET AL. v. STAFFORD, et al.**

Upon consideration of the above styled application for appeal, the application is hereby *denied*. The respondents' motion to dismiss, which is in substance nothing more than a response addressing the merits of the application, is hereby *dismissed* as moot.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 21 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

APR 02 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0298. IN THE INTEREST OF: R. P. T. AND W. L. T., CHILDREN (MOTHER)**

Rebecca Thaxton, the mother of Wesley Lane Thaxton and Richard Paul Thaxton, filed this timely application for discretionary appeal seeking review of the Juvenile Court of Crawford County's order terminating her parental rights. The petition giving rise to the order issued in this case was filed on November 1, 2007.

In 2007, the Georgia Legislature amended OCGA §§ 5-6-34 and 5-6-35 as to parental termination of rights appeals and child custody appeals. Act 264, H. B. No. 369 (the "Act"). Before the changes, appeals in termination of parental rights cases were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act purports to change the appeal rights in termination of parental rights cases to require an application for discretionary appeal. OCGA § 5-6-35 (a) (12). The Act, as amended, states that the new procedures "become effective January 1, 2008." Section 8 of the implementing legislation provides for application of the new Act to "all child custody proceedings and modifications of child custody *filed* on or after January 1, 2008" (emphasis added).<sup>1</sup>

Since the petition giving rise to the order sought to be appealed was *filed* prior to January 1, 2008, the appellate change set forth in the Act requiring an application

---

<sup>1</sup>Although termination of parental rights is not specifically stated, clearly the legislature intended for the effective date to be applicable to both custody cases and the termination of parental rights cases as both were changed in the same amendment.

for discretionary appeal in a termination of parental rights case is inapplicable to this case. Thus, this case is directly appealable.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. This application is accordingly **GRANTED**. Thaxton shall have ten days from the date of this order to file her notice of appeal in the juvenile court. The juvenile court is instructed to include a copy of this order in the record transmitted to this court.

LC#  
03907J149 03907J150

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 02 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Will. L. Mat... , Clerk.*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 17, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0299  
ALFONSE DEL NEGRO V. JULIE ROBERTS DEL NEGRO

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91025

07CV2583



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 17 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 15, 2008

*The Court of Appeals passed the following order*

Case No. A08D0299

ALFONSE DEL NEGRO V. JULIE ROBERTS DEL NEGRO

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAY 15, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 18, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0300

JAMES A. VECCHIONE V. PLAZA STAR ASSOCIATES, LLC

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94025

06EV001450



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 14, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0301

MARK PINKINS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95026

05R132

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 14 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Matz*

**Court of Appeals  
of the State of Georgia**

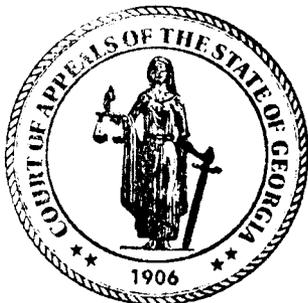
ATLANTA, APRIL 09, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0302  
BENICO GONZALES ET AL V. MAJOR FORTSON 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.

96026  
05CV888



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 09 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, March 28, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0303. BULLOCK v. BULLOCK.**

James Bullock seeks an appeal from an order disposing of his "Complaint for Modification and Release of Alimony." Because the ruling complained of involves alimony, Bullock'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* **MAR 28 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Matz*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 22, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0304

ATLANTA CITY BOARD OF EDUCATION V. GERALD NELSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90026

2007CV144103



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 22 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 23, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0305  
JOSHUA JAVIER DUCKETT V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97026

01B0954



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 23 2008**

**A08D0306. DEVIN LEONARD GRANT v. THE STATE.**

Devin Leonard Grant entered guilty pleas to numerous offenses and the trial court sentenced him for those crimes on November 21, 2001. This Court affirmed the judgment of conviction in a written but unpublished opinion issued in 2004. *Grant v. State*, 267 Ga. App. XXVI (2004).

Several years after his sentencing, Grant filed a motion to modify sentence. The trial court denied his pro se motion on November 2, 2007, finding the motion untimely under OCGA § 17-10-1 (f). Grant then filed an application for a certificate of probable cause and again sought modification of his sentence relying primarily on his assertion that his trial lawyer had misled him into believing “all sentences would be imposed concurrent [sic]” and not consecutively.

In January 2008, the trial court found it lacked jurisdiction to entertain Grant’s application for a certificate of probable cause, noting the procedural requirements in OCGA § 9-14-52. In the same January 2008 order, the trial court denied Grant’s motion for sentence modification, finding the motion untimely. Grant then submitted an application for discretionary review in the Supreme Court and that Court transferred the application to this Court.

Under OCGA § 17-10-1 (f), a sentencing court has jurisdiction to modify a sentence within one year of the date the sentence is imposed or within 120 days after receipt by the sentencing court of the remittitur upon affirmance after direct appeal, whichever is later. It does not appear, however, that Grant filed his motion to modify sentence within 120 days after the receipt of the remittitur. As to any contention that the sentence is void because the judge was not authorized to impose consecutive

sentences, that issue is controlled adversely to Grant by *Jones v. State*, 271 Ga. App. 830, 831 (610 SE2d 570) (2005). When the sentence imposed falls within the permissible range of statutory punishment, the sentence is not void and is not subject to post-appeal modification beyond that provided in OCGA § 17-10-1 (f). See *Jones v. State*, 278 Ga. 669, 670 (604 SE2d 483) (2004).

Where, as here, a defendant's conviction has been affirmed on direct appeal, he is not entitled to file an appeal from the denial of a post-conviction motion that contends the judgment of conviction is voidable. *Collins v. State*, 277 Ga. 586 (591 SE2d 820) (2004). Because no cognizable basis exists upon which to grant Grant's application for discretionary appeal, this application is ordered DISMISSED.

LC#  
01CR00611



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*

**APR 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Matz*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, JUNE 03, 2008

Honorable Court of Appeals hereby passes the following order:

A08D0306. DEVIN LEONARD GRANT v. THE STATE

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

93-026

01CR00611

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 03 2008**

*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.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 16, 2008

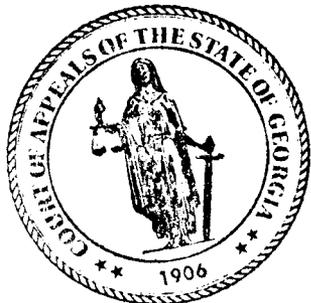
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0307  
LEROY PERRY ET AL V. INTERNATIONAL LONGSHOREMEN  
ASSOCIATION

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.

71026

CV051240



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willi L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 16, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0308  
ANDREW BURNETT V. UNIFIED GOVERNMENT OF ATHENS  
CLARKE COUNTY, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92026

SU08CV0109



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**APR 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

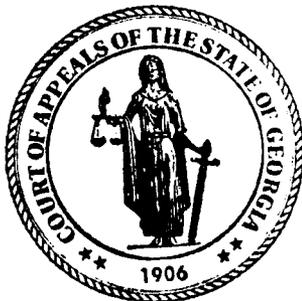
# Court of Appeals of the State of Georgia

ATLANTA, April 22, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0309. MYERS v. THE STATE.**

Ernest Myers, Jr., is currently serving a twelve year sentence for kidnapping and a one year sentence for misdemeanor obstruction, running consecutively. The sentences were imposed in 1998. Myers appealed to this court, which affirmed the convictions in an opinion addressing, among other issues, allegations that Myers received ineffective assistance of trial counsel. 257 Ga. App. XXVIII (2002) (not officially reported). Myers has filed an application for a discretionary appeal from an order denying his Motion to Enter a Valid Judgment of Sentence, as well as his Motion for Appointment of Counsel and Evidentiary Hearing. Because Myers has already exhausted his right to file a direct appeal challenging his convictions and because the punishment imposed was well within legal limits, the trial court correctly noted in its order that Myers's motions "are not a valid means for post-appeal modification." As stated in *Jones v. State*, 278 Ga. 669 (604 SE2d 483) (2004), cited by the trial court, post-appeal "[r]ulings on pleadings asserting erroneous procedure or unfair treatment are not subject to direct appeal because they are not rulings on whether the sentence is void. Rather, a petition for writ of habeas corpus is the means for seeking sentence review for such allegations. [Cit.]" Id at 671. Because Myers has no right to appeal the order complained of here, his application for appeal is hereby *dismissed* for lack of jurisdiction.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **APR 22 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 27, 2008

Honorable Court of Appeals hereby passes the following order:

A08D0309. ERNEST MYERS, JR. v. THE STATE

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

99-026

CR971835

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 27 2008**

*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. Mat...*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** June 16, 2008

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 **S08C1648**

ERNEST MYERS, JR. v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0309

Court of Appeals of Georgia

Notice of Petition for Certiorari

JUN 18 2008

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 11 2008**

**A08D0310. CARLOS A. WRIGHT v. THE STATE.**

On March 31, 2008, Carlos A. Wright filed this application for discretionary appeal of his June 25, 2007 probation revocation.<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Wright failed to file his application within 30 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. The application is, therefore, DISMISSED.

LC#  
CR061783



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**APR 11 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martinez*, Clerk.

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<sup>1</sup>Two prior attempts to file applications for discretionary appeal were returned for failure to comply with the docketing requirements.

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 21 2008**

**A08D0311. ALVISTA HEALTHCARE CENTER, INC., A/K/A ATLANTA CARE HOME ET AL. v. MARY MILLER.**

The applicants in this case have filed an application for discretionary appeal from the superior court's order granting Mary Miller a temporary restraining order, permanent injunction, and declaratory judgment. The order complained of imposes a permanent injunction, which is directly appealable under OCGA § 5-6-34 (a) (4), and issues a declaratory judgment, which is directly appealable under OCGA § 9-4-2 (a); *Sunstates Refrigerated Svcs. v. Griffin*, 215 Ga. App. 61, 62 (1) (449 SE2d 858) (1994).

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. In this case, however, the applicants indicate that they have filed a timely notice of appeal. Thus, OCGA § 5-6-35 (j) does not apply, and this application is **DISMISSED**.

LC#  
2008CV0186



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **APR 21 2008**

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Willie L. Martinez*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 25, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0312  
GEORGIA DEPARTMENT OF REVENUE V. TRAWICK CONSTRUCTION  
COMPANY, 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.

94026

2004CV94454



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 25 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, April 14, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0313. ANGELA ENSLEN REMBERT v. DAVID JOHN REMBERT.**

Angela Enslen Rembert filed this application in the Supreme Court to appeal the denial of her challenge to a custody order. Instead of either granting or denying Rembert's motion for new trial, the superior court modified the language in what it refers to as the "Final Decree."

In spite of the references in the application to the "final hearing" and the "Final Decree," the Supreme Court transferred the application here "[b]ecause no final judgment of divorce has yet been entered and the issues on appeal involve child custody rather than divorce or alimony. . .," and because the divorce action is pending. We are bound by the Supreme Court's findings. *Buchan v. Hobby*, 288 Ga. App. 478, 479-80 (654 SE2d 444) (2007).

Because the case is pending below, Rembert was required to follow the interlocutory appeal procedures of 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). Her failure to do so deprives this Court of jurisdiction to consider this application, which is therefore *DISMISSED*.

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **APR 14 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Mat... , Clerk.*



**SUPREME COURT OF GEORGIA**

Case No. S08D1048.

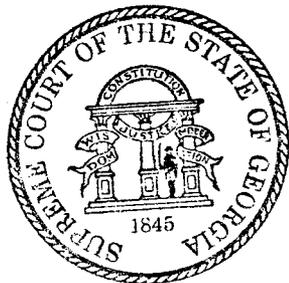
Atlanta April 21, 2008

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**ANGELA ENSLEN REMBERT v. DAVID JOHN REMBERT**

It appears that, in the above-styled application for discretionary appeal, Applicant seeks review of an award of custody which was incorporated into a final judgment and decree of divorce. However, she did not refer to that judgment or attach it to the application, but rather attached only the incorporated custody order. As a result, this Court transferred the application to the Court of Appeals pursuant to Egeland v. Egeland, 279 Ga. 565 (2005), by order dated April 3, 2008. It now appears that Applicant has filed a motion for reconsideration, to which she has attached the entire final judgment. Because that judgment shows that this case comes within this Court's jurisdiction over divorce and alimony cases, it is hereby ordered that the motion for reconsideration be granted and that the previous order of April 3, 2008 be vacated. The Court of Appeals is ordered to return the application to the Clerk of this Court. It is further ordered that the application for discretionary appeal be granted pursuant to this Court's Pilot Project in divorce cases.



**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.

, Chief Deputy Clerk

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 24, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0314

LAUREL BAYE OF LAKE LANIER ET AL V. KELLY D. BLACKBURN

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.

98029

07A11160



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 24 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 29, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0315  
NATHAN B. CLARKE V. COUNTRY HOME BAKERS 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.

98029

2007CV142290



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 29 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA ,

*The Court of Appeals hereby passes the following order:* **APR 22 2008**

A08D0316. ALL ABOUT FLOOR SHOWROOM, INC., v. HAROLD D. MICHAELIS ET AL

Upon consideration of the motion for withdrawal of the above styled application, it is hereby ordered that said motion be GRANTED.

90-027

2006CA630



*Court of Appeals of the State of Georgia*

*Clerk's Office,*

**APR 22 2008**

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Will L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 23 2008**

**A08D0317. MICHAEL A. DIXON v. MILTON E. NIX ET AL.**

Michael A. Dixon filed this discretionary application seeking review of the trial court's dismissal of his mandamus action and the denial of Dixon's motion for reconsideration of that order. Under Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (5), the Supreme Court has jurisdiction over appeals involving extraordinary remedies such as mandamus. *James v. State*, 120 Ga. App. 317 (170 SE2d 303) (1969). This application for discretionary review is therefore **TRANSFERRED** to the Supreme Court.

LC#  
2007CV132726

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Will. L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 30, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0318

JORGE W. OCHOA V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93027

0092421



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 30 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Mat... [Signature]*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 03, 2008

*The Court of Appeals passed the following order*

Case No. A08D0318

JORGE W. OCHOA V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JUN 03, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Mat... [Signature]*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 18, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0319

WILLIAM BART HARPER V. MARY ANN PAYNE ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71027

2007SUCV2995



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

APR 16 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0320. DEMARCUS MARSHALL v. THE STATE.**

Demarcus Marshall seeks discretionary review of the trial court's order revoking his probation. An application for discretionary appeal must be filed within thirty days of the order sought to be appealed. OCGA § 5-6-35 (d). The order that Marshall seeks to appeal was entered on October 27, 2006, but Marshall did not file this application until April 4, 2008. Consequently, this application is untimely, and we lack jurisdiction to consider it.

Marshall relies on a March 12, 2008 order of the trial court granting his motion for an out-of-time appeal, but an out-of-time discretionary appeal is not authorized by OCGA § 5-6-35 or any other code section. The trial court had no authority to extend the time for filing a discretionary appeal. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). We therefore DISMISS this application. Marshall is advised that he may have a remedy through a petition for a writ of habeas corpus. See *Kreps v. Gray*, 234 Ga. 745 (218 SE2d 1) (1975).

LC#  
SU05CR0518



*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*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 02, 2008

*The Court of Appeals passed the following order*

Case No. A08D0320

DEMARCUS MARSHALL V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAY 02, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** May 21, 2008

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 **S08C1549**

DEMARCUS MARSHALL v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0320

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**MAY 23 2008**

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 05, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0321  
IN THE INTEREST OF : N. K. , A CHILD ( MOTHER )

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99027

10507851



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 05 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 22 2008**

**A08D0322. DARYL BAPTISTE v. THE STATE.**

Daryl Baptiste seeks discretionary review of the trial court's "Order Denying Motion to Vacate Void Sentence." On November 4, 1996, Baptiste entered a plea of guilty to two counts of aggravated assault and two counts of false imprisonment. In an appeal to this Court following his motion to withdraw his guilty plea, we held that Baptiste entered the guilty plea freely, knowingly and voluntarily and that he failed to establish ineffective assistance of counsel. *Baptiste v. State*, 229 Ga. App. 691, 699 (494 SE2d 530) (1997).

Baptiste's contention in this case is based upon an alleged procedural failure in the return of the charging instrument, which claim was waived upon entry of his guilty plea. *Kemp v. Simpson*, 278 Ga. 439 (603 SE2d 267) (2004). Thus, Baptiste's claims about the purported defects are moot. OCGA § 5-6-48 (b) (3). Accordingly, this application is ordered DISMISSED.

LC#  
96CR5149



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 22 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Mat... Clerk.*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** May 19, 2008

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 **S08C1535**

DARYL BAPTISTE v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0322

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

**MAY 23 2008**

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 06, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0323  
MARY LINDA KIRKLAND V. WILKES COUNTY BOARD OF COMMISSIONERS  
ET AL

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

91027

07CV0525



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 06 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 01, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0324  
JAY HARVEY MORREY V. SHARON DENISE STEWART

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94027

2007CV06415



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 01 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, APR 22 2008

*The Court of Appeals hereby passes the following order:*

## A08D0325. MATTHEW GOLGAN v. MANON GOLGAN.

Matthew Golgan seeks to appeal the denial of his motion for new trial filed to challenge the superior court's order incorporating the ruling of an arbitrator in this domestic relations case. The issues before the arbitrator concerned the parties' requests for modification of child support, Golgan's alleged contempt of the final judgment and divorce decree, and the respondent's request for attorney fees.

Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. See, e.g., OCGA § 19-6-19 (a); *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 underlying subject matter in this case involves child support, this Court lacks appellate jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is *TRANSFERRED* to the Supreme Court of Georgia.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

APR 22 2008  
*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martinez*

. Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 08, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0326  
NATHANIEL LEWIS BAKER V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96028

06D00742



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 08 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 12, 2008

*The Court of Appeals passed the following order*

Case No. A08D0327

CHARLES E. JOHNSON, JR. V. MELODIE SNELL CONNOR, JUDGE ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JUN 12, 2008*



*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

A handwritten signature in black ink, appearing to read "W. L. Martin", is written over the printed name of the Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 12, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0327

CHARLES E. JOHNSON, JR. V. MELODIE SNELL CONNOR, JUDGE ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96030

06A6970

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 12 2008**



*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 05, 2008

*The Court of Appeals hereby passes the following order:*

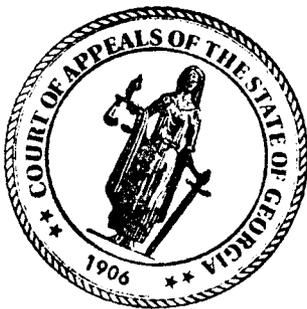
APPLICATION NO. A08D0328

RANDY MOEHN V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90028

2001R9408



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 05 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**MAY 02 2008**

**A08D0329. JOHNNIE D. MCGEE v. THE STATE.**

Johnnie D. McGee has filed a discretionary application seeking review of an order that denied his motion to vacate or void sentence. The copy of the order McGee submitted with his application, however, is not stamped as filed in the superior court. Thus, McGee failed to include a stamped "filed" copy of the order at issue as required by Court of Appeals Rule 31 (e). On April 15, 2008, this Court ordered McGee to supplement his application with a stamped "filed" copy of the order sought to be appealed within ten days or face the sanction of dismissal of his application. On April 22, 2008, McGee submitted another copy of the order at issue, but it is also not stamped "filed." Thus, McGee has not filed a stamped "filed" copy of the order within the additional time allowed. Therefore, this application is ordered **DISMISSED**.

LC#  
41186D



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAY 02 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin* , Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 15, 2008

*The Court of Appeals passed the following order*

Case No. A08D0329

JOHNNIE D. MCGEE V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAY 15, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** June 05, 2008

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 **S08C1618**

JOHNNIE D. MCGEE v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0329

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

JUN 7 0 2008  
Sent to S.C.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 09, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0330

DERRICK WELLS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71028

01CR17535



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 09 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 08, 2008

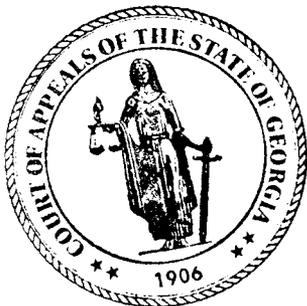
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0331  
DANIEL WILLIAM MOSES V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92028

05CR538



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 08 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, APRIL 24, 2008

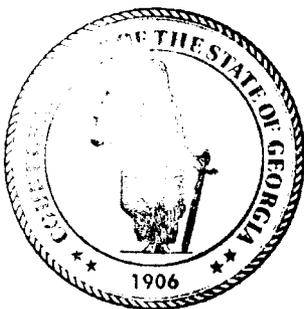
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0332  
LARRY DEWAYNE VANMETER V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99028

92CR753



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **APR 24 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 08, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0333  
SATILLA HEALTH SERVICES ET AL V. SHERRY TANNER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

70028

07V1086



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 08 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **APR 23 2008**

**A08D0334. CHARLES L. ORR v. SAVANNAH ELECTRIC AND POWER CO.**

Charles L. Orr filed this application for discretionary appeal. However, there is no order subject to appeal to this Court contained in the application. Summary judgment was granted to Savannah Electric and Power Company on November 15, 2005. No timely appeal was filed. Thus, there is no basis for appellate jurisdiction. Accordingly, this application is ordered DISMISSED.

LC#  
STCV0603781

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**APR 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 21, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0334. ORR v. SAVANNAH ELECTRIC AND POWER COMPANY.**

This Court dismissed Charles Orr's application for discretionary appeal for lack of subject matter jurisdiction. This Court finds Orr's application for discretionary appeal was frivolous and had no legal basis, and it imposes a penalty pursuant to Court of Appeals Rule 15 (b).<sup>1</sup> Accordingly, the motion for sanctions filed by Savannah Electric and Power Company is hereby GRANTED. See *Shamsai v. Coordinated Properties, Inc.*, 259 Ga. App. 438, 440 (3) (576 SE2d 901) (2003). The trial court is directed to enter judgment against Orr and in favor of Savannah Electric in the amount of \$1,000. See *Brown v. Benham*, 218 Ga. App. 518 (462 SE2d 184) (1995). The penalty may be collected in the same manner as other money judgments. See Court of Appeals Rule 15 (c).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 21 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martinez*

....., Clerk

---

<sup>1</sup> This Court **DENIES** Orr's motion for reconsideration of the order dismissing his discretionary application.

# Court of Appeals of the State of Georgia

ATLANTA,

**MAY 16 2008**

*The Court of Appeals hereby passes the following order:*

## **A08D0335. LARRY SOUTHARDS v. RABUN COUNTY, GEORGIA.**

Larry Southards, who is proceeding pro se, filed an application for discretionary appeal from an order denying his three motions for new trial and a motion styled, "A Judgement Void on Its Face May Be Attacked in Any Court at Any Time (9-11-60)." Southards has already challenged his conviction by direct appeal to this court and the judgment was affirmed in an unpublished opinion. *Southards v. State*, A07A0688 (Decided June 8, 2007). The Supreme Court denied certiorari. *Southards v. State*, 2007 Ga. LEXIS 684 (2007). This court's affirmance is res judicata. See *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991). Because Southards raises no issue that could not have been raised in his first appeal, and because he otherwise raises no issue that suggests either his conviction or his sentence is a legal nullity, his unauthorized second appeal is hereby **DISMISSED** for lack of jurisdiction. See *Reynolds v. State*, 272 Ga. App. 91, 95 (3) (611 SE2d 750) (2005); *Daniels v. State*, 244 Ga. App. 522 (536 SE2d 206) (2000) (defendant may not raise issues going solely to the validity of the underlying conviction when that conviction has been previously reviewed on appeal).

LC#  
05CV408



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 09, 2008

*The Court of Appeals passed the following order*

Case No. A08D0335

LARRY SOUTHARDS V. RABUN COUNTY GA

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 09, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 16, 2008

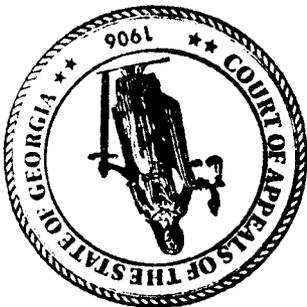
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0336  
JOHN STINSON V. PERSONNEL BOARD OF FULTON COUNTY  
ET AL

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

97028

2007CV131448



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAY 01 2008**

**A08D0337. ROOFERS EDGE, INC. v. STANDARD BUILDING COMPANY, INC.**

Roofers Edge, Inc. filed this application for discretionary appeal from the superior court's order denying its motion for OCGA § 9-15-14 attorney fees. The underlying final judgment is on appeal as Case No. A08A1060.

A post-judgment award of OCGA § 9-15-14 attorney fees may be directly appealed without regard to the discretionary appeal procedures, where there is a pending "direct appeal" taken from the underlying judgment. *Rolleston v. Huie*, 198 Ga. App. 49 (400 SE2d 349) (1990). See also, *Kilgore v. Sheetz*, 268 Ga. App. 761 (2) (603 SE2d 24) (2004) (application for discretionary appeal of order denying motion for OCGA § 9-15-14 attorney fees granted under OCGA § 5-6-35 (j) because main case was pending on direct appeal).

Because Roofers Edge, Inc. was entitled to bring this appeal under OCGA § 5-6-34 (a), this application is GRANTED under OCGA § 5-6-35 (j). Roofers Edge, 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.

LC#  
06CV5535



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAY 01 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martinez*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 15, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0338

RHUPEE WILLIAMS V. SUNBELT GREENHOUSE, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96029

NONE



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 15 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 15, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0339  
LINDA HARRIS-BRUNSON V. JAMES JENKINS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96029

06A06158



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 15 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
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*Clerk.*

*Will L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** June 04, 2008

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 **S08C1612**

LINDA HARRIS-BRUNSON v. JAMES JENKINS

Clerk, Supreme Court of Georgia

Case No. A08D0339

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

8007 9 0 N00

JUN 0 6 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 09, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0340  
PAUL GREG SWILLEY, D/B/A G & D CONSTRUCTION ET AL V. JAY B.  
PULLIAM

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

90029

08CV264



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 09 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Mat... [Signature]*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 16, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0341

IN THE INTEREST OF : E. C. , B. N. , AND S. R. , MINOR CHILDREN  
( MOTHER )

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

95029

02807J1459



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

# Court of Appeals of the State of Georgia

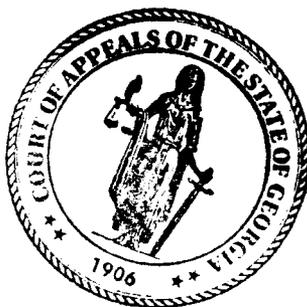
ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 02 2008**

**A08D0343. CONFESOR CHAPARRO v. THE STATE.**

Confesor Chaparro filed an application for discretionary appeal from an order denying his "Motion to Vacate Sentence and to Exercise Constitutional Rights." Chaparro's convictions were affirmed by this Court in *Chaparro v. State*, 279 Ga. App. 145 (630 SE2d 645) (2006). This Court's affirmance is *res judicata*. See *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991). Because Chaparro raises no issue that could not have been raised in his first appeal, and because he otherwise raises no issue that suggests either his conviction or his sentence is a legal nullity, his unauthorized second appeal is hereby *DISMISSED* for lack of jurisdiction. See *Reynolds v. State*, 272 Ga. App. 91, 95 (3) (611 SE2d 750) (2005); *Daniels v. State*, 244 Ga. App. 522 (536 SE2d 206) (2000) (defendant may not raise issues going solely to the validity of the underlying conviction when that conviction has been previously reviewed by appeal).

LC#  
02B2568



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

**MAY 02 2008**

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, APRIL 24, 2008

*The Court of Appeals hereby passes the following order:*

**Case No. A08D0344**

**ALPHA BONDING COMPANY V. THE STATE**

The discretionary application received in the above docketed matter does not contain a stamped 'filed' copy of the order which is being appealed as required by Rule 31 (d) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped 'filed' copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application See OCGA 5-6-35 (f).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR 24 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*William T. McIntosh*

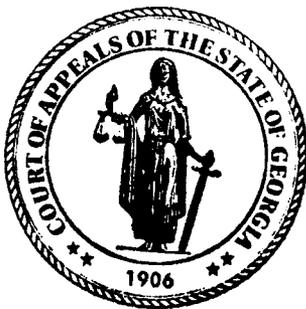
# Court of Appeals of the State of Georgia

ATLANTA, May 21, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0344. ALPHA BONDING COMPANY v. THE STATE.**

On January 17, 2008, the superior court entered an order denying surety Alpha Bonding Company's motion to set aside a bond forfeiture order. The surety filed a motion for reconsideration, which was denied by order entered on March 28, 2008. The above styled application was filed on April 24, 2008. The denial of a motion for reconsideration, however, is not an appealable order in its own right, nor does it serve to extend the time for initiating an appeal. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Because the applicant did not file its submission within 30 days of an appealable order, its application for appeal 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 **MAY 21 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martin*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 27, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0345

TRUDY GILBERT V. RHEEM MANUFACTURING CO., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99029

2008CV41906



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 27 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAY 16 2008**

## **A08D0346. GRADY ROBERTS, III v. ERNIE EAYRS**

Grady Roberts, III seeks discretionary review of an order of the State Court of Fulton County which dismissed his counterclaim for want of prosecution.<sup>1</sup> The state court did not receive this case as a de novo appeal from the magistrate court; thus, the discretionary appeal requirements set forth in OCGA § 5-6-35 (a) (11) were not required. Accordingly, the order appealed from is a final judgment directly appealable under OCGA § 5-6-34 (a) (1), and an application for discretionary appeal was not necessary. This application is thus GRANTED pursuant to OCGA § 5-6-35 (j). Roberts shall have ten days from the date of this order to file his notice of appeal with the state court. The clerk of the state court is directed to include a copy of this order in the record transmitted to this Court.

LC# 99DD0003768 99ED0413462



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martinez*, Clerk.

---

<sup>1</sup>Roberts identifies the court which rendered the order he seeks to appeal as a decision by the magistrate court; however, the order sought to be appealed was rendered in the State Court of Fulton County. This case originated in the magistrate court as a dispossessory action. After a consent order was entered resolving the issue of possession, the case was transferred to the state court for resolution of Roberts' counterclaims.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 23, 2008

*The Court of Appeals passed the following order*

Case No. A08D0347

WARREN K. BROWN V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAY 23, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 20, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0348

CLARENCE SUMLIN V. CITY OF ATLANTA WATER DEPARTMENT ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94029

2008CV145564



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 20 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

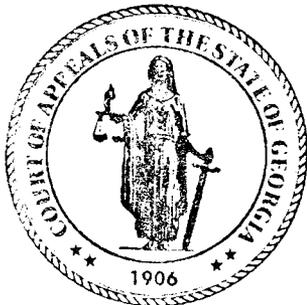
ATLANTA, JUNE 12, 2008

*The Court of Appeals passed the following order*

Case No. A08D0348

CLARENCE SUMLIN V. CITY OF ATLANTA WATER DEPARTMENT ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 12, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

**JUL 25 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0348. CLARENCE SUMLIN v. CITY OF ATLANTA WATER DEPARTMENT AND CITY OF ATLANTA**

Upon consideration of the Motion for Permission to File Second Motion for Reconsideration, the same is hereby GRANTED. The Court has received the Second Motion for Reconsideration. The respondent shall have ten (10) days from the date of this order to file any response, should respondent choose to do so.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta.* **JUL 25 2008**

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*



*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

**AUG 14 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0348. CLARENCE SUMLIN v. CITY OF ATLANTA WATER  
DEPARTMENT AND CITY OF ATLANTA.**

Upon consideration of Clarence Sumlin's second motion for reconsideration,  
the same is hereby ordered DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG 14 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin* Clerk.

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** September 05, 2008

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 **S09C0033**

CLARENCE SUMLIN v. CITY OF ATLANTA WATER DEPARTMENT et al.

Clerk, Supreme Court of Georgia

Case No. A08D0348

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

To S.C.  
SEP 08 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 15, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0349  
RONDA HOBBY V. EXCHANGE BANK ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97030

07GR038739



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**MAY 15 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 04, 2008

*The Court of Appeals passed the following order*

Case No. A08D0349

RONDA HOBBY V. EXCHANGE BANK ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 04, 2008*

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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

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** June 24, 2008

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 **S08C1719**

RONDA HOBBY v. EXCHANGE BANK

Clerk, Supreme Court of Georgia

Case No. A08D0349

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 14, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0350

ROBERT GUNSALLUS V. PREMIER WOOD MANUFACTURING, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98029

05A07727

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 14 2008**



*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

MAY 27 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0351. WHITAKER v. THE STATE.**

Michael J. Whitaker seeks an appeal from an order denying his motion for credit for time served. To the extent Whitaker is arguing that his sentence has not been properly calculated, this is a matter that must be addressed to the Department of Corrections and not to the court of rendition. OCGA § 17-10-2; *Cutter v. State*, 275 Ga. App. 888, 890 (2) (622 SE2d 96) (2005). To the extent Whitaker is arguing that he would not have pled guilty had he fully understood the consequences of the resulting sentence, his only remedy at this time is through habeas corpus proceedings. *Goodrum v. State*, 259 Ga. App. 704 (578 SE2d 484) (2003). Since Whitaker's application presents nothing for review, it is hereby *dismissed* for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAY 27 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martin*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 27, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0352  
WILLIAM S. STONE V. SHERREE C. STONE

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.

90030  
2006V431



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 27 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

**MAY 27 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0353. SOUTHEASTERN LAND HOLDINGS, INC. v. SPALDING TRIANGLE PARTNERS, L.P. et al.**

Southeastern Land Holdings, Inc. filed an application for discretionary appeal from the superior court's order granting summary judgment to the defendants in this case and granting their motion to cancel lis pendens. Under OCGA § 9-11-56 (h), the grant of summary judgment on any issue or as to any party is reviewable by direct appeal, even if other matters remain pending below. *Olympic Dev. Group v. American Druggists' Ins. Co.*, 175 Ga. App. 425 (1) (333 SE2d 622) (1985). Moreover, a direct appeal is permitted from the grant of a motion to cancel a notice of lis pendens, because such appeals fall within an exception to the final-judgment rule of OCGA § 5-6-34 (a), and are thus not subject to the interlocutory appeal requirements of OCGA § 5-6-34 (b). *Scroggins v. Edmondson*, 250 Ga. 430, 432 (2) (297 SE2d 469) (1982); *Hutson v. Young*, 255 Ga. App. 169 (564 SE2d 780) (2002). We also note that no provision of OCGA § 5-6-35 (a) relating to discretionary appeals is applicable to the order Southeastern Land Holdings, Inc. seeks to appeal. Accordingly, Southeastern

Land Holdings, Inc. has a right of direct appeal in this case.

This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. Because it appears that Southeastern Land Holdings, Inc. has not filed a notice of appeal, this application is **GRANTED**. Southeastern Land Holdings, Inc. shall have ten days from the date of this order to file its notice of appeal in 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* **MAY 27 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, MAY 30, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0354

JOHNNY MCDONALD V. DOUGLAS ASPHALT COMPANY ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93030

08CV60



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 30 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, May 21, 2008

*The Court of Appeals hereby passes the following order:*

## **A08D0355. ELIZABETH JAZON ET AL. v. ISABELLA LAU-SANDERSON.**

Elizabeth Jazon, William Jazon and Trincity Realty, LLC seek to appeal the denial of the motion to set aside the default judgment entered in favor of Isabella Lau-Sanderson on her counterclaim. One of the grounds asserted in the motion to set aside was that the judgment violates OCGA § 9-11-54 (c) (1) in that it exceeds the amount Lau-Sanderson sought in her counterclaim. "While it does not appear that a motion to set aside is the appropriate vehicle to challenge the amount of the judgment here, because [the applicants] filed [their] motion within 30 days of the entry of the judgment, it is permissible to treat the motion in part as a motion for new trial." *Stamps v. Nelson*, 290 Ga. App. 277, \_\_\_ n. 3 (\_\_\_ SE2d \_\_\_) (2008).

An order which simultaneously denies both a motion for new trial and motion to set aside a judgment is directly appealable. *Martin v. Williams*, 263 Ga. 707, 709-710 (3) (438 SE2d 353) (1994); *Smith v. Dept. of Human Resources*, 214 Ga. App. 508, 509 (448 SE2d 372) (1994). Because the motion for new trial is directly appealable, all other rulings may also be appealed. OCGA § 5-6-34 (d). This court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. This application is accordingly GRANTED. The applicants shall have ten days from the date of this order to file a notice of appeal with the superior court. The clerk of 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* **MAY 21 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **MAY 30 2008**

## **A08D0356. FINNICUM v. THE STATE.**

Christopher Finnicum filed an application for discretionary appeal from an order denying his request for an order removing him from the sex offender registry. Finnicum also sought, in addition to or as an alternative to removal from the registry, to be resentenced as a first offender. That request was likewise denied. OCGA § 5-6-35 (a) (5) is applicable only to those orders where the underlying subject matter is an order revoking probation. The provision does not encompass appeals from orders that merely involve probation generally. Although Finnicum describes his application as one involving probation revocation, this is not the case. Because we conclude that the order complained of is directly appealable, Finnicum's application for appeal is hereby *granted* as required under OCGA § 5-6-35 (j). See generally *Staley v. State*, 233 Ga. App. 597 (505 SE2d 491) (1998).

Finnicum shall have ten days from the date of this order to file a notice of appeal in the superior court. The clerk of the superior court is directed to include a copy of this order in the appeal record transmitted to this court.

LC#  
94R1038

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAY 30 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin* Clerk.



# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JUN 03 2008**

**A08D0357. HOGSED v. THE STATE.**

Applicant's motion to supplement his application is hereby *granted*. Upon consideration of the application as supplemented, the application is hereby *denied*.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 03 2008**

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*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, JUNE 05, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0358

IN THE INTEREST OF : J. H., J. H., J. P., J. P., J. P., & J. R.,  
CHILDREN ( MOTHER )

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

70030

075072888



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 05 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**MAY 29 2008**

## **A08D0359. MICHAEL CRUMPTON v. THE STATE.**

On May 7, 2008, Michael Crumpton, *pro se*, filed an application for discretionary appeal in this Court, seeking review of the trial court's March 31, 2008 order denying his motion to dismiss his probation.<sup>1</sup> An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Crumpton filed his 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. OCGA § 5-6-35 (d). Accordingly, Crumpton's application is **DISMISSED**.

LC# 97145, 97146, 9886,  
9887, 9888, 9889, 9890,  
9891



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 29 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

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<sup>1</sup>Crumpton originally submitted his application on April 25, 2008, but the Clerk of this Court returned the application materials to him on the basis that he failed to include the requisite filing fee or sufficient pauper's affidavit. See OCGA § 5-6-4. Crumpton then resubmitted the application with a pauper's affidavit. The application was filed in this Court May 7, 2008.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 02, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0360  
IN THE INTEREST OF : S. S. , A CHILD ( MOTHER )

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94030

029060718

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN -2 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

*Clerk.*

*Willi Z. Mart...*

**Court of Appeals  
of the State of Georgia**

ATLANTA,

MAY

28, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0361

JACKSON COUNTY BOARD OF EDUCATION ET AL V. JACKIE WALKER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97031

A08CV0141

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 28 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above above written.*

Clerk.

*Willie L. Martin*



# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUN 04 2008

**A08D0362. 3P DELIVERY, INC., et al. v. CARDINAL LOGISTICS  
MANAGEMENT CORPORATION.**

3P Delivery, Inc., and John Turner filed an application for discretionary appeal from an order denying a 3P Delivery's motion for a protective order and directing 3P Delivery to produce certain documents. Non-final discovery orders such as this are generally subject to the interlocutory appeal procedure. OCGA § 5-6-34 (b); *Johnson & Johnson v. Kaufman*, 226 Ga. App. 77 (485 SE2d 525) (1997); compare *In re Paul*, 270 Ga. 680 (513 SE2d 219) (1999) (order requiring non-party reporter to disclose privileged information subject to direct appeal). Because applicants failed to follow the additional requirements of the interlocutory appeal procedure, their application for discretionary appeal is hereby *dismissed* as premature. *Scruggs v. Dept. of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991).

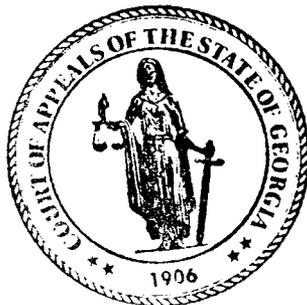
LC#  
06A10208

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

JUN 04 2008  
I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Willie L. Matting*, Clerk.



**Court of Appeals  
of the State of Georgia**

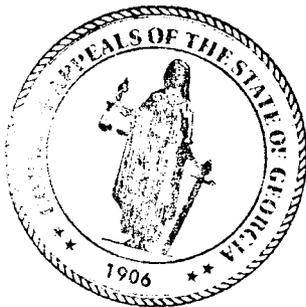
ATLANTA, JUNE 18, 2008

*The Court of Appeals passed the following order*

Case No. A08D0362

3P DELIVERY, INC., ET AL V. CARDINAL LOGISTICS MANAGEMENT  
CORPORATION

Upon consideration of the motion for reconsideration filed  
in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 18, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Mat... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUN 0 5 2008

## **A08D0363. MAGNOLIA MANOR OF MARION COUNTY v. SHIRLEY DALE**

Magnolia Manor of Marion County and S. E. U. S. Insurance c/o Common Sense Claims (“Employer”) filed this discretionary application seeking review of the superior court’s order remanding this workers’ compensation case to the Appellate Division of the State Board of Workers’ Compensation for clarification of its findings with regard to Shirley Dale’s request for temporary total disability payments. The Employer appealed the ALJ’s decision to the superior court. A hearing was held on March 10, 2008. The superior court’s order disposing of the issues on appeal was entered on April 9, 2008. However, because the superior court’s order was entered more than 20 days after the hearing, and no order was entered extending the hearing to a date certain, the decision of the Appellate Division was affirmed by operation of law on March 30, 2008, and it is this date that controls for purposes of filing a timely application for appeal.<sup>1</sup> OCGA § 34-9-105 (d); *MacKenzie v. Sav-A-Lot Food Store*, 226 Ga. App. 32, 33 (485 SE2d 559) (1997). The subsequent April 9, 2008 order of the superior court is a mere nullity. *Synthetic Industries v. Camp*, 196 Ga. App. 637 (396 SE2d 518) (1990).

After the Appellate Division’s decision was affirmed by operation of law and

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<sup>1</sup>The superior court’s holding that the Appellate Division’s decision was not automatically affirmed by operation of law since the matter was held in abeyance pending the timely submission of supplemental briefs by a date certain, is in error as the statute requires any continuance to be by a date certain and by order of the court. There is no evidence that an order continuing the hearing was ever entered after the March 10, 2008 hearing. OCGA § 34-9-105 (d).

became final on March 30, 2008, the Employer filed this application for discretionary review of May 9, 2008. Because the Employer's application was not filed within 30 days of March 30, 2008, it is untimely. *Taylor Timber Co. v. Baker*, 226 Ga. App. 211, 213 (485 SE2d 819) (1997); *Coronet Carpets v. Reynolds*, 199 Ga. App. 383 (405 SE2d 103) (1991). Accordingly, this application is 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*

**JUN 05 2008**

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 09, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0364  
DIVERSE POWER INC., V. RONALD W. JACKSON ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92033

2007CV128585



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 09 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Mat... [Signature]*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** June 20, 2008

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 **S08C1675**

DIVERSE POWER INC. v. RONALD W. JACKSON et al.

Clerk, Supreme Court of Georgia

Case No. A08D0364

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 01 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 04, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0365

ROBERT W. LEAVENWORTH V. KARLA BELLI LEAVENWORTH

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95031

05CV73645



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 04 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

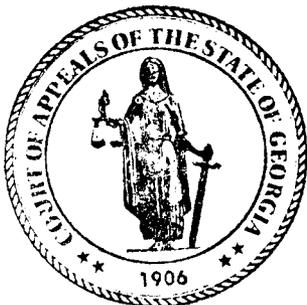
ATLANTA, JUNE 27, 2008

*The Court of Appeals passed the following order*

Case No. A08D0365

ROBERT W. LEAVENWORTH V. KARLA BELLI LEAVENWORTH

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 27, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 17, 2008

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 **S08C1870**

ROBERT W. LEAVENWORTH v. KARLA BELLI LEAVENWORTH

Clerk, Supreme Court of Georgia

Case No. A08D0365

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 21 2008

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA,

JUN 16 2008

*The Court of Appeals hereby passes the following order:*

**A08D0366. BOARD OF TRUSTEES FOR THE FULTON COUNTY  
EMPLOYEES RETIREMENT SYSTEM ET AL. v. CYNTHIA LAURIE  
ET AL.**

The applicants filed this application for discretionary appeal from the superior court's "Order on Final Hearing." It appears, however, that the respondents' motion for class certification remains pending for decision. "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).<sup>1</sup> Because the issue of class certification remains pending, the judgment for which an appeal is sought is not the final judgment in the case. The applicants were 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. Georgia Dep't of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991). The failure to do so deprives this Court of jurisdiction to consider this application, which is therefore **DISMISSED**.

LC#  
2007CV128125



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUN 16 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*, Clerk.

<sup>1</sup>But see OCGA § 9-11-23 (g).

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**JUN 13 2008**

**A08D0367. MORTON, et al. v. WALLACE, et al.**

Ernest Morton and Hughes and Associates, P. C., seek an appeal from an order of the superior court denying its motion for new trial referencing the grant of attorney's fees to respondents under OCGA § 9-15-14. The respondents argue that the underlying motion challenges only the trial court's judgment and legal conclusions, and as such it is not a proper motion for new trial. We agree. The applicants' motion essentially urges the trial judge to reconsider the weight of the evidence. While a contention that the jury verdict is contrary to the weight of the evidence is always proper fodder for a valid new trial motion, a new trial would serve no valid purpose where, as here, the movants' contention is merely that the trial judge has weighed the evidence from the first trial improperly. When an order or judgment does not involve a jury verdict, a motion for new trial lies "only to challenge the determination of substantive facts by the fact finder." (Citations and punctuation omitted.) *Bank South Mortgage v. Starr*, 208 Ga. App. 19 (429 SE2d 700) (1993). The applicants' motion here is in substance a mere motion for reconsideration. The denial of such a motion is not appealable in its own right, nor does it extend the time to file an application for appeal. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Because we conclude that this application is taken from a non-appealable order, the application is hereby *dismissed* for lack of jurisdiction.

LC#  
2004CV20308



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 13 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Matz*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 11, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0368  
KIMBERLY J. ZOGBY V. ADAMS LAW FIRM, LLC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92031

07SCCV585



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 11 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 04, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0369

STEVEN L. HUNT V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99031

CR032322



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUN 04 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 16, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0370  
CHRISTOPHER KEELING V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

70031

SU07CV2212



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 16 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 03, 2008

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 **S08C1734**

CHRISTOPHER KEELING v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A08D0370

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

7-3-08  
To SC.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 06, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0371

THE KROGER COMPANY ET AL V. MICHAEL THAYER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91031

CV080308



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 06 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 25, 2008

*The Court of Appeals passed the following order*

Case No. A08D0371

THE KROGER COMPANY ET AL V. MICHAEL THAYER

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 25, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Mat...*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 15, 2008

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 **S08C1814**

KROGER COMPANY et al. v. MICHAEL THAYER

Clerk, Supreme Court of Georgia

Case No. A08D0371

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 16 2008

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 12 2008**

**A08D0372. AMERICAN LENDING GROUP, INC. ET AL. v. REGIONS BANK  
D/B/A REGIONS FUNDING.**

On May 16, 2008, American Lending Group, Inc. and Warin Kumar filed this application for discretionary appeal in this Court, seeking review of the trial court's April 14, 2008 order denying their motion to set aside default judgment. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because the applicants filed their application more than thirty days after entry of the order they seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. *Id.* Accordingly, the application is **DISMISSED.**

**LC#**  
**2007CV143558**



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **JUN 12 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin* , Clerk.

# Court of Appeals of the State of Georgia

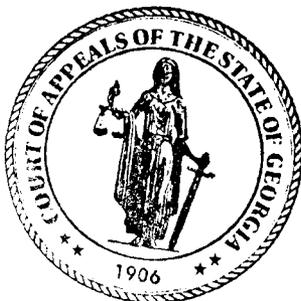
ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 12 2008**

**A08D0373. TAYLOR v. PEACHBELT PROPERTIES, INC., d/b/a Westview  
Nursing Center.**

Applicant Brenda Joyce Taylor received a judgment based on an award of workers' compensation in March 1995. In February 2005 Taylor filed a complaint to revive the 1995 judgment. It appears undisputed for present purposes that in the 2005 proceeding Taylor requested and received less relief than she would have otherwise been entitled under the terms of the 1995 judgment. The order concluding that proceeding was entered in January 2006. In July 2007 Taylor filed a motion seeking further relief based on the terms of the 1995 judgment. The superior court denied Taylor's request. The court concluded that it did not have authority to further revive the 1995 judgment beyond the extent to which it was revived in 2006, nor did it have authority to modify the 2006 order. Because we conclude that the discretionary appeal procedure is not applicable to the order complained of here, and because Taylor informs the Court that she has already filed a direct appeal from that same order, Taylor's application for discretionary appeal is hereby *dismissed* as superfluous.

LC#  
2005CV80652



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **JUN 12 2008**

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Will. L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 12, 2008

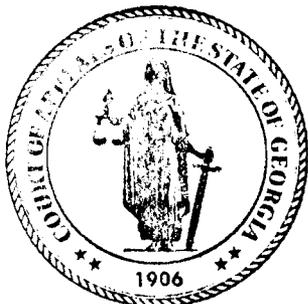
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0374  
JAMES LAREED HOWARD V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96032

06CR074



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 12 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Will L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 13, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0375  
DERRICK A. TWYMAN V. JANICE E. LYLES

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98032

0511664



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 13 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 07, 2008

*The Court of Appeals passed the following order*

Case No. A08D0375

DERRICK A. TWYMAN V. JANICE E. LYLES

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 07, 2008*



*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 24, 2008

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 **S08C1907**

DERRICK A. TWYMAN v. JANICE E. LYLES

Clerk, Supreme Court of Georgia

Case No. A08D0375

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

*Sent to S. C.*  
JUL 25 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 04, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0376  
IN THE INTEREST OF: M. L. V., A CHILD

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90032

03507J160



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 04 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 13, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0377

MATTHEW V. ROUSH V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

95032

SU07CV1488



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 13 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 03, 2008

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 **S08C1736**

**MATTHEW ROUSH v. THE STATE**

Clerk, Supreme Court of Georgia

Case No. A08D0377

Court of Appeals of Georgia

Notice of Petition for Certiorari

JUL 08 2008

filed in office

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 19, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0379  
DEMETRIUS HALL V. SEARS ROEBUCK ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71032

CV080507



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 19 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 23, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0380  
JOAN E. DOKSON V. CITY OF ATLANTA ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92032

2006CV114762



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 10, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0378  
VERNON HORTON V. CLERK OF THE COURT

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

06CV0146



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 10 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 11, 2008

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 **S08C1808**

JOAN E. DOKSON v. CITY OF ATLANTA et al.

Clerk, Supreme Court of Georgia

Case No. A08D0380

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 16 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 10, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0381  
DEKALB COUNTY, GEORGIA., ET AL V. EVAN BULL

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.

99032

07CV13047

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 10 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



Clerk.

*Will. L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

**JUN 18 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0382. LANCE v. McDONALD.**

W. Dennis Lance filed an application for appeal on May 24, 2008, from an order entered on April 21, 2008, dismissing a de novo appeal from magistrate court. Because Lance did not file his application for appeal 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. *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

LC#  
2007SV2364

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUN 13 2008

## **A08D0383. TRANSWORLD FINANCING CORPORATION v. COASTAL TIRE AND CONTAINER REPAIR, LLC.**

Transworld Financing Corporation ("TFC") filed this application for discretionary appeal seeking review of the trial court's order which granted it a writ of possession for a 1996 Freightliner 839778 truck; however, possession of the truck was conditioned upon TFC paying \$5,025.00 for storage fees to Coastal Tire and Container Repair, LLC pursuant to Coastal's counterclaim. Although the judgment is for less than \$10,000, the underlying action is not an action for damages. *Purser Truck Sales, Inc. v. Horton*, 276 Ga. App. 17 (622 SE2d 405) (2005). Therefore, the discretionary application procedure of OCGA § 5-6-35 (a) (6) does not apply. This application is GRANTED as required under OCGA § 5-6-35 (j).

TFC shall have ten days from the date of this order to file a notice of appeal with the state court. The state 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 13 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 20, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0384

IN THE INTEREST OF : R. C. AND R. C. , CHILDREN ( MOTHER )

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94032

02807J0639



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 20 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Matz*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 18, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0385

IN THE INTEREST OF : I. C. , C. C. , D. C. , AND J. D. , CHILDREN  
( MOTHER )

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

97033

03507J0297

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*



**JUN 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 18, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0386  
ANTERRIO T. DANIELS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96033

06CR2057



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*W. L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 23, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0387

NAKIA JONES V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98033

07CR2035



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 23 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Mat... A*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 10, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0388  
STATE OF GEORGIA, DEPARTMENT OF TRANSPORTATION  
V. DOUGLAS ASPHALT COMPANY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90032

2005CV0127



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 10 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 24, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0389  
DUNWOODY FOREST RENAISSANCE HOMES, LLC V. PAUL  
MURPHY ET AL

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

90033

07CV7399



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 24 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** September 05, 2008

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 **S09C0031**

DAVID TONY NEISLER v. MACON TRANSITIONAL CENTER et al.

Clerk, Supreme Court of Georgia

Case No. A08D0390

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

T.S.C.  
SEP 08 2008

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA,

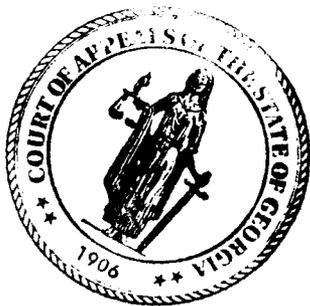
**JUN 19 2008**

*The Court of Appeals hereby passes the following order:*

**A08D0390. DAVID TONY NEISLER v. MACON TRANSITIONAL CENTER  
et al.**

David Tony Neisler, a prison inmate proceeding *pro se*, has filed an application for discretionary appeal from an order entered on April 24, 2008 which denied his request to proceed in *forma pauperis* and denied his petition to file a civil lawsuit. Neisler's application was docketed in this Court on May 30, 2008.

OCGA § 5-6-35 (d) requires that an application for discretionary appeal must be filed within 30 days of the entry of the order sought to be appealed. Because Neisler filed this application 36 days after entry of the order at issue, it is untimely. This Court lacks jurisdiction to consider an untimely application. Therefore, Neisler's application is ordered DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta

**JUN 19 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**JUN 18 2008**

**A08D0391. SYKES PEACHTREE CREEK, LLC v. AMERICAN SPORTS  
MANAGEMENT, INC. D/B/A ATLANTA KICK.**

Sykes Peachtree Creek, LLC seeks to appeal the order denying its motion to set aside the entry of default. Sykes filed the application May 30, 2008, although the trial court entered the order March 20, 2008. In spite of the apparent untimeliness of the application, Sykes contends the court has "tag along" jurisdiction as Sykes filed its application challenging the order within 30 days of the entry of the \$185,752 default judgment in favor of American Sports Management, Inc. d/b/a Atlanta Kick.

Under OCGA § 5-6-34 (d), when a proper appeal is lodged in our court, the appellant may raise on appeal all judgments, rulings, or orders rendered in the case. Therefore, Sykes correctly asserts that a proper appeal of the default judgment would allow it to challenge the earlier entered order denying its motion to set aside.

Moreover, the \$185,752 default judgment appears to be a directly appealable final judgment. 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. In this case, however, Sykes indicates that it has filed a timely notice of appeal. Thus, OCGA § 5-6-35 (j) does not apply, and this application is **DISMISSED**.

LC#  
06EV001490



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 18 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will L. Martinez*

, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 27, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0392

EDILBERTO PALACIO V. HARP'S FARM MARKET & NURSERY, INC

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

71033

NONE



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 27 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martinez*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 16, 2008

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 **S08C1837**

CITY OF ATLANTA v. DIETRICH LEE

Clerk, Supreme Court of Georgia

Case No. A08D0393

Court of Appeals of Georgia

JUL 18 2008

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 26, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0393  
CITY OF ATLANTA ET AL V. DIETRICH LEE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99033

2008CV147313

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUN 26 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willi Z. Mart...*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 25, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0394  
GWENDOLYN BENSON V. LEROY ERVIN

Upon consideration of the Application for Discretionary  
Appeal, it is ordered that it be hereby DENIED.

70033

04A26319



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 25 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 18, 2008

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 **S08C1864**

KEYSTONE FREIGHT CORP v. FORD MOTOR CREDIT COMPANY

Clerk, Supreme Court of Georgia

Case No. A08D0395

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 18 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 30, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0395

KEYSTONE FREIGHT CORP V. FORD MOTOR CREDIT COMPANY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91033

03GC036878

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 30 2008**



*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, June 20, 2008

*The Court of Appeals hereby passes the following order:*

**A08D0396. MACON SENIOR LIVING PROPERTY, LLC ET AL. v.  
CATHERINE PETTERSON-TRUEMPER ET AL.**

Macon Senior Living Property, LLC seeks to appeal the denial of its motion for OCGA § 9-15-14 attorney fees. Generally, a party must follow the discretionary appeal procedures to appeal the denial of an award of OCGA § 9-15-14 attorney fees. OCGA § 5-6-35 (a) (10). Because the case remains pending in the trial court, however, no final judgment has been entered, and the applicant 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). The failure to follow the interlocutory appeal procedures deprives this Court of jurisdiction to consider this application, which is therefore **DISMISSED**.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta June 20, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 31 2008

**A08D0396. MACON SENIOR LIVING PROPERTY, LLC ET AL. v.  
CATHERINE PETTERSON-TRUEMPER ET AL.**

On July 15, 2008, Macon Senior Living Property, LLC filed a motion for reconsideration of this court's June 20, 2008 order dismissing its application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the dismissal. Macon Senior Living Property, LLC's motion for reconsideration, filed 25 days after the dismissal of its application, is thus untimely and is **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL 31 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Will. L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 29 2008

**A08D0396. MACON SENIOR LIVING PROPERTY, LLC ET AL. v.  
CATHERINE PETTERSON-TRUEMPER ET AL.**

Catherine Petterson-Truemper et al.'s motion for sanctions is hereby **DENIED**.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta* JUL 29 2008

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 02, 2008

*The Court of Appeals passed the following order*

Case No. A08D0397

JOSHUA BOND V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 02, 2008*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 17 2008**

## A08D0397. BOND v. THE STATE.

Joshua Bond filed an application on May 29, 2008, seeking an appeal from an order revoking probation and the subsequent denial of his motion for new trial. The latter order was entered on March 31, 2008. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Bond relies on an order of the trial court entered on April 29, 2008, granting his request for an extension of time to file his appeal. Although we acknowledge that Bond's application would be considered timely filed based on the terms of the extension order, the trial court lacked the statutory authority to grant an extension of time for Bond to file an application for appeal in this court. See OCGA § 5-6-39 (a); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Bond's untimely application for appeal is therefore *dismissed* for lack of jurisdiction.

LC#  
052182



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **JUN 17 2008**

I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court  
hereto affixed the day and year last above written.

*Willie L. Martin*, Clerk.

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 25, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0398  
LATASHA M. WILLIAMSON V. CHILON BOLTON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96034

2006CV125308



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUN 25 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Willie L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

**Docketing Date:** July 30, 2008

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 **S08C1933**

JASON HALLIBURTON v. CITY OF CLARKSTON

Clerk, Supreme Court of Georgia

Case No. A08D0399

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

*Sent to S.C.  
7-31-08* JUL 31 2008

Clerk, Court of Appeals of Georgia

**Court of Appeals  
of the State of Georgia**

ATLANTA, JULY 02, 2008

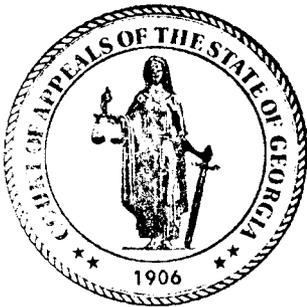
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0399  
JASON HALLIBURTON V. CITY OF CLARKSTON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98034

07CV11308



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

**JUL 02 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

Clerk.

*Will L. Martin*

**Court of Appeals  
of the State of Georgia**

ATLANTA, JUNE 30, 2008

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A08D0400  
CITY OF ATLANTA ET AL V. RICHARD ROACH

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

2008CV147253



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 30 2008**

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Will. L. Martin*