

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

ATLANTA, JANUARY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0196
STEPHEN JOSEPH V. TRUCKS, INC., ET AL

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

98017

2003CV036455

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta January 15, 2004

*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.

L. Mait; [Signature]

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

ATLANTA,

The Court of Appeals hereby passes the following order: **DEC 24 2003**

A04D0197. JEFFREY WEEKS v. JOYCE WILLIAMS.

Jeffrey Weeks has filed an application for discretionary appeal challenging the order changing custody of his children to their mother, Joyce Williams. He has also filed an emergency motion to stay the order changing custody in the event his discretionary application does not act as supersedeas.

Weeks contends that this court should grant his emergency motion because Williams has previously absconded with the children; because the guardian ad litem recommended that Weeks retain custody; and because of the psychological reports pertaining to Williams' husband. In essence, Weeks asks us to second-guess the trial court's resolution of questions of credibility and judgments as to the welfare of the children.

This court's authority to issue orders in emergency situations is not unlimited. Such authority is exercised to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. See Court of Appeals Rule 40 (b). In the present case, we have not been presented with evidence that such an emergency situation exists in which we have the authority to grant relief. Weeks' emergency motion is hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC 24 2003**

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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.*

William L. Matzinger Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, JANUARY 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0198

MARIAN MACDONALD V. JAMESON HOSPITALITY, ET AL

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

71017

03CV94767

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 28 2004

*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.

C. Jill L. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 9, 2004

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 **S04C0933**

MARIAN MACDONALD v. JAMESON HOSPITALITY et al.

Clerk, Supreme Court of Georgia

Case No. A04D0198

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 11 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 15 2004**

A04D0199. ROBERT L. REHBERGER v. THE STATE.

Robert L. Rehberger seeks an appeal from a probation revocation order entered November 13, 2003. Rehberger's application for discretionary appeal was docketed in this court January 2, 2004, fifty days after the revocation order was entered in the trial court. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Rehberger filed his application in this court 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. Therefore, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 15 2004**

*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.*

C. Will. L. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 24 2004

A04D0199. ROBERT L. REHBERGER v. THE STATE.

Robert L. Rehberger has filed a document asking the Court to reconsider, on its own motion, the dismissal of his untimely application for discretionary appeal. The Court denied Rehberger's first motion for reconsideration on February 5, 2004. Rule 37 (d) of the Court of Appeals provides that "[n]o party shall file a second motion for reconsideration unless permitted by order of the Court." Rehberger has failed to obtain permission to file his second motion for reconsideration. Accordingly, the motion for reconsideration is hereby DENIED.

Rehberger's request to consolidate his untimely discretionary application with case number A04A03600 is also hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 24 2004

*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. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 09 2004**

A04D0200. Michael Crumpton v. The State

Applicant Michael Crumpton seeks discretionary review of the trial court's Order Denying Motion for Preliminary Hearing. The order Crumpton seeks to appeal was entered by the trial court on November 26, 2003. This application was filed in this Court on January 2, 2004. This court may not consider the merits of an application for discretionary appeal unless it is filed within 30 days of the entry of the order that is the subject of the application. OCGA § 5-6-35 (d). Because Crumpton's application is untimely, it is hereby DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 09 2004**

*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, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JANUARY 05, 2004

The Court of Appeals hereby passes the following order:

Case No. A04D0201

GLIN MULLIS 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 32 (b) 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

JAN 05 2004

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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. Maitland
Clerk

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 28 2004**

A04D0201. GLIN MULLIS v. THE STATE

Glin Mullis, pro se, filed this application for discretionary appeal from the denial of his motion for sentence modification. Under OCGA § 5-6-35 (d), an application for discretionary appeal must include a copy of the judgment for which an appeal is sought, and Court of Appeals Rule 32 (b) requires that copy to be stamped "filed." Mullis's application, however, did not contain one. Thus, on January 5, 2004, this Court ordered him to submit a stamped "filed" copy of the judgment appealed within ten days and emphasized that the application would be dismissed if it was not physically received by that deadline. Mullis, however, failed to submit the requisite stamped "filed" copy of the judgment within that deadline, and this application is hereby *dismissed*. Court of Appeals Rule 7.

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

JAN 28 2004
*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: FEB 25 2004

A04D0201. GLIN MULLIS v. THE STATE.

On February 17, 2004, Glin Mullis filed his motion for reconsideration of this Court's January 28, 2004, order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days of judgment. Mullis's motion for reconsideration is thus untimely, and the motion is accordingly hereby DISMISSED.

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

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C. Will. L. Maitland, Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Sherie M. Welch, Clerk

(404) 656-3470

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

Docketing Date: January 20, 2004

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 **S04C0877**

MICHAEL CRUMPTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0200

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 03 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JANUARY 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0202

LYNN K. WHITE F/K/A LYNN K. MAYS V. RICHARD C. MAYS

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

91017

02CV103793

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 28 2004

*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.

C. Will. L. Martin; [Signature]

Court of Appeals
of the State of Georgia

ATLANTA, JANUARY 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0203
LARRY WILLIAMS V. REAL ESTATE BROKERS

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

70017

03CV24151

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 16 2004**

*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.

C. Will. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 16 2004**

A04D0204. WILLIAM DASCOMBE v. EDWARD HANLEY.

In this action for damages the jury returned a verdict in the amount of \$10,000.00, and a judgment for plaintiff William Dascombe was entered for this amount plus court costs and post judgment interest. After the trial court denied plaintiff's motion for new trial and other relief, he filed a notice of appeal, and this application for discretionary appeal as a precaution should it be determined that the appeal is governed by the provisions of OCGA § 5-6-35 (a) (6). This statutory provision requires that the discretionary appeal procedure be followed in cases in which the judgment is \$10,000.00 or less. However, in this case the amount of judgment includes the principal amount of the verdict plus costs and interest which raises the total amount of the judgment above \$10,000.00. See *Castleberry's Food Company v. Smith*, 205 Ga. App. 859, 861 (1) (424 SE2d 33) (1992).

Thus, this appeal is not subject to the discretionary appeal requirements pursuant to OCGA § 5-6-35 (a) (6), nor does it fall within any other provision of OCGA § 5-6-35 (a). Because a timely notice of appeal has been filed in the trial court, the grant of this application pursuant to OCGA § 5-6-35 (j) is unauthorized. Therefore, this application is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 16 2004**

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; JR, Clerk.

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

ATLANTA, JANUARY 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0205
ROBERT TOMMY DORSEY V. BECKY ESTES

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

95018

02CV1488

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 22 2004**

*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, Jr.

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

ATLANTA, JANUARY 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0206

RICHARD O. TROTTER V. BARDEL SUMMEROUR, D/B/A
TBJ WELDING SERVICE

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.

96018

02SUCV192C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 21 2004**

*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.

C. Will. L. Mart; 

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

ATLANTA, FEBRUARY 02, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0207

FRANK PLATT V. THE STATE

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

98018

02R108

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 02 2004

*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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 16 2004**

A04D0208. Scapelli v. Ashline

Applicant Danna Scalpelli seeks discretionary review of the trial court's final custody order entered on December 3, 2003. This application was filed in this Court on January 5, 2004. This court may not consider the merits of an application for discretionary appeal unless it is filed within 30 days of the entry of the order that is the subject of the application. OCGA § 5-6-35 (d). Because Scapelli's application was filed 33 days after entry of the order sought to be appealed, its is untimely. The 30th day fell on January 2, 2004, which was not a legal holiday. Accordingly, this application is hereby DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 16 2004**

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the minutes of the Court of Appeals of Georgia.*

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Will. L. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 28 2004**

**A04D0209. ZACHARY BOUVIER TAYLOR v. LAGRANGE GA POST OF
THE GA STATE PATROL et al.**

Zachary Bouvier Taylor filed this discretionary application to appeal the speeding conviction entered on his guilty plea. Taylor's conviction is a directly appealable final judgment. When an otherwise timely application for discretionary appeal is filed in a case where a direct appeal could have been filed under OCGA § 5-6-34 (a), an appellate court has jurisdiction and shall grant the application. OCGA § 5-6-35 (j). Because this application falls under OCGA § 5-6-35 (j), it is hereby GRANTED. Taylor shall have ten days from the date of this order to file a notice of appeal. OCGA § 5-6-35 (g). The clerk of the state 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 **JAN 28 2004**

*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. Martin, Jr., Clerk.

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

ATLANTA, JANUARY 26, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0210
BOBBY JACK WILLIAMS V. THE STATE

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

90018

2000CR109

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

JAN 26 2004

*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.

C. Will. L. Mait; 

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0211
LINWOOD N. ROBINSON V. LANA YVETTE WALTZ

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

93018

0210349542

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 09 2004

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

Clerk.

Will. L. Mart; JR

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

ATLANTA, JANUARY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0212

FLOYD COUNTY GOVERNMENT ET AL V. TERI SMITH

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

99018

03CV31430

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 2004

*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, Jr.

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

ATLANTA, FEBRUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0213
MICHAEL ASBURY CHILDERS V. THE STATE

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

91018

2003CR12607

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 05 2004**

*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.

C. Will. L. Mait; 

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 27 2004**

A04D0214. Lusk v. Lusk

Applicant Michael Shane Lusk has filed this application for discretionary appeal seeking review of the trial court's "FINAL JUDGMENT AND DECREE" in this divorce and alimony case. However, the Supreme Court has exclusive jurisdiction over all divorce and alimony cases. Ga. Const. Art. 6, Sec. 6, Par. III (6). See *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979). Therefore, this case is ordered TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 27 2004**

*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. Mattingly Clerk.

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

ATLANTA, JANUARY 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0215
COASTAL MARSHLANDS PROTECTION COMMITTEE, ET AL V.
CENTER FOR A SUSTAINABLE COAST, ET AL

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

92018

2002CV52219

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 30 2004**

*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.
C. Will. L. Martin

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

ATLANTA, JANUARY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0216
BERNARD ASH V. C & W ASSET ACQUISITIONS, L.L.C.

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

94018

03A014912

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 2004

*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 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0217
EMERALD POINTE DEVELOPMENT, LLC. V. CENTER FOR A
SUSTAINABLE COAST, ET AL

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

92019

2002CV52219

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

JAN 30 2004

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

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Clerk.

C. Will. L. Mart; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 19, 2004

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 **S04C0972**

EMERALD POINTE DEVELOPMENT, LLC v. CENTER FOR A SUSTAINABLE COAST
et al.

Clerk, Supreme Court of Georgia

Case No. A04D0217

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 20 2004

Clerk, Court of Appeals of Georgia

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 18, 2004

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 **S04C1005**

COASTAL MARSHLANDS PROTECTION COMMITTEE et al. v. CENTER FOR SUSTAINABLE COAST et al.

Clerk, Supreme Court of Georgia

Case No. A04D0217

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 25 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0218
MARKELL D. BOULIS V. THE STATE

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

95019

929019204 91W13339

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 06 2004**

*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. Marti, Jr.
Clerk

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

ATLANTA, JANUARY 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0219
ALONZO KING LEWIS V. THE STATE

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

96019

94R231

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 29 2004**

*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.

C. Vill. L. Mait; R

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

ATLANTA, FEBRUARY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0220
AVA CHUN V. CHRISTOPHE A. SMITH

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

98019

2002CV60963

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 2004

*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, JR

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

ATLANTA, FEBRUARY 02, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0221
HOWARD LITSKY V. DANA LORD SCHAUB

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

97019

00A096314 0059172

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 02 2004

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

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Clerk.

William L. Martini

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

ATLANTA, FEBRUARY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0222
THOMAS TYSON V. DREES TOWING & TRANSPORTATION

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

71019

03CV103576

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 06 2004**

*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. Mart; R

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

ATLANTA, FEBRUARY 25, 2004

The Court of Appeals passed the following order

Case No. A04D0223

WILLIE JAMES REED V. THE STATE

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

90-019
A50633

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 25, 2004*

*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.

C. Will. L. Martini

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

ATLANTA, FEBRUARY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0224
RYAN CRAIG PITTS 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.

93019

00CR0236

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 2004

*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, Jr.

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

ATLANTA, FEBRUARY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0225
WILLIAM Y. BARTON V. CLARENCE RONALD THORNTON
D/B/A TELISIS, LTD., ET AL

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

99019

03GR015882A

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

FEB 06 2004

*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. Mait; [Signature]

91-019

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

ATLANTA, FEBRUARY 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0226
COACHMEN INDUSTRIES ET AL V. FLEETWOOD HOMES OF GEORGIA
ET AL

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

91019
NONE

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 13 2004**

*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.

C. Will. L. Mart; JR

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

ATLANTA, FEBRUARY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0227
ERIC WALTER KRUEGER V. THE STATE

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

70019

992191 012059

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 12 2004

*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.

C. Vill. L. Mait; JR

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

ATLANTA,

FEBRUARY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0228

JOSEPH O. SMITH V. JENNIFER L. KUZMA

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

94019

03C04070S5

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 09 2004

*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, Jr.

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 27, 2004

The Court of Appeals passed the following order

Case No. A04D0228

JOSEPH O. SMITH V. JENNIFER L. KUZMA

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

94-019
03C04070S5

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 27, 2004*

*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. Mart; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 18, 2004

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 **S04C1161**

JOSEPH O. SMITH, II v. JENNIFER L. KUZMA

Clerk, Supreme Court of Georgia

Case No. A04D0228

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 19 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 05 2004**

**A04D0229. GREATER ATLANTA BAGEL COMPANY, INC. ET AL v.
JARROD LEVY et al.**

Greater Atlanta Bagel Company, Inc., Bagel Break Franchising, Inc., and Anthony Grittani filed an application on January 20, 2004, seeking an appeal from an order entered November 25, 2003, awarding attorney fees and expenses of litigation. 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). The failure to file an application in a timely manner deprives this Court of jurisdiction to consider the appeal.

Also, the application maintains that an order signed by the superior court has granted an extension of time for the filing of the application pursuant to OCGA § 5-6-39. However, while a trial court has authority under OCGA § 5-6-39 to grant a 30-day extension of time for filing a notice of appeal, no comparable authority exists for granting an extension of time to file an application for discretionary appeal. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983).

Therefore, the application was untimely filed and this Court lacks jurisdiction to consider it. For this reason, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 05 2004

*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. Mait; [Signature], Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 26 2004**

**A04D0229. GREATER ATLANTA BAGEL COMPANY, INC. ET AL. v.
JARROD LEVY ET AL.**

On February 19, 2004, plaintiffs Great Atlanta Bagel Company, Inc., Bagel Break Franchising, Inc., and Anthony Grittani filed their motion for reconsideration of this Court's February 5, 2004 order dismissing their application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days of judgment. Plaintiffs' motion for reconsideration is thus untimely, and the motion is accordingly hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 26 2004**

*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; [Signature], Clerk.

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

ATLANTA, FEBRUARY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0230

OSAN PETROLEUM COMPANY ET AL V. PAUL R. CLARK

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

96020

CE0301466063

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

FEB 12 2004

*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. Mart; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 3, 2004

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 **S04C1073**

OSAN PETROLEUM COMPANY et al. v. PAUL R. CLARK

Clerk, Supreme Court of Georgia

Case No. A04D0230

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 04 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0231
LARRY DIXON, IV 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.

98020

99CR4582

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 05 2004

*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.

C. Will. L. Martin, Jr.

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

ATLANTA, FEBRUARY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0232
ARTHUR F. MILLARD V. TERESA O. MILLARD

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

97020

9773271

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 06 2004

*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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: FEB 06 2004

A04D0232. ARTHUR MILLARD v. TERESA O. MILLARD.

Respondent Teresa O. Millard has filed a Motion for Supersedeas Bond in this Court, seeking an order requiring Applicant Arthur Millard to give supersedeas bond pending the appeal of this case. Under OCGA § 5-6-46 (a), however, such motions must be filed in the trial court. The motion is accordingly hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 06 2004

*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. Mait; [Signature], Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 26, 2004

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 **S04C1018**

ARTHUR F. MILLARD v. TERESA O. MILLARD

Clerk, Supreme Court of Georgia

Case No. A04D0232

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office **MAR 01 2004**

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 06 2004**

A04D0233. RALPH L. FOUTZ v. CLOUD SPRINGS COMPLEX ET AL.

On January 21, 2004, Ralph L. Foutz, acting pro se, filed an application for discretionary appeal seeking review of the order, entered on November 17, 2003, denying his motion for new trial. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Foutz did not file his application within 30 days of the date of entry of the order denying his motion for new trial, this Court lacks appellate jurisdiction over this application and it is ordered DISMISSED. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 06 2004**

*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. Martini, Clerk.

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

ATLANTA, FEBRUARY 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0234

DEVONN BELK V. THE STATE

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

90020

03R258

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 03 2004

*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, Jr.

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

ATLANTA, FEBRUARY 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0235

AVERY HALL V. THE STATE

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

93020

03R259

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 19 2004**

*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.

C. Jill. L. Marti; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 18 2004**

A04D0236. COFFEY v. SELLERS, et al.

Because this application for appeal in an adoption case also involves a termination of parental rights and it is well-settled that the discretionary appeal procedure does not apply in such cases, Melody Coffey's application is hereby *granted* as required under OCGA § 5-6-35 (j). *In the Interest of D.S.P.*, 233 Ga. App. 346, 504 SE2d 211 (1998); see also *In re C.M.L.*, 260 Ga. App. 502 (580 SE2d 276) (2003). Applicant 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 **FEB 18 2004**

*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.*

C. Jill L. Martini, Clerk.

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

ATLANTA, FEBRUARY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0237
KEITH BRAYNON V. ALEXA HILBERT

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.

91020

03CV0142C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 05 2004**

*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,

The Court of Appeals hereby passes the following order: FEB 19 2004

A04D0238. CHANNING RUSKELL v. DAVID CANNON, JR.

This discretionary appeal is from a superior court order awarding attorney fees under OCGA § 9-15-14 in an election contest. As such, the appeal is within the exclusive appellate jurisdiction of the Supreme Court. Ga. Const. 1983, Art. VI, Sec. VI, Par. II (2); see also *Collins v. American Tel. & Tel. Co.*, 265 Ga. 37 (456 SE2d 50) (1995). Accordingly, the appeal is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 19 2004

*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. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 11 2004**

A04D0239. RONALD ADAMS v. THE STATE.

On March 9, 1995, the State of Georgia filed a complaint for forfeiture bringing an action in rem to cause the forfeiture of \$1320.00 against claimant Ronald Adams. On October 10, 1995, a default judgment was entered after Adams failed to file an answer or claim within the time prescribed by law.

On October 9, 2003, Adams filed a motion to set aside judgment on the grounds of insufficient notice, seeking to set aside the civil forfeiture. On December 16, 2003, the trial court entered an order denying Adams' motion to set aside and dismissed the motion with prejudice.

On January 2, 2004, Adams filed an application for discretionary appeal with the Supreme Court of Georgia. On January 16, 2004, the Supreme Court entered an order transferring the application to this Court for resolution on that grounds that there was no subject matter jurisdiction vested in the Supreme Court over this application and none appeared from the record.

The Clerk of this Court examined the application and determined that Adams neither had paid the requisite filing fees nor filed or attached for filing an affidavit of indigence to the application. Under OCGA § 5-6-4, "the clerk is prohibited from receiving the application for appeal or the brief of the appellant unless the costs have been paid or a sufficient affidavit of indigence is filed or contained in the record." Accordingly, the application was not filed but returned to Adams with an explanatory letter advising him of the said statutory requirements.

On January 28, 2004, Adams filed an affidavit of indigence and requested that his application be filed. On the same date, the Clerk of this Court filed Adams'

application for discretionary appeal.

Under OCGA § 5-6-35 (d), and application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000). Because this Court was prohibited under OCGA § 5-6-4 from filing Adams' application until his affidavit of indigence was filed, 43 days after the order sought to be reviewed was entered, this application is untimely and it is ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 11 2004

*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

Sherie M. Welch, Clerk

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

Docketing Date: March 2, 2004

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 **S04C1054**

RONALD ADAMS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0239

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 04 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0240
ROBERT LEE WASHINGTON V. ALBANY HONDA C/O
GRAHAM EDWARDS

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

94020

03CV26881

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 13 2004**

*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. Matier

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 1, 2004

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 **S04C1042**

ROBERT LEE WASHINGTON v. ALBANY HONDA C/O GRAHAM EDWARDS

Clerk, Supreme Court of Georgia

Case No. A04D0240

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 04 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 13 2004**

A04D0241. NATHANIEL PETERS, JR. v. THE STATE.

Nathaniel Peters, Jr. seeks an appeal from an order denying a motion to modify sentence. The motion to modify sentence and a motion for reconsideration, apparently following an earlier denial of the motion to modify sentence, do not maintain that the sentence is illegal or void. Peters's motions are in substance motions to reconsider the sentence, the denials of which are not subject to appellate review. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Because Peters's application fails to show that it is timely with respect to any final judgment or revocation of probation, and because the order denying a motion to modify sentence is not appealable, his application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 13 2004**

*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, Jr., Clerk.

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

ATLANTA, FEBRUARY 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0242
COWETA COUNTY ET AL V. DANNY RUSSELL HENDERSON

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.

96021
03V912

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **FEB 24 2004**

*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.

C. Jill L. Martin

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

ATLANTA, FEBRUARY 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0243

OAK GROVE CIVIC ASSOCIATION, INC., ET AL V. DEKALB
COUNTY GEORGIA, ET AL

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

98021

03CV91626

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 20 2004

*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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 17 2004**

**A04D0244. JENNIFER DAWN COTTINGHAM v. TAMMY COTTINGHAM
ET AL.**

Jennifer Dawn Cottingham filed an application for discretionary appeal in this Court. She simultaneously filed a substantially identical application for discretionary appeal in the Supreme Court on the basis that the case involves modification of the child support provisions of a final divorce decree, the application contests the denial of the modification of child support, and this matter falls within the divorce and alimony jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, Sec. VI, Para. III (6); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999).

The Supreme Court of Georgia has “ultimate responsibility for construing the constitutional provisions regarding appellate jurisdiction” and its determinations result “in a binding and conclusive determination of the jurisdiction of the Court of Appeals.” *Saxon v. Coastal Dialysis & Medical Clinic, Inc.*, 267 Ga. 177, 178 (476 SE2d 587) (1996). Therefore, in the interest of judicial economy and in aid of our appellate jurisdiction, this discretionary application is ordered TRANSFERRED to the Supreme Court for consolidation with Case No. S04D0871 so that one

. authoritative determination can be made. See Georgia Constitution of 1983, Art. VI,
Sec. I, Para. IV.

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

FEB 17 2004

*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. Matier, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: FEB 11 2004

A04D0245. HASSAN KARGBO v. SHIRL HOLMES.

Hassan Kargbo seeks a discretionary appeal of an order, entered December 31, 2003, rescinding an order of December 29, 2003 in so far as it denied Kargbo's motion to set aside and reentering its order denying the motion to set aside. The order sought to be appealed also clarifies that Kargbo's motion to set aside judgment was "in fact a Motion to Set Aside the Temporary Order entered by this Court on November 20, 2003."

This latter finding raises an issue regarding this Court's appellate jurisdiction over this case that is a threshold question that this Court must resolve. The Temporary Order, entered November 20, 2003, is captioned as a temporary order and it expressly states that the trial court is reserving the issue of damages for a later date. Furthermore, the trial court subsequently made no determination that the order, entered December 31, 2003, was a final order under OCGA § 9-11-54 (b).

In determining proper appellate procedure, it is the underlying subject matter set forth in an application that generally controls. See *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994). Here, the underlying subject matter of this application is the issue of whether the temporary order of the trial court should be set aside. The order sought to be set aside is an interlocutory order as issues remain pending below in this case. "[T]he discretionary-application statute, OCGA § 5-6-35, does not allow a party to ignore the interlocutory-application subsection, OCGA § 5-6-34 (b), when attempting to obtain appellate review." *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. 587, 589 (1) (408 SE2d 103) (1991). Because Kargbo has not filed a timely application for interlocutory review, this Court is without appellate

jurisdiction over this application and it is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 11 2004

*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.*

C. Will. L. Martin, Clerk.

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

ATLANTA, FEBRUARY 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0246

HEIDI ANNE COHEN V. RICHARD ALLEN NUDELMAN

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.

90021

01CV69886

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 17 2004

*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, III

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

ATLANTA, FEBRUARY 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0247
MARSHAL HORNE, COMMISSIONER, DEPT. OF MOTOR
VEHICLE SAFETY V. MATTHEW D. MASSEY

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.

93021

03CV27582

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 19 2004**

*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, III

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

ATLANTA, FEBRUARY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0248

WENDY NICOLE DONELLI V. ALLAN MICHAEL DONELLI

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

99021

2003V142

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 27 2004

*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.

C. Jill L. Marti; PA

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

ATLANTA, FEBRUARY 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0249

THE STONE EXCHANGE, INC., V. SURFACE TECHNOLOGY CORP.
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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91021

03SV365

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 19 2004**

*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. Martine

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

ATLANTA, FEBRUARY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0250

COLLIE CONCESSIONS, INC., ET AL V. LILLIE J. BRUCE

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.

70021

2003RCCV1206

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 27 2004

*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.
C. Will. L. Mait; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 03 2004**

A04D0251. DEBORAH HENDRICKS SARDEN v. KEITH BAILEY MYRICK.

Deborah Hendricks Sarden filed a suit against Keith Bailey Myrick for damages arising out of an automobile collision. After a problem arose regarding service of process this suit was dismissed but was later renewed. Myrick filed a motion to dismiss the renewed suit. The trial court issued an order converting the motion to dismiss to a motion for summary judgment.

Thereafter, the trial court reviewed the entire record and granted summary judgment in favor of Myrick. Sarden filed a timely motion for discretionary appeal seeking to appeal the grant of summary judgment.

In determining proper appellate procedure, it is the underlying subject matter set forth in an application that generally controls. See *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994). The underlying subject matter set forth in this application is the grant of summary judgment in favor of Myrick. An order granting summary judgment, regardless of the nomenclature given to the movant's original motion, is subject to direct appeal. OCGA §9-11-56 (h); see *Culwell v. Lomas & Nettleton Company*, 242 Ga. 242, 243 (248 SE2d 641) (1978).

Under OCGA § 5-6-35 (j), an application must be granted where no timely notice of appeal has been filed and the case is directly appealable under OCGA § 5-6-34 (a) and not subject to direct appeal under OCGA § 5-6-35 (a). Sarden has not filed a notice of appeal in this case. Accordingly, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j).

Sarden shall have ten days from the date of this Order to file his notice of appeal. The clerk of the state 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 03 2004**

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. Martini, Clerk.

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

ATLANTA, MARCH 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0252
GEORGIA DEPARTMENT OF AGRICULTURE V. TOMMIE
BROWN

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

03V73

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 03 2004**

*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. Martine

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

ATLANTA, MARCH 17, 2004

The Court of Appeals passed the following order

Case No. A04D0253

COOPER TIRE & RUBBER COMPANY ET AL V. TIMOTHY A. GREEN

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

95-022
03CV25733

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 17, 2004*

*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. Mart;^{Clerk.}

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

ATLANTA, MARCH 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0253

COOPER TIRE & RUBBER COMPANY ET AL V. TIMOTHY A. GREEN

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

95022

03CV25733

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 03 2004

*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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 03 2004**

A04D0254. D'ALMEIDA v. HOOKER, et al.

Afiave D'Almeida filed her application for appeal on February 9, 2004, from an order of the superior court entered on December 19, 2003, affirming a decision of the Fulton County Personnel Board. D'Almeida asserts that she first attempted to file her application on January 20, 2004, by dropping it in the Court's drop box, but she claims that she did not include the required filing fee because she was afraid to put cash in the drop box. The filing fee was not submitted until February 9, 2004. D'Almeida nevertheless asks the Court to consider her application since her initial attempt to file it was timely. OCGA § 5-6-35 (d) mandates that applications for appeal shall be filed "within 30 days of the entry of the order, decision, or judgment complained of." OCGA § 5-6-4 states in part that "the clerk is *prohibited* from receiving the application for appeal . . . unless the costs have been paid or a sufficient affidavit of indigence is filed or contained in the record." (Emphasis supplied.) It follows that D'Almeida's application cannot be deemed filed before the date she actually paid the required filing fee. Because D'Almeida failed to file her application for appeal within 30 days of the order affirming the decision of the personnel board, her application is hereby *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 03 2004

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.

C. Will. L. Maitland, Clerk.

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

ATLANTA, MARCH 16, 2004

The Court of Appeals passed the following order

Case No. A04D0254

AFIAVIE D'ALMEIDA V. MARY K. HOOKER, ET AL

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

96-022
2003CV70964

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 16, 2004*

*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. Maitland

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 29, 2004

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 **S04C1219**

JEANNINE AFIAVIE D'ALMEIDA v. MARY K. HOOKER et al.

Clerk, Supreme Court of Georgia

Case No. A04D0254

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAR 30 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, FEBRUARY 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0255

NICHOLAS MARK BELLUSO V. MAHLON GRADY TANT ET AL

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

98022

02CV3451

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 24 2004

*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.

C. Will. L. Mart; JR

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

ATLANTA, MARCH 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0256
CAROLYN D. JOHNSON V. TYSON FOODS, 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.

97022

2003CV076

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 04 2004**

*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. Marti, Jr.

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

ATLANTA, FEBRUARY 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0257
TROY BRISON V. THALRONE WILLIAMS ET AL

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

71022

2002CV37543

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 16 2004

*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. Mart; 

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

ATLANTA, MARCH 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0258
NORTH HALL NEIGHBORHOOD COALITION ET AL
V. HALL COUNTY, GEORGIA 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.

93024

01CV3090C

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 04 2004**

*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.

C. Jill L. Martin; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 03 2004**

A04D0259. ERIC SIRMONS v. THE STATE.

On February 9, 2004, Eric Sirmons, acting pro se, filed an application for discretionary appeal which fails to clearly designate the order sought to be appealed. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because the application does not contain or reference any order of the trial court filed within the allowed period of 30 days preceding the filing of the application, this court lacks appellate jurisdiction over this application and it is ordered DISMISSED. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 03 2004**

*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.*

C. Jill L. Martini, Clerk.

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

ATLANTA, MAY 04, 2004

Honorable Court of Appeals hereby passes the following order:

A04D0259. ERIC SIRMONS v. THE STATE.

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

9980

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 04 2004**

*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; JR

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

ATLANTA, MARCH 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0260
CONTINENTAL PET, TECHNOLOGIES INC V. JUANA SANDOVAL
PALACIAS

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.

99022

03CV3545

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 16 2004**

*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. Matz, Jr.

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

ATLANTA, MARCH 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0261
HENRY C. SAMA V. THE MACON-BIBB COUNTY PLANNING
& ZONING COMMISSION

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

91022

02CV18876

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 04 2004**

*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.

C. Will. L. Martine

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

**A04D0262. MICHAEL A. KILGORE, P.C. v. LAKE LIVINGSTON SHEETZ,
ADMINISTRATOR OF THE ESTATE OF WHITNER K. LIVINGSTON,
III**

Michael A. Kilgore, P.C. filed this application for discretionary appeal from the superior court's order denying its motion for attorney fees under OCGA § 9-15-14. Judgments for attorney fees are ordinarily reviewable only on application for discretionary appeal. OCGA § 5-6-35 (a) (10). However, an award of attorney fees need not be appealed through the discretionary application process when a direct appeal from the underlying judgment is pending. *Mitcham v. Blalock*, 268 Ga. 644, 647 (4) (491 SE2d 782) (1997). In this case, the underlying judgment was appealed and docketed in this Court as appeal A04A0114, and it is currently pending. Thus, the order denying the applicant's motion for attorney fees under OCGA § 9-15-14 is directly appealable. Accordingly, this application is ordered GRANTED pursuant to OCGA § 5-6-35 (j). The applicant 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.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 09 2004**

*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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

A04D0263. ANGELIKA SHERRILL v. DONALD P. PITTS.

On February 12, 2004, Angelika Sherrill, acting pro se, filed an application seeking discretionary appeal of the order of the Municipal Court of Columbus denying a motion to set aside judgment. The order sought to be appealed was signed by the trial court and filed in the office of the clerk of the Municipal Court of Columbus on December 11, 2003.

OCGA § 5-6-35 (d) provides that an application for discretionary appeal shall be filed with the clerk of the Court of Appeals within 30 days of the entry of the order, decision, or judgment sought to be appealed. An order is entered on the date that it is filed with the clerk of the trial court. OCGA § 5-6-31; see *Turner v. Harper*, 231 Ga. 175, 176 (200 SE2d 748) (1973). Because Sherrill's application was not filed within 30 days of the date of entry of the order denying her motion to set aside, it untimely and this court lacks appellate jurisdiction over the application. Accordingly, the application is order DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 2004

*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. Marti, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **FEB 20 2004**

A04D0264. LUCIOUS JOHNSON v. THE STATE.

Lucious Johnson seeks an appeal from an order granting in part and denying in part his "Motion to Vacate Null and Void Sentences" and denying his "Extraordinary Motion for New Trial." 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). Accordingly, Johnson's application is hereby *granted* as required under OCGA § 5-6-35 (j).

Johnson 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 20 2004**

*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, MARCH 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0265
CYNTHIA LUCAS V. COBBLESTONE FLATS ET AL

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

94022

2003CV40727

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 09 2004**

*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.

William L. Maitland

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 16 2004**

A04D0266. REYNOLDS v. KRESGE.

Patricia Reynolds has filed both a notice of appeal and an application for discretionary appeal seeking review of a permanent stalking protective order and a subsequent order denying her motion for new trial. Reynolds filed her application for appeal due to a concern that the appeal might be classified as involving a temporary restraining order governed under OCGA § 5-6-35 (a) (9). A permanent protective order is not a temporary restraining order subject to discretionary appeal under OCGA § 5-6-35 (a) (9). Because the discretionary appeal procedure does not apply and because Reynolds has already filed her notice of appeal, her application for appeal is hereby *DISMISSED* for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 16 2004

*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. Mait; [Signature] Clerk.

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

ATLANTA, MARCH 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0267

KELVIN A. TOMLINSON V. DEBORAH TURNER, GUARDIAN OF JAKEL TOMLINSON

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

96023

S802DM844

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 12 2004

*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, Jr.

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

ATLANTA, MARCH 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0268
DONNA MARIE SMITH V. THE STATE

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

98023

989098828

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 15 2004**

*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. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 03 2004**

A04D0269. KENNY TYRONE DAVIS v. THE STATE.

On June 27, 2002, the superior court entered an order revoking Kenny Tyrone Davis's probation. Davis filed a motion for out-of-time new trial. On December 14, 2003, the superior court entered an order denying the motion for an out-of-time new trial. On February 20, 2004, Davis, acting pro se, filed an application for discretionary appeal seeking review of the revocation of his probation.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Davis has not filed his application within 30 days of the date of the order that he seeks to appeal, this court is without jurisdiction over this application, and the application is ordered DISMISSED. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 03 2004**

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Will. L. Martineau, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 05 2004**

A04D0270. STARLA MOSS v. HENRY ELLIS.

Relying on an order granting her an out-of-time appeal, Starla Moss seeks discretionary review of an order changing custody of her child. We cannot consider Moss's submission because the superior court's grant of an out-of-time appeal is insufficient to authorize the filing of an otherwise untimely application for discretionary appeal. *Department of Offender Rehabilitation v. Meeks*, 165 Ga. App. 269 (299 SE2d 757) (1983). Moreover, an out-of-time appeal is not an available remedy in civil cases. *Woodall v. Woodall*, 248 Ga. 172 (281 SE2d 619) (1981). For these reasons, the above styled application for discretionary appeal is hereby DISMISSED as untimely filed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 05 2004**

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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, JR., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 19 2004**

A04D0271. H. L. SPELL ET AL. v. KELEE CELESTE SPELL ET AL.

This is a post-divorce action involving child custody and visitation issues which was transferred to this Court from the Supreme Court. This discretionary application seeks review of an interlocutory order denying a motion to recuse. The applicants recognized that OCGA § 5-6-34 (b) is applicable and sought to obtain a certificate of immediate review, but that request was denied. The application also acknowledges that generally the appellate courts will not review the discretion vested in the trial court to grant or refuse a certificate for immediate review of interlocutory rulings (*Houser v. State*, 234 Ga. 209 (214 SE2d 893) (1975)), but maintains that under rare factual circumstances an exception should be allowed where the need for interlocutory appellate review is sufficiently clearly shown. The Supreme Court has considered this issue and crafted an exception to the requirement of a certificate where the actions of the trial court have the effect of precluding appellate review of a substantive issue. *Waldrip v. Head*, 272 Ga. 572, 575 (532 SE2d 380) (2000). However, the Supreme Court has also declined to extend that exception and restated

its adherence to the general rule. See *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (3) (2001). Since the circumstances of this case do not fall within the narrow exception to the requirement of a certificate of immediate review, the applicants' failure to comply with the interlocutory appeal procedures of OCGA § 5-6-34 (b) deprives this Court of jurisdiction to consider this application, which is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 19 2004**

*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.*

C. Jill L. Martin, Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, MARCH 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0272
JOSEPH STEWART BRADLEY 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.

99023

01FCR32J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 24 2004

*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.

William L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 30 2004**

A04D0273. GAIL PARKS v. CHAUNDRA MARSHALL.

On Tuesday, March 2, 2004, defendant Gail Parks filed a discretionary appeal seeking an appeal of the order, entered January 30, 2004, awarding \$3000.00 to plaintiff Chaundra Marshall. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Parks's application for discretionary appeal was not filed until 32 days after the date of entry of the order sought to be appeal, this Court lacks jurisdiction over the application and it is ordered DISMISSED. See *DePass v. Board of Review*, 172 Ga. App. 561 (324 SE2d 505) (1984).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 30 2004**

*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.*

C. Jill L. Martini, Clerk.

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

ATLANTA, MARCH 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0274
GAIL PARKS V. CHAUNDRA MARSHALL

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

91024

03A132207

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 29 2004**

*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. Matier

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

ATLANTA, MARCH 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0275

CITY OF GRIFFIN, GEORGIA V. ROY MCCOY 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.

70023

02V789

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 19 2004**

*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, Jr.

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

ATLANTA, MARCH 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0276

WELLSTONE F/K/A TNS MILLS, INC ET AL V. JAMES H. LYONS

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

92023

04FV048H

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 25 2004**

*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. Mart; JR

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

ATLANTA, APRIL 14, 2004

The Court of Appeals passed the following order

Case No. A04D0276

WELLSTONE F/K/A TNS MILLS, INC ET AL V. JAMES H. LYONS

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

92-023
04FV048H

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 14, 2004*

*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.

C. Will. L. Maitland

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

ATLANTA, MARCH 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0277

JANET LAMAR-HOGAN V. HANCOCK COUNTY BOARD OF COMMISSIONERS

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

94023

03CV0157

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 24 2004

*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.

C. Will. L. Martin

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

ATLANTA, APRIL 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0278

JANET NOLEN KING ET AL V. BIBBY SHORT KING, EXTRX

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

95024

S04D0968

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 01 2004**

*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. Mart; R

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

ATLANTA, MARCH 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0279
THE PROFESSIONAL STANDARDS COMMISSION V. MITCHELL
VALENTINE

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.

96024

2003CV70106

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAR 16 2004**

*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.

William L. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 25 2004**

A04D0280. SHERRY Y. BLUE v. THEODORE T. BLUE.

Sherry Y. Blue filed this discretionary application from the superior court's order denying her motion to set aside the parties' final divorce decree. The Supreme Court, however, has exclusive jurisdiction over all divorce and alimony cases. Ga. Const. Art. 6, Sec. 6, Par. III (6). See *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (1) (435 SE2d 914)(1993); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979). Therefore, this application is ordered TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 25 2004**

*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. Martini, Clerk.

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

ATLANTA, MARCH 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0281

CHRISTIAN LEEDY V. WINDHAM BRANNON, P.C., ET AL

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

97024

03A116097

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 15 2004**

*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.

C. Will. L. Mart; JR

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

ATLANTA, MARCH 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0282

LAURIE A. LIVELY V. GAIL G. BOWEN

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.

71024

02V002068

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 19 2004**

*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.

Court of Appeals
of the State of Georgia

ATLANTA, APRIL 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0283

HENRY COUNTY, GEORGIA., ET AL V. DAVID CRUMPLER

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

90023

00CV1095M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 01 2004

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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.

C. Will. L. Mait; JR

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

ATLANTA, APRIL 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0284

EDWARD BARBER V. JIM WETHERINGTON, ET AL

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

90024

2001CA25783

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 01 2004

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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.

C. Vill. L. Mart; R

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

ATLANTA, APRIL 16, 2004

The Court of Appeals passed the following order

Case No. A04D0284

EDWARD BARBER V. JIM WETHERINGTON, ET AL

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

90-024
2001CA25783

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 16, 2004*

*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

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

ATLANTA MARCH 22, 2004

The Court of Appeals hereby passes the following order:

A04D0285. HALLISY v. BROWN.

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

99-024

03DV0185

*Court of Appeals of the State of Georgia
Clerk's Office, MARCH 22, 2004*

*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.*

C. Will. L. Maitland, Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, APRIL 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0286

LODING UNLIMITED, INC. V. HARRIET REGINA EASON, ET AL

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

70024

CE0301632063

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 05 2004

*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. Mart; 

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

ATLANTA, MARCH 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0287

S&G WORLDWIDE, INC. V. OLE MEXICAN FOODS, INC.

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

92024

03A035596

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 25 2004**

*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. Mait; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 08 2004**

A04D0288. GEORGIA DEPARTMENT OF REVENUE et al v. GEORGIA CHEMISTRY COUNCIL, INC. et al.

The Georgia Chemistry Counsel, Inc. (“GCC”) filed a petition for declaratory judgment pursuant to OCGA §§ 9-4-2 and 50-13-10 in order to challenge the validity of Ga. Comp. R. & Regs. r. 560-7-8-.42, which was promulgated by the Georgia Department of Revenue in order to implement OCGA § 48-7-40.12, the Research Tax Credit Statute. The superior court granted summary judgment to GCC, declaring Ga. Comp. R. & Regs. r. 560-7-8-.42 (2) invalid. The Department of Revenue filed the instant discretionary application pursuant to OCGA § 5-6-35 (a) (1).

This is not an appeal from a judgment of a superior court reviewing an adverse decision of a state or local administrative agency, as contemplated by OCGA § 5-6-35 (a) (1). “Declaratory judgments ‘have the force and effect of [final judgments] and [are] reviewable as such.’ OCGA § 9-4-2 (a).” *Sunstates Refrigerated Svcs. v. Griffin*, 215 Ga. App. 61, 62 (1) (449 SE2d 858) (1994). See also OCGA § 50-13-10 (c) (declaratory judgment on validity of rules appealable in accordance with OCGA § 9-4-2 (a)). The order in this case is thus directly appealable and is not subject to the discretionary appeal requirements. The Department of Revenue filed a timely notice of appeal in addition to the instant application. Thus, this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 08 2004

*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. Mait; [Signature], Clerk.

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

ATLANTA, MARCH 31, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0289

QUALITY CONSTRUCTION COMPANY ET AL V. GARY ENGLISH

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

95025

03A037357

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 31 2004

*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. Mart; [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 01 2004**

A04D0290. SUTTON v. THE STATE.

David Charles Sutton seeks an appeal from order denying his “motion to vacate void unconstitutional illegal sentence and conviction for lack of courts jurisdiction”. Because Sutton is once again seeking what is in substance an unauthorized second appeal from his conviction, this application is hereby *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 01 2004**

*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.*

C. Will. L. Maitland, Clerk.

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

ATLANTA, APRIL 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0291
FRANKLIN L. WILLIAMS V. MARTIN H. EAVES

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

98025

03V0852

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 06 2004**

*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, Jr.

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

ATLANTA, APRIL 22, 2004

The Court of Appeals passed the following order

Case No. A04D0291

FRANKLIN L. WILLIAMS V. MARTIN H. EAVES

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

98-025
03V0852

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 22, 2004*

*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.

C. Will. L. Martin, Jr.

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

ATLANTA, APRIL 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0292

ANDERSON MEDIA SERVICES, INC., ET AL V. CITIZENS TRUST BANK

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

97025

03SV547

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 06 2004

*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. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAR 19 2004**

A04D0293. EDWARD BARBER v. DEBBIE CREWS.

Edward Barber, a prisoner, seeks a discretionary review of the order, entered February 20, 2004, denying the filing of his petition in a civil action for mandamus.

The Georgia Constitution of 1983, Article VI, Section VI, Paragraph III (5) provides that the Supreme Court of Georgia shall have appellate jurisdiction as to all cases involving extraordinary remedies. Mandamus is an extraordinary remedy and, therefore, this appeal lies within the appellate jurisdiction of the Supreme Court. See also OCGA § 9-6-28 (b); *Brown v. Johnson*, 251 Ga. 436 (306 SE2d 655) (1983); *Settle v. McWhorter*, 203 Ga. 93 (1) (45 SE2d 210) (1947). Accordingly, this appeal is ordered TRANSFERRED to the Supreme Court.

The clerk of this court shall forthwith remove this appeal from the appellate docket of this court and transfer it to the Supreme Court of Georgia for appropriate appellate disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 19 2004**

*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 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0294

RICO E. TEASLEY V. THE STATE

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

90025

SU03CR0637SW

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 05 2004**

*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.

C. Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAR 24 2004

A04D0295. LINDBERG PRESCOTT v. THE STATE.

On March 18, 2004, Lindberg Prescott, acting pro se, filed an application for discretionary appeal seeking review of the order entered March 10, 2003, denying his extraordinary motion to set aside conviction and sentence. To the extent that Prescott maintains that the filing date of the order sought to be appealed was inaccurately recorded in the trial court, we note that this issue is not ripe for appellate review as there is no indication that the matter has been raised and ruled on below.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Prescott did not file his application within 30 days of the date of entry of the order denying his motion, this Court lacks appellate jurisdiction over this application and it is ordered DISMISSED. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

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

MAR 24 2004

*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. Mait; [Signature], Clerk.

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

ATLANTA, APRIL 23, 2004

The Court of Appeals passed the following order

Case No. A04D0295

LINDBERG PRESCOTT V. THE STATE

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

93-025
Z78909

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 23, 2004*

*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. ^{Clerk.} Mac

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

ATLANTA, APRIL 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0296

WALIKE MOSELEY V. THE STATE

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

99025

023533

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

APR 14 2004

*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: **APR 01 2004**

A04D0297. John Holcomb v. Deena N. Holcomb

John Holcomb seeks discretionary review of the trial court's orders modifying child support and denying a motion for new trial. The orders Holcomb seeks to appeal were entered in the trial court on February 11, 2004. This application was filed in this Court on March 22, 2004, forty days after entry of the order sought to be appealed. Because an application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed, this application is untimely and this Court lacks jurisdiction to consider it. OCGA § 5-6-35 (d). Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 01 2004**

*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, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 16 2004**

A04D0298. ANTHONY BERNARD GAINES v. THE STATE.

In March 1993, Anthony Bernard Gaines pled guilty to sale of cocaine and was sentenced to serve eighteen years, eight years of which was to be served in prison and the balance on probation. The court revoked two years of Gaines's probation on June 24, 2003. On February 2, 2004, the court granted his motion for an out-of-time discretionary appeal of the June 24, 2003, revocation order. On March 10, 2004, the court vacated and then re-entered the February 2, 2004, order.

On March 23, 2004, Gaines filed this application for discretionary review of the trial court's June 24, 2003, order revoking his probation. Applications for discretionary appeal, however, are addressed to the appellate courts, and any request for permission to file an untimely application necessarily would also be addressed to the appropriate appellate court rather than the trial court. This Court has already noted the lack of any authority to grant such a request. See *Dept. of Offender Rehabilitation v. Meeks*, 165 Ga. App. 269 (299 SE2d 757) (1983). Accordingly, this untimely application for discretionary appeal is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 16 2004

*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. Martini, Clerk.

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

ATLANTA, APRIL 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0299
EDWARD RAY TOSTON V. THE STATE

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

92025

99B40403 98B33503 03B08463

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 14 2004

*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, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 16 2004**

A04D0300. CITY OF RINCON et al v. CAROL A. COUCH et al.

Under the authority of OCGA § 5-6-35 (a) (1), the City of Rincon (“City”) seeks discretionary review of a superior court order granting the State Environmental Protection Division’s (“EPD”) petition for judgment pursuant to OCGA § 12-5-189. The directory language of OCGA § 12-5-189 is analogous to that of OCGA § 34-9-106. In that regard, the narrow purpose of both statutes is to create a right to judicial enforcement of a state agency’s award/decision, not to review that decision; “a superior court may not change the award[.]” *Ayers v. Rembert*, 241 Ga. App. 698, (527 SE2d 290) (1999); *Wade v. Harris*, 210 Ga. App. 882, 884 (1) (437 SE2d 863) (1993). As there is no review of an agency decision, OCGA § 5-6-35 (a) (1) is inapplicable. Since the discretionary appeal procedure is inapplicable, and the case does not remain pending below, the proper avenue of appeal was direct, per OCGA § 5-6-34 (a) (1). Under these circumstances, the instant application must be granted pursuant to OCGA § 5-6-35 (j), so that the City’s appeal may be considered on its merits. *Harrell v. Little Pup Development & Construction*, 269 Ga. 143, 144 (1) (498 SE2d 251) (1998). The issue on appeal will be the propriety of the entry of judgment as authorized by OCGA § 12-5-189, not the correctness of the EPD’s decision, which was subject to appeal pursuant to OCGA §§ 12-2-2 (c), 50-13-19, and for which no appeal was taken. OCGA § 12-5-186; *Wade v. Harris*, supra.

Therefore, the City’s application is hereby GRANTED. The City shall have ten (10) days from the date of this order to file a notice of appeal in the court below. The clerk of the superior court is directed 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 **APR 16 2004**

*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. Mattingly, Clerk.

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

ATLANTA, APRIL 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0301
TINA LOVE POWELL V. DANNY WILLARD POWELL

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

95026

2003V10382

Court of Appeals of the State of Georgia

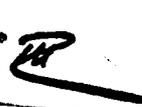
Clerk's Office, Atlanta

APR 16 2004

*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.

C. Jill L. Martin; 

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 01 2004**

A04D0302. MURPHY v. MILO.

Mitchell David Murphy filed the above styled application for appeal to the Supreme Court from an order denying Murphy's motion to set aside as well as his alternative motion for new trial. The Supreme Court transferred the application to this court for disposition. Murphy states that he has also filed a notice of appeal and that this application was filed out of an abundance of caution. Since the order complained of also disposes of Murphy's motion for new trial, it follows that OCGA § 5-6-35 (a) (8), which otherwise mandates the discretionary appeal procedure for appeals from orders denying motions to set aside under OCGA § 9-11-60 (d), does not apply here. See *Martin v. Williams*, 263 Ga. 707 (438 SE2d 353) (1994). Because Murphy has already filed a direct appeal from the same order complained of here, his application for appeal is hereby *dismissed* as superfluous.

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

APR 01 2004
*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.*

C. Will. L. Martin, Jr., Clerk.

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

ATLANTA, APRIL 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0303

CHARLES LAMONT MILLER V. J.M. SIKES, ET AL

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

98026

04CV004

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 14 2004

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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. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 12 2004**

A04D0304. EDWIN THOMAS v. THE STATE

Edwin Thomas, pro se, seeks an appeal from a January 6, 2004, order denying his "Appeal for Extraordinary Motion for Out of Time Review." Thomas's application was not filed with this court until March 29, 2004.¹ Because Thomas's submission was not filed within 30 days 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).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 12 2004**

*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. Maitland, Clerk.

¹Although timely received, Thomas's original submission, which was transferred here from the Georgia Supreme Court, could not be accepted for filing in this Court because it did not include a Certificate of Service to opposing counsel, as required under Court of Appeals Rule 1 (a).

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

APR 21 2004

A04D0305. VINCENT C. OVIEDO v. KELLEY M. MYERS F/K/A KELLEY M. OVIEDO.

Vincent C. Oviedo, acting pro se, filed a notice of appeal of the order, entered March 3, 2004, finding him in wilful contempt of certain provisions of a settlement agreement incorporated by reference into and expressly made a part of the final judgment and decree of divorce between he and his former spouse, Kelley M. Myers, and awarding attorney fees to Myers. Oviedo asserts, inter alia, that the trial court erred by modifying several provisions of the settlement agreement thereby resulting in an "unjustified modification" of the final judgment and decree of divorce, and that this determination resulted in rendering certain portions of the incorporated settlement agreement meaningless.

Because this application involves construction of non-custodial provisions of a settlement agreement incorporated into a divorce decree, the Supreme Court has exclusive jurisdiction over this matter. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); see *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (1) (435 SE2d 914) (1993). Accordingly, this application is ordered TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 21 2004

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

C. Will. L. Mait, Clerk.

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

ATLANTA, APRIL 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0306

JOHN GUNDAKER V. THE UNIFIED GOVERNMENT OF
ATHENS-CLARKE COUNTY, GEORGIA

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

90026

NONE

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 19 2004**

*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. Mait^{Clerk.}

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

ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 10 2004**

**A04D0306. JOHN GUNDAKER v. THE UNIFIED GOVERNMENT OF
ATHENS-CLARKE COUNTY, GEORGIA.**

On April 30, 2004, John Gundaker filed a motion for reconsideration of this court's April 19, 2004 denial of his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the rendition of the judgment. Gundaker's motion for reconsideration is thus untimely and is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 10 2004**

*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. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 07 2004**

A04D0307. GLORIA J. LEWIS v. TERRY M. LEWIS.

Gloria J. Lewis filed an application seeking discretionary review of the superior court's order refusing to find her former husband in contempt of a temporary order entered in a divorce action. This Court, however, lacks jurisdiction to review the application. The order complained of directly addresses enforcement of non-custodial provisions of an order entered in a pending divorce action, and therefore, jurisdiction to consider the merits of the application lies in the Supreme Court. Ga. Const. Art. VI, Sec. VI, Para. III (6); *Griffin v. Griffin*, 243 Ga. 149 (254 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). Therefore, the application is TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 07 2004**

*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. Maitland Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 28 2004**

A04D0308. FLOWERS v. THE STATE.

Joe Flowers seeks an out-of-time appeal from an order entered on October 29, 2003, denying his “Motion to Vacate and Set Aside Judgment” as amended. His petition has been docketed in this court as an application for discretionary appeal. A motion for an out-of-time appeal is a matter for the trial court to address.¹ Because Flowers’ application is not timely filed within 30 days of an appealable order, it 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 **APR 28 2004**

*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.*

C. Jill L. Martin, Clerk.

¹We note, however, that Flowers has already exercised his right to a direct appeal challenging his conviction. *Flowers v. State*, 255 Ga. App. 660 (566 SE2d 339) (2002). See generally *Miller v. State*, 277 Ga. 372 (589 SE2d 108) (2003).

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

ATLANTA, APRIL 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0309
ROBERT JOSEPH DAVIS V. ATLANTA JOURNAL
CONSTITUTION ET AL

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

91026

04A005317

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

APR 20 2004

*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.

C. Jill L. Maitland

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

ATLANTA, APRIL 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0310
PEP BOYS, INC., F/K/A PEP AUTO SUPPLY COMPANY
V. ROCHE AUTO CARE, INC., ET AL

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

70026

03C057743

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 27 2004

*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,

The Court of Appeals hereby passes the following order: **APR 15 2004**

A04D0311. JACQUELINE A. FRANKLIN v. LEONARD B. FRANKLIN.

Defendant Jacqueline A. Franklin has filed an application for discretionary appeal seeking to appeal the order denying her motion for new trial. The underlying subject matter of this appeal is the modification of the parties' final judgment and decree of divorce so as to relieve plaintiff Leonard B. Franklin of his obligation "to pay child support for the support, maintenance, and education of the minor child" birthed by Jacqueline A. Franklin during the parties' marriage.

Because the underlying subject matter of this appeal concerns a modification of the non-custodial provisions of the parties' final judgment and decree of divorce, the Supreme Court has exclusive jurisdiction over this matter. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); see *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); *Eickhoff v. Eickhoff*, 263 Ga. 498, 499 (1) (435 SE2d 914) (1993). Accordingly, this application is ordered TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 15 2004**

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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.*

C. Jill L. Martin, Clerk.

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

ATLANTA, APRIL 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0312

WILLIE J. ROBINSON V. PROFESSIONAL TRUCK TOWING, 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94026

03VS058964

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 28 2004

*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. Mait; JR

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

ATLANTA, APRIL 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0313
SAM RUBENSTEIN V. GARY BUNCH, PC

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

95027

02S0913

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 22 2004

*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.

C. Jill L. Martin

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

ATLANTA, APRIL 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0314
ALBERT P. CRUTCHFIELD V. THE GEORGIA DEPARTMENT
OF HUMAN RESOURCES ET AL

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

96027

SU99DM33319

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

APR 27 2004

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hereto affixed the day and year last above written.*

Clerk.

Will. L. Martin, Jr.

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

ATLANTA, MAY 18, 2004

The Court of Appeals passed the following order

Case No. A04D0314

ALBERT P. CRUTCHFIELD V. THE GEORGIA DEPARTMENT
OF HUMAN RESOURCES ET AL

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

96-027
SU99DM33319

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 18, 2004*

*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.

C. Jill L. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **APR 14 2004**

A04D0315. Marshall v. Creta

John Marshall seeks discretionary review of the trial court's order which ordered sanctions against Marshall for failure to respond to discovery, struck his answer and counterclaim, and entered a default judgment against him. The matter was to be set down for hearing to determine the judgment against Marshall. However, because the issue of damages remains pending before the trial court, no final judgment has been entered and the interlocutory appeal procedures were required in this case. OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). Marshall's failure to comply with the interlocutory appeal requirements deprives this Court of jurisdiction to consider this application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 14 2004**

*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. Maitland
....., Clerk.

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

ATLANTA, MAY 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0316
CAROL A. COUCH, DIRECTOR, ENVIRONMENTAL
PROTECTION DIVISION ET AL V. MARK LEBLANC

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

97027

2003CV69427

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 04 2004

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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.*

Clerk.

Will. L. Martini

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

ATLANTA, APRIL 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0317

CORNELIUS WILSON V. THE STATE

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

71027

01R062

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **APR 21 2004**

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Clerk.

Will. L. Marti

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

ATLANTA, APRIL 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0318

DELPHI CAPITAL CORPORATION V. SUBURBAN PARTNERS, L.L.C

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

90027

03C12037S5

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 27 2004

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Clerk.

William L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAY 06 2004

A04D0319. FREEMAN BERRY v. THE STATE.

Freeman Berry filed this discretionary application seeking review of the trial court's denial of his motion for out of time appeal. While Berry's pro se motion was styled as an extraordinary motion for new trial, the superior court order indicates that the issues raised were in substance those of a motion for out-of-time appeal and that the motion was treated accordingly by court and counsel. A denial of a motion for out of time appeal is directly appealable. *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999).

This Court will grant a 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. In this case, however, Berry has filed a timely notice of appeal in addition to the instant application. Thus, OCGA § 5-6-35 (j) does not apply, and this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 06 2004

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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.*

C. Will. L. Maitland, Clerk.

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

ATLANTA, MAY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0320

JERRY MOATS V. HOME DEPOT

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

99027

2004CV004296

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 05 2004**

*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.

C. Jill L. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: May 25, 2004

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 **S04C1582**

JERRY MOATS V. HOME DEPOT

Clerk, Supreme Court of Georgia

Case No. A04D0320

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

MAY 28 2004

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 16 2004**

A04D0321. Spratt Howard v. James W. Smith

Spratt Howard seeks discretionary review of the trial court's dismissal of his pro se prisoner civil litigation action against James W. Smith, his former attorney. The order Howard seeks to appeal was entered in the trial court on February 19, 2004. This application was filed in this Court fifty days later on April 9, 2004. However, an application for discretionary appeal must be filed within thirty days after entry of the order sought to be appealed. OCGA § 5-6-35 (d). Howard's failure to timely filed this application deprives this Court of jurisdiction to consider it. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 16 2004**

*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; [Signature], Clerk.

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

ATLANTA, MAY 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0322
SHERNOTTA FEBRECHO WALTERS V. THE STATE

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

70027

99343635

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 04 2004**

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Clerk.

Will. L. Marti, Jr.

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

ATLANTA, APRIL 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0323

MARILYN DORSEY V. THE STATE

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

92027

1991CR734A

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 16 2004**

*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. Matz, Jr.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: April 21, 2004

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 **S04C1366**

MARILYN DORSEY v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0323

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

APR 22 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0324

SHUMATE MECHANICAL ET AL V. TERRY DALE BOSWELL

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

94027

2004SUCV18

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 05 2004

*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. Mait; [Signature]

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

ATLANTA, MAY 21, 2004

The Court of Appeals passed the following order

Case No. A04D0324

SHUMATE MECHANICAL ET AL V. TERRY DALE BOSWELL

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

94-027
2004SUCV18

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 21, 2004*

*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, Jr.

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

ATLANTA, MAY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0325
RUBY WATKINS V. HORIZON CONSULTING, INC., ET AL

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

95028

2003CV79600

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 06 2004

*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. Marti; [Signature]

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

ATLANTA, APRIL 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0327

AMEDISYS HOME HEALTH, INC., ET AL V. MARY HOWARD

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.

98028

04CV30HS

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 30 2004**

*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, Jr.

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

ATLANTA, MAY 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0328
STEVEN R. COTTING V. MIKI COTTING

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

97028

02A093506

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 10 2004**

*I certify that the above is a true extract fromd
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*Witness my signature and the seal of said court
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Clerk.

Will. L. Martine

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 18, 2004

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 **S04C1708**

STEVEN R. COTTING v. MIKI COTTING

Clerk, Supreme Court of Georgia

Case No. A04D0328

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 24 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, APRIL 23, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0329

TRISCINDRA M. FITZPATRICK V. JASON R. FITZPATRICK

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

71028

0201913

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 23 2004

*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. Marti

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

ATLANTA, MAY 03, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0330

THE MISSOURI GROUP, INC V. WALKER CONCRETE, INC

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

90028

2001CV05496C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 03 2004

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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.

C. Will. L. Mart; JR

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

ATLANTA, MAY 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0331
KENNESTONE HOSPITAL V. GLORIA MIDDLETON

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

93028

041057924

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

MAY 13 2004

*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.

C. Will. L. Mait, Jr.

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

ATLANTA, MAY 13, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0332

NORTH GEORGIA DISPOSAL, INC., ET AL V. DANNY CROOK

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

99028

87245

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 13 2004**

*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.

C. Will. L. Martin, Jr.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 11, 2004

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 **S04C1672**

NORTH GEORGIA DISPOSAL, INC., et al. v. DANNY CROOK

Clerk, Supreme Court of Georgia

Case No. A04D0332

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 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0333
LOUIS LEVENSON ET AL V. MARJORIE SEWNATH

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

91028

2001CV34604

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 2004

*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.

C. Jill L. Martin; [Signature]

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 3, 2004

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 **S04C1638**

LOUIS LEVENSON et al. v. MARJORIE SEWNATH

Clerk, Supreme Court of Georgia

Case No. A04D0333

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 04 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0334
SANDRA C. FREEMAN V. SOUTHWIRE 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.

70028

04V00378

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY 12 2004**

*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, Jr.

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

ATLANTA, MAY 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0335
REGINALD CLOWERS V. THE STATE

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

92028

1222445

3222445

5222445

6222445

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 12 2004

*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.

C. Will. L. Mart; [Signature]

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

ATLANTA, MAY 19, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0336

MILCO BUILDING PRODUCTS, INC., ET AL V. FREDERICK COLEMAN

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

94028

NONE

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 19 2004

*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: **MAY 19 2004**

A04D0337. OLLIE C. CROCKETT v. VINSON F. CROCKETT.

Via this discretionary application, applicant Ollie C. Crockett seeks review of an award of attorney fees based on an unsuccessful Petition for Contempt which alleged that applicant was entitled to child support under a 1992 decree of divorce. Although applicant Ollie C. Crockett has filed this application with this Court, we conclude that appellate jurisdiction lies in the Supreme Court which has exclusive jurisdiction over appeals in divorce cases. Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6).

A contempt action based on the failure to comply with child support provisions of a final divorce decree is ancillary to the prior divorce action and is therefore within the general appellate jurisdiction of the Supreme Court. *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). Furthermore, a motion for attorney fees is ancillary to the underlying divorce case. *Hallman v. Emory University*, 225 Ga. App. 247 (483 SE2d 362) (1997). Here, both the contempt proceeding and award of attorney fees are ancillary to the prior divorce action and therefore within the general appellate jurisdiction of the Supreme Court.

Therefore, this application is ordered TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 19 2004**

*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. Martini, Clerk.

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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0338
REY DAVID VARGAS V. RAYMOND HEAD ET AL

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

96029

2004CV84250

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 15 2004

*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.

C. Will. L. Mart; JR

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

ATLANTA, AUGUST 06, 2004

The Court of Appeals passed the following order

Case No. A04D0338

REY DAVID VARGAS V. RAYMOND HEAD ET AL

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

96-029
2004CV84250

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 06, 2004*

*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. Mart; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 19, 2004

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 **S04C2074**

REY DAVID VARGAS v. RAYMOND HEAD et al.

Clerk, Supreme Court of Georgia

Case No. A04D0338

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 19 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0339

ON-LINE COMPUTER LOGIC V. DAVID HODES ET AL

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

98029

2001CV41675

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 17 2004

*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.

C. Jill L. Martin; R

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

ATLANTA, MAY 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0340

CARTER'S ROYAL DISPOSALL, INC., ET AL V. CATERPILLAR
FINANCIAL SERVICES CORPORATION

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.

97029

04CV24W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 2004

*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.

C. Jill. L. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 05 2004**

A04D0341. MELANIE DURDEN v. ELDRIDGE SUGGS, IV.

Melanie Durden, acting pro se, filed a timely application for discretionary review with the Supreme Court of Georgia seeking an appeal of the final order granting a motion to dismiss her motion to vacate an arbitration award made by the State Bar of Georgia in attorney fee dispute. See generally OCGA § 9-9-13. The Supreme Court determined that it did not have appellate jurisdiction over the application and transferred it to this Court for adjudication.

Because the subject matter underlying this application does not pertain to the type of case subject to the discretionary appeal procedure of OCGA § 5-6-35, and because Durden has not filed a notice of appeal seeking a direct appeal of the final order sought to be reviewed, this application is ordered GRANTED under OCGA § 5-6-35 (j).

Durden 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.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY 05 2004**

*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. Matz, Clerk.



SUPREME COURT OF GEORGIA

Case No. S04D1316.

A0400342

Atlanta

APR 30 2004

The Honorable Supreme Court met pursuant to adjournment

FILED IN OFFICE

The following order was passed:

APR 30 2004

CLERK COURT OF APPEALS OF GA

THOMAS ADAMS et al. v. MADISON COUNTY et al.

From the Superior Court of Madison County.

In January 2003, a magistrate court found appellants in violation of a Madison County zoning ordinance and ordered them to remove certain non-complying equipment and tools from their property upon penalty of recurring, prospective fines. Then, in March 2003, appellants moved the court to set aside the January judgment. After the magistrate court denied that motion, appellants petitioned the superior court for cert, but the superior court denied the petition finding that it had been untimely filed. Appellants then timely filed this discretionary application seeking to invoke this Court's equity jurisdiction and asserting that they are challenging the propriety of injunctive relief ordered by the magistrate court. As the only issue currently on appeal, however, involves the timeliness of appellants' petition for cert, this Court does not have equity jurisdiction over this appeal. See Redfearn v. Huntcliff Homes Assn., Inc., 271 Ga. 745 (524 SE2d 464) (1999); Beauchamp v. Knight, 261 Ga. 608 (409 SE2d 208) (1991). Moreover, although appellants apparently tried to attack the constitutionality of the zoning ordinance, it appears that they first raised this issue at some point after the magistrate court's January 2003 order and, to date, no court has ruled on their constitutional challenge. Therefore, this Court's jurisdiction over constitutional questions does not reach this case either. See Georgia Board of Dentistry v. Pence, 223 Ga. App. 603 (478 SE2d 437) (1996); Raskin v. Wallace, 215 Ga. App. 603, 604 (1) (451 SE2d 485) (1994). For these reasons, this appeal hereby is transferred to the Court of Appeals for resolution.

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.

Lynda M. Stonehouse, Chief Deputy Clerk

, Chief Deputy Clerk

RECEIVED IN OFFICE

APR 30 PM 3:10

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

ATLANTA, MAY 18, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0342

THOMAS ADAMS ET AL V. MADISON COUNTY 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 MAGISTRATE COU is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90029

03MD510T

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 18 2004

*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. Hunt, Jr.

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

ATLANTA, MAY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0343

WILLIAM A. ALBRIGHT V. DEKALB COUNTY, GEORGIA ET AL

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

93029

03CV99474 03CV99484

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 27 2004

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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.

William L. Martin, Jr.

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

ATLANTA, MAY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0344
RAYMOND EDWARD JONES V. GEORGIA DEPARTMENT OF
CORRECTIONS

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

99029

04CV32487

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

MAY 27 2004

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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.

C. Will. L. Martini

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

ATLANTA, MAY 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0345
LATROY DVON BROWN V. THE STATE

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

91029

02R493

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 25 2004**

*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. Z. Martin

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

ATLANTA, MAY 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0346
RACHEL MEDINA F/K/A RACHEL MARIE FARLETT
V. ROBERT JAMES FARLETT, SR.

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

70029

2002V072864N

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 21 2004

*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.

William L. Martin

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

ATLANTA, MAY 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0347
KATHERINE HARRIS V. MICHAEL WERNER

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.

92029

02VS042362C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 2004

*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.

C. Jill. L. Mart; 

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

ATLANTA, MAY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0348
SHAW INDUSTRIES, INC., V. LOUISE MONTGOMERY

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

94029

04CV486

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 27 2004

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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.

C. Jill L. Marti; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 14, 2004

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 **S04C1678**

SHAW INDUSTRIES, INC. v. LOUISE MONTGOMERY

Clerk, Supreme Court of Georgia

Case No. A04D0348

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 17 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

MAY 25 2004

The Court of Appeals hereby passes the following order:

**A04D0349. SOUTHLAND DEVELOPMENT CORPORATION et al. v. LARA
BATTLE et al.**

Defendants Southland Development Corporation, Bryant Properties, Inc., and L & B Properties, Inc. filed this discretionary application seeking review of an order granting the plaintiffs' motion for a temporary restraining order. The application candidly reveals that the application is precautionary in that the applicants believe the order entered is in substance one providing an interlocutory injunction and thus subject to direct appeal.

In the order sought to be appealed, the superior court holds that the "[p]laintiffs have shown an interlocutory injunction is necessary to preserve the status quo pending a final adjudication of this case," and states that the "[d]efendants are enjoined from building and/or preparing any lot within The Southland for the construction of town home style or any other condominiums until this case is fully adjudicated." The application also recites that the order "resulted from a lengthy hearing, at which both parties were present, and introduced abundant documentary evidence."

Based on these facts, including the representations of the defendants, we agree that the limitations on the defendants' conduct ordered by the superior court after the hearing was in substance an interlocutory injunction rather than a temporary restraining order. See *Glynn County Bd. of Tax Assessors v. Haller*, 273 Ga. 649 (2) (543 SE2d 699) (2001); *Dolinger v. Driver*, 269 Ga. 141, 142 (1) (498 SE2d 252) (1998).

The grant of an interlocutory injunction is subject to direct appeal. OCGA §

5-6-34 (a) (4). 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 defendants indicate that they have simultaneously filed a notice of appeal. Thus, OCGA § 5-6-35 (j) does not apply. And, this application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 25 2004

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 Z. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUN 03 2004

A04D0350. STRICKLAND v. THE STATE.

Wayne D. Strickland seeks an appeal from an order of the superior court denying his "Extraordinary Motion to Vacate Judgment and Sentence" premised on the State's failure to establish venue. Strickland's convictions were previously affirmed by unpublished opinion. 251 Ga. App. XXVII (2001). Strickland is in effect attempting to file a second appeal challenging his conviction based on the sufficiency of the evidence. *Collins v. State*, 277 Ga. 586 (591 SE2d 820) (2004); see also *Wright v. State*, ___ Ga. ___ (Appeal No. S04A0551, decided May 3, 2004); *Jordan v. State*, 253 Ga. App. 510, 511 (1) (559 SE2d 528) (2002). Because Strickland is not entitled to a second appeal based on the State's alleged failure to establish venue at trial, his application for discretionary appeal is hereby *dismissed* for lack of jurisdiction.

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

JUN 03 2004

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.

C. Will. L. Maitland, Clerk.

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

ATLANTA, JUNE 22, 2004

The Court of Appeals passed the following order

Case No. A04D0350

WAYNE D. STRICKLAND V. THE STATE

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

96-030
00CR15315B

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22, 2004*

*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.

C. Will. L. Mait; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 8, 2004

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 **S04C1792**

WAYNE DOUGLAS STRICKLAND v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0350

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

JUL 09 2004

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

ATLANTA, MAY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0351

ERIC HILL 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.

98030

01SC12519

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 27 2004**

*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.

C. Jill. L. Mait; [Signature]

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

ATLANTA, MAY 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0352
CITY OF DEMOREST, GEORGIA V. RICK AUSTIN ET AL

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

97030

03CV812W

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

MAY 24 2004

*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.

C. Will. L. Mart; JR

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

ATLANTA, MAY 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0353

DAVID VINCENT 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.

71030

SU98CR1459

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 25 2004

*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.

William Z. Martineau

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

ATLANTA, MAY 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0354
JAMES DEVINCENTIS V. KENNETH W. HODGES 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.

90030

03CV775DB

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 25 2004

*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.

William Z. Martinez

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

ATLANTA, MAY 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0355
JOSEPH B. JOHNSON V. THE STATE

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

93030

2002C29742L

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY-27 2004**

*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.

C. Will. L. Martin, Jr.

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

ATLANTA, JUNE 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0356
GPT 300, INC ET AL V. J. KEITH RIDER

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

99030

04CV118DB

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 08 2004**

*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. Martine

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

ATLANTA,

JUN 14 2004

The Court of Appeals hereby passes the following order:

**A04D0357. WASTE MANAGEMENT OF GEORGIA v. HAROLD F. REHEIS,
DIRECTOR, ENVIRONMENTAL PROTECTION DIVISION,
DEPARTMENT OF NATURAL RESOURCES OF GEORGIA.**

Waste Management of Georgia filed an application for discretionary review of a superior court order affirming the final decision of an administrative law judge. This application is hereby DENIED. The motion by Waste Management for an injunction and supersedeas pursuant to Rule 40 (b) is DISMISSED as moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 14 2004**

*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. Matison, Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 6, 2004

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 **S04C1780**

WASTE MANAGEMENT OF GEORGIA, INC. v. HAROLD F. REHEIS et al.

Clerk, Supreme Court of Georgia

Case No. A04D0357

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 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0358
ON-LINE COMPUTER LOGIC V. DAIVD HODES ET AL

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

98031

2001CV41448

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 28 2004

*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.

C. Will. L. Martin, JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUN 08 2004

A04D0359. STANLEY LEWIS JONES v. THURBERT E. BAKER.

Stanley Lewis Jones filed this application for discretionary appeal on May 14, 2004, from the superior court's April 12, 2004 order¹ denying his request to file a civil action as a pauper. Jones thus filed his application in this Court thirty-two days after the order was entered in the trial court. An application for discretionary appeal must be filed within thirty days of the order appealed. OCGA § 5-6-35 (d). Because Jones filed his application in this Court 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. For this reason, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 08 2004

*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, Jr., Clerk.

¹The copy of the order included with the application indicated that the order was signed "April 8, 2004," but was stamped filed in the superior court clerk's office "March 12, 2004." Upon inquiry by this Court, the superior court clerk's office confirmed that the stamped filed date should have been April 12, 2004, and forwarded a corrected copy of the order to this Court.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **MAY 28 2004**

A04D0365. DAVID F. JOHNSON v. SUSAN HIGGS.

David F. Johnson has filed an application for discretionary review seeking an appeal of a final order, entered on April 26, 2004. He had previously filed a direct appeal, in Case No. A04A1794, of the same order except that the order in the direct appeal was captioned "HABEAS CORPUS."

The record reflects that Johnson commenced a civil action against defendant Susan Higgs. Higgs answered and filed a counterclaim. During the course of pretrial litigation, Johnson filed several motions. He also filed in the same civil action, Civil Action No. 03-OCGA §-707, a Petition For A Writ Of Habeas Corpus Ad Testificandum and a Proposed Order For Writ Of Habeas Corpus Ad Testificandum. Case No. A04A1794, pertaining to an appeal in a Habeas Corpus case, was transferred to the Supreme Court for appropriate appellate jurisdiction.

Except that the words, "HABEAS CORPUS," have been scratched out in ink in the order attached to this application, the orders sought to be appealed in the direct appeal and in this application appear to be the same. The trial court's final orders in both the direct appeal and the application expressly acknowledge, inter alia, that Johnson filed a proposed order to be signed by the court pertaining to his petition or motion for writ of habeas corpus. Thereafter, the trial court ruled that "all above-mentioned motion and proposed orders of petitioner are DENIED and DISMISSED for failure of Johnson to prosecute his action and awarded Higgs compensatory and punitive damages on her counterclaim.

Ga. Constitution of 1983, Article VI, Section VI, Paragraph III (4) provides that

the Supreme Court of Georgia shall have appellate jurisdiction of the following classes of cases "all habeas corpus cases." See also, *Fullwood v. Sivley*, 271 Ga. 248, 249 (517 SE2d 511) (1999). Accordingly, this Court does not have appellate jurisdiction over this application and it is ordered TRANSFERRED to the Supreme Court of Georgia for appropriate appellate disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 28 2004

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.



SUPREME COURT OF GEORGIA
Case No. S04D1603.

Atlanta

JUN 25 2004

The Honorable Supreme Court met pursuant to adjournment.

FILED IN OFFICE

The following order was passed:

JUN 25 2004

**COURT CLERK
CLERK COURT OF APPEALS OF GA**

DAVID F. JOHNSON v. SUSAN HIGGS

RECEIVED IN OFFICE
2004 JUN 25 AM 3:52
Clerk/Court Administrator
COURT OF APPEALS OF GA.

From the Superior Court of Toombs County.

Appellant, a pro se prisoner who filed a civil action against a prison employee for the recovery of personal property, moved the superior court for a writ of habeas corpus ad testificandum pursuant to OCGA §§ 24-10-60 and 24-10-62 asking the court to issue an order compelling the Board of Corrections to produce him for the hearing in his civil action. The superior court misinterpreted his motion as a habeas petition challenging the validity of his incarceration and, upon appellant's failure to appear at the hearing, issued a final order in his case denying and dismissing all his claims for failure to prosecute while awarding both compensatory and punitive damages to the appellee on her counterclaims. Appellant filed a timely application for discretionary appeal of the trial court's April 26, 2004 final order in the Court of Appeals. Based on the trial court's confused ruling regarding appellant's motion for writ of habeas corpus ad testificandum, the Court of Appeals transferred the appeal to this Court asserting that it invoked this Court's jurisdiction over "all habeas corpus cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4). The Court of Appeals erred, however, in equating a petition for writ of habeas corpus ad testificandum with a petition for writ of habeas corpus for the purpose of determining appellate jurisdiction. Rather, it is clear that an appeal from the denial of a writ of habeas corpus ad testificandum is not within this Court's jurisdiction unless the underlying case is one over which this Court would have jurisdiction, see Elrod v. Elrod, 272 Ga. 188 (526 SE2d 339) (2000); Brand v. State, 154 Ga. App. 781 (270 SE2d 206) (1980). Accordingly, as this Court does not have jurisdiction over the underlying case, there exists no basis upon which this Court has jurisdiction over the instant appeal and it hereby is returned 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.

[Signature], Chief Deputy Clerk

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

ATLANTA, JULY 22, 2004

The Court of Appeals passed the following order

Case No. A04D0365

DAVID F. JOHNSON V. SUSAN HIGGS

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

71-031
03CV707

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 22, 2004*

*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, Jr.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 30, 2004

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 **S04C1960**

DAVID F. JOHNSON v. SUSAN HIGGS

Clerk, Supreme Court of Georgia

Case No. A04D0365

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 05 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 22, 2004

The Court of Appeals passed the following order

Case No. A04D0359

STANLEY LEWIS JONES V. THURBERT E. BAKER

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

70-030
2004CV84413

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22, 2004*

*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, Jr.

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

ATLANTA, JUNE 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0360

ISAAC PAYTON V. THE COCA-COLA COMPANY ET AL

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

92030

2004CV81044

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 09 2004**

*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. Mait; JR

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

ATLANTA, JUNE 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0361

THE PROFESSIONAL STANDARDS COMMISSION V. JIMMY ALBERSON

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.

94030

2003CV0009

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 07 2004**

*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.

C. Will. L. Martin, Jr.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 08 2004**

A04D0362. ROBERT LEE CLARK, JR. v. THE STATE.

On May 18, 2004, Robert Lee Clark, Jr., acting pro se, filed an application for discretionary appeal seeking review of the order entered March 26, 2004, denying his motion for new trial and motion to withdraw his guilty plea. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order sought to be appealed. Because Clark did not file his application within 30 days of the date of entry of the order denying his motions, this Court lacks appellate jurisdiction over this application and it is ordered DISMISSED. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 08 2004**

*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.*

E. J. L. Mait; R, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 09 2004**

A04D0363. FLOWERS v. THE STATE.

Joe Flowers' conviction on two counts of child molestation was affirmed by this court in *Flowers v. State*, 255 Ga. App. 660 (566 SE2d 339) (2002). Flowers now seeks an appeal from order of the superior court denying his "Second Amended Motion to Vacate and Set Aside Judgment". In his motion Flowers argued that the indictment was defective and that he received ineffective assistance of counsel due to counsel's failure to raise the issue on appeal. He raised these same issues in his original motion to vacate and set aside judgment. Flowers failed to file a timely appeal from the denial of the original motion, as evidenced by his application to this court for an out-of-time appeal docketed as Application No. A04D0308 (dismissed, April 28, 2004). It follows that Flowers' second motion was a mere motion for reconsideration of the trial court's original ruling. The denial of a motion for reconsideration is not appealable in its own right, nor does it extend the time to appeal a previous order of the court. *Simmons v. State*, 228 Ga. App. 470 (491 SE2d 908) (1997); *Campbell v. State*, 192 Ga. App. 316 (385 SE2d 14) (1989). Moreover, we conclude that what Flowers effectively seeks here is a second appeal from his conviction, to which he is not entitled. See generally *Miller v. State*, 277 Ga. 372 (589 SE2d 108) (2003). For these reasons, Flowers' application for appeal is hereby *dismissed* for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 09 2004**

*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, Jr.

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

ATLANTA, JUNE 10, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0364
RONALD MINOTT V. RANDY BLACK ET AL

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

97031

03C26712

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

JUN 10 2004

*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; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MAY 28 2004

A04D0366. FRANKIE THOMAS SEAGRAVES v. THE STATE.

Frankie Thomas Seagraves filed an application for discretionary appeal from an order denying three motions: his "Extra-Ordinary Out of Time Motion for New Trial Under New Developing Law and Confrontation Clause of the 6th Amed. Fed. Constitution," his "Extra-Ordinary Out-of-Time Motion to Recall and or Quash Void Indictment Under New Developing Law and Confrontation Clause of 6th Amed. Fed. Constitution," and his "Extra-Ordinary Out-of-Time Motion for Supercedeas Bond on Own Recognizance Under New Rule of Law." This court previously affirmed Seagraves' conviction in *Seagraves v. State*, 191 Ga. App. 207 (381 SE2d 523) (1989) and dismissed his appeal from the denial of his "Extraordinary Motion to Arrest Judgement Pursuant to O.C.G.A. § 17-9-4 and O.C.G.A. § 9-11-60 Claim Void Judgement and Lack of Subject Matter Jurisdiction," as an unauthorized second appeal.

Because Seagraves' right to appeal issues related to his underlying conviction has lapsed and he otherwise raises no issue specific to the validity of his sentence, this court lacks jurisdiction to consider his application. *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).

The court observes that to the extent Seagraves challenges certain testimony before the grand jury, "the sufficiency of the legal evidence before a grand jury is not subject to inquiry. And the finding of guilt beyond a reasonable doubt demonstrates that there was probable cause to charge [Seagraves] with the offense for which he was convicted, rendering any possible error harmless." (Citations omitted.) *Fradley v. State*, 245 Ga. App. 832, 834 (538 SE2d 893) (2000).

This application for discretionary appeal is hereby *dismissed* for lack of jurisdiction.

*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.*

C. Will. L. Martin, Jr.
Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 10 2004**

A04D0366. FRANKIE THOMAS SEAGRAVES v. THE STATE

The above discretionary application was filed with this Court on May 21, 2004. After review of the application, this Court issued an order on May 28, 2004, dismissing the application. Thereafter, on June 3, 2004, movant Seagraves filed a Motion for Reconsideration. In contravention of Court of Appeals Rule 41(b), the Motion for Reconsideration was filed as a compound motion containing a "Motion to Compel the Court to Inquire into the Subject Matter of the Jurisdiction", a "Motion for Extraordinary Writ of Assistance" and "Motion to Recuse All Judges."

Upon consideration of the Motion for Reconsideration, the same is hereby DENIED. Since the Motion to Recuse did not comply with the Rule 44 of this Court, that motion is DISMISSED. As the Court is denying the Motion for Reconsideration, the other pending motions are dismissed as MOOT.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 10 2004**

*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.
C. Will. L. Martin, JR.

Court of Appeals of the State of Georgia

ATLANTA,

JUN 15 2004

The Court of Appeals hereby passes the following order:

A04D0367. DOUGLAS MAURICE ARRINGTON v. THE STATE.

Douglas Maurice Arrington filed this discretionary application seeking review of orders denying his extraordinary motions for supersedeas bond and for out of time motion for new trial. Arrington has already challenged his conviction by direct appeal to this court and the judgment was affirmed. *Arrington v. State*, 244 Ga. App. 672 (535 SE2d 337) (2000). This court's affirmance is res judicata. See *Stirling v. State*, 199 Ga. App. 877 (406 SE2d 282) (1991). Because Arrington raises no issue that could not have been raised in his first appeal, and because he otherwise raises no issue that could entitle him to a second appeal in this court, we lack jurisdiction to consider this application for discretionary appeal. See *Daniels v. State*, 244 Ga. App. 522 (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); see also *Goodrum v. State*, 259 Ga. App. 704 (578 SE2d 484) (2003) (motion alleging a "void judgment" does not lie where neither subject matter jurisdiction nor personal jurisdiction is meaningfully challenged and the sentenced rendered is otherwise within legal limits). For these reasons, Arrington's application is hereby DISMISSED for lack of jurisdiction.

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

JUN 15 2004

*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 Z. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 25, 2004

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 **S04C1732**

DOUGLAS MAURICE ARRINGTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0367

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUN 29 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA, JUN 18 2004

The Court of Appeals hereby passes the following order:

A04D0368. BAGGETT, EXR v. BAGGETT, et al.

Jimmy Bob Baggett seeks discretionary review of an order of the superior court denying his motion for summary judgment and granting the respondents' motion for summary judgment. Baggett states that he followed the discretionary appeal procedure because "[p]ermission for an appeal is necessary as provided by OCGA [§] 5-6-35; since the Superior Court's ruling requested to be appealed from came by a de novo proceeding from the Probate Court of Douglas County." OCGA § 5-6-35 (a) (1) does generally require that superior court review by de novo proceedings shall be taken by application for discretionary appeal, "provided, however, that this provision shall not apply to decisions of the Public Service Commission and *probate courts* and to cases involving ad valorem taxes and condemnations." (Emphasis supplied.) See *Clark v. Davis*, 242 Ga. App. 425 (530 SE2d 49) (2000). Because the order at issue here is subject to direct appeal, Baggett's application is hereby *granted* as required under OCGA § 5-6-35 (j).

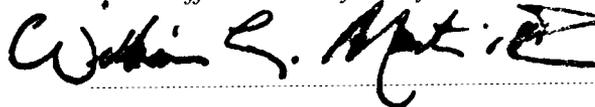
Baggett shall have ten days from the date of this order to file his notice of appeal. The clerk of the superior court is directed to include a copy of this order in the record transmitted to this court.

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

JUN 18 2004

*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.

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

ATLANTA, July 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0369

MARK VICTOR WALTON v. THE STATE

This Court's order of June 15, 2004 is hereby vacated and the attached order is substituted in its place.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta July 12, 2004*

*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. Maitland
....., Clerk.

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

ATLANTA, JUNE 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0369
MARK VICTOR WALTON V. THE STATE

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

91031

96CR0161

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 15 2004**

*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. Matier

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 15 2004**

A04D0369. Walton v. The State

Applicant Mark Victor Walton seeks discretionary review of the trial court's order denying his Extraordinary Motion for New Trial. The order Walton seeks to appeal was entered by the trial court on April 12, 2004. This application was filed on May 21, 2004. However, this court may not consider the merits of an application for discretionary appeal unless it is filed within 30 days of the entry of the order that is the subject of the application. OCGA § 5-6-35 (d). Because Walton's application was not filed within 30 days, it is untimely. Accordingly, this application is ordered DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

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

JUN 15 2004
*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.*

C. Will. L. Martin, Jr., Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 26, 2004

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 **S04C1901**

MARK VICTOR WALTON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0369

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 28 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0370

TERRY CAPE V. THE STATE

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

70031

02CN149

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 14 2004

*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.

William Z. Mat... [Signature]

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

ATLANTA, JUNE 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0371
SAM M. THORNTON V. JANE A. THORNTON INTVELDT

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.

92031

031115634

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 16 2004

*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, Jr.

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

ATLANTA, JUNE 21, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0372
NANCY CREEK CONSTRUCTORS, INC., ET AL V. CARLOS
F. CINTRON

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.

94031

2004CV81946

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 21 2004

*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.

William L. Maitland

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

ATLANTA,

JUN 14 2004

The Court of Appeals hereby passes the following order:

A04D0373. NATHANIEL PETERS, JR. v. THE STATE.

Nathaniel Peters, Jr., pro se, filed this discretionary application seeking an appeal from an order denying a motion to modify sentence. The motion to modify sentence does not maintain that the sentence is illegal or void. Peters's motion is in substance a motion to reconsider the sentence, the denial of which is not subject to appellate review. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Because Peters's application fails to show that it is timely with respect to any final judgment or revocation of probation, and because the order denying a motion to modify sentence is not appealable, his application is hereby **DISMISSED** for lack of jurisdiction.

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

JUN 14 2004

*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. Matison, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 21 2004**

A04D0374. IN THE INTEREST OF: L.R.M., A CHILD.

Né Chanta Alexander seeks an appeal from an order of the juvenile court denying her motion to set aside the disposition entered in her son's delinquency case. Alexander's motion was filed within 30 days of the disposition order. Moreover, it was within the juvenile court's discretion to grant a motion for new trial based on Alexander's assertion that the disposition was influenced by perjured testimony. *Geo. A. Hormel & Co. v. Ramsey*, 62 Ga. App. 343 (7 SE2d 789) (1940). Because Alexander's motion may be treated in part as a timely motion for new trial, the discretionary appeal procedure does not apply to the order disposing of her motion. See *Martin v. Williams*, 263 Ga. 707 (438 SE2d 353) (1994). Alexander's application for appeal is therefore *granted* as required under OCGA § 5-6-35 (j).

Alexander shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is directed 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 21 2004**

*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, Jr., Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 16 2004**

A04D0375. Cindie Foster d/b/a Southeastern Properties v. Stinnett

Cindie Foster d/b/a Southeastern Properties ("Foster") seeks discretionary review of the trial court's denial of her motion for summary judgment. On April 19, 2004, the trial court denied Foster and Eric and Tracy Stinnett's cross motions for summary judgment. Foster seeks discretionary review pursuant to *Scruggs v. Georgia Department of Human Resources*, 261 Ga. 587 (408 SE2d 103) (1991). However, contrary to Foster's assertions, *Scruggs* requires compliance with the interlocutory appeal requirements set forth in OCGA § 5-6-34 (b) for review of a non-final order. Foster has failed to follow the proper appellate procedure. Accordingly, this Court lacks jurisdiction to consider this application, and this application is ordered *dismissed* as premature.

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

JUN 16 2004
*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. Meade, Jr., Clerk.

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

ATLANTA, JUNE 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0376

COFFEE CHRYSLER PLYMOUTH V. GLENN C. DAVIS

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.

97032

2004S020188

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 15 2004

*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.

T. Mat... [Signature]

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 0 1 2004**

A04D0377. CALVIN OLIVER v. THE STATE.

Calvin Oliver has filed an application for discretionary appeal with this Court of the order denying his motion to declare judgment void pursuant to OCGA § 17-9-4. The judgment that he seeks to declared void arises from his conviction for murder and burglary. See *Oliver v. State*, 276 Ga. 665 (581 SE2d 538).

The underlying subject matter of an appeal generally controls in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467 (448 SE2d 192) (1994). The underlying subject matter of Oliver's application is to overturn his conviction of offenses that include murder. In *State v. Thornton*, 253 Ga. 524 (1) (322 SE2d 711) (1984), the Supreme Court of Georgia directed that all appeals in murder cases shall be decided by that Court. Accordingly, this Court does not have appellate jurisdiction over this application and it is ordered TRANSFERRED to the Supreme Court of Georgia.

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

JUN 0 1 2004
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, Jr., Clerk.

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

ATLANTA, JUNE 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0378
EDWINA D. MINNIEFIELD V. LESTER SCRUGGS

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

90032

03A140382

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 15 2004

*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. Mait; JR

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

ATLANTA, JUNE 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0379

COLLIN LANDIS V. JODY LOVE

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

93032

03SC1458

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 16 2004

*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.

C. Jill. L. Martine

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

ATLANTA, JUNE 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0380

CHARLES EMERSON RAINEY V. DAWN RENEE LANGE ORMOND
ET AL

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

99032

02CV00266

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 29 2004

*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. Marti, Jr.

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

ATLANTA, JUNE 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0381

KIMSARAH, LLC D/B/A COMPADRES V. U.S. FOOD SERVICE, INC.

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

91032

04GR017651E

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 28 2004**

*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.

William L. Martini

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

ATLANTA, JUNE 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0382

KENNETH MCMILLAN 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.

70032

01C28243

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 22 2004

*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, Jr.

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

ATLANTA,

JUN 18 2004

The Court of Appeals hereby passes the following order:

A04D0383. GLENN ORLANDO WINFIELD v. THE STATE.

On Thursday, June 3, 2004, Glenn Orlando Winfield filed an application for discretionary appeal of the order, entered July 15, 2003, revoking his probation and from the order, entered on May 3, 2004, denying his motion for new trial of the judgment of conviction and sentence arising from Indictment No. 03CR56042. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of entry of the order, decision, or judgment sought to be appealed.

This application is untimely because it was not filed within 30 days of the date of entry of any of the orders sought to be appealed. Accordingly, this application is ordered DISMISSED.

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

JUN 18 2004

*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 R. Matier Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUN 25 2004**

A04D0384. SANDRA ELAINE YOUNG v. DENNIS PAUL MAILE.

Sandra Elaine Young filed this application for discretionary appeal from the superior court's April 29, 2004 order denying her motion to set aside a judgment. The application was docketed in this Court on June 4, 2004, 36 days after the superior court's order was entered. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Young filed her application in this Court more than thirty days after entry of the order she seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. For this reason, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 25 2004

*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. Maitland, Clerk.

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

ATLANTA, JULY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0385
STEVEN GREENSPAN V. CHERYL L. BROWN

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

95033

2003CV70134

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

JUL 06 2004

*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. Mart; JR

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

ATLANTA, JULY 22, 2004

The Court of Appeals passed the following order

Case No. A04D0385

STEVEN GREENSPAN V. CHERYL L. BROWN

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

95-033
2003CV70134

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 22, 2004*

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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. Martini

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 10, 2004

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 **S04C2014**

STEVEN GREENSPAN v. CHERYL L. BROWN

Clerk, Supreme Court of Georgia

Case No. A04D0385

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 11 2004

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 30 2004**

A04D0386. REDFORD v. NUNNALLY, et al.

Mike Redford has filed both a timely notice of appeal and an application for appeal from an order denying his "motion in arrest of judgment." Because the order complained of is not subject to the discretionary appeal procedure and Redford has already filed a direct appeal from the same order, his application for appeal is hereby *dismissed* as superfluous.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 30 2004**

*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.*

C. Jill L. Maitland, Clerk.

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

ATLANTA, JULY 21, 2004

The Court of Appeals passed the following order

Case No. A04D0386

MIKE REDFORD V. DEANN NUNNALLY ET AL

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

96-033
04A26998

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 21, 2004*

*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 L. Martini

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 12, 2004

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 **S04C1818**

MIKE REDFORD v. DEANN NUNNALLY et al.

Clerk, Supreme Court of Georgia

Case No. A04D0386

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 15 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0387
TED AND GLADY'S SONS, INC. V. KENDRICK'S SOUTHERN
EXPOSURE, INC.

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

98033

01CV0271

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 24 2004

*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.

C. Will. L. Mart; JR

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

ATLANTA, JUNE 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0388
PAUL N. PSAREAS V. DONNA L. COTE

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

97033

03CV0899

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

JUN 29 2004

*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. Mart; R

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

ATLANTA, JUNE 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0389
JOAN COOL V. ST. JOSEPH'S HEALTH SYSTEM

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.

71033

03A149521

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN 28 2004**

*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. Mat; [Signature]

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

ATLANTA, JUNE 22, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0390
HAROLD SPRADLEY D/B/A HAROLD SPRADLEY CONSTRUCTION
V. CHRISTOPHER WAYNE BRISTOL

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

90033

04C117

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 22 2004

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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. Mait; [Signature]

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

ATLANTA, JULY 07, 2004

The Court of Appeals passed the following order

Case No. A04D0390

HAROLD SPRADLEY D/B/A HAROLD SPRADLEY CONSTRUCTION
V. CHRISTOPHER WAYNE BRISTOL

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

90-033
04C117

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 07, 2004*

*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 Z. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 22, 2004

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 **S04C1898**

HAROLD SPRADLEY, d/b/a HAROLD SPRADLEY CONSTRUCTION v. CHRISTOPHER WAYNE BRISTOL

Clerk, Supreme Court of Georgia

Case No. A04D0390

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 28 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 25, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0391
STANLEY SEARS V. MACON WATER AUTHORITY

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.

93033

04CV24126

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

JUN 25 2004

*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.

C. Will. L. Martin, Jr.

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

ATLANTA,

JUL 7 2004

The Court of Appeals hereby passes the following order:

A04D0392. FORD v. THE STATE.

Kenny R. Ford seeks an appeal from an order denying his Request to Proceed in Forma Pauperis with respect to a motion for out-of-time appeal and to vacate his guilty plea. Since Ford's motion remains pending in the court below, Ford was required to apply for an appeal under the interlocutory appeal procedure, OCGA § 5-6-34 (b). Because the order complained of was not certified for immediate review by the court below, Ford's application is hereby *dismissed* as premature. *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 7 2004

*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.*

William Z. Martineau, Clerk.

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

ATLANTA, JULY 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0393
BRENDA K. ROBINSON V. THE STATE

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

91033

89R381

94R500

95R428

98R211

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 07 2004

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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.

William L. Martin

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

ATLANTA,

JULY

01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0394

BRYANT L. RAWLS ET AL V. THE STATE

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

70033

02V0841

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

JUL 01 2004

*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. Mait; JR

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 15, 2004

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 **S04C1838**

BRYANT L. RAWLS et al. v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0394

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 29 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JUNE 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0395
SHEPHERD LOGGING & CHIPPING ET AL V. IMA JEAN WELCH

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

92033

20040210S

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 28 2004**

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the minutes of the Court of Appeals of Georgia*

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Clerk.

Will. L. Marti, Jr.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 29, 2004

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 **S04C1927**

SHEPHERD LOGGING & CHIPPING et al. v. IMA JEAN WELCH

Clerk, Supreme Court of Georgia

Case No. A04D0395

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 06 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JULY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0396
NATIONAL UNION FIRE INSURANCE COMPANY V. DIANE
RENEE FREEMAN

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

97036

2000A1856A

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

JUL 06 2004

*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.

C. Will. L. Marti, Jr.

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

ATLANTA, JULY 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0397

DARNELL NOLLEY 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 Juvenile Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95034

10704J051112

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 06 2004**

*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. Mait; JR

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

ATLANTA, JULY 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0398

1690 COBB L.L.C. D/B/A WATERPIPE WORLD, ET AL V. CITY OF MARIETTA

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

96034

031617834

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 07 2004

*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. Z. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 27, 2004

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 **S04C1906**

STARSHIP ENTERPRISES OF ATLANTA, INC., d/b/a STARSHIP et al. v. CITY OF MARIETTA et al.

Clerk, Supreme Court of Georgia

Case No. A04D0398

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 28 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JULY 07, 2004

The Court of Appeals passed the following order

Case No. A04D0399

LESTER SCRUGGS V. GWINNETT COUNTY HEALTH DEPARTMENT

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

90-034
03A140382

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 07, 2004*

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Will. L. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

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Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: July 27, 2004

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 **S04C1903**

LESTER SCRUGGS v. GWINNETT COUNTY HEALTH DEPARTMENT

Clerk, Supreme Court of Georgia

Case No. A04D0399

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

JUL 28 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JULY 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0400

GREG JOSEPH THEISMANN V. JESSICA D. PONDER

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

98034

03V0337

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

JUL 14 2004

*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. Mart; JR

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

ATLANTA, JULY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0401
RANDALL DAVID MILLWOOD V. THE STATE

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

97034

M02CR0328

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 09 2004

*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.

C. Will. L. Martin, Jr.

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

ATLANTA, JULY 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0402
TIMOTHY D. ADAMS V. MARSHALL HORNE, AS COMMISSIONER
OF THE GEORGIA DEPARTMENT OF MOTOR VEHICLE SAFETY

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

71034

03SUCV819W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 14 2004

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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. Mait; [Signature]

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 2, 2004

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 **S04C1954**

TIMOTHY D. ADAMS v. MARSHAL HORNE, Comr.

Clerk, Supreme Court of Georgia

Case No. A04D0402

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 05 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0403
PITT'S PROPERTIES, INC., ET AL V. AUBURN BANK

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

93034

04CV256

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 15 2004**

*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. Maiti
Clerk.

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

ATLANTA, JULY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0404

DAVID MEREDITH BOWERS, JR. V. MARGARET PEARSON

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.

99034

2003V271

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 09 2004

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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. Matz, Jr.

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

ATLANTA, JULY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0405

DENNIS C. ADAMS, II V. BETTY LOUANN ADAMS

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

91034

04MV039H

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

JUL 09 2004

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Clerk.

C. Will. L. Mait; JR

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

ATLANTA, JULY 08, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0406

ROYCE EVANS MCPHETERS V. SUSAN K. MCPHETERS

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

70034

200301645

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 08 2004

*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. Mart; JR

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

ATLANTA, JULY 01, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0407
JOHN A. KAHLIG V. KAY MARTINEZ

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.

92034

03SC1461

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 01 2004

*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. Martine

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

ATLANTA, JULY 09, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0408
DEISI CEVALLOS V. FIELDALE FARMS

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

94034

04CV1031C

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

JUL 09 2004

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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.

C. Jill. L. [Signature]

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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0409
FREDERICK RAMONE ROBINSON V. THE STATE

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

95035

54470 52163

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

JUL 15 2004

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the minutes of the Court of Appeals of Georgia*

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Clerk.

Will. L. Mart; R

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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0410

AIRBORNE FREIGHT V. HP MANAGEMENT SERVICES, INC

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

96035

03GR016501

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

JUL 15 2004

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Clerk.

Will. L. Mart; R

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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0411
VINCENT CASTELLI V. YULIYA CASTELLI

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

98035

2003CV71754

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 15 2004

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

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Clerk.

C. Will. L. Martin, Jr.

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

ATLANTA, JULY 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0412
LINDA R. DAVIS V. BRUCE T. DAVIS

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.

97035

04A12962

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUL 16 2004**

*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. Mart; [Signature]

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

ATLANTA, JULY 14, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0413
BRENDA STOUT V. MARK E. FARRAR

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

71035

00CV0251

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 14 2004

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the minutes of the Court of Appeals of Georgia*

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Will. L. Marti^{Clerk.}

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

ATLANTA, AUGUST 02, 2004

The Court of Appeals passed the following order

Case No. A04D0413

BRENDA STOUT V. MARK E. FARRAR

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

71-035
00CV0251

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 02, 2004*

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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.



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

ATLANTA, JULY 15, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0414

GWENDOLYN R. PORTERFIELD V. E. RUSSELL PORTERFIELD

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

90035

03A142381

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 15 2004

*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, JULY 28, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0415
NEW YORK LIFE INSURANCE ET AL V. JOY JENNINGS

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

93035

04A049537

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 28 2004

*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.*

C. Jill L. Maiti^{Clerk}

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

ATLANTA, AUGUST 02, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0416

RABUN APPAREL/FRUIT OF THE LOOM ET AL V. DEDRA JUSTUS

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

99035

04CV182C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 02 2004**

*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.

C. J. L. Mart; R

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

ATLANTA, JULY 26, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0417
ALLEN THACHER ASSOCIATES, INC., D/B/A TECHNOLOGY
SYSTEMS V. CHRIS WATSON

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

91035

03A150953

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 26 2004

*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. Mait; JR

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

ATLANTA, JULY 29, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0418

TEXACO TEMPLE V. THE STATE

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

70035

99R8604

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 29 2004

*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. Mant; JR

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: JUL 14 2004

A04D0419. WENDI PRYOR v. THE STATE.

Wendi Pryor was tried and acquitted of theft by deception in the State Court of Clayton County. At trial, her defense counsel filed a "Motion for Complete Recordation and Transcript of all Proceedings" at the state's expense on the grounds that Pryor was indigent. The trial court granted the motion but following Pryor's acquittal the proceedings were never transcribed.

Pryor subsequently filed a civil suit for damages in the Superior Court of Clayton County against the alleged victim, Value City. Pryor also filed a post-judgment motion in the state court seeking a transcript of the criminal proceedings at the state's expense or, in the alternative, at her own expense.

On June 3, 2004, the state court entered a final order denying the post-judgment motion. Pryor filed a timely application for discretionary appeal and did not file a notice of appeal seeking a direct appeal of the state court's post-judgment order. Because the order complained of constitutes a final disposition of a post-judgment matter not enumerated under OCGA § 5-6-35 (a) and because no timely

application for direct appeal has been filed, Pryor's application is ordered GRANTED under OCGA § 5-6-35 (j).

Pryor 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 JUL 14 2004

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,

The Court of Appeals hereby passes the following order: **JUL 22 2004**

A04D0420. JACQUELINE WATSON v. PATRICIA FRNKA.

On June 25, 2004, Jacqueline Watson filed this application for discretionary appeal from a judgment entered against her on May 26, 2004, which granted Patricia Frnka attorney fees as provided by OCGA § 9-15-14. An application for discretionary appeal *must* include a copy of the judgment for which an appeal is sought. OCGA § 5-6-35 (d). This Court will not docket a discretionary application absent a copy of the judgment being appealed. Court of Appeals Rule 32 (b). Watson's application, however, did not contain a copy of the May 26, 2004 judgment awarding OCGA § 9-15-14 attorney fees. After being notified of such omission, Watson resubmitted an application on July 2, 2004, which contained the requisite judgment sought to be appealed. However, this Court may not consider the merits of an application for discretionary appeal unless it is filed within 30 days of the entry of the order that is the subject of the application. OCGA § 5-6-35 (d). Because Watson's application was not filed within 30 days, it is untimely. Accordingly, this application is ordered DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 22 2004**

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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.

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

ATLANTA, JULY 20, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0421
KIRK GORDON MILLER V. THE STATE

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

94035

01CR359

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

JUL 20 2004

*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, III

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: August 9, 2004

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 **S04C2028**

KIRK GORDON MILLER v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0421

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 12 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0422

CHARLES LAMONT MILLER V. J.M. SIKES ET AL

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

95036

04CV077

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 04 2004

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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,

The Court of Appeals hereby passes the following order: **SEP 20 2004**

A04D0422. MILLER v. SIKES, et al.

The applicant's motion for reconsideration is hereby dismissed as untimely.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 20 2004**

*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.*

C. Will. L. Maitland, Clerk.