

Court of Appeals of the State of Georgia

ATLANTA, APRIL 09, 2003

The Court of Appeals hereby passes the following order:

A03A0926. WILLIAM DANIEL MALLON v. THE STATE

The above appeal was docketed in this Court on January 8, 2003. On January 27, 2003, this Court received a "Motion to Stay" filed pursuant to OCGA §17-8-26, which extends the time for filing the brief of an appellant to 21 days following any recess or adjournment, including adjournment *sine die* of any regular or extraordinary session of the Georgia General Assembly, if the party or attorney to the case is a member of the General Assembly. Appellant's attorney in this matter, Mr. Scott Dix is a member of the General Assembly and has sought a stay under this statute that was granted by the Court.

The Court notes that the Legislative Session has extended to April 9, 2003, this being the 34th day of the 40 day session. This appeal was entered on the Court's docket on January 8, 2003 as an April 2003 Term case. If there is a Special Session of the Legislature later this summer, this Court is required under OCGA §17-8-26 to extend the time of filing appellant's brief to 21 days beyond the adjournment of the Special Session.

On March 28, 2003, this Court received documents from appellant Mallon including a notarized letter dated March 27, 2003, stating Mr. Mallon no longer wished for Mr. Dix to represent him in this appeal. At the direction of the Court, the clerk of this Court contacted Mr. Dix to ascertain if he would be filing a Motion for Permission to Withdraw as Counsel. It was communicated to the Court that Mr. Dix

was not going to file such motion. However, since Mr. Dix has been involved in his legislative duties, he may not yet have read Mr. Mallon's letter, dismissing him.

This Court has concerns that the Legislative Session may extend beyond the time that would permit the Court to have a reasonable opportunity to review the briefs and the record and to devote the requisite time and attention necessary to adequately determine the issues raised in this appeal and still comply with the Constitution of the State of Georgia, Article VI, Section IX, Paragraph II, which requires that the Supreme Court and Court of Appeals dispose of every case during the term in which it is entered on the Court's docket for hearing or at the next term. Obviously, the Court is unable to address the merits of the appeal until the Court receives appellant's brief with its enumerated errors.

Additionally, this Court is concerned about the copy of the letter the Court received wherein Mr. Mallon stated he no longer desired for Mr. Dix to represent him in cases before the Court of Appeals of Georgia or the Gwinnett Superior Court. While the sagacity of Mr. Mallon's decision to sever his ties with his attorney may be questioned, the Court feels he has the right, assuming he is not *non-compos mentis*, to choose to proceed without Mr. Dix, or without any attorney.

Given all of the attendant circumstances regarding this appeal, this Court hereby REMANDS the matter to the trial court for a determination as to whether the trial court will permit Mr. Mallon to proceed without Mr. Dix, with or without another attorney, or pro se. If the trial court enters an order permitting Mr. Mallon to proceed without counsel, the clerk of the trial court is directed to return the record to the Court of Appeals where the case will be re-docketed and issues addressed. If the trial court appoints Mr. Dix or another attorney who is a member of the Georgia General Assembly, such attorney shall have 30 days from the adjournment of the Georgia General Assembly, *sine die*, to file a new Notice of Appeal. Should the trial court appoint another attorney who is not a member of the Georgia General

Assembly, then such attorney shall have 30 days from the date of the entry of the order appointing counsel to file a new Notice of Appeal. The clerk of this Court is directed to return the copy of the record the trial court supplied in this appeal to the trial court. After the trial court has entered orders on the appointment of counsel, the clerk shall include those orders with the record to be returned pursuant to the schedule outlined in this order.

This Court regrets having to remand the case. This Court realizes that a remand causes additional work for the trial court judge, the trial court clerk, and for the clerk and judges on the Court of Appeals. However, given the exceptionally long nature of the Legislative Session, the constraints placed upon the Court by OCGA §17-8-26, and the concerns raised by Mr. Mallon regarding his desire to proceed with out current counsel, this Court feels a remand is the recourse that best addresses the myriad concerns.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 9 2003

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

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

Clerk.

Will. L. Martin, III