

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A95A0016. TRANSFER TO SUPREME COURT.

Appellant was convicted of burglary, kidnapping with bodily injury, rape, possession of a knife during the commission of a crime, and aggravated sodomy. Sentences of the convictions ranged from five years' imprisonment on the possession of a knife charge to life imprisonment on the kidnapping and rape charges.

The trial court denied appellant's motion for new trial on (DATE) and on (DATE) appellant filed his notice of appeal seeking review in the Supreme Court. However, the matter was mistakenly transmitted to and docketed with the Court of Appeals.

Appellant's basis for appealing his convictions to the Supreme Court, rather than the Court of Appeals, appears to be the Supreme Court's appellate jurisdiction specified in Ga. Const. 1983, Art. VI, Sec. VI, Par. III, read in conjunction with the penalty for kidnapping with bodily injury as provided in OCGA § 16-5-40 (b). However, in this regard, the Supreme Court has held that "[c]onvictions of rape, armed robbery and kidnapping with bodily injury where no death results are not capital felonies for appellate jurisdictional purposes and appeals in such cases go to

the Court of Appeals. [Cits.]" Cook v. State, 242 Ga. 657 (251 SE2d 230) (1978).

It would appear that the subject matter of this appeal is properly before the Court of Appeals. Nevertheless, inasmuch as the appellant's notice of appeal directed that his appeal was to be submitted to the Supreme Court, this case is hereby transferred to that Court.

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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.