

# Court of Appeals of the State of Georgia

ATLANTA,

*The Honorable Court of Appeals met pursuant to adjournment.*

*The following order was passed:*

**A95A0050. REMAND TO SET BOND UNDER BIRGE.**

Upon consideration of the appeal in this case from the trial court's denial of appellant's motion for a bond pending appeal, this Court finds that the trial court properly considered the factors set forth in Birge v. State, 238 Ga. 88 (230 SE2d 895) (1976). After hearing, the trial court in its order entered (DATE) "nunc pro tunc to (DATE)," found that the appeal was not frivolous or taken for delay, that there existed no substantial risk appellant would not appear to answer judgment against him, that appellant was not a danger to others or the community, and that he was not likely to commit a crime, intimidate witnesses, or otherwise interfere with the administration of justice. See White v. State, 146 Ga. App. 147-148 (245 SE2d 870) (1978).

These findings of fact, as well as other findings going beyond those required by OCGA § 17-6-1 and the applicable case law, including findings regarding appellant's family and community ties, his continuous and stable business record in the community, and his appearances at all proceedings, were more than sufficient under the law of this State to compel the conclusion that appellant was entitled to bond pending appeal. In its order entered (DATE), however, the trial court denied the motion for bond and stated that it did so "upon the grounds that it is the conclusion of the Court

that the Defendant's release upon an Appeal Bond does not set a proper example for the community and will be perceived by the community as a weak administration of the law." These "grounds" constitute no legal basis whatever for denial of the motion for bond.

Having found facts more than sufficient to support the grant of bond pending appeal, the trial court was duty-bound by the law of this State to implement those findings by ordering that bond be granted and by setting a fair and equitable amount for that bond. The State has indicated that it has no objection to such bond being granted and that it does not intend to file further pleadings in this case.

Therefore, inasmuch as the trial court has determined that appellant meets the criteria for entitlement to a bond but has abused its discretion in failing to grant appellant's motion for bond pending appeal, this case is remanded to the trial court for further proceedings consistent with this order, and the trial court is directed: (1) to vacate its previous order; (2) to implement its findings of fact in its order entered (DATE), that entitle appellant to a bond pending appeal; and (3) set a fair and equitable amount for such bond instantner.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

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

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

*Clerk.*