

IN THE MATTER OF: IKE DURU

After a complete review of the record concerning Mr. Ike Duru's conduct in Case Number A91A0894, Christine Harris v. State, we make the following findings of fact.

Christine Harris was tried and convicted of aggravated assault on October 2, 1990 and was represented in the trial by court-appointed counsel, Nicholas Pagano. On October 11, 1990, attorney Ike Duru, Georgia State Bar Number 235880, filed an entry of appearance as Ms. Harris' counsel in the trial court. On the same date, he filed a motion for new trial and a request for a free trial transcript with the required pauper's affidavit. The motion for new trial was denied on December 14, 1990. Attorney Duru filed a timely Notice of Appeal on December 21, 1990.

This case was docketed in this Court on February 12, 1991 and Appellant Harris' enumeration of errors and brief were due on March 4, 1991. See Rule 14. Appellant failed to file these documents and on March 13, 1991 this Court issued an Order directing her to file the documents by March 18, 1991. The

A91A0382. ALBERT KING v. THE STATE.

A91A0383. TOXIE ODOM v. THE STATE.

IN THE MATTER OF HERBERT SHAFER, Georgia Bar No. 637200.

IT APPEARING that, as reflected by the records of this court, on March 19, 1991, Herbert Shafer, Georgia Bar No. 637200, as counsel of record for appellants King and Odom, filed identical Motions for Rehearing of the opinion issued by this court on March 14, 1991; and

IT FURTHER APPEARING that, on May 7, 1991, by order of this court, Herbert Shafer was directed, under penalty of contempt, to recast said Motions for Rehearing by May 13, 1991, as further reflected in the copy of the order of May 7, 1991, which is attached hereto as "Exhibit A" and made a part hereof as if fully set out herein; and

IT FURTHER APPEARING that, at the request of Herbert Shafer, the date for complying with the May 7, 1991 order was extended until May 24, 1991; and

IT FURTHER APPEARING that, on May 23, 1991, this court received a document headed "Response to Order of May 7, 1991," (hereinafter "Response") a copy of which is attached hereto as "Exhibit B" and made a part hereof as if fully set out herein; and

IT FURTHER APPEARING that, Herbert Shafer has failed and refused to comply with the May 7, 1991 Order by failing and refusing to recast the Motions for Rehearing as directed in the May 7, 1991 Order; and

IT FURTHER APPEARING that, although Herbert Shafer requested in the Response to withdraw the word "disingenuous," that

Rehearing in the Response, and

IT FURTHER APPEARING that the May 23, 1991 Response (Exhibit B) is in violation of Rules 10 (a) & (b) of this court in that its overall tone and the following specific statements contained therein are discourteous and disparaging of the members composing the First Division of this Court and calls into question the integrity and impugns the motives of the members of the First Division of this Court:

1. (Page 3) "To be sure, we also said that the Court 'distorted' or 'misstated material facts in the record,' and either didn't 'understand' or erroneously construed and misapplied controlling authority. The language used was no rhetorical inflation. We earnestly believe, first, that the Court either does not understand United States v. Rios, 495 U.S. \_\_\_\_\_, 110 S. Ct 1845, 109 L. Ed. 224 (1990) and 18 U.S. C. § 2518 (8) (a) or that it has erroneously construed and misapplied them."

2. The fourth and fifth paragraphs on page 4 in toto.

3. (Page 6, fourth paragraph) "In view of the foregoing facts, the Court's rejoinder - that the 'application' was sufficient to demonstrate the State's compliance with the statutory requirements . . . is simply a bald asseveration, totally lacking in substance, factual or logical. That statement, if not the Mother of Non-Sequiturs is, minimally, dandiest Non-Sequitur of the Year. "

4. (Page 7, second full paragraph) "But what cannot be withdrawn is this: The Court's opinion is flawed. The Court has disregarded accuracy. The Court's opinion is a wretched example of ipse dixit jurisprudence."

THEREFORE, IT IS HEREBY ORDERED that Herbert Shafer, Georgia Bar No. 637200, appear before this Court at 10:00 a.m., on July 24, 1991, to show cause why he should not be held in contempt of this Court for:

a) Violating Rules 10 (a) and (b) of this Court as set forth in Exhibit "A" to this Order;

b) Failing and refusing to comply with the May 7, 1991 Order as set forth above; and

c) Violating Rules 10 (a) and (b) of this Court in his May 23, 1991 Response as set forth above.

Alternatively, that Herbert Shafer file with this Court by July 22, 1991, a sworn statement showing cause why he should not be held in contempt of this Court for the conduct set forth above. Said statement shall be deemed filed when received by the Clerk of this Court.

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

Clerk's Office, Atlanta JUL 5 1991

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

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

*Victoria McLaughlin*

Clerk.

On March 18, 1991, Attorney Duru filed a "NOTICE FOR Withdrawal" in which he requested permission to withdraw from representation of Ms. Harris for non-payment of fees. On April 3, 1991 Attorney Duru filed a motion requesting an extension of time within which to file an enumeration of errors and brief. In the affidavit which accompanied the motion, Attorney Duru swore that Ms. Harris: "only recently retained counsel after the said expiration date. Counsel now has been retained, and has the resources needed to pursue Appellant's case before this Honorable Court."

This Court issued an Order on May 2, 1991 in which Mr. Duru was ordered:

- 1) To file an enumeration of errors and brief by May 7, 1991;

- 2) To file a brief showing good and sufficient reason that the appeal should not be dismissed for his failure to file the enumeration of errors and brief as directed in the March 13, 1991 Order. See Rule 14 and Rule 23;

- 3) To show cause that he should not be held in contempt of this Court for failure to comply with the March 13, 1991 order at a hearing before this Court, or, alternatively, to show

Pursuant to the directives of the May 2 order, Mr. Duru filed an enumeration of errors and brief and filed a sworn statement regarding his handling of Ms. Harris' case. In the sworn statement, the only explanation Mr. Duru offers for his dilatory behavior is that Ms. Harris' payment for his fees was late.

To date, Mr. Duru has completely failed to respond to the second directive of our May 2 order in that he has failed to file a brief showing good and sufficient reason that the appeal should not be dismissed for his failure to timely file the enumeration of errors and brief as was directed by this Court on March 13, 1991. See Rule 14 and Rule 23.

Based on the foregoing, it is hereby Ordered:

1. That based on Mr. Duru's failure to respond to this Court's Order of March 13, 1991 to file an enumeration of errors and brief and based on his subsequent failure to offer any justification for this noncompliance as he was ordered to do in our May 2, 1991 order, Mr. Ike Duru, Georgia State Bar Number 235880, is hereby found guilty of contempt of this Court beyond a reasonable doubt. (See In re Irvin, 254 Ga. 251, 256 (328 SE2d 215) (1985).)

received by the clerk of this Court within thirty (30) days of the date of this order, Mr. Duru shall be stricken from the list of attorneys authorized to practice before this Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 18 1991

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

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

*Victoria McLaughlin*

Clerk.



On September 21, 1990, James A. Nolan, an appointed counsel of record for appellant in the above-styled criminal case, filed a notice of appeal in the Superior Court of Morgan County. On October 29, 1990, Mr. Nolan was mailed a docketing notice pursuant to Rule 23 of this Court, directing him to file an enumeration of errors and a brief on behalf of appellant within 20 days in accordance with Rule 14 (a) of this Court, and informing him that failure to do so could subject him to sanctions for contempt. When no enumerations of error and brief were forthcoming, an order was issued on November 27, 1990, directing Mr. Nolan to file an enumeration of errors and brief no later than December 3, 1990, and again informing him that failure to comply could subject him to contempt. Again, no response was forthcoming and, on December 17, 1990, this Court consequently issued an order directing Mr. Nolan to show cause within seven days why he should not be adjudicated in contempt. Although Mr. Nolan's response was thus due no later than December 26, 1990, it was not received by this Court until December 27, 1990. Mr. Nolan's response is, therefore, untimely and will be given no consideration in determining whether he was in contempt of this court's order of November 27, 1990. See OCGA § 1-3-1 (d) (3).

Insofar as the record demonstrates no timely compliance with this Court's order of November 27, 1990 and no timely response to this Court's order of December 17, 1990, Mr. Nolan has not shown cause why he should not be held in contempt for his non-compliance with this Court's order of November 27, 1990 and he is, therefore, adjudged to be in contempt of that order. Mr. Nolan is, therefore, directed to pay a fine of \$500 to the Clerk of this Court. It is further ordered that, within ten days of the date of this order, the Superior Court of Morgan County appoint new counsel for appellant and that the Clerk of the Superior Court of Morgan County notify the Clerk of this Court as to the name and address of counsel so appointed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 27 1991

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

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

*Victoria McLaughlin*

Clerk.

A91A0299. DANIEL E. SWEIGART v. THE STATE.

~~IN THE MATTER OF STEPHEN T. MAPLES~~ Bar# 469950

The above-styled appeal was docketed in this Court on October 30, 1990. By order dated November 27, 1990 this Court ordered Stephen T. Maples, as counsel of record for the appellant, to file an enumeration of errors and brief on his client's behalf no later than December 3, 1990. On January 30, 1991, having as of that date received no such enumeration of errors and brief, this Court ordered Mr. Maples to show cause why he should not be held in contempt of this Court for failure to comply with this Court's November 27, 1990 order. Thereafter, this matter came on for hearing at 9:45 a.m. on February 7, 1991 at which time attorney Stephen T. Maples appeared and offered no explanation or justifiable excuse for his actions. However, on the date of this hearing Mr. Maples did finally file an enumeration of errors and brief in the case, 80 days after the original due date of November 19, 1990.

On the basis of these facts, Mr. Stephen T. Maples is hereby adjudged, in accordance with Rules 14 (a) and 23 of this Court, to be in wilful contempt and is hereby Ordered to pay to the Clerk of this Court, instanter, a fine of \$500.00. It is further Ordered that the license of Stephen T. Maples to practice before this Court shall be and hereby is suspended for a period of one (1) year, commencing from the date of this order. The Clerk of this Court is hereby directed to send a copy of this Order to the State Disciplinary Board of the State Bar of Georgia for such further proceedings as it shall deem necessary.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 7 1991

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

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

*Victoria McLaughlin*

Clerk.

A91A0299. DANIEL E. SWEIGART v. THE STATE.

~~IN THE MATTER OF STEPHEN T. MAPLES~~

Bar # 469950

IT IS ORDERED that counsel for appellant, STEPHEN T. MAPLES, appear before this Court in Atlanta at 9:45 a.m. on February 7, 1991, and show cause why he should not be held in contempt of this Court for failure to timely respond to an order entered in this matter on November 27, 1990 directing the filing of an enumeration of errors and brief no later than December 3, 1990, said documents not having been filed as of the date of this order. See Court of Appeals Rule 7.

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

Clerk's Office, Atlanta

JAN 30 1991

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

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

*Victoria McLaughlin*

Clerk.

A90A0863. PYE v. THE STATE.

~~IN THE MATTER OF:~~ ARLEEN EVANS GARDENHIRE

Bar # 283960

The above-styled appeal was docketed in this Court on February 5, 1990. By order dated March 7, 1990, this Court ordered Arleen Evans Gardenhire, as counsel of record for the appellant, to file an enumeration of errors and brief on her client's behalf no later than March 12, 1990. On April 19, 1990, having as of that date received no such enumeration of errors and brief, this Court ordered Ms. Gardenhire to show cause in writing no later than April 27, 1990, why her name should not be stricken from the list of attorneys licensed to practice before this Court. A copy of that order was sent to Ms. Gardenhire by certified mail, and the return receipt indicates that she received it on April 25, 1990. To this date Ms. Gardenhire's only response to that order has been to request, by letter dated April 30, 1990, an extension of time of unspecified duration in which to file a response. However, on May 3, 1990, Ms. Gardenhire did finally file an enumeration of errors and brief in the case, 66 days after the original due date of February 26, 1990.

On the basis of these facts, Ms. Arleen Evans Gardenhire is hereby adjudged, in accordance with Rules 14 (a) and 23 of this Court, to be in wilful contempt and is hereby ordered to pay to the Clerk of this Court, within five days from the date of this order, a fine of \$300.00, failing which her license to practice before this Court shall be suspended for a period of six months.

Court of Appeals of the State of Georgia

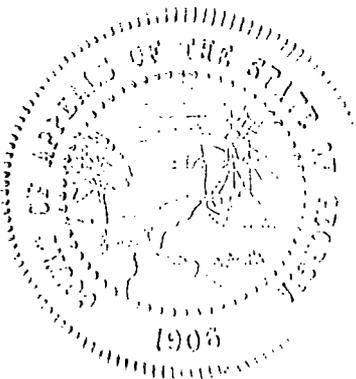
Clerk's Office, Atlanta MAY 7 1990

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

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

*Victoria McLaughlin*

Clerk.



Court of Appeals of Georgia  
433 State Judicial Building  
Atlanta, Georgia 30334

MAIL COPY TO MR. SMITH ON CONTEMPT ORDERS

MR. WILLIAM P. SMITH, III  
OFFICE OF THE GENERAL COUNSEL  
STATE BAR OF GEORGIA  
800 THE HURT BUILDING  
50 HURT PLAZA  
ATLANTA, GA 30303