

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

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**Docketing Date: December 23, 2011**

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 **S12C0716**.

**TIMOTHY JACKSON v. THE STATE**

Clerk, Supreme Court of Georgia

JAN - 6 2012

Case No. A12D0135

A12D0139

A12D0158

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0716

Atlanta, April 24, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

TIMOTHY JACKSON v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.

A12D0135

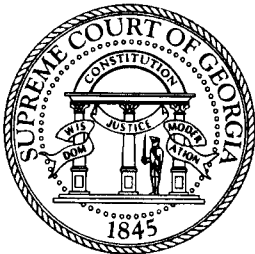
A12D0139

A12D0158

RECEIVED IN OFFICE  
2012 MAY -9 PM 1:00  
CLERK/COUNT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 09, 2012



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.

*Lia C. Hilton*, Chief Deputy Clerk

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

ATLANTA,            DECEMBER 20, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A12D0159

TRAVIS CLINE V. ALISON LOVE

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

96013

10F00083



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    DEC 20 2011*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            JANUARY    23, 2012

*The Court of Appeals passed the following order*

Case No. A12D0159

TRAVIS CLINE V. ALISON LOVE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 23, 2012*

*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.*

*Hally K. O. Sparrow*



# Court of Appeals of the State of Georgia

ATLANTA, DEC 27 2011

*The Court of Appeals hereby passes the following order:*

**A12D0160. Don Acree v. Nancy Pickering (Acree).**

On November 28, 2011, Don Acree filed his pro se application for discretionary review, challenging the attorney's fees awarded in a final order and judgment entered by the trial court on October 24, 2011, in an action for defamation, equitable relief, and damages. We dismiss the application.

First, under OCGA § 5-6-35 (a) (10), "[a]ppeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14" must be taken by application for discretionary appeal. Final orders adjudicating fee claims under OCGA § 13-6-11, however, are directly appealable. See *Kraft v. Dalton*, 249 Ga. App. 754, 755 n. 2 (549 SE2d 543) (2001). Pickering's amended complaint shows that she sought a fee award under OCGA § 13-6-11, not OCGA § 9-15-14. Therefore, the trial court's order is directly appealable. Acree filed a timely notice of appeal from that order. Thus, his application for discretionary appeal is superfluous.

Second, a discretionary application must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Acree filed his application 35 days after the order from which he appeals. Therefore, his application is untimely. Accordingly, for the reasons stated above, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, DEC 27 2011*

*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.*

*Hally K. O. Spaw*....., Clerk.

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

ATLANTA,            DECEMBER 21, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0161  
INSOURCE EMPLOYER SOLUTIONS, INC., ET AL V.  
RANDALL SADLER ET AL

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

97013

2011CV056



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 21 2011

*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.*  
*Hally K. O. Spawor*

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

ATLANTA,            DECEMBER 27, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0162

CHARLES E. THOMPSON ET AL V. ROBERT REINHERT

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.

93014

MISC # 89



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    DEC 27 2011*

*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.*

*Hally K. O. Spencer*    Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, December 19, 2011

*The Court of Appeals hereby passes the following order:*

**A12D0163. ALEX HIGDON v. JANE REID HIGDON.**

In this divorce matter, Alex Higdon filed this application for discretionary appeal from the trial court's September 27, 2011 order denying his motion to recuse the trial judge. "Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992).

Although the trial court entered a final divorce decree on June 7, 2011, a motion for new trial remains pending below. Under these circumstances, the trial court's recusal order is interlocutory. And OCGA § 5-6-35, the discretionary appeal statute, does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). See *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996). Accordingly, Higdon's failure to comply with the interlocutory appeals procedures and obtain a certificate of immediate review deprives this Court of jurisdiction, and this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, DEC 19 2011*

*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.*

*Hally H. O. Spencer*....., Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, JANUARY 11, 2012

Honorable Court of Appeals hereby passes the following order:

A12D0163. ALEX HIGDON v. JANE HIGDON

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

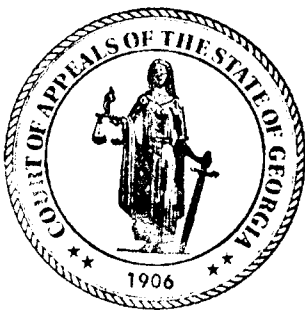
93-015

2010CV184629

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JAN 11 2012

*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.*  
*Hally K. O. Sparrow*

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

ATLANTA,            DECEMBER 27, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A12D0164

TODD CASEY V. COBB COUNTY BOARD OF COMMISSIONERS

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

92014

1118757



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    DEC 27 2011*

*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.*

*Hally K. O. Spawor* Clerk.



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

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**Docketing Date: January 17, 2012**

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 **S12C0804**.

**TODD CASEY v. COBB COUNTY BOARD OF COMMISSIONERS**

Clerk, Supreme Court of Georgia

JAN 18 2012

Case No. A12D0164

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0804

Atlanta, May 07, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

TODD CASEY v. COBB COUNTY BOARD OF COMMISSIONERS

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

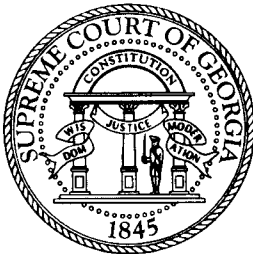
All the Justices concur.

Court of Appeals Case No.  
A12D0164

RECEIVED IN OFFICE  
2012 MAY 23 PM 1:03  
CLERK OF COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 22, 2012



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, DEC 27 2011

*The Court of Appeals hereby passes the following order:*

**A12D0165. IN THE INTEREST OF: M. MC., T. MC., AND T. MC.,  
CHILDREN (MOTHER).**

Katherine McClendon, the mother of minor children, M. Mc., T. Mc., and T. Mc., filed an application for discretionary appeal seeking to challenge the trial court's order granting the Polk County Department of Family and Children Services' motion for nonreunification. "An order within a deprivation proceeding deciding temporary custody of the child is a 'final order,' within the meaning of OCGA § 5-6-34 (a) (1), from which a direct appeal lies." *In the Interest of S. J.*, 270 Ga. App. 598, 608 (1) (a) (607 SE2d 225) (2004).

Ordinarily, when a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v State*, 204 Ga App 582 (420 SE2d 393) (1992). The trial court's order was entered on October 31, 2011, and McClendon filed her application on December 1, 2011, 31 days after entry of the trial court's order. Accordingly, her application is untimely and must be DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, DEC 27 2011*

*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.*

*Hally K. A. Spawr* \_\_\_\_\_, Clerk.

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

ATLANTA,            DECEMBER 28, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0166

TRACY WATSON D/B/A BOWDON PAWN AND JEWELRY

V. JESS JEWELRY DESIGNS, INC., D/B/A AMERICAN RING SOURCE

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

91014

08S01935



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    DEC 28 2011*

*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.*

*Holly K. O. Spawr*            Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, DEC 30 2011

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2012 JUL -3 PM 1:09  
CLERK'S OFFICE / REGISTRAR  
COURT OF APPEALS OF GA.

*The Court of Appeals hereby passes the following order:*

**A12D0167. Duane E. Blocker v. Taneshia C. Scott.**

Duane E. Blocker seeks discretionary review of four orders, the most recent of which was entered on February 17, 2011. We lack jurisdiction because his application is untimely.

To be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Blocker filed his application on December 1, 2011, 287 days after the court's most recent order was entered. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,* DEC 30 2011

*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.*

*Holly K. O. Spencer*, Clerk.

S12C1144

FILED IN OFFICE  
MAR 28 2012

Adrian J. Wood  
SUPREME COURT OF GEORGIA

Court of Appeals  
of the State of Georgia

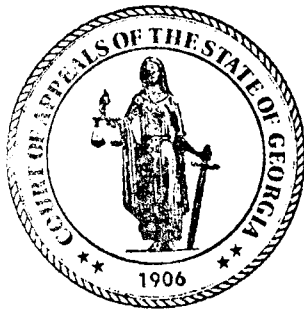
ATLANTA, MARCH 13, 2012

*The Court of Appeals passed the following order*

Case No. A12D0167

DUANE E. BLOCKER SR., V. TANESHIA C. SCOTT

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAR 13, 2012*

*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.*

*Hally K. O. Sparrow*

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COURT OF APPEALS OF THE STATE OF GEORGIA



S12C1144

FILED IN OFFICE  
MAR 28 2012

Adrian J. Wood  
SUPREME COURT OF GEORGIA

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

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**Docketing Date: March 23, 2012**

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 **S12C1144**.

**DUANE E. BLOCKER v. TANESHIA SCOTT**

Clerk, Supreme Court of Georgia

3/29/12

Case No. A12D0167

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1144

Atlanta, June 18, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DUANE E. BLOCKER v. TANESHIA SCOTT

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.

A12D0167

RECEIVED IN OFFICE  
2012 JUL -3 PM 1:09  
CLERK'S OFFICE  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta July 03, 2012



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.

*Lia C. Pittman*, Chief Deputy Clerk

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

ATLANTA,            DECEMBER 22, 2011

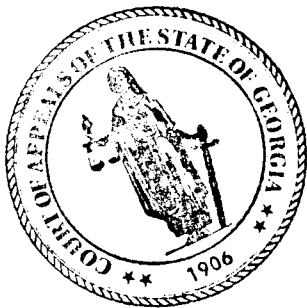
*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0168  
JAMES DAVID WHITE V. THE STATE 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 SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

71014

07CR189



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 22 2011

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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.*

*Holly K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, December 21, 2011

*The Court of Appeals hereby passes the following order:*

**A12D0169. BILAL A. RASHEED v. BANK OF NEW YORK MELLON, F/K/A  
BANK OF NEW YORK, AS TRUSTEE et al.**

Bilal A. Rasheed seeks discretionary review of an order entered by the Magistrate Court of Fulton County in this dispossessory action. “The only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court.” *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). In other words, a party aggrieved by a magistrate court ruling must first seek review in the state or superior court.

It appears that Rasheed filed an appeal in the state court on November 22, 2011, but before the state court could rule on his case, he filed an application for discretionary appeal to this Court from the magistrate court’s December 1, 2011 denial of his motion to vacate the writ of possession. Because we can only address magistrate court matters that have been reviewed by the state or superior court, we have no authority to consider his application. See *id.*; *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990). Jurisdiction over Rasheed’s appeal, therefore, lies below.

The Georgia Constitution requires that “[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.” 1983 Ga. Const., Art 6, § 1, ¶ 8; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this appeal is hereby TRANSFERRED to the State Court of Fulton County for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**DEC 21** 2011

*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.*

*Hally A. O. Spawort*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 5, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0170. DUANE E. BLOCKER SR., et al v. THE STATE.**

Duane E. Blocker, Sr., filed this application for discretionary appeal seeking to challenge a June 1, 2010 order entering a nolle prosequi as to criminal charges against Montanez Carmichael. According to Blocker, who was the alleged victim of the crime, the dismissal of the charges against Carmichael violated due process. We, however, lack jurisdiction to consider Blocker's application.

It is "elementary that no person is entitled to prosecute a writ of error for the reversal of a judgment unless that person was a party to the proceeding in which the judgment complained of was rendered." (Punctuation omitted.) *Gates v. Rutledge*, 151 Ga. App. 844 (261 SE2d 757) (1979). Here, Blocker was not a party to the proceeding sought to be appealed, and he thus lacks standing to bring this application. See *Id.*; see also *In the Interest of J. C. H.*, 224 Ga. App. 708, 710 (2) (482 SE2d 707) (1997); OCGA § 5-6-33 (a) (1).

Moreover, Blocker's application was not timely. Although the court entered its order on June 1, 2010, this application was not filed until December 6, 2011. To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Accordingly, Blocker's application – filed 553 days after entry of the trial court's order – is untimely. For these reasons, this application is hereby DISMISSED.



*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.*

*Hally H. O. Spencer* ..... , Clerk.



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

ATLANTA,            JANUARY    31, 2012

*The Court of Appeals passed the following order*

Case No. A12D0170

DUANE E. BLOCKER SR., ET AL V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 31, 2012*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,

DECEMBER 30, 2011

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0171

JULIAN VASQUEZ V. HOLLANDER CONSTRUCTION, INC., ET AL

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

98014

11CV2377



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 30 2011

*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.*

*Hally K. O. Lawrence*

Clerk.

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

ATLANTA,            MARCH            19, 2012

*The Court of Appeals passed the following order*

Case No. A12D0171

JULIAN VASQUEZ V. HOLLANDER CONSTRUCTION, INC., ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    MAR 19, 2012*

*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.*

*Hally K. O. Spawr*

Clerk.

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

ATLANTA,                      JANUARY      04, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0172

DANIEL L. MOBLEY V. THE STATE

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

97014

2004CR0364



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            JAN - 4 2012*

*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.*

*Hally H. O. Spanow*

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2012 NOV 23 AM 8:33  
CLERK OF APPEALS OF GEORGIA

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2012 DEC 3 AM 8:33

CLERK OF APPEALS OF GEORGIA

S12C0807

FILED IN OFFICE

JAN 20 2012

*Adrian S. Woods*

SUPREME COURT OF GEORGIA

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

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**Docketing Date: January 10, 2012**

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 **S12C0807**.

**DANIEL L. MOBLEY v. THE STATE**

Clerk, Supreme Court of Georgia

JAN 18 2012

Case No. A12D0172

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0807

Atlanta, September 10, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DANIEL L. MOBLEY v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur, except Blackwell, J., disqualified.

Court of Appeals Case No.  
A12D0172

DEC - 3 2012

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta September 25, 2012



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, December 22, 2011

*The Court of Appeals hereby passes the following order:*

## **A12D0173. STEPHANIE JACKSON et al. v. JAN LYNN KETCHERSID.**

Stephanie Jackson filed a notice of appeal in an action for damages for which the judgment was less than \$10,000, which was docketed in this Court as Case No. A11A0967. This Court dismissed her appeal for lack of jurisdiction on July 8, 2011, for failure to comply with the discretionary appeal procedures.

After the remittitur to the trial court, Jackson filed a "Motion for Nunc Pro Tunc," requesting that the trial court re-enter the judgment to afford her the opportunity to file an application for discretionary appeal. The defendant opposed the motion and requested attorney's fees, pursuant to OCGA § 9-15-14. The trial court denied the motion and awarded the defendant attorney's fees in an order dated September 19, 2011. Jackson moved for reconsideration of the trial court's order, which was denied on November 9, 2011. Jackson filed this application for discretionary appeal on December 9, 2011.

Although Jackson had a right to appeal the trial court's September 19 order awarding attorney's fees, she did not do so in a timely manner. An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Here, Jackson filed her application within 30 days of the trial court's order denying the motion for reconsideration but 81 days after the order awarding attorney's fees. A trial court's order denying a motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Moreover, a motion for reconsideration does not extend the time for filing an appeal from an underlying order. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994).



Because Jackson's application for discretionary appeal is untimely, it is hereby DISMISSED for lack of jurisdiction. See 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,*

DEC 22 2011

*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.*

*Hally H. O. Spawr*....., Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, DEC 27 2011

*The Court of Appeals hereby passes the following order:*

## **A12D0174. RICARDO SANTIAGO v. THE STATE.**

On October 25, 2011, Ricardo Santiago filed an application for discretionary appeal, seeking to appeal the trial court's September 22, 2011 order denying a motion for reconsideration.<sup>1</sup> According to his application, Santiago sought reconsideration of the trial court's August 11, 2011 order denying a motion for sentence modification.

An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Here, however, Santiago filed his application 33 days after the trial court's order denying the motion for reconsideration and thus it is untimely. Furthermore, Santiago has no right to appeal the order denying his motion for reconsideration, which is not an appealable order. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Although Santiago may have had a right to appeal the trial court's August 11 order denying his request for sentence modification, his filing of a motion for reconsideration did not extend the time in which he could seek an appeal. See *id.* For these reasons, we lack jurisdiction to consider this application for discretionary appeal, which is hereby DISMISSED. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

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<sup>1</sup> Santiago filed his application in the Supreme Court, which transferred the matter to this Court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, DEC 27 2011*

*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.*

*Hally K. O. Spawor* ..... , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, JANUARY 20, 2012

Honorable Court of Appeals hereby passes the following order:

A12D0174. RICARDO SANTIAGO v. THE STATE

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

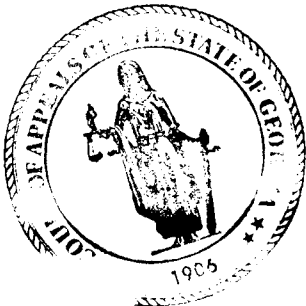
90-015

2009R562

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JAN 20 2012

*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.*

*Hally K. O. Sparrow*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: January 26, 2012**

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 **S12C0883**.

RICARDO SANTIAGO v. THE STATE

Clerk, Supreme Court of Georgia

FEB -2 2012

Case No. A12D0174

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0883

Atlanta, May 07, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**RICARDO SANTIAGO v. THE STATE**

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0174

RECEIVED IN OFFICE  
2012 MAY 23 PM 1:03  
CLERK'S COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 22, 2012



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.

*Lia C. Pittman*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, January 5, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0175. Timothy Jackson v. The State.**

On December 7, 2011, Timothy Jackson filed an application for discretionary appeal. In his application, he argues that (1) the trial court erroneously denied his request for an out-of-time appeal, and (2) his guilty plea was invalid. The only order attached to Jackson's application, however, is a November 2, 2011, order denying his "Motion for Order Based on Instant Petition for Open Records Act."

Pursuant to OCGA § 5-6-35 (c) and Court of Appeals Rule 31 (b), an application for discretionary review must include a copy of the order being appealed. Here, Jackson has not included any order addressing his request for an out-of-time appeal, nor any order addressing the validity of his guilty plea. Accordingly, we are unable to determine whether his application was filed within 30 days of the order(s) he challenges. See OCGA § 5-6-35 (d) (providing that an application must be filed within 30 days of entry of the order). Moreover, his application is untimely as to the only order he did include, as it was filed 35 days after that order was entered. See *id.*

As the applicant, Jackson bears the burden of establishing that his application should be granted. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989). Given the dearth of information he provided with his application, we are unable to assume jurisdiction. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989) ("The requirements of O.C.G.A. § 5-6-35 are jurisdictional and this court cannot accept an appeal not made in compliance therewith."). Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**JAN - 5 2012**

*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.*

*Hally H. O. Spawar*

*, Clerk.*



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

ATLANTA,            MARCH            14, 2012

*The Court of Appeals passed the following order*

Case No. A12D0175

TIMOTHY JACKSON V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    MAR 14, 2012*

*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.*

*Hally K. O. Spawor*

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

ATLANTA,                      JANUARY      04, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.              A12D0176

IN THE INTEREST OF: A. S., A CHILD (FATHER)

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.

91015

14711J0709 &

14711J0710, 14711J0711



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN - 4 2012

*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.*

*Hally K. O. Spanos*

# Court of Appeals of the State of Georgia

ATLANTA, December 21, 2011

*The Court of Appeals hereby passes the following order:*

**A12D0177. RONALD F. FOX v. CENTENNIAL PARK NORTH  
TOWNHOMES ASSOCIATION, INC.**

Ronald F. Fox filed an application for discretionary appeal from the trial court's order granting summary judgment to Centennial Park North Townhomes Association, Inc. Orders granting summary judgment are subject to direct appeal. See OCGA § 9-11-56 (h). If a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). Thus, this application for discretionary appeal is hereby GRANTED.

It appears that Fox has already filed a notice of appeal. If he has not, however, Fox shall have 10 days from the date of this order in which 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,*

**DEC 21 2011**

*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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA,            DECEMBER 30, 2011

*The Court of Appeals hereby passes the following order:*

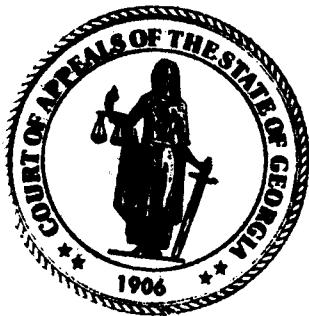
APPLICATION NO.        A12D0178

TERRY LEWALLEN V. PILGRIM'S PRIDE ET AL

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

71015

2011CV2468



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    DEC 30 2011*

*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.*

*Hally K. O. Lawrence*    Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 4, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0179. JORGE PINEDA-CAMPOS v. THE STATE.**

Jorge Pineda-Campos filed an application for discretionary appeal from the trial court's October 11, 2011 order denying his motion for sentence modification.<sup>1</sup> The denial of a timely motion to modify under OCGA § 17-10-1 (f) is subject to direct appeal. See, e.g., *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008); *Maldonado v. State*, 260 Ga. App. 580 (580 SE2d 330) (2003). Accordingly, this application for discretionary appeal is GRANTED pursuant to OCGA § 5-6-35 (j).

Pineda-Campos shall have ten days from the date of this order to file a notice of appeal with the trial court. If he has already filed a notice of appeal from the order at issue, he need not file a second notice. The clerk of the trial 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,*

*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.*

*Hally H. O. Spencer*, Clerk.

---

<sup>1</sup> Pineda-Campos filed this application with the Supreme Court, which transferred the matter to this Court.

# Court of Appeals of the State of Georgia

ATLANTA, January 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0180. Kenneth Lee Faulkner v. The State.**

In June 2009, Kenneth Lee Faulkner entered a guilty plea to aggravated child molestation and child molestation and was sentenced to 20 years, to serve 10 in prison and the remainder on probation. In July 2011, Faulkner filed a motion to vacate and set aside the judgment, arguing that it failed to accurately reflect his plea agreement. On November 10, 2011, Faulkner filed an application for discretionary appeal in the Supreme Court, complaining that the trial court had failed to issue any ruling on his motion to vacate. The Supreme Court transferred the application here upon finding that it lacked jurisdiction.

To the extent that Faulkner seeks to appeal his June 2009 final disposition, his application is untimely. See OCGA § 5-6-35 (d) (applications for discretionary appeal must be filed within 30 days of the order on appeal). To the extent that he seeks review of his motion to vacate and set aside, the trial court apparently has not yet ruled on that motion. "Inasmuch as we are a court for the correction of errors, we do not consider issues which were not raised below and ruled on by the trial court." *Ward v. State*, 299 Ga. App. 826, 827 (683 SE2d 894) (2009). In the absence of a ruling by the trial court, we have nothing to review. *Amica v. State*, 307 Ga. App. 276, 282 (2) (704 SE2d 831) (2010). Because this application for discretionary appeal is untimely from the only order attached, it is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta,* JAN 11 2012

*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.*

*Hally K. O. Spaw*....., Clerk.

512C1000

FILED IN OFFICE  
FEB 29 2012

Adrian P. Wood  
SUPREME COURT OF GEORGIA



# Court of Appeals of the State of Georgia

ATLANTA, FEB - 6 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0180. Kenneth Lee Faulkner v. The State.**

On November 10, 2011, Kenneth Lee Faulkner filed an application for discretionary appeal in the Supreme Court, seeking review of his motion to vacate and set aside the judgment of conviction that had been entered against him two years before. The Supreme Court transferred the application to this Court. We dismissed it because Faulkner had not included any order from the trial court ruling on his motion to vacate. Faulkner has now filed a motion for reconsideration, attaching a copy of the trial court's order, entered November 9, 2011, denying his motion to vacate.

Under Court of Appeals Rule 37 (e),

[a] reconsideration will be granted . . . only when it appears that the Court overlooked a material fact in the record, a statute or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.

See *Frazier v. State*, 311 Ga. App. 293, 297-298 (715 SE2d 712) (2011). A motion for reconsideration is not a means of supplementing an application with materials that should have been included with the original filing. In any event, we note that the trial court's order denying the motion to vacate does not appear to be erroneous.

For these reasons, Faulkner's motion for reconsideration is DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, FEB - 6 2012*

*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.*

*Hally H. O. Lawton*, Clerk.

SI 2C1000

FILED IN OFFICE

FEB 29 2012

*Adrian D. Woods*

SUPREME COURT OF GEORGIA

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

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**Docketing Date: February 16, 2012**

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 **S12C1000**.

**KENNETH LEE FAULKNER v. THE STATE**

Clerk, Supreme Court of Georgia

FEB 28 2012

Case No. A12D0180

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1000

Atlanta, May 29, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

KENNETH LEE FAULKNER v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0180

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta June 13, 2012

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.



*Lia C. Britton*, Chief Deputy Clerk

RECEIVED IN OFFICE  
2012 JUN 14 AM 10:00  
CLERK OF APPEALS OF GEORGIA

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

ATLANTA,            JANUARY    09, 2012

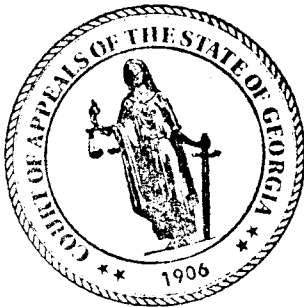
*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.            A12D0181  
JOHNNY ALLEN MARTIN V. THE STATE

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

98015

00CR01572



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN - 9 2012**

*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.*

*Hally K. O. Spaword*

# Court of Appeals of the State of Georgia

ATLANTA, January 9, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0182. Addie Belinda Smith v. The State.**

On September 28, 2011, the superior court entered an order denying Addie Belinda Smith's Extraordinary Motion for New Trial. On November 1, 2011, Smith filed an application for discretionary appeal from this ruling.<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Smith filed her application 34 days after entry of the order she seeks to appeal. The application is thus untimely, and it is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**JAN - 9 2012**

*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.*

*Hally K. O. Spaworth*, Clerk.

---

<sup>1</sup> Smith filed her application in the Supreme Court, which transferred the matter to this Court.

# Court of Appeals of the State of Georgia

ATLANTA, JAN 25 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0182. Addie Belinda Smith v. The State.**

Addie Belinda Smith filed an application for discretionary appeal on November 1, 2011, seeking to appeal the trial court's September 28, 2011 order denying her extraordinary motion for new trial. The untimely application was dismissed for lack of jurisdiction. Smith has filed a motion for reconsideration, arguing that she did not receive a copy of the trial court's order in time to file her application. Regardless of the reason, this Court lacks jurisdiction to consider an untimely application for appeal. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989).

If Smith's right to apply for an appeal was frustrated due to the trial court's failure to send her a copy of the order, her remedy is to petition the trial court to vacate and re-enter the order as a means of correcting the problem. See *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980). Because the Court is without jurisdiction to consider this untimely application on the merits, Smith's motion for reconsideration is hereby DENIED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, JAN 25 2012

*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.*

*Holly K. O. Spencer*, Clerk.



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

ATLANTA,            JANUARY    13, 2012

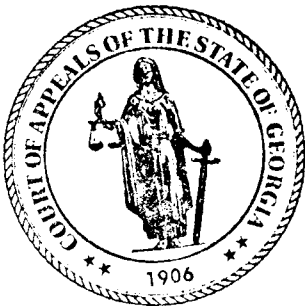
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A12D0183  
SATUNDRA SLADE V. MARK BUTLER, COMMISSIONER OF  
GEORGIA DEPARTMENT OF LABOR, 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.

93016

2011CV198092



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 13 2012**

*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.*  
*Hally K. O. Spawar*

# Court of Appeals of the State of Georgia

ATLANTA, DEC 29 2010

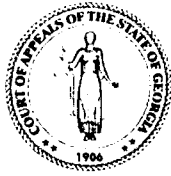
*The Court of Appeals hereby passes the following order:*

**A11D0184. PERLMAN v. PERLMAN.**

During the divorce proceedings of Scott Perlman and Rachel Perlman, the superior court awarded sole custody of their two children to Rachel Perlman. In October 2010, Scott Perlman sought family violence protective orders on behalf of each child, and the trial court entered ex parte temporary protective orders awarding Scott Perlman temporary custody of the children. One month later, the trial court dismissed the ex parte temporary protective orders, directed that the children be returned to Rachel Perlman's custody, and ordered that Rachel Perlman be allowed to leave the state with the children. Scott Perlman then filed this application.

Under OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody or holding or declining to hold persons in contempt of such child custody judgment or orders" are now directly appealable. See also *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704-05 (1) (678 SE2d 152) (2009); OCGA § 19-9-41 (4) (defining "child custody proceeding" as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue.").

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Scott Perlman's application is **GRANTED**. He shall have ten days from the date of this order to file a notice of appeal with the trial court, if he has not already done so. See OCGA § 5-6-35 (g). The clerk of the trial 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, DEC 29 2010*

*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.*

*Hally H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, JAN 23 2012

*The Court of Appeals hereby passes the following order:*

**A12D0184. Benjamin Henderson v. Georgia State Board of Workers' Compensation.**

Benjamin Henderson filed an application for discretionary appeal from a superior court order dismissing his civil action against the Georgia State Board of Workers' Compensation. We dismissed this application on the ground that Henderson had failed to include a copy of the order he wished to appeal. Henderson now seeks reconsideration of our dismissal. It appears that Henderson did, in fact, submit a copy of the order in question, but the copy became separated from his application and therefore was not reviewed. Accordingly, Henderson's motion for reconsideration is GRANTED, and his application is REINSTATED.

Upon review, the superior court order dismissing Henderson's complaint is directly appealable.<sup>1</sup> We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Henderson shall have ten days from the date of this order to file a notice of appeal with the superior court. If, however, he has already filed a notice of appeal, he need not file a second notice. The clerk of the superior court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

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<sup>1</sup> Although related to Henderson's prior workers' compensation case, this is an action for damages against the Board itself. Therefore, OCGA § 5-6-35 (a) does not apply here.



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

**JAN 23 2012**

*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.*

*Hally K. O. Spencer*....., Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 11, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0185. IN RE: VETA MAE CHRISTIE-SMITH, DECEASED.**

Eric Smith, administrator of the estate of Veta May Christie-Smith, filed an application for discretionary review from the probate court's order denying his motion for reconsideration.<sup>1</sup> On October 7, 2011, the probate court entered an order, which, among other things, ordered that counsel for Smith reimburse the estate for monies paid on account of legal fees and expenses. Smith filed a motion for reconsideration requesting that the court reconsider its award on the issue of attorney's fees. On November 17, 2011, the court denied the motion for reconsideration. Smith filed the instant application on December 15, 2011.

Although Smith had a right to appeal the trial court's October 7 order awarding attorney's fees, he did not do so in a timely manner. An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Here, Smith filed his application within 30 days of the trial court's order denying the motion for reconsideration, but 69 days after the order denying attorney's fees. A trial court's order denying a motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Moreover, a motion for reconsideration does not extend the time for filing an appeal from an underlying order. See *Cheeley-Towns v. Rapid Group, Inc.*,

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<sup>1</sup> The applicant does not state the reason he proceeded by application, rather than by direct appeal. The trial court's order does not appear to decide the issue of attorney's fees under OCGA § 9-15-14, which requires that an applicant follow the discretionary appeal procedures. OCGA § 5-6-35 (a) (10). In any event, this Court lacks jurisdiction due to the untimeliness of Smith's appeal.

212 Ga. App. 183 (441 SE2d 452) (1994).

Because Smith's application for discretionary appeal is untimely, it is hereby DISMISSED for lack of jurisdiction. See 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,* JAN 11 2012

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0186. SUNDAY N. UDOINYION v. MICHELIN NORTH AMERICA, INC.**

Sunday N. Udoinyion filed this application for discretionary appeal from the trial court's November 16, 2011 order denying his motion to recuse the trial judge.<sup>1</sup> "Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992). Accordingly, Udoinyion's failure to comply with the interlocutory appeals procedures and obtain a certificate of immediate review deprives this Court of jurisdiction, and this application is hereby DISMISSED.<sup>2</sup>

---

<sup>1</sup> Udoinyion, who is pro se, styled the motion as one for "Permission to Make Request/Motion for the Transfer of the Above Case to Another Court Judge." It is clear from the substance of the motion that Udoinyion sought recusal of the trial judge.

<sup>2</sup> Udoinyion provided scant material with his application regarding the underlying case. We note, however, that we recently affirmed the grant of summary judgment in *Udoinyion v. Michelin North America, Inc.*, Ga. App. (Case Number A11A2411, decided Dec. 8, 2011). To the extent this recusal motion pertains to that case, we note that the issue is almost certainly moot. See *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997) (a matter is moot when a ruling would have no practical effect on the alleged controversy or when the issues have ceased to exist).





*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**JAN 11 2012**

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hereto affixed the day and year last above written.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 12, 2012

*The Court of Appeals hereby passes the following order:*

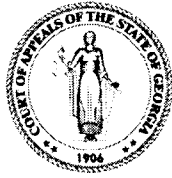
## **A12D0187. Jimmy Arnold v. The State.**

Jimmy Arnold has filed a pro se application for discretionary appeal from the trial court's order denying his motion to vacate sentence and set aside a void conviction. The trial court's order was entered on June 4, 2010, and Arnold filed his application on November 22, 2011.<sup>1</sup>

Pretermitted whether Arnold had a right of direct appeal from the trial court's order, we lack jurisdiction because his application is untimely. An application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Arnold filed his application 536 days after entry of the order he seeks to appeal. His application is thus untimely, and it is hereby DISMISSED for lack of jurisdiction.

---

<sup>1</sup> Arnold filed his application in the Supreme Court, which transferred the matter to us.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

*JAN 12 2012*

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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.*

*Hally K. O. Spawor* \_\_\_\_\_, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, MARCH 13, 2012

Honorable Court of Appeals hereby passes the following order:

A12D0187. JIMMY ARNOLD v. THE STATE

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

94-016

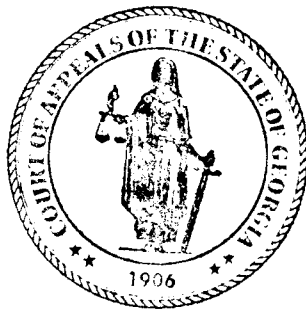
Z67799 & Z87428

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 13 2012**

*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.*

*Holly K. O. Spanos*

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

ATLANTA,            JANUARY    06, 2012

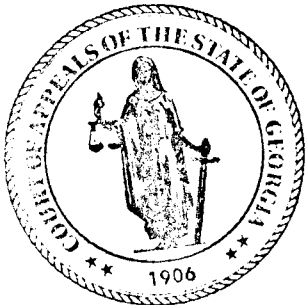
*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.        A12D0188  
TONY LEE GARNER V. MARTHA JEAN BAKER

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

71016

10CV00592



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN - 6 2012*

*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.*

*Holly K. O. Sparrow*

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

ATLANTA,            JANUARY    11, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.        A12D0189

RICHARD D. POWELL V. GEORGIA DEPARTMENT OF LABOR

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

95016

10A07387



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 11 2012**

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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.*

*Hally K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, January 10, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0190. ALFRED BURGEST, JR. v. THE STATE.**

Alfred Burgest, Jr., was found guilty of armed robbery and possession of a firearm during the commission of a crime, and his conviction was affirmed on appeal. See *Burgest v. State*, 231 Ga. App. 25 (497 SE2d 623) (1998). In 2011, Burgest filed a motion alleging that his conviction was void.<sup>1</sup> By order entered December 2, 2011, the trial court dismissed this motion, and Burgest filed this application for discretionary appeal.

A motion seeking to challenge an allegedly void judgment of conviction “is not one of the established procedures for challenging the validity of a judgment in a criminal case. Because [Burgest] was not authorized to seek relief from his criminal convictions pursuant to a motion to vacate or correct a void conviction, there is nothing for this Court to review and his [application for discretionary] appeal is subject to dismissal.” (Citations omitted.) *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010). See also *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009) (overruling *Chester v. State*, 284 Ga. 162, 162-163 (2) (664 SE2d 220) (2008)); *Matherlee v. State*, 303 Ga. App. 765 (694 SE2d 665) (2010). This application is therefore DISMISSED for lack of jurisdiction.

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<sup>1</sup> Burgest has filed other motions seeking to challenge his allegedly void sentence, which have been denied. He has attempted to appeal these rulings, and his appeals have been dismissed. See Case Number A07A1771, dismissed May 21, 2007 and Case Number A10A1435, dismissed October 25, 2010.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 10 2012*

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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.*

*Hally H. O. Spencer*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, January 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0191. Southern Guaranty Insurance Company (“SGIC”) et al v. Erin Bethany Lecroy.**

Southern Guaranty Insurance Company (“SGIC”), defendant in the case below, has filed an application to appeal from the trial court’s November 30, 2011, order. In that order, the court granted the plaintiff’s motion for partial summary judgment and denied SGIC’s motion for summary judgment.<sup>1</sup>

Pursuant to OCGA § 9-11-56 (h), the grant of summary judgment on any issue or as to any party is reviewable by direct appeal. *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989). Therefore, the order in this case is subject to direct appeal.

We will grant an otherwise timely application for either interlocutory or discretionary appeal if the lower court’s order is subject to direct appeal. See *Spivey v. Hembree*, 268 Ga. App. 485, 486 n.1 (602 SE2d 246) (2004); OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED, and SGIC shall have ten days from the date of this order to file a notice of appeal with the trial court. If SGIC has already filed a notice of appeal, it need not file a second notice. The clerk of the trial court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

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<sup>1</sup> Although SGIC appears to seek interlocutory review, the application was titled “Application for Leave to File Discretionary Appeal” and was docketed as such.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 11 2012*

*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.*

*Hally H. O. Spawor*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 12, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0192. In the Interest of: D. W. H. & C. G. H., Children (Father).**

In July 2011, the juvenile court entered an order terminating the father's parental rights to these two minor children. The father filed a timely motion for new trial. On November 16, 2011, the trial court entered an order denying that motion. Thirty-three days later, on December 19, 2011, the father filed this application for discretionary appeal.

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 requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because this application was not timely filed, it is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, JAN 12 2012*

*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.*

*Hally H. O. [Signature]*, Clerk.

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

ATLANTA, JANUARY 12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0193

MEI YU ZHENG V. NEW GRAND BUFFET, INC., ET AL

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

97016

2011CV03981



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 12 2012

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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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, March 30, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0193. MEI YU ZHENG v. NEW GRAND BUFFET, INC., ET AL.**

Mei Yu Zheng filed an application for discretionary appeal seeking review of the award of the State Board of Workers' Compensation (the Board). We denied the application on the merits, and Zheng filed a motion for reconsideration.

Having reviewed Zheng's motion for reconsideration, in which Zheng supports her argument that the Board erred, Zheng's motion is hereby *GRANTED*; this Court's prior order denying the application is *VACATED*; and the application is *REINSTATED* and *GRANTED*.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR 30 2012*

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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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA,            JANUARY    12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.        A12D0194  
RODNEY RICHARDSON V. THE STATE

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

93017

08CR39



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 12 2012

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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.*  
*Hally K. O. Spaw*

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

ATLANTA,            JANUARY    11, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0195  
ASHLEY FLOYD 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.

92017

09CR3331



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 11 2012**

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hereto affixed the day and year last above written.*

*Clerk.*

*Holly K. A. Spawr*

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

ATLANTA, JANUARY 11, 2012

*The Court of Appeals hereby passes the following order:*

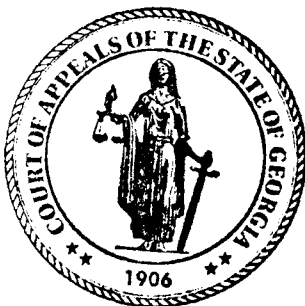
APPLICATION NO. A12D0196

IN THE INTEREST OF: T. G., A CHILD (FATHER)

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.

90017

1101915 & 1101944



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 11 2012

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the minutes of the Court of Appeals of Georgia*

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*Clerk.*

*Hally K. O. Spawr*



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

ATLANTA,            JANUARY    12, 2012

*The Court of Appeals hereby passes the following order:*

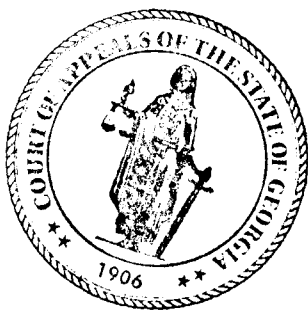
APPLICATION   NO.            A12D0197

ROBERTO BAEZ V. GEORGIA DEPARTMENT OF CORRECTIONS,  
ET AL

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

91017

2011S01



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 12 2012

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hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Spaw*

# Court of Appeals of the State of Georgia

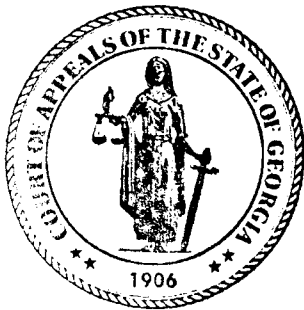
ATLANTA, APRIL 04, 2012

Honorable Court of Appeals hereby passes the following order:

A12D0197. ROBERTO BAEZ v. GEORGIA DEPARTMENT OF CORRECTIONS.

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

91-017



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **APR - 4 2012**

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*Clerk.*

*Hally H. O. Spencer*

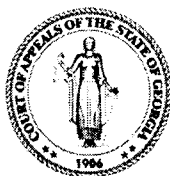
# Court of Appeals of the State of Georgia

ATLANTA, January 10, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0198. J. DUNCAN PRICE v. MARK BUTLER, COMMISSIONER OF  
THE GEORGIA DEPARTMENT OF LABOR, ET AL.**

On August 25, 2011, the superior court entered an order affirming a decision of the Georgia Department of Labor's Board of Review to disqualify J. Duncan Price from receiving unemployment compensation benefits. On December 21, 2011, Price filed an application for discretionary appeal in this Court. 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 requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Price filed this application 118 days after entry of the order he seeks to appeal. The application is untimely and, accordingly, is hereby **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**JAN 10 2012**

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*Hally H. O. Spencer*

, Clerk.

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

ATLANTA,            JANUARY    17, 2012

*The Court of Appeals hereby passes the following order:*

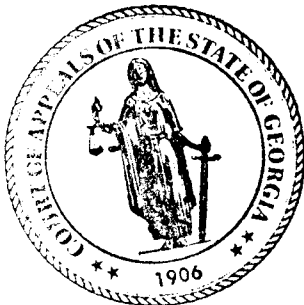
APPLICATION   NO.            A12D0199

KEVIN RAMONE ROBERSON V. THE STATE

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

71017

2011CR0482



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 17 2012**

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*Clerk.*

*Hally K. O. Spencer*

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

ATLANTA,            JANUARY    18, 2012

*The Court of Appeals hereby passes the following order:*

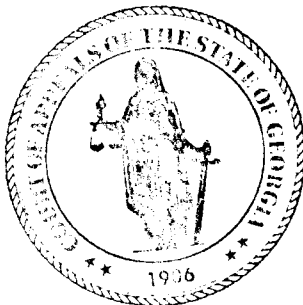
APPLICATION    NO.            A12D0200

THE MEDICAL CENTER, INC., V. CELVIN HERNANDEZ -  
ALVARADO

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.

95017

SU11CV3496



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            JAN 18 2012*

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hereto affixed the day and year last above written.*

*Hally K. O. Sparrow*  
Clerk

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

ATLANTA,            JANUARY    12, 2012

*The Court of Appeals hereby passes the following order:*

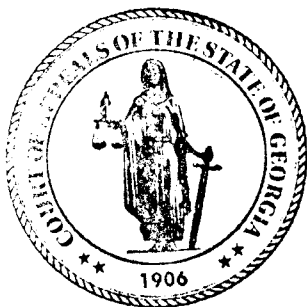
APPLICATION   NO.            A12D0201

FERNANDO ACEVES V. THE STATE

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

99017

05B5524



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 12 2012

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

*Clerk.*

*Hally K. O. Spaw*

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

ATLANTA,            JANUARY    18, 2012

*The Court of Appeals hereby passes the following order:*

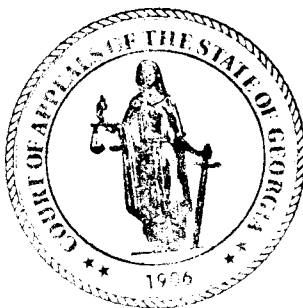
APPLICATION   NO.            A12D0202

CELVIN HERNANDEZ ET AL V. ATLANTA DRYWALL, LLC 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.

95018

SU11CV3496



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 18 2012

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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.*

*Hally K. O. Sparrow*

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

ATLANTA,            JANUARY    12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.            A12D0203

IN THE INTEREST OF: J.A.G. AND A.M.G. ( MOTHER)

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

96017

11JUV00269 &  
11JUV00270



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 12 2012

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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.*

*Holly K. O. Spencer*



# Court of Appeals of the State of Georgia

ATLANTA, January 27, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0204. Darrell Brown v. The State of Georgia.**

In 2004, Darrell Brown received a life sentence after he was convicted of multiple offenses, including aggravated assault, aggravated battery, kidnapping with bodily injury, and possession of a firearm or knife during commission of a felony. His convictions were affirmed on appeal. See *Brown v. State*, 275 Ga. App. 99 (619 SE2d 789) (2005).

On December 28, 2011, Brown filed the instant application for discretionary review. Although Brown does not specify what trial court order he seeks to appeal, he has attached several orders to his application – the most recent of which was entered on November 15, 2011. We lack jurisdiction because his application is untimely.

To be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Brown filed his application 43 days after the trial court's most recent order was entered. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 27 2012*

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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.*

*Holly H. O. Spawor* \_\_\_\_\_, Clerk.

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

ATLANTA,            JANUARY    19, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0205

WILMA CARPENTER V. TY COBB MEMORIAL HOSPITAL 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.

97017

11FV723



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 19 2012

*I certify that the above is a true extract from  
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*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Hally K. O. Spaw*

*Clerk.*

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

ATLANTA,                      JANUARY      24, 2012

*The Court of Appeals hereby passes the following order:*

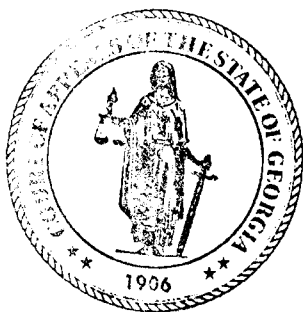
APPLICATION    NO.                      A12D0206

ROBERT CLARK V. DENNIS BLACKMON, JUDGE

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

70018

04CR00093



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta                      JAN 24 2012*

*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.*

*Hally K. O. Sparrow*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: February 01, 2012**

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 **S12C0902**.

ROBERT CLARK v. DENNIS BLACKMON

Clerk, Supreme Court of Georgia

FEB - 7 2012

Case No. A12D0206

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0902

Atlanta, October 01, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROBERT CLARK v. DENNIS BLACKMON

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby ~~writ~~ denied.

All the Justices concur.

Court of Appeals Case No.

A12D0206

RECEIVED IN OFFICE  
2012 OCT 22 PM 4:18  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta October 18, 2012

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.



*Lia C. Britton*, Chief Deputy Clerk

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

ATLANTA,            JANUARY    18, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.        A12D0207  
IN THE INTEREST OF: M.R., (MOTHER)

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.

93018

02811J0535



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 18 2012

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA,

January 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0208. Brendan Jenkins v. Stacey Jenkins.**

Brendan Jenkins filed a petition for modification of child custody, which the trial court denied. He then filed the instant application for discretionary appeal of the trial court's order.

Under OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody" are now directly appealable. Because Jenkins's appeal stems from a petition for modification of child custody that was filed after January 1, 2008, it is directly appealable under this provision. See *Harris v. Williams*, 304 Ga. App. 390, 390 n.1 (696 SE2d 131) (2010).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Jenkins shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal from the order at issue, he need not file a second notice. The clerk of the trial 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 26 2012*

*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.*

*Halley K. O. Spawson*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, FEB - 6 2012

*The Court of Appeals hereby passes the following order:*

**A12D0208. Brendan Jenkins v. Stacey Jenkins.**

On January 26, 2012, we granted Brendan Jenkins's application for discretionary appeal from the trial court's December 9, 2011, order. Jenkins has now filed an emergency motion to stay the effect of that same trial court order.

Pursuant to Rule 40 (b), we may issue such orders as are necessary to prevent the contested issue from becoming moot. "This power will be exercised sparingly." See Ga. Ct. App. R. 40 (b). Jenkins has not shown that a Rule 40 (b) order is necessary to prevent this appeal from becoming moot. Accordingly, his emergency motion is DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, FEB - 6 2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 25, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0209. Michael Lake v. Leslie Tagye.**

On October 18, 2011, the trial court entered a stalking twelve-month protective order against Michael Lake. On November 18, 2011, Lake filed an application for discretionary appeal in the Supreme Court, which subsequently transferred the application here.

To be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Lake filed his application 31 days after entry of the protective order he seeks to appeal. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 25 2012*

*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.*

*Hally K. O. Spawor* ..... , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 25, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0210. MONTFORD v. THE STATE.**

Beauprue Montford filed this discretionary application seeking review of the trial court's denial of his motion to withdraw his guilty plea, pursuant to the court's grant of his motion for an out of time appeal. However, no application for appeal is required to appeal from the denial of a motion to withdraw a guilty plea. *Murray v. State*, 265 Ga. App. 119, 120 (592 SE2d 898) (2004). Therefore, this application for appeal is *GRANTED*, as OCGA § 5-6-35 (j) requires. Montford shall have ten days from the date of this order to file a notice of appeal with the Superior Court of DeKalb County, which is instructed 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, JAN 25 2012

*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.*

*Hally K. O. Spaw*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 30, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0211. ETHEL JERALDINE WASHINGTON, et al. v. FEDERAL HOME  
LOAN MORTGAGE CORPORATION.**

After the magistrate court entered a writ of possession, Ethel Jeraldine Washington appealed to superior court. In an order entered on October 6, 2011, the superior court dismissed the appeal. The court also ruled that Federal Home Loan Mortgage Corporation ("Freddie Mac") was entitled to a writ of possession. On December 31, 2011, Washington filed an application for discretionary appeal in this Court.

Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994). OCGA § 44-7-56 provides that an appeal from any dispossession judgment – such as the one here – must be filed within seven days of the date the judgment was entered. See *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999). Accordingly, Washington's application for discretionary appeal – filed 86 days after the order on appeal – is untimely, and it is thus DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 30 2012*

*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.*

*Hally H. O. Lammert* ..... , Clerk.

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

ATLANTA,            FEBRUARY   03, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.            A12D0212

DANNY HAWK V. GRADY HOSPITAL

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

71018

2011CV202990



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    FEB   3   2012*

*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.*

*Hally K. O. Spawor*    Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, January 24, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0213. Steve Carr v. City of Atlanta.**

Steve Carr sued the City of Atlanta for a declaratory judgment that his property is entitled to the legal status of a nonconforming use. The trial court granted the City's motion for summary judgment, and Carr filed this application for discretionary appeal. This application, however, is not an appeal from a decision of a superior court reviewing an administrative decision, as contemplated by OCGA § 5-6-35 (a) (1). Thus, the trial court's summary judgment order was directly appealable. See *Harrell v. Little Pup Development Construction, Inc.*, 269 Ga. 143, 144 (1) (498 SE2d 251) (1998).

Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, this application is hereby GRANTED. Carr shall have 10 days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. The superior court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta,* **JAN 24 2012**

*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.*

*Hally H. O. Spaw*, Clerk.

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

ATLANTA,            JANUARY    27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0214

IN THE INTEREST OF: J. M., A CHILD (FATHER)

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.

96018

11DE00129



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            JAN 27 2012*

*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.*  
*Hally K. O. Sparrow*



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

ATLANTA,            JANUARY    27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0215  
PERRY LEE HENDERSON V. THE STATE

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

98018

2004CR29



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            JAN 27 2012*

*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.*

*Hally K. O. Spencer*

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

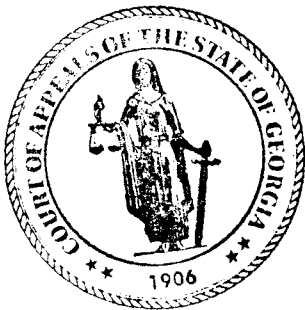
ATLANTA,            MARCH            21, 2012

*The Court of Appeals passed the following order*

Case No. A12D0215

PERRY LEE HENDERSON V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    MAR 21, 2012*

*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.*

*Hally K. O. Spencer*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 03, 2012**

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 **S12C1222**.

PERRY LEE HENDERSON v. THE STATE

Clerk, Supreme Court of Georgia

APR - 6 2012

Case No. A12D0215

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1222

Atlanta, October 01, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

PERRY LEE HENDERSON v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur, except Blackwell, J., disqualified.

Court of Appeals Case No.

A12D0215

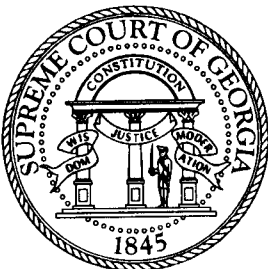
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2012 NOV 15 AM 9:16  
CLERK/COUNT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta October 18, 2012

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.



*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

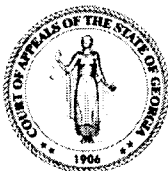
ATLANTA, January 25, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0216. Monesha Lackley v. The State.**

Monesha Lackley filed an application for discretionary appeal from the trial court's order denying her motions for modification of sentence. From the limited materials submitted with the application, it appears that Lackley filed her motions for sentence modification within one year of the imposition of her sentence. If so, her motions were timely, and Lackley would have a right of direct appeal from the order. See OCGA § 17-10-1 (f); *Bowen v. State*, 307 Ga. App. 204 (704 SE2d 436) (2010); *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Lackley shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, she has already filed a notice of appeal from the order at issue, she need not file a second notice. The clerk of the trial 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 25 2012*

*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.*

*Hally K. O. Spencer*, Clerk.

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

ATLANTA, JANUARY 27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0217

IN THE INTEREST OF: C. S. C., J. M., AND D. C., CHILDREN (MOTHER)

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.

96019

11DE00129



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JAN 27 2012*

*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.*

*Hally K. O. Spencer*

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

ATLANTA,            JANUARY    30, 2012

*The Court of Appeals hereby passes the following order:*

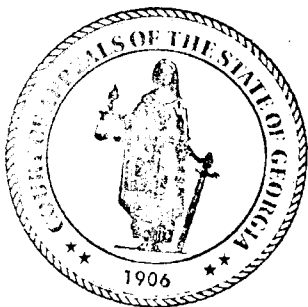
APPLICATION NO.        A12D0218

IN THE INTEREST OF: S. R. C. J., A CHILD (MOTHER)

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.

70019

1100234



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 30 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            JANUARY    27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.            A12D0219

IN THE INTEREST OF: H. T. H., H. A. H., CHILDREN (MOTHER)

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

93019

11001152



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 27 2012**

*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.*

*Hally K. O. Spanow*



# Court of Appeals of the State of Georgia

ATLANTA, FEB 3 2012

*The Court of Appeals hereby passes the following order:*

**A12D0220. James I. West, Jr., et al. v. Clayton County, Georgia.**

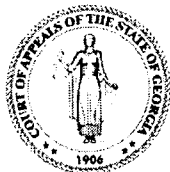
James I. West, Jr., Jim West House Movers, Inc., and J. W. Productions, Inc., (collectively, "West") sought declaratory judgment against Clayton County, Georgia, asserting that certain property is entitled to the legal status of a nonconforming use under a grandfather clause. West filed a motion for partial summary judgment, and Clayton County filed a cross-motion for summary judgment on the application of the grandfather clause. By order entered December 9, 2011, the trial court granted Clayton County's cross-motion for summary judgment, and West filed this application for discretionary appeal.<sup>1</sup>

Orders granting summary judgment are subject to direct appeal. See OCGA § 9-11-56 (h). Moreover, all rulings within that order and any other non-final rulings entered in the case may also be raised as part of such a direct appeal. See OCGA § 5-6-34 (d); *Southeast Ceramics v. Klem*, 246 Ga. 294, 295 (1) (271 SE2d 199) (1980). Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, West's application is hereby GRANTED. West shall have 10 days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. The

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<sup>1</sup> It is unclear why West filed an application for discretionary appeal. An application is required for an appeal from the decision of a superior court reviewing an administrative decision. See OCGA § 5-6-35 (a) (1). Where, as here, the case commenced as an action in superior court, no application is required. See *Harrell v. Little Pup Development Construction, Inc.*, 269 Ga. 143, 144 (1) (498 SE2d 251) (1998).

superior court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, FEB 3 2012*

*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.*

*Holly K. O. Spencer*, Clerk.

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

ATLANTA,            FEBRUARY 01, 2012

*The Court of Appeals hereby passes the following order:*

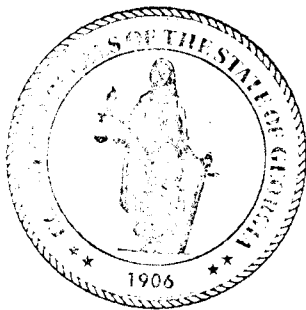
APPLICATION    NO.            A12D0221

B. H. TRANSFER COMPANY ET AL V. DONNIE R. GAY, ET AL

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

90019

STCV032542



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    FEB - 1 2012*

*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.*

*Hally K. O. Spawr*

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

ATLANTA,

FEBRUARY 02, 2012

*The Court of Appeals hereby passes the following order:*

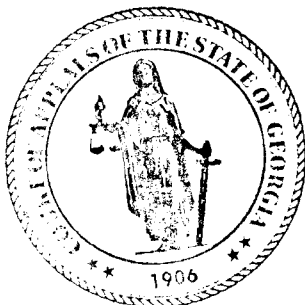
APPLICATION NO. A12D0222

R.W. SMITH ET AL V. GILBERTO BONILLA

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

97019

2008026218



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 2 2012

*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.*

*Holly K. O. Spaworth*

# Court of Appeals of the State of Georgia

ATLANTA, February 8, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0223. NATHANIEL GARNER ET AL. v. US BANK NATIONAL ASSOCIATION, AS TRUSTEE.**

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED. Petitioner's Objection to and Motion to Strike Respondent's Untimely Filed Response and Emergency Motion to Stay or Quash Order and Writ of Possession are also hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, FEB - 8 2012*

*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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA,

APRIL

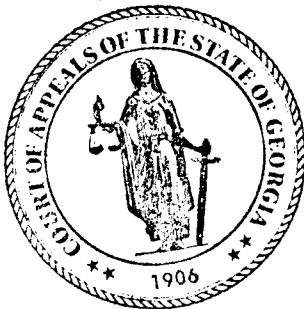
04, 2012

*The Court of Appeals passed the following order*

Case No. A12D0223

NATHANIEL GARNER ET AL V. US BANK NATIONAL ASSOCIATION,  
AS TRUSTEE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 04, 2012*

*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.

*Hally K. O. Sparrow*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 24, 2012**

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 **S12C1350**.

NATHANIEL GARNER et al. v. US BANK NATIONAL ASSOCIATION, TRUSTEE

Clerk, Supreme Court of Georgia

APR 26 2012

Case No. A12D0223

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, January 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0224. MARILYN PETERSON v. HSBC BANK USA BANK NATIONAL ASSOCIATION.**

Marilyn Peterson filed this application for discretionary appeal seeking appellate review of an order entered by the Gwinnett County magistrate court, which dismissed her appeal to superior court. However, “[t]he only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court.” *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). This Court may only address magistrate court matters that already have been reviewed by the state or superior court. See *id.*; *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990).

The Georgia Constitution requires that “[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.” See Ga. Const. of 1983, Art. VI, Sec. I, Par. VIII; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this application is hereby TRANSFERRED to the Gwinnett County superior court.





*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, JAN 26 2012*

*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.*

*Hally H. O. Spawor* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 6, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0225. Richard Heslen v. The State.**

In June 2007, Richard Heslen was sentenced to eight years' probation after he pled guilty to felony theft by conversion. In July 2008, after Heslen committed three new misdemeanor offenses, the court revoked his probation and directed him to serve 6 years, 11 months, and 13 days in confinement. A habeas court later vacated the July 2008 revocation order. On September 13, 2011, the trial court ordered that Heslen "be returned to regular probation under his original terms and conditions." In November 2011, Heslen filed a "petition for injunction and emergency hearing," contending that the court was not authorized to reinstate his original sentence. The trial court denied Heslen's petition, and he filed this application for discretionary appeal.

Pursuant to OCGA § 5-6-35 (a) (5), a criminal defendant must follow the discretionary-appeal procedures to challenge the revocation of his probation. This appeal, however, does not concern the revocation of Heslen's probation. Instead, it concerns the reinstatement of his original sentence. Accordingly, OCGA § 5-6-35 (a) (5) does not apply. See *Fulp v. State*, 217 Ga. App. 603 (458 SE2d 395) (1995).

In addition, although Heslen framed his challenge to the September 2011 sentencing order as a request for injunctive relief, the crux of his argument was that the court was not authorized to reinstate the original terms of his sentence. See *Martin v. Williams*, 263 Ga. 707, 708 (1) (438 SE2d 353) (1994) (motion's substance controls over its nomenclature). To the extent he sought a modification or correction of the September 2011 sentence pursuant to OCGA § 17-10-1 (f), his request was timely because it was filed within one year of the imposition of that sentence, and he

would have a right of direct appeal from the order. See OCGA § 17-10-1 (f); *Bowen v. State*, 307 Ga. App. 204 (704 SE2d 436) (2010); *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008). Alternatively, to the extent he sought to vacate the sentence as void, he would also have a right of direct appeal. See *Williams v. State*, 271 Ga. 686, 689 (523 SE2d 857) (1999); *Crumbley v. State*, 261 Ga. 610, 611 (1) (409 SE2d 517) (1991) (“A sentence is void if the court imposes punishment that the law does not allow.”).

We will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Heslen shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal from the order at issue, he need not file a second notice. The clerk of the trial 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 - 6 2012*

*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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA,

FEBRUARY 02, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0226

IN THE INTEREST OF: K. W., A CHILD (MOTHER)

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

95019

1101122



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB - 2 2012

*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.*

*Hally K. O. Spencer*

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

ATLANTA,            FEBRUARY 07, 2012

*The Court of Appeals hereby passes the following order:*

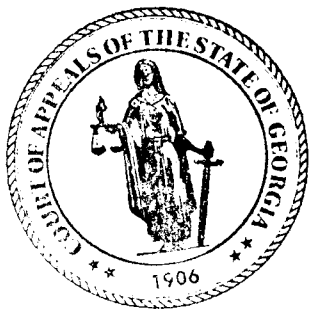
APPLICATION NO.            A12D0227

LINDA JONES V. MARK BUTLER, COMMISSIONER OF THE  
GEORGIA DEPARTMENT OF LABOR ET AL

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

99019

11A09122



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 7 2012

*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.*

*Hally K. O. Spaworth*

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

ATLANTA,            JANUARY    19, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION   NO.        A12D0228

IN THE INTEREST OF: K. D. S., C. J. A. AND Z. T. S., CHILDREN  
(MOTHER)

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

98019

01310J090



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta      JAN 19 2012*

*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.*

*Hally K. O. Spawr*      Clerk.

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

ATLANTA,            JANUARY    30, 2012

*The Court of Appeals hereby passes the following order:*

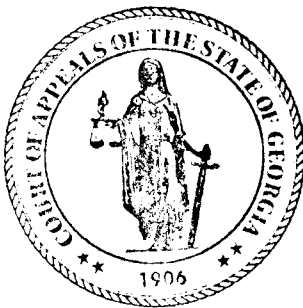
APPLICATION NO.        A12D0229

IN THE INTEREST OF: S. R. C. J., A CHILD (GRANDMOTHER)

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.

70020

1100234



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 30 2012

*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.*  
*Hally K. O. Spawor*

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

ATLANTA,

FEBRUARY 08, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0230

IN THE INTEREST OF: A. P., A CHILD (FATHER)

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

93020

1100967



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 8 2012

*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.*

*Hally K. O. Sparrow*



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

ATLANTA,            FEBRUARY 08, 2012

*The Court of Appeals hereby passes the following order:*

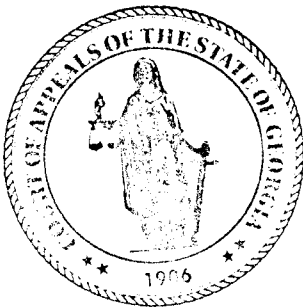
APPLICATION NO.            A12D0231

HARRIET ROBINSON V. MARK BUTLER, 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.

92020

2011CV203000



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 8 2012

*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.*  
*Hally K. O. Sparrow*

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

ATLANTA,

FEBRUARY 08, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0232

ROBERT W. HAGAN V. KAREN DIGIROLAMO COX, F/K/A

KAREN HAGAN

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

97020

2002CV53953



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta FEB - 8 2012*

*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.*

*Hally K. O. Spaworth*

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

ATLANTA,            FEBRUARY 07, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0233

CYNTHIA BRYANT V. ATLANTA PUBLIC SCHOOLS

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

91020

2011CV207101



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 7 2012

*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.*

*Hally K. O. Spanos*

# Court of Appeals of the State of Georgia

ATLANTA, February 13, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0234. Robert Rodriguez Johnson v. The State.**

Robert Rodriguez Johnson pled guilty to numerous offenses, and, in 2002, was sentenced to life imprisonment followed by 20 years' probation. In 2011, Johnson filed a motion to vacate his allegedly void sentence. On December 5, 2011, the trial court dismissed his motion. On January 17, 2012, Johnson filed an application for discretionary appeal.

We lack jurisdiction because Johnson's application is untimely. To be timely, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Johnson filed his application 43 days after the trial court entered its order. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, the application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,* FEB 13 2012

*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.*

*Hally H. O. Spawr*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 13, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0235. In the Interest of: S. M. B., a Child (Father).**

This application for discretionary appeal is hereby GRANTED. The father shall have ten days from the date of this order to file a notice of appeal with the juvenile court. The clerk of the juvenile court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

The parties are directed, in their appellate briefs, to address the issue of the juvenile court's authority to grant an out-of-time discretionary appeal in a parental rights termination case in light of the Supreme Court's opinion in *Gable v. State*, 290 Ga. 81 (\_\_\_ SE2d \_\_\_) (2011).



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, FEB 13 2012*

*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.*

*Holly H. O. [Signature]*, Clerk.

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

July 5, 2013

William K. Suter  
Clerk of the Court  
(202) 479-3011

RECEIVED IN OFFICE  
2013 JUL -8 PM 3:34  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

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

Re: Stephen Michael Lester  
v. Jennifer G. Butch  
No. 13-5142  
(Your No. A12D0235)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on May 9, 2013 and placed on the docket July 5, 2013 as No. 13-5142.

Sincerely,

William K. Suter, Clerk

by



Andrew Downs  
Case Analyst

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

October 7, 2013

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

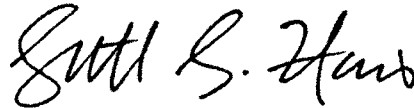
Re: Stephen Michael Lester  
v. Jennifer G. Butch  
No. 13-5142  
(Your No. A12D0235)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

RECEIVED IN OFFICE  
2013 OCT -9 PM 3:17  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

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

ATLANTA,                      FEBRUARY    08, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A12D0236

IN THE INTEREST OF: S. C., A CHILD (MOTHER)

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

95020

1101349 &

1101195



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 8 2012

*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.*

*Hally K. O. Spawor*



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

ATLANTA,            FEBRUARY 07, 2012

*The Court of Appeals hereby passes the following order:*

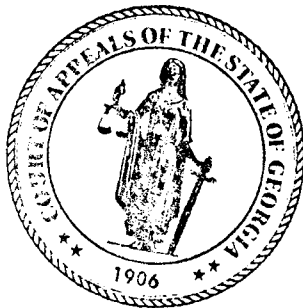
APPLICATION NO.            A12D0237

CHRISTOPHER A. EVANS V. MARK BUTLER, COMMISSIONER OF  
THE GEORGIA DEPARTMENT OF LABOR ET AL

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

99020

2011CV201724



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB - 7 2012

*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.*

*Holly K. O. Sparrow*

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

ATLANTA,

FEBRUARY 13, 2012

*The Court of Appeals hereby passes the following order:*

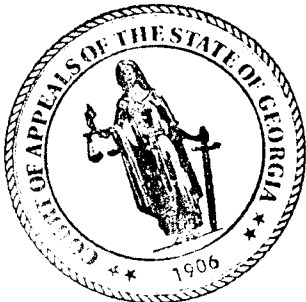
APPLICATION NO. A12D0238

BRADLEY FORRISTER V. CITY OF MT. ZION

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.

96020

09CV03618



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 13 2012

*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.*

*Hally K. O. Spanow*

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

ATLANTA,

FEBRUARY 15, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0239

GARY N. WILSON V. SWAINSBORO EMANUEL COUNTY

AIRPORT

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

98020

12CV12



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 15 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,

FEBRUARY 15, 2012

*The Court of Appeals hereby passes the following order:*

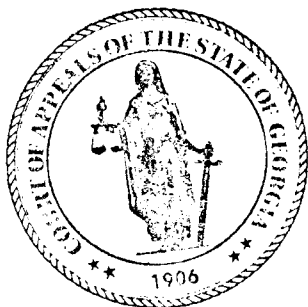
APPLICATION NO. A12D0240

JOY LASKAR V. BOARD OF REGENTS OF THE UNIVERSITY  
SYSTEM 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 SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90020

2011CV20556



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 15 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,

FEBRUARY 09, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0241

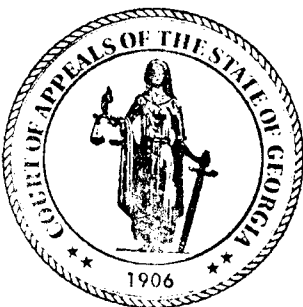
GATES OF BRASELTON COMMUNITY ASSOCIATION, INC.,

V. JACK BRUCE MILLS

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

70021

11A05587



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB - 9 2012

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA,

FEB 13 2012

*The Court of Appeals hereby passes the following order:*

**A12D0242. Mark A. Smith v. Patricia Rice, et al.**

Mark A. Smith, who is incarcerated, submitted a pro se “Complaint Based on Personal Injury” to the superior court. On July 19, 2011, the court denied filing of the complaint pursuant to OCGA § 9-15-2 (d), based on improper venue. Smith filed two motions challenging that order. On December 2, 2011, the trial court denied both of those motions. On January 18, 2012, Smith filed an application for discretionary appeal.

Pretermitted whether Smith was required to follow the discretionary appeal procedures, we lack jurisdiction because his application is untimely. To be timely, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Smith filed his application 47 days after the trial court entered its December 2 order, and 183 days after the court entered its July 19 order.<sup>1</sup> We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, the application is hereby DISMISSED.

---

<sup>1</sup> Smith initially attempted to file his application on January 4, 2012, but it was not accepted at that time because it did not include a pauper’s affidavit. Even if the application had been accepted on that date, it would have been untimely.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, FEB 13 2012

*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.*

*Hally H. O. Spawor* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, MARCH 23, 2012

Honorable Court of Appeals hereby passes the following order:

A12D0242. MARK A. SMITH v. PATRICIA RICE, ET AL.

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

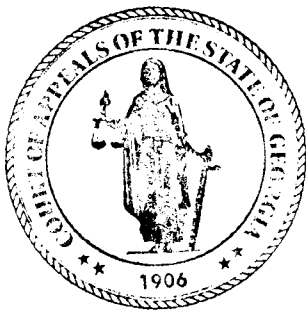
93-021

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 23 2012

*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.*

*Hally K. O. Sparrow*



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 06, 2012**

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 **S12C1264**.

MARK A. SMITH v. PATRICIA RICE et al.

Clerk, Supreme Court of Georgia

APR 12 2012

Case No. A12D0242

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, February 16, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0243. Charles Pritchett v. The State.**

In 1994, Charles Pritchett was convicted of possession of cocaine and sentenced to 25 years without parole. We affirmed his conviction in an unpublished opinion. *Pritchett v. State*, 223 Ga. App. XXIX (1996). In 2003, Pritchett filed a motion to vacate a void sentence. The trial court denied the motion, and we affirmed that denial on appeal. See *Pritchett v. State*, 267 Ga. App. 303 (599 SE2d 291) (2004).

Pritchett later filed a "Petition for Modification of Sentence," arguing that the trial court had erroneously enhanced his sentence and that his sentence violated the prohibition against ex post facto laws. The trial court denied the petition in an order entered on December 14, 2011. Forty days later, on January 23, 2012, Pritchett filed this application for discretionary appeal.<sup>1</sup>

Pretermitted whether Pritchett was entitled to appeal the trial court's order, this application was not timely filed. An application for discretionary appeal must be

---

<sup>1</sup> Although we initially received Pritchett's application on January 12, 2012, we could not accept it for filing because Pritchett had failed to include the filing fee or sufficient pauper's affidavit required by OCGA § 5-6-4 and Court of Appeals Rule 5.

filed within 30 days of the order on appeal. OCGA § 5-6-35 (d). Because Pritchett failed to meet this statutory deadline, we lack jurisdiction to consider his application, and it is therefore DISMISSED. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,* **FEB 16** 2012

*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.*

*Hally K. O. Spawor*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 16, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0244. SILVIO FAZZINI v. MIKE STOREN.**

Silvio Fazzini filed a direct appeal from the trial court's order denying his motion to set aside judgment, which was entered on October 13, 2011. This Court dismissed Fazzini's direct appeal because appeals from an order denying a motion to set side under OCGA § 9-11-60 (d) must be made by application for discretionary appeal. See OCGA § 5-6-35 (a) (8). Fazzini then filed this application for discretionary appeal on January 23, 2012, 102 days after the entry of the trial court's order. Again, we lack jurisdiction.

An application for discretionary appeal must be filed within 30 days of the order on appeal. OCGA § 5-6-35 (d). This Court's order dismissing Fazzini's direct appeal did not extend the time within which Fazzini was permitted to file his application. The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because this application was not timely filed, it is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**FEB 16 2012**

*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.*

*Holly H. O. Spaw* ..... , Clerk.

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

ATLANTA,            FEBRUARY    17, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0245

STEPHEN FRANCIS ET AL V. SUNTRUST MERCHANT SERVICES,  
LLC

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

91021

10VS180902



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*            FEB 17 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            FEBRUARY 21, 2012

*The Court of Appeals hereby passes the following order:*

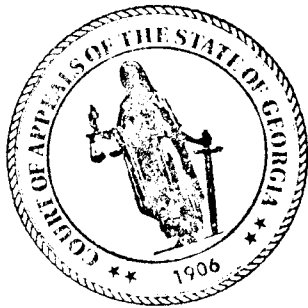
APPLICATION NO.            A12D0246

BRIAN LAMAR COLLINS V. DE ANNA DAVIS, F/K/A DE ANNA OWENS

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

20110972



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 21 2012**

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,

FEBRUARY 16, 2012

*The Court of Appeals hereby passes the following order:*

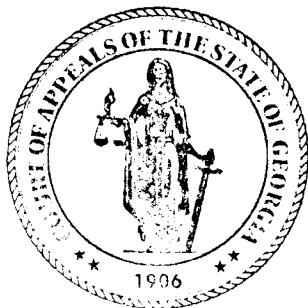
APPLICATION NO. A12D0247

IN THE INTEREST OF: J. F., A CHILD (MOTHER)

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

71021

1101153



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB 16 2012

*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.*

*Hally K. O. Spawor*

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

ATLANTA,                      FEBRUARY    16, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A12D0248

WIELER PROPERTIES, LLC V. MCCOLGAN & COMPANY, LLC 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.

95021

10CV14255



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    FEB 16 2012*

*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.*  
*Hally K. O. Sparrow*



Court of Appeals  
of the State of Georgia

ATLANTA,      FEBRUARY 17, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.      A12D0249  
NANCIE ANNE MERRILL V. HARRISON W. MERRILL

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.

99021

2006CV118521



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 17 2012

*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.*

*Hally K. O. Spanow*

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

ATLANTA,            FEBRUARY 21, 2012

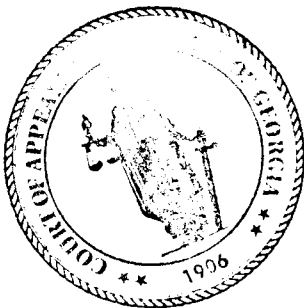
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0250  
TONY E. MATHIS V. DEKALB 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 SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96021

11CV7169



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            FEB 21 2012*

*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*  
*Holly K. O. Sparrow*

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

ATLANTA,

MARCH

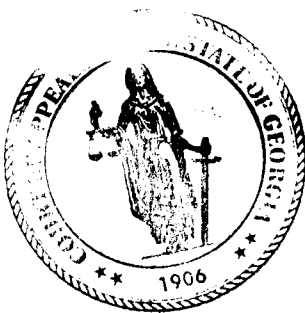
30, 2012

*The Court of Appeals passed the following order*

Case No. A12D0251

ANTHONY COWAN V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAR 30, 2012*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            FEBRUARY 23, 2012

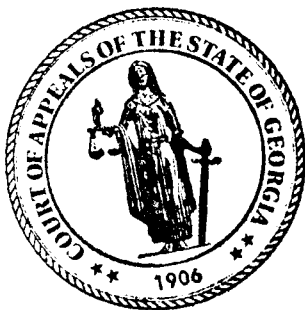
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0252  
HUSSAIN L. KAREEM V. BANK OF AMERICA

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

90021

11C04260



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 23 2012**

*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.*

*Hally H. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, February 6, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0253. ERIC BERNARD SCOTT v. DANNY THOMPSON, WARDEN.**

Eric Bernard Scott filed an application for discretionary appeal purporting to appeal the trial court's ruling in this habeas corpus action. Under our Constitution, however, the Supreme Court has appellate jurisdiction over all cases involving habeas corpus. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4). Accordingly, Scott's application is hereby TRANSFERRED to the Supreme Court for disposition.



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

**FEB - 6 2012**

*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.*

*Hally H. O. Spaw*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 21, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0254. Ricky Green v. The State.**

Ricky Green has filed an application for discretionary appeal, seeking review of the trial court's order denying his motion to modify sentence. From the very limited materials submitted with the application, it appears that Green filed his motion for sentence modification within one year of the imposition of his sentence. If so, his motion was timely and he would have a right of direct appeal from its denial. See OCGA § 17-10-1 (f); *Bowen v. State*, 307 Ga. App. 204 (704 SE2d 436) (2010); *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Green shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal, he need not file a second notice. The clerk of the trial 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 21 2012**

*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.*

*Hally K. O. Spawr*

, Clerk.

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

ATLANTA,            FEBRUARY 24, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0255  
RICKY JOHNSON V. SABRINA ROGERS

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

92022

11CV10041



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*            **FEB 24 2012**

*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.*

*Hally K. O. Spencer*

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

ATLANTA,            FEBRUARY 16, 2012

*The Court of Appeals hereby passes the following order:*

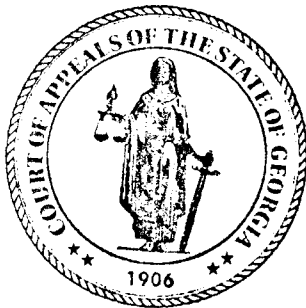
APPLICATION NO.            A12D0256

IN THE INTEREST OF: J. O. F., A CHILD (FATHER)

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

71022

1101153



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta FEB 16 2012*

*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.*

*Hally H. O. Spawr*



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

ATLANTA,                      FEBRUARY    08, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0257

IN THE INTEREST OF: S. C., A CHILD (FATHER)

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

95022

1101349 &

1101195



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            FEB - 8 2012*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,                      FEBRUARY    23, 2012

*The Court of Appeals hereby passes the following order:*

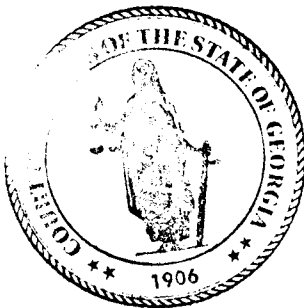
APPLICATION    NO.                      A12D0258

IN THE INTEREST OF: C. R. E. T., R. S. K. T., AND A. M. L. T.,  
CHILDREN (MOTHER)

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

97022

1100383



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*                      **FEB 23 2012**

*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.*

*Hally K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, March 1, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0259. Johnny Haygood, et al. v. Claude E. Head, et al.**

Johnny and Donna Haygood seek discretionary review of a trial court order that, among other things, dismissed their notice of appeal. However, "[t]he dismissal of an appeal by the trial court is subject to direct appeal." *Castleberry's Food Co. v. Smith*, 205 Ga. App. 859, 860 (424 SE2d 33) (1992).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. The Haygoods shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, they have already filed a notice of appeal from the order at issue, they need not file a second notice. The clerk of the trial 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 - 1 2012

*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.*

*Holly K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 1, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0260. Johnny Haygood et al. v. Larry H. Rogers et al.**

Johnny and Donna Haygood seek discretionary review of a trial court order that, among other things, dismissed their notice of appeal. However, "[t]he dismissal of an appeal by the trial court is subject to direct appeal." *Castleberry's Food Co. v. Smith*, 205 Ga. App. 859, 860 (424 SE2d 33) (1992).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. The Haygoods shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, they have already filed a notice of appeal from the order at issue, they need not file a second notice. The clerk of the trial 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 - 1 2012*

*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.*

*Holly K. A. Spencer*, Clerk.

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

ATLANTA,            FEBRUARY 27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0261

IN THE INTEREST OF: K. A. K., A CHILD (MOTHER)

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.

99022

115111004

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **FEB 27 2012**



*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.

*Holly K. O. Sparrow*

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

ATLANTA, MARCH 05, 2012

*The Court of Appeals hereby passes the following order:*

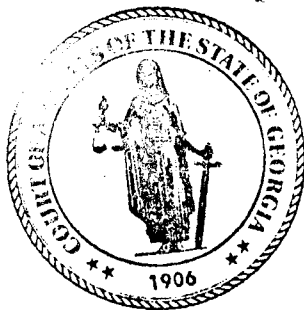
APPLICATION NO. A12D0262

MICHELLE M. CHANDLER V. HONDA LOCK OF AMERICA ET AL

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

96022

2011CV896



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAR - 5 2012*

*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.*

*Hally K. O. Sparrow*

312C1241

RECEIVED IN OFFICE

APR 13 2012

*Adrian P. Wicks*

CLERK'S OFFICE  
SUPREME COURT OF GEORGIA

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 04, 2012**

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 **S12C1241**.

MICHELLE M. CHANDLER v. HONDA LOCK OF AMERICA et al.

Clerk, Supreme Court of Georgia

APR 11 2012

Case No. A12D0262

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia



# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1241

Atlanta, October 01, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MICHELLE M. CHANDLER v. HONDA LOCK OF AMERICA et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ dismissed.

All the Justices concur.

Court of Appeals Case No.  
A12D0262

RECEIVED IN OFFICE  
2012 OCT 22 PM 4:19  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta October 18, 2012

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.



*Lia C. Pittor*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, February 27, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0263. Nicholas Esasky, et al. v. Vicki S. Ford.**

Nicholas Esasky, the maternal grandfather of S. I. S., and his wife, Jimita Esasky, have filed an application for discretionary review of the trial court's order granting their petition to adopt S. I. S. to the extent it awarded visitation rights to Vicki S. Ford. Because the appeal stems from adoption proceedings, however, no application is required. *Families First v. Gooden*, 211 Ga. App. 272, 274 (1) (439 SE2d 34) (1993). This is true even though the order also serves to terminate parental rights. See, e. g., *id.*

Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, this application is hereby GRANTED, and the applicants shall have 10 days from the date of this order to file a notice of appeal with the superior court. If, however, they have already filed a notice of appeal, they need not file a second notice. The superior court is instructed to include a copy of this order in the appellate record.



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

**FEB 27 2012**

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 22, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0264. Bilal A. Rasheed v. Bank of New York Mellon, f/k/a Bank of New York, as Trustee et al.**

For the second time, Bilal A. Rasheed seeks discretionary review of an order entered by the Magistrate Court of Fulton County in this dispossessory action. As we explained in our order transferring Rasheed's first discretionary application in this matter, Case Number A12D0169, "[t]he only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court." *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). Because we can only address magistrate court matters that have been reviewed by the state or superior court, we have no authority to consider this application. See *id.*; *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990). As with Rasheed's previous application, jurisdiction lies below.

The Georgia Constitution requires that "[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere." 1983 Ga. Const., Art 6, § 1, ¶ 8; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this appeal is hereby TRANSFERRED to the State Court of Fulton County for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**FEB 22 2012**

*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.*

*Hally H. A. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 6, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0265. ROBERT L. REHBERGER v. HENRY CO., ET AL.**

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED. Petitioner's "Motion to Consolidate" is also hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR - 6 2012*

*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.*

*Hally H. O. Spawor*, Clerk.

S12C1290

FILED IN OFFICE

APR 17 2012

*Adrian J. Woods*

SUPREME COURT OF GEORGIA

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

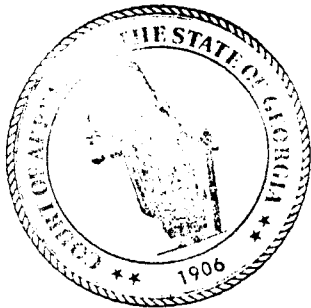
ATLANTA,            MARCH            29, 2012

*The Court of Appeals passed the following order*

Case No. A12D0265

ROBERT L. REHBERGER V HENRY CO., ET AL

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    MAR 29, 2012*

*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.*

*Hally K. O. Sparrow*

S12C1290

FILED IN OFFICE

APR 17 2012

*Adrian S. Woods*

SUPREME COURT OF GEORGIA



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 12, 2012**

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 **S12C1290**.

ROBERT L. REHBERGER v. HENRY COUNTY et al.

Clerk, Supreme Court of Georgia

APR 13 2012

Case No. A12D0265

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1290

Atlanta, October 01, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROBERT L. REHBERGER v. HENRY COUNTY et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0265

RECEIVED IN OFFICE  
2012 OCT 22 PM 4:18  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta October 18, 2012

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.



*Lia C. Pittor*, Chief Deputy Clerk

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

ATLANTA,            FEBRUARY 27, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0266

GEORGE HAYNES V. THE STATE

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

93023

SU05CR0153



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 27 2012**

*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.*

*Hally K. O. Spaworth*

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

ATLANTA,            MARCH            02, 2012

*The Court of Appeals hereby passes the following order:*

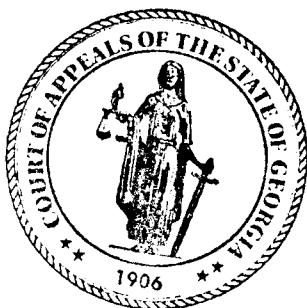
APPLICATION NO.            A12D0267

IN THE INTEREST OF: K. A. B. & B. M. B., CHILDREN (FATHER)

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

92023

1101254



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            MAR -2 2012*

*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.*

*Hally K. O. Spawr*

# Court of Appeals of the State of Georgia

ATLANTA, February 28, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0268. Serling Strickland v. The State.**

Serling Strickland was found guilty of theft by taking. On appeal, we affirmed his conviction in an unpublished opinion. *Strickland v. State*, Case No. A06A2128 (decided December 7, 2006). Strickland later filed a petition for writ of habeas corpus, which the trial court denied. He has appealed that ruling to the Supreme Court, where it remains pending as Case No. S12H0257. In connection with his habeas corpus petition, Strickland also sought copies of various transcripts and records of previous convictions that apparently were used to enhance his theft by taking sentence. The trial court denied his request by letter dated November 28, 2011. On February 6, 2012, Strickland filed an application for discretionary appeal in this Court.

This application appears to be ancillary to the habeas corpus matter currently pending in the Supreme Court. See Ga. Const. of 1983, Art VI, Sec. VI, Para. III (4). It is therefore *TRANSFERRED* to the Supreme Court for disposition.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, **FEB 28 2012**

*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.*

*Holly K. O. Jones*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 29, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0269. GEORGE W. PITTS, JR. v. THE STATE.**

George W. Pitts, Jr. was found guilty of rape, aggravated battery, kidnapping with bodily injury, aggravated child molestation, and aggravated assault. Pitts filed a direct appeal from the denial of his motion for new trial, and this Court vacated the conviction on the charge of aggravated child molestation but affirmed the remaining convictions. See *Pitts v. State*, 287 Ga. App. 540 (652 SE2d 181) (2007). In 2011, Pitts filed a motion alleging that his convictions were void. By order entered on January 5, 2012, the trial court dismissed this motion, and Pitts filed this application for discretionary appeal.

A motion seeking to challenge an allegedly void judgment of conviction "is not one of the established procedures for challenging the validity of a judgment in a criminal case. Because [Pitts] was not authorized to seek relief from his criminal convictions pursuant to a motion to vacate or correct a void conviction, there is nothing for this Court to review and his [application for discretionary] appeal is subject to dismissal." (Citations omitted.) *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010). See also *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009) (overruling *Chester v. State*, 284 Ga. 162, 162-163 (2) (664 SE2d 220) (2008)); *Matherlee v. State*, 303 Ga. App. 765 (694 SE2d 665) (2010). This application is therefore DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, FEB 29 2012*

*I certify that the above is a true extract from  
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*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Hally F. O. Spencer*, Clerk.

S12C1096

FILED IN OFFICE

MAR 16 2012

Adrian P. Woods

SUPREME COURT OF GEORGIA



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: March 14, 2012**

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 **S12C1095**.

**GEORGE PITTS v. THE STATE**

Clerk, Supreme Court of Georgia

**MAR. 15 2012**

Case No. A12D0269

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1095

Atlanta, June 18, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

GEORGE PITTS v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

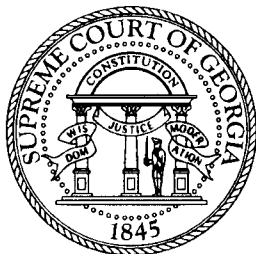
Court of Appeals Case No.

A12D0269

RECEIVED IN OFFICE  
2012 AUG -8 PM 4:04  
CLERK OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta August 07, 2012



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, February 15, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0270. Olivia Wintz, et al. v. Deutsche Bank National Trust Co.**

Olivia Wintz filed this application for discretionary appeal seeking appellate review of an order entered by the Newton County magistrate court, which entered a writ of possession. However, “[t]he only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court.” *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). This Court may only address magistrate court matters that already have been reviewed by the state or superior court. See *id.*; *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990).

The Georgia Constitution requires that “[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.” See Ga. Const. of 1983, Art. VI, Sec. I, Par. VIII; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this application is hereby TRANSFERRED to the Newton County superior court.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, FEB 15 2012*

*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.*

*Holly H. O. Spencer*, Clerk.

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

ATLANTA, MARCH 12, 2012

*The Court of Appeals hereby passes the following order:*

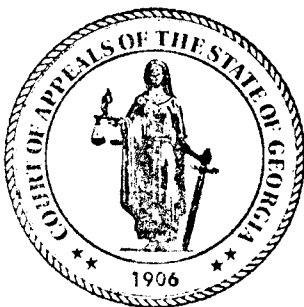
APPLICATION NO. A12D0271

RICHARD SHAW ET AL V. REBECCA K. JEFFRIES 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.

71023

2010AD19



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 12 2012**

*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.*  
*Hally K. O. Sparrow*

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

ATLANTA,            MARCH            12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0272

RICHARD SHAW ET AL V. REBECCA K. JEFFRIES 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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

71024

2010A019



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **MAR 12 2012**

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

*Hally K. O. Sparrow*  
Clerk

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

ATLANTA,                      MARCH                      08, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A12D0273

JOSEPH RAYMOND PARKS, JR., V. THE STATE

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

95023

03CR00750



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    MAR    8    2012*

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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 above written.*

*Hally K. O. Lanoor*                      Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 2, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0274. RODNEY PETERSON v. THE STATE.**

Rodney Peterson filed an application for discretionary appeal on February 9, 2012, in which he sought to appeal the trial court's order denying his motion to vacate and set aside judgment, which was entered on December 15, 2011.<sup>1</sup> We lack jurisdiction because this application is untimely.

Peterson filed his application 56 days after the entry of the order he seeks to appeal. An application for discretionary appeal must be filed within 30 days of the order on appeal. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because this application was not timely filed, it is hereby DISMISSED for lack of jurisdiction.

---

<sup>1</sup> Although we initially received Peterson's application on January 24, 2012, we could not accept it for filing because it did not contain a proper certificate of service as required by Court of Appeals Rule 6. Notwithstanding the lack of certificate of service, however, the application would have been untimely nonetheless because it was filed more than 30 days after the trial court's order.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**MAR - 2 2012**

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the minutes of the Court of Appeals of Georgia.*

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*Hally H. O. Spencer*

*, Clerk.*



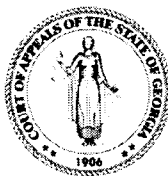
# Court of Appeals of the State of Georgia

ATLANTA, February 27, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0275. CHRISTOPHER L. ATES v. THE STATE.**

Christopher L. Ates seeks discretionary review of a January 11, 2012 order, which denied his request for an out-of-time appeal. An order denying a motion for out-of-time appeal may be appealed directly. See, e.g., *Ingram v. State*, 300 Ga. App. 834 (686 SE2d 440) (2009); *Lewis v. State*, 300 Ga. App. 586 (685 SE2d 485) (2009). Accordingly, this application for discretionary appeal is GRANTED pursuant to OCGA § 5-6-35 (j). Ates shall have ten days from the date of this order to file a notice of appeal with the trial court. If he has already filed a notice of appeal from the order at issue, he should not file a second notice.<sup>1</sup> The clerk of the trial 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 27 2012*

*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.*

*Hally K. D. [Signature]*, Clerk.

---

<sup>1</sup> We note that Ates' application contains a notice of appeal, but the notice is not stamped "entered" by the lower court clerk. Thus, it is unclear whether Ates has already filed a notice of appeal.

# Court of Appeals of the State of Georgia

ATLANTA, March 5, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0276. Johnny Haygood, et al. v. Phily Tilley, et al.**

Johnny and Donna Haygood seek discretionary review of a trial court order that, among other things, dismissed their notice of appeal. However, "[t]he dismissal of an appeal by the trial court is subject to direct appeal." *Castleberry's Food Co. v. Smith*, 205 Ga. App. 859, 860 (424 SE2d 33) (1992).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. The Haygoods shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, they have already filed a notice of appeal from the order at issue, they need not file a second notice. The clerk of the trial 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 - 5 2012*

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

*Hally H. O. Spencer* ..... , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 14, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0277. Cynthia Morris v. Ricky Weldon Morris, Jr.**

Cynthia Morris has filed an application seeking discretionary review of an order changing the visitation schedule for the parties' minor children. Under OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including . . . awarding or refusing to change child custody" are directly appealable. A party seeking to challenge a child custody order, therefore, may file a direct appeal. See *Cohen v. Cohen*, 300 Ga. App. 7, 8 (1) (684 SE2d 94) (2009); *Taylor v. Curl*, 298 Ga. App. 45 (679 SE2d 80) (2009). And visitation "is considered a custody issue." *Daniels v. Barnes*, 289 Ga. App. 897, 899 n.1 (658 SE2d 472) (2008); see also OCGA § 19-9-41 (4) (defining "child custody proceeding" as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue."). Thus, the order at issue here is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court's order is directly appealable and the applicant has not already filed a notice of appeal. See OCGA § 5-6-35 (j). Cynthia Morris, however, indicates that she has already filed a timely notice of appeal in the trial court. Accordingly, this application is superfluous and is therefore DISMISSED.



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

**MAR 14 2012**

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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.*

*Hally H. O. Spawr*....., Clerk.

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

ATLANTA, MARCH 12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0278

MICHAEL GARRETT ET AL V. STUART DODDS ET AL

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

70024

2011A033065



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 12 2012**

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, February 23, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0279. DONNY LYNN ROWLETTE v. DENISE WILLIAMS.**

Denise Williams filed a contempt petition, seeking to hold Donny Lynn Rowlette in contempt of a settlement agreement that had been incorporated into their divorce decree. The trial court found Rowlette to be in contempt, and Rowlette filed a discretionary application in this Court. However, "an appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases." (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748 (670 SE2d 84) (2008). This application is therefore TRANSFERRED to the Supreme Court for disposition.



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

**FEB 23 2012**

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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.*

*Hally K. O. Spencer*

, Clerk.

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

ATLANTA,            MARCH            09, 2012

*The Court of Appeals hereby passes the following order:*

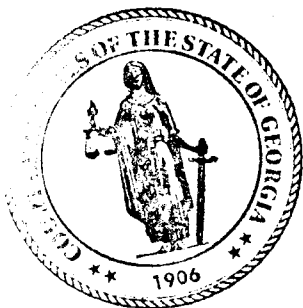
APPLICATION    NO.            A12D0280

MICHAEL J. WOODRUFF V. DONNA WOODRUFF

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

92024

12100533



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR - 9 2012

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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.*

*Hally K. O. Spanos*

# Court of Appeals of the State of Georgia

ATLANTA, February 24, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0281. Helen Hopkinson v. Pulte Homes Corporation et al.**

On January 13, 2012, the superior court entered multiple orders granting summary judgment to all defendants in this action. On February 12, 2012, plaintiff Helen Hopkinson filed this timely application for discretionary appeal. Based on the materials included in the application, no provision of OCGA § 5-6-35 (a) appears to be applicable here. Therefore, the orders granting summary judgment are subject to direct appeal. See OCGA § 9-11-56 (h). Because the orders are directly appealable, this application is GRANTED pursuant to OCGA § 5-6-35 (j).

Hopkinson shall have ten days from the date of this order 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, FEB 24 2012*

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

*Hally H. O. [Signature]*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, MAR 8 2012

*The Court of Appeals hereby passes the following order:*

**A12D0282. THEODORE SHIELDS v. BARBARA ANN SHIELDS.**

Theodore Shields filed an application for discretionary review, challenging the provisions of a final judgment and decree of divorce that was entered by the trial court on January 17, 2012. The Georgia Supreme Court has jurisdiction over all divorce and alimony cases. See Ga. Const. 1983, Art. VI, Sec. VI, Par. III (6). Accordingly, this application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR 8 2012*

*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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA,            FEBRUARY 24, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0283

IN THE INTEREST OF: A. M. L. T., A CHILD (FATHER)

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

97025

1100383, 1100384, 1100385



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    FEB 24 2012*

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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.*

*Hally K. O. Spencer*

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

ATLANTA, MARCH 13, 2012

*The Court of Appeals hereby passes the following order:*

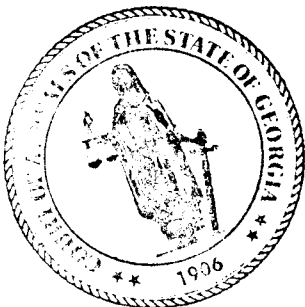
APPLICATION NO. A12D0284

PORTRAIT HOMES-GEORGIA, LLC ET AL V. ESSEX INSURANCE  
COMPANY ET AL

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

94024

2009CV171103



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 13 2012**

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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.*

*Hally K. O. Spencer*

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

ATLANTA,            MARCH            20, 2012

*The Court of Appeals hereby passes the following order:*

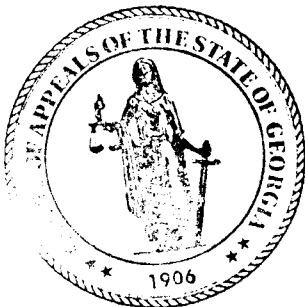
APPLICATION   NO.            A12D0285

IN THE INTEREST OF: K. A. & S. A., CHILDREN (MOTHER)

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

95024

102033



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 20 2012**

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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*  
*Hally H. O. Spencer*

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

ATLANTA, MARCH 21, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0286

JAMIE TRIBE V. KAREN SLADE

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

99024

11CV13628



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* MAR 21 2012

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, March 1, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0287. JEFFERY MITCHELL O'HEARN v. MARY S. O'HEARN.**

Mary S. O'Hearn filed a contempt petition, seeking to hold Jeffery Mitchell O'Hearn in contempt of a settlement agreement that had been incorporated into their divorce decree. The trial court found Jeffery O'Hearn to be in contempt, and he filed a discretionary application in this Court. However, "an appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases." (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748 (670 SE2d 84) (2008). This application is therefore TRANSFERRED to the Supreme Court for disposition.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, MAR - 1 2012

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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.*

*Hally H. O. Spaw*, Clerk.

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

ATLANTA,            MARCH            14, 2012

*The Court of Appeals hereby passes the following order:*

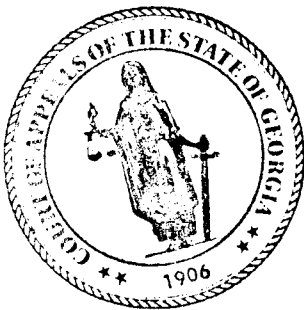
APPLICATION NO.            A12D0288

CLAIRE E. FULLER V. BARBARA JO CALL

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

98024

08CV12046



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            MAR 14 2012*

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hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Spaworth*

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

ATLANTA, MARCH 15, 2012

*The Court of Appeals hereby passes the following order:*

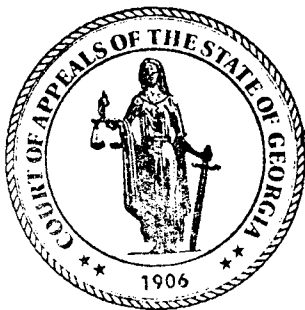
APPLICATION NO. A12D0289

JAMES L. BROWN V. THE STATE

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

90024

0200600



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 15 2012

*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.*

*Hally K. O. Sparrow*



512C1351

FILED IN OFFICE

APR 30 2012

*Adrian P. Woods*

SUPREME COURT OF GEORGIA

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

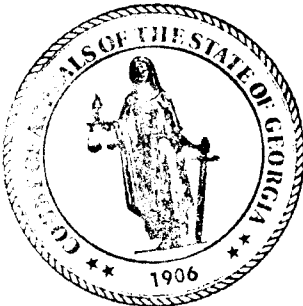
ATLANTA,            APRIL            11, 2012

*The Court of Appeals passed the following order*

Case No. A12D0289

JAMES L. BROWN V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    APR 11, 2012*

*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.*

*Hally K. O. Spanow*

*[Faint handwritten text]*

S12C1351

FILED IN OFFICE  
APR 30 2012

Adrian P. Woods  
SUPREME COURT OF GEORGIA

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1351

Atlanta, January 07, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES L. BROWN v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0289

RECEIVED IN OFFICE  
2013 JAN 28 PM 4:22  
CLERK/DEPUTY CLERK  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta January 28, 2013



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, March 2, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0290. J. DUNCAN PRICE v. MARK BUTLER, COMMISSIONER OF  
GEORGIA DEPARTMENT OF LABOR ET AL.**

J. Duncan Price filed an application for discretionary appeal on February 24, 2012, seeking review of the trial court's order dismissing his second unemployment compensation appeal, which was entered on January 24, 2012. We lack jurisdiction.

To be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Price filed his application 31 days after entry of the order he seeks to appeal. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR -2 2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 14, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0291. CHARLES STAFFORD v. BRYAN COUNTY.**

We granted Charles Stafford's application for discretionary review in which he sought to challenge the superior court's order affirming a magistrate court ruling that he had violated an ordinance. Stafford argued both that the magistrate court had impermissibly exercised equitable powers and that the ordinance was unconstitutional.<sup>1</sup> After docketing the direct appeal, this Court determined that its resolution required a ruling on Stafford's constitutional arguments, and the case was remanded. See *Stafford v. Bryan County*, 312 Ga. App. 533 (718 SE2d 832) (2011). The trial court entered an order finding the ordinance to be constitutional, and Stafford filed this application for discretionary appeal.

The Supreme Court "has exclusive jurisdiction over all cases involving construction of the Constitution of the State of Georgia and of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been called into question." *Atlanta Independent School System v. Lane*, 266 Ga. 657 (1) (469 SE2d 22) (1996); Ga. Const. of 1983, Art. VI, Sec. VI, Para. II. Because Stafford's discretionary application involves an allegedly unconstitutional ordinance, it is hereby TRANSFERRED to the Supreme Court for disposition. See *Atlanta Independent School System*, supra (Supreme Court generally has jurisdiction where "the issue raised on appeal relates either to the constitutional construction or to the constitutionality of a law, ordinance or constitutional provision").

---

<sup>1</sup> Stafford argued both at the administrative level and in the superior court that the ordinance was unconstitutional.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**MAR 14 2012**

*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.*

*Hally H. O. Spencer*....., Clerk.

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

ATLANTA, MARCH 15, 2012

*The Court of Appeals hereby passes the following order:*

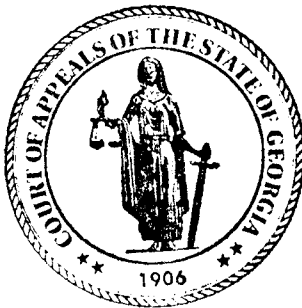
APPLICATION NO. A12D0292

RODOLFO JIMENEZ PERALTA V. THE STATE

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

92025

06B4442



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAR 15 2012**

*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.*

*Hally K. O. Spawson*



# Court of Appeals of the State of Georgia

ATLANTA, March 20, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0293. ERIKA JACOBS v. NONPUBLIC POSTSECONDARY  
EDUCATION COMMISSION.**

Erika Jacobs, a former student at United Medical and Business Institute, filed a negligence claim against the Nonpublic PostSecondary Education Commission, alleging that it failed to investigate her complaint against the school. The defendant filed a motion to dismiss, which the trial court granted in an order entered on October 7, 2011. Jacobs filed a motion to object to the order granting the motion to dismiss, which the trial court construed as a motion for reconsideration and denied on January 24, 2012. Jacobs filed an application for discretionary appeal from the trial court's order. However, we lack jurisdiction to consider Jacobs's application.

Jacobs had a right of direct appeal from the grant of the motion to dismiss under OCGA § 5-6-34 (a) (1). Ordinarily, when a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v State*, 204 Ga App 582 (420 SE2d 393) (1992). Jacobs filed her application 143 days after the trial court granted the motion to dismiss. Thus, her application is untimely.

Jacobs filed an objection to the order granting the motion to dismiss, which the trial court construed as a motion for reconsideration and denied. However, "the denial of a motion for reconsideration of a final judgment is not itself a judgment subject to direct appeal." *Ferguson v. Freeman*, 282 Ga. 180, 181 (646 SE2d 25) (2007). And it does not extend the time for filing a notice of appeal. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (1) (441 SE2d 452) (1994).

Under these circumstances, we lack jurisdiction to review Jacobs's appeal, and her application is hereby DISMISSED.



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

MAR 20 2012

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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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 10, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0293. JACOBS v. NONPUBLIC POSTSECONDARY EDUCATION  
COMMISSION.**

Upon consideration of the motion for reconsideration, it is ordered that it be  
hereby **DENIED**.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/10/2012*

*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.*

*Hally H. O. Spencer* , Clerk.

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

ATLANTA, MARCH 27, 2012

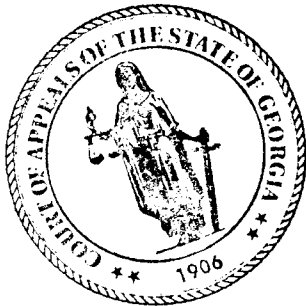
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0294  
FULTON COUNTY SCHOOL DISTRICT V. JAN S. HERSH

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.

94025

2011CV201022



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta MAR 27 2012*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA, MARCH 23, 2012

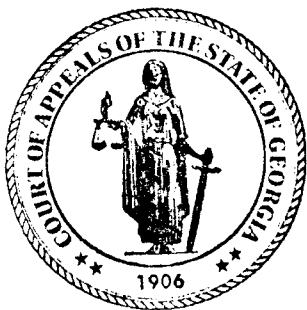
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0295  
PHILLIPE L. GREEN V. THE GEORGIA DEPARTMENT OF HUMAN  
SERVICES, ET AL

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

71025

2011CS06288



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 23 2012**

*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.*

*Hally K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, March 28, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0296. D & G BURKE DAWGS, LLC v. RACE INN CONVENIENCE, INC.**

This case began as a dispossessory proceeding brought by D & G Burke Dawgs, LLC, in the Magistrate Court of Burke County. Defendant Race Inn Convenience, Inc. filed an answer and counterclaim in magistrate court. It appears that due to the amount of rent sought, the case was transferred to the Superior Court of Burke County. After a hearing, the trial court entered an order and judgment in favor of the defendant in the amount of \$28,073, dated August 25, 2011. Plaintiff filed a motion for new trial and motion to set aside judgment on December 2, 2011, which the trial court denied on January 30, 2012. D & G Burke Dawgs filed its application on February 29, 2012.

Generally, an application for discretionary appeal shall be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal generally controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192)(1994). The underlying subject matter of this discretionary application is to seek to set aside an order and judgment entered in a dispossessory action. OCGA § 44-7-56, pertaining to dispossessory actions, states that “[a]ny judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7 of Title 5, provided that any such appeal shall be filed within seven days of the date such judgment was entered.”

Because D & G Burke Dawgs, LLC did not file its application for discretionary appeal within seven days of the date of entry of the order it seeks to appeal, this Court lacks appellate jurisdiction over this application, and it is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta,* **MAR 28 2012**

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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.*

*Holly H. O. Spencer*....., Clerk.

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

ATLANTA, MARCH 28, 2012

*The Court of Appeals hereby passes the following order:*

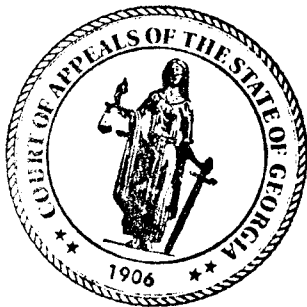
APPLICATION NO. A12D0297

DAMIAN WHITAKER V. BEAUTIFUL RESTAURANT INC

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

99025

2011CV197029



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 28 2012**

*I certify that the above is a true extract from  
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*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Spencer*



# Court of Appeals of the State of Georgia

ATLANTA, March 23, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0298. WILLIE FRANK WRIGHT v. THE STATE.**

Willie Frank Wright has been convicted of aggravated assault and family violence battery, and he apparently is appealing those convictions. He now seeks discretionary review of the trial court's order denying his motion for an appeal bond. The trial court's order was directly appealable. See, e.g., *Luke v. State*, 282 Ga. App. 749 (639 SE2d 645) (2006); *White v. State*, 269 Ga. App. 113 (603 SE2d 686) (2004). Accordingly, this application is GRANTED pursuant to OCGA § 5-6-35 (j). Wright shall have ten days from the date of this order 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 23 2012

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 14, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0299. IN THE INTEREST OF: C. S., A CHILD (A MOTHER)**

The Juvenile Court of Troup County adjudicated C. S. delinquent and entered its order of disposition. C. S. filed an application for discretionary appeal from the juvenile court's order.

OCGA § 15-11-3 authorizes direct appeals from "final judgments of a juvenile court judge." Because the order rendered a judgment of adjudication and disposition on the allegations of the petition, it is a final order. Compare *In the Interest of M.T.*, 223 Ga. App. 615, 616 (478 SE2d 428) (1996).

We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. C. S. shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal from the order at issue, he need not file a second notice. The clerk of the trial 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 14 2012**

*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.*

*Hally H. O. [Signature]*, Clerk.

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

ATLANTA, MARCH 28, 2012

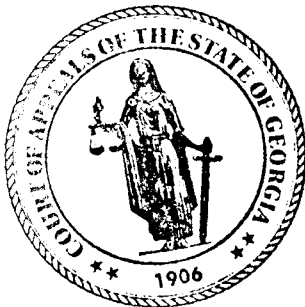
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0300  
TYRICKUS GLADMON V. THE STATE

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

90025

02CR0208



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

**MAR 28 2012**

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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.*

*Hally K. O. Spawort*

# Court of Appeals of the State of Georgia

ATLANTA, March 29, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0301. LEON EAST v. DONIA STEPHENS.**

Leon East seeks discretionary review of an order that finds him in contempt for failing to meet child support obligations that arose, at least in part, from the parties' 2002 divorce decree. The Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). In Georgia, when the obligation to pay child support arises from a prior divorce proceeding, child support is a form of alimony. See *Spurlock v. Dept. of Human Resources*, 286 Ga. 512, 513 (1) (690 SE2d 378) (2010); *Jones v. Jones*, 280 Ga. 712, 715-716 (2) (632 SE2d 121) (2006). As the trial court's contempt finding was based on East's failure to pay child support, it appears that jurisdiction lies in the Supreme Court. See *Spurlock*, supra; *Rogers v. McGahee*, 278 Ga. 287, 287-88 (1) (602 SE2d 582) (2004); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985). This application is therefore TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR 29 2012*

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hereto affixed the day and year last above written.*

*Hally H. D. Spencer*, Clerk.

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

ATLANTA, MARCH 23, 2012

*The Court of Appeals hereby passes the following order:*

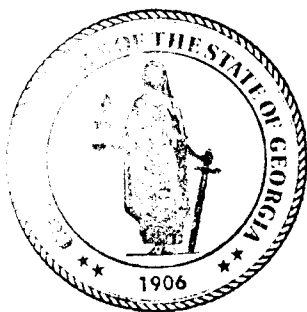
APPLICATION NO. A12D0302

IN THE INTEREST OF: N. R., AND R. R., CHILDREN (FATHER)

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

93026

1101137



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

**MAR 23 2012**

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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.*

*Hally K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, March 15, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0303. KELLI E. FORD v. ROBERT HANNA.**

Kelli E. Ford filed a contempt action against her ex-husband, Robert Hanna, seeking, inter alia, a citation of contempt against Hanna based upon his failure to comply with provisions of the parties' divorce decree. The trial court dismissed the contempt action, and Ford filed this application for discretionary appeal. This Court, however, lacks jurisdiction.

The pending suit involves a petition for contempt based on alleged violations of a divorce decree. Jurisdiction, therefore, lies in the Supreme Court, which has appellate jurisdiction over "[a]ll divorce and alimony cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); see *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); see also *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). Accordingly, this application is hereby TRANSFERRED to the Supreme Court of Georgia for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**MAR 15 2012**

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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.*

*Hally H. O. Spencer*, Clerk.

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

ATLANTA, April 4, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0304. WESLEY SCOTT WILLIAMS v. KEMUEL A. KIMBROUGH.**

Wesley Scott Williams filed this application for discretionary appeal of the trial court's order dismissing his complaint against Clayton County Sheriff Kemuel A. Kimbrough. Williams subsequently moved to withdraw the application on the ground that the order he seeks to appeal is directly appealable. Because Williams was incarcerated when he filed the complaint in this case, his appeal is controlled by the Prison Litigation Reform Act of 1996. OCGA § 42-12-1 et seq. OCGA § 42-12-8 requires that an appeal of a civil action filed by a prisoner "shall be as provided in Code Section 5-6-35." Under OCGA § 5-6-35, the party wishing to appeal must file an application for discretionary appeal to the appropriate appellate court. Accordingly, the trial court's dismissal order was not directly appealable, and Williams properly proceeded by discretionary application. His motion to withdraw is DENIED.

Kimbrough has moved to dismiss the application on the ground that it lacks merit. That, however, does not present a basis for dismissing the application. Kimbrough's motion to dismiss is therefore DENIED.

Upon review of the merits of Williams's application, it is also DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, APR - 4 2012*

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*Holly K. O. Spencer*....., Clerk.



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

ATLANTA,            MARCH            04, 2012

*The Court of Appeals hereby passes the following order:*

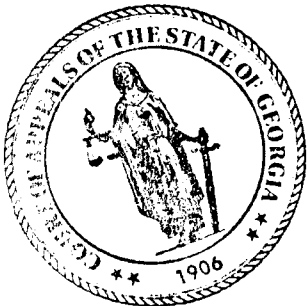
APPLICATION   NO.            A12D0305

IN THE INTEREST OF: A. R. S., A CHILD (FATHER)

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

91026

1101706



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR - 4 2012**

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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.*

*Hally K. O. Spencer*

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

ATLANTA, MARCH 30, 2012

*The Court of Appeals hereby passes the following order:*

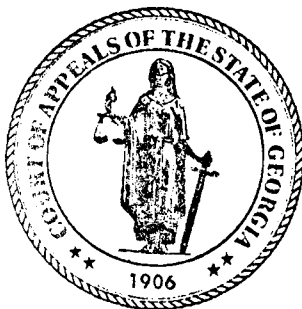
APPLICATION NO. A12D0306

TRAVIS A. HENRY V. THE STATE

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

94026

2010CR00436



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 30 2012

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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.*

*Hally K. O. Sparrow*

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

ATLANTA,            MARCH            28, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0307

ATLANTA INDEPENDENT SCHOOL SYSTEM V. BERTHA SCOTT

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

71026

2011CV201726



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 28 2012

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

*Clerk.*

*Halley K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, May 08, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0307. ATLANTA INDEPENDENT SCHOOL SYSTEM v. BERTHA SCOTT.**

Upon consideration of the Motion for Reconsideration filed in the above-styled appeal, the Motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 05/08/2012*

*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.*

*Hally F. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 20, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0308. JATAVIUS LAMAR TOWNS v. THE STATE.**

In 1999, Jatavius Lamar Towns was convicted of three counts of burglary, two counts of criminal attempt to commit burglary, four counts of armed robbery, six counts of aggravated assault, six counts of possession of a firearm during the commission of a felony, one count of terroristic threats and acts, and one count of hijacking a motor vehicle. Towns was sentenced to life plus 140 years. This Court affirmed Towns's conviction in *Hayes v. State*, 249 Ga. App. 857 (549 SE2d 813) (2001). On January 12, 2012, Towns filed a motion to vacate and set aside his sentence.<sup>1</sup> The trial court denied the motion, and Towns filed this application for discretionary appeal.

A direct appeal lies from the denial of a motion to correct a void sentence if the defendant raises a colorable claim that the sentence is, in fact, void or illegal. See *Harper v. State*, 286 Ga. 216, 217 (1), n. 1 (686 SE2d 786) (2009); *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009). But a sentence is void only when the trial court imposes punishment that the law does not allow. *Jordan v. State*, 253 Ga. App. 510, 511 (1) (559 SE2d 528) (2002).

When the sentence imposed falls within the statutory range of punishment, the sentence is not void and is not subject to post-appeal

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<sup>1</sup> In violation of Court of Appeals Rule 31 (b), Towns did not include a copy of the motion he filed that led to the order he seeks to appeal. Based upon the arguments Towns raises in his application and the trial court's order, it appears that Towns's motion sought to vacate his sentence on the ground that he was sentenced unfairly.

modification beyond that provided in OCGA § 17-10-1 (f). Assertions taking issue with the procedure employed in imposing a valid sentence or questioning the fairness of an imposed sentence do not allege a sentence is void and therefore are not a means for post-appeal, post-OCGA § 17-10-1 (f) sentence modification. Rather, a petition for writ of habeas corpus is the means for seeking sentence review for such allegations.

(Punctuation omitted.) *Coleman v. State*, 305 Ga. App. 680-681 (700 SE2d 668) (2010). Because Towns has not raised a colorable void sentence claim, this application is hereby DISMISSED. See *Mosley v. State*, 301 Ga. App. 47, 49 (686 SE2d 833) (2009).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, MAR 20 2012*

*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.*

*Hally H. O. Spencer* ..... , Clerk.

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

ATLANTA,            MARCH            29, 2012

*The Court of Appeals hereby passes the following order:*

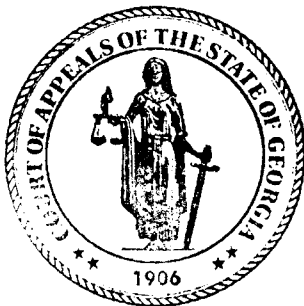
APPLICATION    NO.            A12D0309

IN THE INTEREST OF: D. L. F., T. M. F., R. F., ADN T. J. M., CHILDREN  
(MOTHER)

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.

99026

11JV1689



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **MAR 29 2012**

*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*  
*Hally K. O. Spaw*

# Court of Appeals of the State of Georgia

ATLANTA, April 2, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0310. RONALD F. FOX v. CENTENNIAL PARK NORTH, LLC, et al.**

Ronald F. Fox filed an application for discretionary appeal from the trial court's order granting summary judgment to multiple defendants in this action. Orders granting summary judgment may be appealed directly; no application is necessary. See OCGA § 9-11-56 (h). If a party applies for discretionary review of a directly appealable order, we will grant the application under OCGA § 5-6-35 (j). Thus, this application for discretionary appeal is hereby GRANTED.

It appears that Fox has already filed a notice of appeal. If he has not, however, Fox shall have 10 days from the date of this order in which 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, APR - 2 2012*

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

*Hally H. O. Spencer*, Clerk.



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

ATLANTA,            MARCH            28, 2012

*The Court of Appeals hereby passes the following order:*

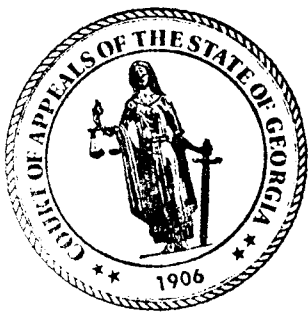
APPLICATION    NO.            A12D0311

MELVIN L. YOUNG V. THE STATE

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

98026

03R99396



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta            MAR 28 2012*

*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.*

*Hally K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, May 16, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0311. MELVIN L. YOUNG v. THE STATE.**

Melvin L. Young has filed a motion for reconsideration of our March 28, 2012, order denying his application for discretionary appeal. That motion for reconsideration is DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/16/2012*

*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.*

*Hally H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 21, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0312. NATHAN DEAL, ET AL. v. RANDY MILLER, ET AL.**

Randy Miller and four other plaintiffs filed suit against Governor Nathan Deal and other public officials (collectively, “the defendants”) alleging that, without legal representation, they were improperly incarcerated for child support debt. The plaintiffs moved for class certification, and the trial court granted the motion. The defendants filed an application for discretionary appeal, seeking review of this ruling.<sup>1</sup>

Pursuant to OCGA § 9-11-23 (g), “[a] court’s order certifying a class or refusing to certify a class shall be appealable in the same manner as a final order to the appellate court which would otherwise have jurisdiction over the appeal from a final order in the action.” Thus, the order at issue here may be appealed directly.

Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. Accordingly, the defendants’ application is hereby GRANTED. The defendants shall have 10 days from the date of this order to file a notice of appeal with the trial court. If, however, a notice of appeal has already been filed, a second notice need not be filed. The clerk of the trial court is directed to include a copy of this order in the appellate record.

---

<sup>1</sup> The application was filed in the Supreme Court, which transferred the matter to this Court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta,*

**MAR 21 2012**

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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.*

*Hally H. O. Spencer* ..... , Clerk.

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

ATLANTA,            MARCH            29, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0313  
DARIUS RANSOME V. THE STATE

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

70027

SU10CR0311



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 29 2012**

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            10, 2012

*The Court of Appeals hereby passes the following order:*

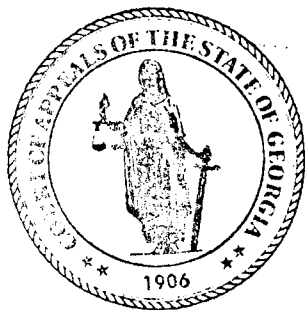
APPLICATION NO.            A12D0314

IAN MENDELSON V. SOUTHEAST MORTGAGE OF GEORGIA, INC.

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

93027

10A10588



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 10 2012

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*Clerk.*

*Hally K. O. Sparrow*

912C1542

FILED IN OFFICE  
JUN 04 2012

Adrian P. Wood  
SUPREME COURT OF GEORGIA

# Court of Appeals of the State of Georgia

ATLANTA, May 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0314. MENDELSON v. SOUTHEAST MORTGAGE OF GEORGIA, INC.**

Ian Mendelson filed an application of discretionary review of the trial court's order directing him to pay attorney fees under OCGA § 9-15-14. On April 10, 2012, this Court denied Mendelson's application. Mendelson has now filed a motion for reconsideration challenging this Court's denial of his application. The motion is hereby DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/07/2012*

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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.*

*Hally F. O. Spencer, Clerk.*



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: May 29, 2012**

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 **S12C1542**.

**IAN MENDELSON v. SOUTHEAST MORTGAGE OF GEORGIA, INC.**

Clerk, Supreme Court of Georgia

**MAY 31 2012**

Case No. A12D0314

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1542

Atlanta, October 29, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IAN MENDELSON v. SOUTHEAST MORTGAGE OF GEORGIA, INC.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0314

RECEIVED IN OFFICE  
2012 NOV 13 PM 2:29  
CLERK'S OFFICE  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta November 13, 2012

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.



*Lia C. Rilton*, Chief Deputy Clerk

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

ATLANTA, APRIL 09, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A12D0315

FRANCISCO TAPIA DORANTES V. H& P CLEANING SERVICE, INC., ET AL

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

92027

NONE



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR - 9 2012

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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.*  
*Hally K. O. Sparrow*

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

ATLANTA,

APRIL

03, 2012

*The Court of Appeals hereby passes the following order:*

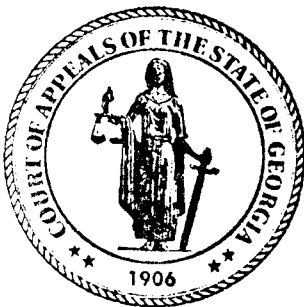
APPLICATION NO. A12D0316

MICHAEL JEROME MOSBY 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.

97027

11B4212



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **APR - 3 2012**

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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.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            05, 2012

*The Court of Appeals hereby passes the following order:*

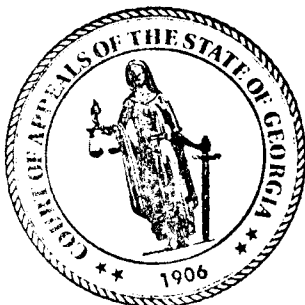
APPLICATION NO.            A12D0317

JAMES STUCKEY ET AL V. PROFESSIONAL GENERAL ADJUSTERS, 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.

91027

10A10718



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR - 5 2012**

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hereto affixed the day and year last above written.*

*Clerk*  
*Holly K. O. Spawr*

# Court of Appeals of the State of Georgia

ATLANTA, March 23, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0318. YVETTE S. SMITH v. GMAC MORTGAGE, LLC, ET AL.**

Yvette S. Smith seeks discretionary review of the trial court's order granting summary judgment to the defendants. An order granting summary judgment is subject to direct appeal. See OCGA § 9-11-56 (h); *Culwell v. Lomas & Nettleton Co.*, 242 Ga. 242, 243 (248 SE2d 641) (1978).

Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely application for discretionary appeal if the order is subject to direct appeal. Accordingly, Smith's application is hereby GRANTED. Smith shall have 10 days from the date of this order to file a notice of appeal with the superior court, if she has not already done so. The superior court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, MAR 23 2012*

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

*Holly K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0319. CALITA E. ROBINSON v. GEORGE ROBINSON, JR.**

Calita E. Robinson filed this application for discretionary appeal from the trial court's order denying her third motion for the trial judge to disqualify herself from presiding over a contempt proceeding in this pending divorce action.<sup>1</sup> Robinson sought disqualification in light of a separate mandamus action that she has filed against the trial judge.

"Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992). And OCGA § 5-6-35, the discretionary appeal statute, does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). See *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996). Accordingly, Robinson's failure to comply with the interlocutory appeals procedures and obtain a certificate of immediate review deprives this Court of jurisdiction, and this application is hereby DISMISSED.

---

<sup>1</sup> Calita Robinson filed this application in the Supreme Court, which transferred it here upon finding that Robinson "seeks to appeal an issue other than divorce or alimony in a pending divorce action."



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, APR 11 2012*

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*Hally H. O. Spawr*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, April 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0320. MARIO MILTON v. STATE OF GEORGIA.**

Mario Milton filed this application for discretionary appeal seeking appellate review of the trial court's order denying his motion for sentence modification. An appeal of such order, however, does not require compliance with the discretionary appeal procedure.

Ordinarily, when a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v State*, 204 Ga App 582 (420 SE2d 393) (1992). Milton filed his application 302 days after entry of the order at issue here. Accordingly, his application is untimely and must be DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, APR 11 2012*

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hereto affixed the day and year last above written.*

*Hally H. O. Sams*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 20, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0321. ANETA JOAN WHITAKER v. CHRISTOPHER BRADEN  
TEMPLES.**

Aneta Joan Whitaker has filed an application for discretionary appeal, seeking review of an order modifying child custody. Under OCGA § 5-6-34 (a) (11), “[a]ll judgments or orders in child custody cases including . . . awarding or refusing to change child custody” are directly appealable. A party seeking to challenge a child custody order, therefore, may file a direct appeal. See *Cohen v. Cohen*, 300 Ga. App. 7, 8 (1) (684 SE2d 94) (2009); *Taylor v. Curl*, 298 Ga. App. 45 (679 SE2d 80) (2009).

We will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Whitaker shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, she has already filed a notice of appeal, she need not file a second notice. The clerk of the trial 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 20 2012*

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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.*

*Hally K. O. [Signature]*, Clerk.

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

ATLANTA,            APRIL            06, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0322

IN THE INTEREST OF: D. J., A CHILD (MOTHER)

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.

96027

0511TP3206



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR - 6 2012**

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*Holly K. O. Spencer*

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

ATLANTA, APRIL 11, 2012

*The Court of Appeals hereby passes the following order:*

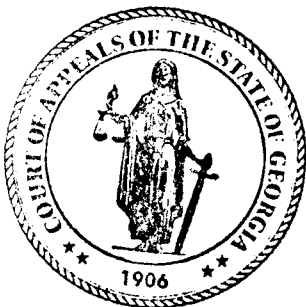
APPLICATION NO. A12D0323

IN THE INTEREST OF: R. L. H. AND S. S. H., CHILDREN (MOTHER)

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

98027

2011J0190



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 11 2012

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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.*

*Holly K. O. Spanow*

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

ATLANTA,          APRIL          11, 2012

*The Court of Appeals hereby passes the following order:*

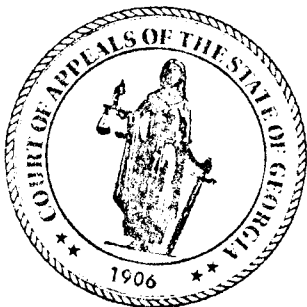
APPLICATION   NO.          A12D0324

MARGARET C. RILEY FULLER V. EXPRESS SCRIPTS ET AL

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

90027

2011CV1810



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 11 2012

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hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, April 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0325. DUDLEY M. HALTER, et al. v. EAGLE NECK HOMEOWNERS  
ASSOCIATION, INC.**

Dudley M. Halter and Nargis Halter seek discretionary review of the trial court's denial of their motion for new trial in this action to recover unpaid homeowners' association fees. Although the materials submitted in support of the Halters' application are paltry, no provision of OCGA § 5-6-35 (a) (1) appears to be applicable here. A timely motion for new trial may extend the time in which appellate relief may be sought.<sup>1</sup> See OCGA § 5-6-38 (a). And the denial of such motion may be directly appealed. See OCGA § 5-6-34 (a); *Martin v. Williams*, 263 Ga. 707 (438 SE2d 353) (1994).

Based upon the material before us, it appears that the Halters have a right of direct appeal.<sup>2</sup> Accordingly, this application is hereby GRANTED pursuant to OCGA § 5-6-35 (j). The Halters shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, they have already filed a notice of appeal, they need not file a second notice. The clerk of the trial court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

---

<sup>1</sup> Although the trial court noted that the Halters' motion for new trial was actually a motion for reconsideration, it is not possible to determine the correctness of that ruling from the materials submitted.

<sup>2</sup> If, upon receiving the record, we determine that we lack jurisdiction, the appeal will be dismissed.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, APR 11 2012*

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

*Hally K. O. Spawar*, Clerk.

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

ATLANTA,            APRIL            12, 2012

*The Court of Appeals hereby passes the following order:*

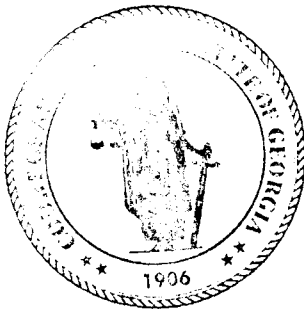
APPLICATION    NO.            A12D0326

THE CITY OF ATLANTA (THE "CITY") ET AL V. EVAN R. HARDIN

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

93028

2011CV205712



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 12 2012

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hereto affixed the day and year last above written.*

*Clerk.*

*Holly K. O. Spanow*



# Court of Appeals of the State of Georgia

ATLANTA, April 9, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0327. MARK LAWRENCE v. THE STATE.**

On March 19, 2012, Mark Lawrence filed this application for discretionary appeal, seeking appellate review of the trial court's February 2, 2012 order refusing to reinstate probation following revocation. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Lawrence filed his application 46 days after entry of the order he seeks to appeal, his application is untimely. Lawrence seeks permission to file an out-of-time application. There is, however, no right to an out-of-time application for discretionary appeal. See *Gable v. State*, 290 Ga. 81(720 SE2d 170) (2011) (out-of-time appeal only available for deprivation of constitutional right). For these reasons, this application is hereby DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, APR - 9 2012

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

*Holly K. O. Spencer*, Clerk.

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

ATLANTA,            APRIL            11, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0328

ROBERT JAY LAGROON V. REBECCA L. LAGROON

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

97028

2011CV0201



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 11 2012

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hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            19, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0329

JOYCE ANDREWS V. COBB COUNTY COMMISSIONERS ET AL

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

91028

11111980



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 19 2012

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hereto affixed the day and year last above written.*

*Clerk.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0330

IN THE INTEREST OF: H. V., A CHILD (FATHER)

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

94028

11JV00820



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            APR 12 2012*

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

*Clerk.*

*Hally K. O. Spanow*

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

ATLANTA,            APRIL            12, 2012

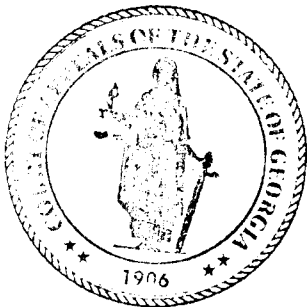
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0331  
MANGA KABASSU ("KABASSU") V. MARK BUTLER, COMMISSIONER  
OF GEORGIA DEPARTMENT OF LABOR ET AL

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

71028

2011CV206938



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 12 2012

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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.*

*Hally K. O. Spaw*

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

ATLANTA,            APRIL            11, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0332

IN THE INTEREST OF: A. M., A. M., D. M., E. M., AND M. M., CHILDREN

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.

95028

1101374



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 11 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            18, 2012

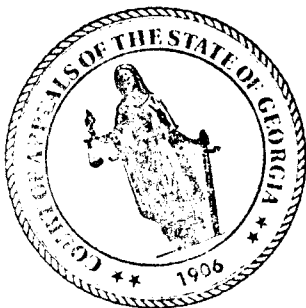
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A12D0333  
JOHNNY BROOKS V. BENTON-GEORGIA

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

99028

12CV00149



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 18 2012

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            APRIL            19, 2012

*The Court of Appeals hereby passes the following order:*

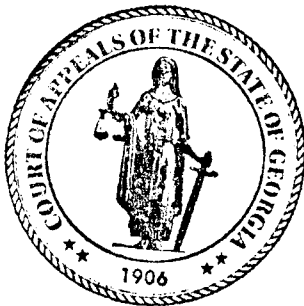
APPLICATION   NO.            A12D0334

JENNIFER L. KNIGHT V. LIMISHA WATKINS 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 STATE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96028

10EV009648



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 19 2012

*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.*

*Hally K. O. Spawort*



# Court of Appeals of the State of Georgia

ATLANTA, April 12, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0335. H. J. CLARK v. WILLIAM S. HARDMAN, et al.**

Following the entry of judgment on a jury verdict, H. J. Clark moved for a new trial or for judgment notwithstanding the verdict. The trial court denied that motion, and Clark appealed to this Court. The appeal was docketed as Case Number A12A0379 and is currently pending. Clark also moved for an award of attorney fees under OCGA § 9-15-14. The court granted Clark's motion in part, after which he filed this application for discretionary appeal.

Under *Rolleston v. Huie*, 198 Ga. App. 49 (400 SE2d 349) (1990), a post-judgment award of attorney fees may be appealed directly without regard to the discretionary appeal procedures where there is a pending direct appeal taken from the underlying judgment. Thus, Clark was entitled to bring this appeal under OCGA § 5-6-34 (a).

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 timely filed a notice of appeal. As it does not appear that Clark has filed a notice of appeal, this application is hereby GRANTED. Clark shall have ten days from the date of this order to file a notice of appeal with the trial court. The trial 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,*

APR 12 2012

*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.*

*Hally K. O. Spencer*....., Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 24, 2012

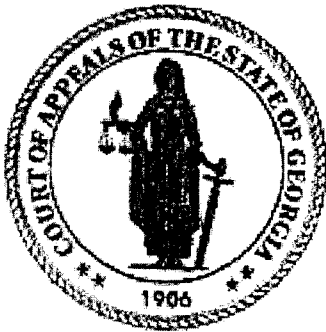
*The Court of Appeals hereby passes the following order*

**A12D0336 MAID OF THE MIST CORPORATION et al v. WILLIAM M. WINDSOR, et  
al**

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

LC NUMBERS:

11GC8860



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, April 24, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

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

ATLANTA,            APRIL            18, 2012

*The Court of Appeals hereby passes the following order:*

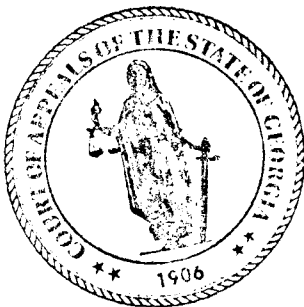
APPLICATION NO.            A12D0337

IN THE INTEREST OF: J. J. S., A CHILD (MOTHER)

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.

70029

1100461



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            APR 18 2012*

*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.*

*Hally K. O. Spaw*

# Court of Appeals of the State of Georgia

ATLANTA, April 26, 2012

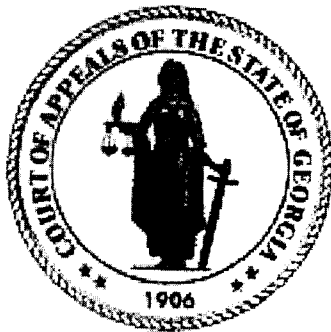
*The Court of Appeals hereby passes the following order*

**A12D0338 DANNY VINCENT CLARK v. THE STATE**

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

LC NUMBERS:

2008CR1141



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, April 26, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

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

ATLANTA,            APRIL            19, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0339  
WILLIE FRANK WRIGHT 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.

92029

48308



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            APR 19 2012*

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, April 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0340. OLIVER H. ENDSLEY, III v. CITY OF ATLANTA.**

Oliver H. Endsley, III was charged with failing to obey a traffic signal and failing to have a valid driver's license. Endsley appeared before the City of Atlanta municipal court, which bound over the traffic offenses to state court. The municipal court also found Endsley to be in contempt of court. Endsley sought to appeal the contempt ruling, and he filed this application for discretionary appeal.<sup>1</sup>

As a general rule, however, the ruling of a municipal court must be appealed – either directly or by certiorari – to the superior court. See OCGA § 5-4-3 (petition for certiorari to superior court); OCGA § 40-13-28 (defendant convicted of traffic offense has right of appeal to superior court). See, e. g., *Dunn v. Mulling*, 108 Ga. App. 9 (31 SE2d 794) (1968) (defendant in contempt of municipal court petitioned for certiorari in superior court). If the party is then aggrieved by the decision of the superior court, an application for discretionary appeal may be filed in this Court. See OCGA § 5-6-34 (a) (1).

The Georgia Constitution requires that “[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.” See Ga. Const. of 1983, Art. VI, Sec. I, Par. VIII; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Accordingly, this application is hereby TRANSFERRED to the Fulton County superior court.

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<sup>1</sup> Endsley filed his application in the Supreme Court, which found no basis for the exercise of its jurisdiction and thus transferred the application to this Court.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 04/26/2012*

*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.*

*Hally F. O. Spencer*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, April 20, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0341. Crawford v. Pendleton.**

Although the procedural history of this case is rather unclear, it appears that Virginia Crawford filed a dispossessory action against Francine Pendleton, seeking a writ of possession regarding certain real property in Conyers, Georgia. Several years later, the trial court held a jury trial to determine who owned the property – Crawford or Pendleton. The jury found that Pendleton was the rightful owner, and the trial court entered judgment directing that the property be titled in Pendleton's name. Crawford filed an application for discretionary appeal from that judgment.

Under Ga. Const. 1983, Art. VI, Sec. VI, Par. III, the Supreme Court has original appellate jurisdiction over cases involving title to land. Because Crawford's application involves title to land, jurisdiction over this matter lies in the Supreme Court. See *Tharp v. Harpagon Co.*, 278 Ga. 654, 655 (1) (604 SE2d 156) (2004). Accordingly, the application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta,* **APR 20 2012**

*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.*

*Hally H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 30, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0342. CAREY LECCELL ROSS v. THE STATE.**

In 2010, Carey Lecell Ross was convicted of multiple counts of felony obstruction. On March 29, 2012, he filed in this Court a "Motion to Set Aside Sentence," which we docketed as an application for discretionary appeal. It does not appear that Ross filed this motion in the trial court, and the only order included with his application is the judgment of conviction and sentence from 2010.

To the extent that Ross seeks to appeal his 2010 conviction, this application is untimely. See OCGA § 5-6-35 (d) (applications for discretionary appeal must be filed within 30 days of the order on appeal). To the extent that he seeks review of his motion to set aside his sentence, the trial court apparently has not yet considered that motion. "Inasmuch as we are a court for the correction of errors, we do not consider issues which were not raised below and ruled on by the trial court." *Ward v. State*, 299 Ga. App. 826, 827 (683 SE2d 894) (2009). In the absence of a ruling by the trial court, we have nothing to review. *Amica v. State*, 307 Ga. App. 276, 282 (2) (704 SE2d 831) (2010). Because this application for discretionary appeal is untimely from the only order attached, it is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 04/30/2012*

*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.*

*Holly K. O. Spencer*, Clerk.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: May 14, 2012**

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 **S12C1487**.

**CAREY LECCELL ROSS v. THE STATE**

Clerk, Supreme Court of Georgia

Case No. A12D0342

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

*Set over*  
*5/21/12*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1487

Atlanta, October 29, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CAREY LECCELL ROSS v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.

A12D0342

RECEIVED IN OFFICE  
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DEPT. / COURT ADMINISTRATION  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta November 13, 2012

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.



*Lia C. Rittor*, Chief Deputy Clerk

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

ATLANTA,            APRIL            12, 2012

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A12D0343

ALTON POWELL V. THE STATE

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

71029

2012CR019



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 12 2012

*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.*

*H. A. O. Spencer*  
Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 27, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0344. MARK KERLIN v. LARRY JOHNSON, ET AL.**

Mark Kerlin, a prison inmate, seeks discretionary review of the trial court's order of October 6, 2011, denying his request to proceed in forma pauperis, and the trial court's order of January 12, 2012, denying his motion to set aside the October 6, order. We lack jurisdiction.

Kerlin's application for discretionary appeal was docketed in this Court on April 2, 2012,<sup>1</sup> 179 days after the entry of the order denying his request to proceed in forma pauperis. An application for discretionary appeal must be filed within 30 days of the order on appeal. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Therefore, Kerlin's application is untimely from the order denying his request to proceed as a pauper.

Moreover, Kerlin has not included with his application materials the motion that led to the trial court's order of January 12, 2012. Kerlin states in his brief that his motion sought reconsideration of the trial court's order of October 6, 2011. Additionally, in its order, the trial court indicates that Kerlin sought reconsideration of its earlier order in his motion. Although the January 12 order is entitled "Order

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<sup>1</sup> Kerlin's application was initially received by this Court on March 1, 2012, but was returned for failure to include a certificate of service.

Denying Defendant's Motion to Set Aside Judgment,"<sup>2</sup> we look to the substance of the motion rather than its nomenclature. See *Kuriatnyk v. Kuriatnyk*, 286 Ga. 589, 590 (690 SE2d 397) (2010) (in pleadings, substance controls over nomenclature). Here, the substance of the motion was the reconsideration of the trial court's earlier order. The denial of a motion for reconsideration, however, is not directly appealable. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). And the filing of such a motion does not extend the time for appealing the underlying judgment – here, the order denying the request to proceed in forma pauperis. Kerlin's application therefore, is untimely as to the order denying his request to proceed in forma pauperis, and is invalid as to the order of January 12, 2012. Accordingly, we lack jurisdiction to consider this appeal, which is hereby *DISMISSED*.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 04/27/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

---

<sup>2</sup> The trial court's order contained a scrivener's error as the first sentence of the order makes it clear that the motion at issue was one filed by the plaintiff, Kerlin.

# Court of Appeals of the State of Georgia

ATLANTA, April 25, 2012

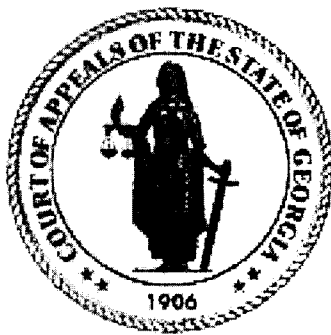
*The Court of Appeals hereby passes the following order*

**A12D0345 BARRY K. ALLISON 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.

LC NUMBERS:

03CR197



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, April 25, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, April 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0346. ROBERT AUTRUE DURHAM v. THE STATE.**

Robert Autrue Durham seeks discretionary review of the trial court's February 16, 2012 order denying his motion to withdraw his guilty plea. Durham's application, however, was not filed in this Court until April 3, 2012, 47 days after entry of the trial court's order.<sup>1</sup> To be valid, 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); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Accordingly, we lack jurisdiction to consider Durham's application, which is hereby DISMISSED.<sup>2</sup>

---

<sup>1</sup> Durham attempted to file his application earlier, but it was returned to him because it did not contain a copy of the order to be appealed, in violation of OCGA § 5-6-35 (c).

<sup>2</sup> It appears that Durham filed his motion to withdraw his guilty plea outside the term of court in which the plea was entered. See *State v. Shields*, 265 Ga. App. 473 (594 SE2d 692) (2004) ("The terms of court for the State Court of Gwinnett County shall be as follows: first Mondays in January, March, May, July; second Monday in September; and first Monday in November."). If so, the trial court lacked jurisdiction to entertain or grant the motion, and Durham's only remedy for withdrawing the plea would be through a habeas corpus proceeding. See *Crane v. State*, 302 Ga. App. 422 (1) (691 SE2d 559) (2010).



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 04/26/2012*

*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.*

*Hally F. O. Spencer, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, April 30, 2012

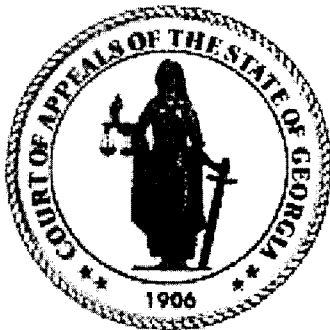
*The Court of Appeals hereby passes the following order*

**A12D0347 IN THE INTEREST OF: M. F. W., A CHILD (FATHER)**

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

LC NUMBERS:

111005



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, April 30, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 27, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0348. CHARLES FERGUSON v. FULTON COUNTY DISTRICT  
ATTORNEY SHEPERD ORLOW.**

Charles Ferguson seeks discretionary review of the trial court's order of September 10, 2012, entitled "Second Order Denying Various Post-Judgment Motions Filed by Plaintiff."<sup>1</sup> In violation of Court of Appeals Rule 31 (b), Ferguson did not include with his application the motions that led to the order he seeks to appeal. In its order, however, the trial court identified the motions as "Plaintiff's Motion(s) & Motion(s) in Support of All Motion(s) Both in Opposition & Prosecution" and "Plaintiff's Motion to Reevaluate All Motions and Find that Two False Writings Exist." The trial court also explained that it had granted summary judgment to the defendant on April 13, 2010, and that Ferguson's post-judgment motions sought reconsideration of that final order. We lack jurisdiction over Ferguson's application for discretionary review.

The order denying Ferguson's motions for reconsideration is not appealable. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000); *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). And the filing of such motions did not extend the time for appealing the underlying judgment – here, the grant of the

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<sup>1</sup> Ferguson initially filed his application in the Supreme Court, which transferred it to this Court. The application was timely from the trial court's order but was not docketed in this Court until March 28, 2012, after Ferguson submitted his pauper's affidavit and a proper certificate of service.

defendant's motion for summary judgment.<sup>2</sup> See *Bell*, 244 Ga. App. at 510-511. Ferguson's application, therefore, is invalid as to the order of September 10, 2010, and untimely as to the order granting the motion for summary judgment. Therefore, we lack jurisdiction over this discretionary application, which is hereby **DISMISSED**.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 04/27/2012*

*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.*

*Hally H. D. Spencer*, Clerk.

---

<sup>2</sup> The grant of summary judgment would have been directly appealable under OCGA § 5-6-34 (a) (1).

# Court of Appeals of the State of Georgia

ATLANTA, June 04, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0348. CHARLES FERGUSON v. FULTON COUNTY DISTRICT  
ATTORNEY SHEPERD ORLOW.**

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/04/2012*

*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.*

*Holly H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 04, 2012

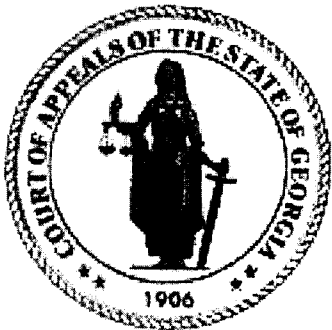
*The Court of Appeals hereby passes the following order*

**A12D0349 SHAW INDUSTRIES, INC., v. BETTY BROOK SHIRE**

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

LC NUMBERS:

10CD2577



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 04, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 02, 2012

*The Court of Appeals hereby passes the following order*

**A12D0350 IN THE INTEREST OF: S. N. P., S. N. P., L. J. P., CHILDREN**

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

LC NUMBERS:

115111067 115111068 115111069



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 02, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 01, 2012

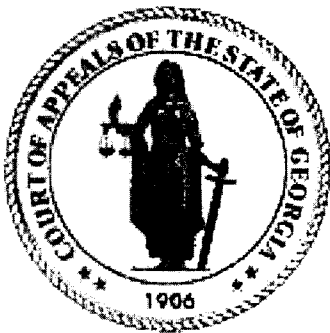
*The Court of Appeals hereby passes the following order*

**A12D0351 RICHARD L. PARSONS v. JAMIE F. MERTZ (AKA) JAMIE MERTZ 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.

LC NUMBERS:

11A11205



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 01, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 08, 2012

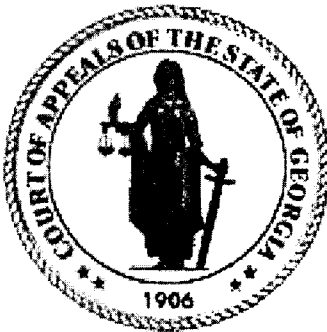
*The Court of Appeals hereby passes the following order*

**A12D0352 IN THE INTEREST OF: C. H., R. H., AND A. M. H., CHILDREN (MOTHER)**

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

LC NUMBERS:

1101483 1101482 1101664



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 08, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 09, 2012

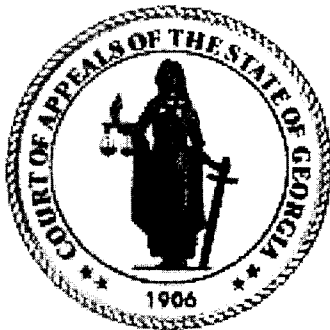
*The Court of Appeals hereby passes the following order*

**A12D0353 MIKE ELROD et al v. SUNFLOWER MEADOWS DEVELOPMENT, LLC et  
al**

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

LC NUMBERS:

08CV1062



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 09, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 03, 2012

*The Court of Appeals hereby passes the following order*

**A12D0354 KELLY NEILL v. CHARLES BRANNON**

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.

LC NUMBERS:

11CV0910



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 03, 2012.*

*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.*

*Holly K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0355. NATIONAL HILLS EXCHANGE, LLC, et al. v. DONALD THOMPSON.**

National Hills Exchange, LLC and 2701 Partners, LLC filed this application for discretionary appeal from an order of the trial court directing them to open a gate that they had erected to bar access to a parking lot on their property. Under OCGA § 5-6-35 (a) (9), an application for discretionary appeal is required to appeal from a temporary restraining order. But under OCGA § 5-6-34 (a) (4), a party may appeal directly from an interlocutory injunction.

The order at issue here is styled as a “Temporary Restraining Order.” However, the order provides that because the defendants had notice of the hearing and appeared and participated in it, the directive to keep the gate open “shall not expire upon the expiration of 30 days,” but instead shall remain in force pending another hearing to be scheduled at a later date. An order granting indefinite injunctive relief is a preliminary injunction, not a temporary restraining order. See OCGA § 9-11-95 (b) (a temporary restraining order “shall expire by its terms within such time after entry, *not to exceed 30 days*, as the court fixes . . . ) (emphasis supplied); see also *Matrix Financial Svcs. v. Dean*, 288 Ga. App. 666 n. 1 (655 SE2d 290) (2007) (trial court order indefinitely extending TRO “is the equivalent of a judgment granting an interlocutory injunction and is directly appealable”). Because the order at issue grants a preliminary injunction, it is directly appealable.

Accordingly, this application is GRANTED pursuant to OCGA § 5-6-35 (j). Applicants shall have ten days from the date of this order 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, 05/07/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

## Court of Appeals of the State of Georgia

ATLANTA, April 24, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0356. ANTONIO ROBINSON v. THE STATE.**

On February 22, 2012, the trial court entered an order denying Antonio Robinson's motion to correct his sentence.<sup>1</sup> On April 13, 2012, Robinson filed his application for discretionary appeal, challenging the trial court's order.

Robinson did not include a copy of the motion that led to the order on appeal. To the extent that he argued that his sentence was void, however, we point out that the denial of a motion to correct a void sentence is directly appealable and therefore, does not require an application for discretionary appeal. See *Harper v. State*, 286 Ga. 216 n.1 (686 SE2d 786) (2009); *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009) (a direct appeal lies from an order denying a motion to correct a void sentence if the defendant raises a colorable claim that the sentence is, in fact, void or illegal). Ordinarily, when a party applies for discretionary review of a directly appealable order – such as one denying a motion to correct a void sentence – we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v State*, 204 Ga App 582 (420 SE2d 393) (1992). Robinson filed his application 44 days after the trial court entered its order. Accordingly, we lack

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<sup>1</sup> Robinson filed a motion for extension of time to file his application for discretionary appeal on March 27, 2012, but this Court lacks the authority to grant an extension of time for the filing of an application for discretionary appeal where the request for an extension is not filed before the expiration of the period for filing as originally prescribed. See *Gable v. State*, 290 Ga. 81, 85 (2) (a) (720 SE2d 170) (2011); OCGA § 5-6-39 (d).

jurisdiction to consider the application, which is hereby *DISMISSED* as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 04/24/2012*

*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.*

*Holly H. A. Spencer*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 04, 2012

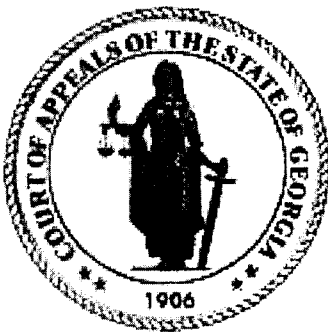
*The Court of Appeals hereby passes the following order*

**A12D0357 PAIGE MERCEDES BANKSTON v. TIMOTHY LAMAR WARBINGTON**

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.

LC NUMBERS:

2011CV196301



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 04, 2012.*

*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.*

*Hally K. O. Spawort*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0358 KAUTEX TEXTRON et al v. EVELYN MCDOWELL**

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

LC NUMBERS:

12FV0045



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 09, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 04, 2012

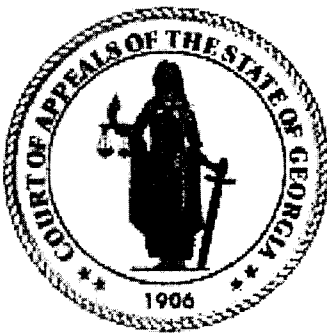
*The Court of Appeals hereby passes the following order*

**A12D0359 JOSEPH DILLARD 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.

LC NUMBERS:

10CR420



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 04, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 11, 2012

*The Court of Appeals hereby passes the following order*

**A12D0360 BRETT HALL v. CITY OF WOODSTOCK, et al**

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

LC NUMBERS:

11CV2431



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 11, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0360. HALL v. CITY OF WOODSTOCK et al.**

Upon consideration of Brett Hall's motion for reconsideration, it is hereby  
DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/07/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0361 METRO FOOD PARTNERS, INC., et al v. ALAMO GROUP, INC**

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

LC NUMBERS:

2010CV194493



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 09, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 07, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0362. JOSEPH RAYMOND PARKS, JR. v. TRACY ALVORD ET AL.**

Joseph Raymond Parks seeks discretionary review of the superior court's order affirming an agency decision that classified him as a "sexually dangerous predator" under OCGA § 42-1-14. Among other arguments raised below, Parks asserted that his OCGA § 42-1-14 classification violates the constitutional prohibition against ex post facto laws. The trial court rejected Parks's constitutional challenge, and this application for discretionary review followed. In his application, Parks again raises an ex post facto claim.

The Supreme Court "has exclusive jurisdiction over all cases involving construction of the Constitution of the State of Georgia and of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been called into question." *Atlanta Independent School System v. Lane*, 266 Ga. 657 (1) (469 SE2d 22) (1996); Ga. Const. of 1983, Art. VI, Sec. VI, Para. II. Although we have jurisdiction to apply unquestioned and unambiguous constitutional provisions, we can resolve a constitutional challenge to a state law only "if the law has been held to be constitutional against the same attack being made." *City of Decatur v. Dekalb County*, 284 Ga. 434, 436 (2) (668 SE2d 247) (2008).

It does not appear that the particular constitutional attack raised by Parks has been addressed or considered by the appellate courts.<sup>1</sup> The Supreme Court, therefore,

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<sup>1</sup> The Supreme Court has addressed the constitutionality of Georgia's sexual offender registration provisions in several contexts, including whether the criminal penalty for not registering under OCGA § 42-1-12 is an improper ex post facto law.

has jurisdiction over this matter, and Parks's application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/07/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

---

See *Frazier v. State*, 284 Ga. 638, 638-639 (1) (668 SE2d 646) (2008). The Court has not, however, addressed the ex post facto challenge at issue here or the constitutionality of OCGA § 42-1-14.



# Court of Appeals of the State of Georgia

ATLANTA, May 11, 2012

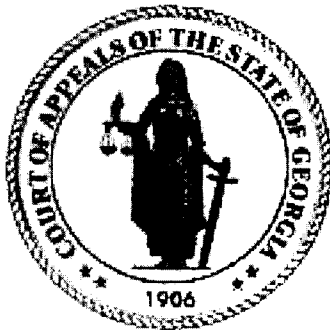
*The Court of Appeals hereby passes the following order*

**A12D0363 BRYAN ALLEN ROBERTS v. THE STATE**

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

LC NUMBERS:

09CR682



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 11, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 17, 2012

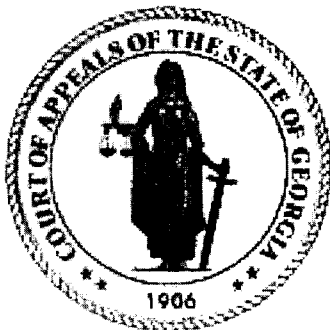
*The Court of Appeals hereby passes the following order*

**A12D0364 MITZI GAINES AS THE OWNER OF PEACE HOUSE et al v.  
DEPARTMENT OF COMMUNITY HEALTH et al**

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

LC NUMBERS:

2011CV199895



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 17, 2012.*

*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.*

*Hally K. O. Spanoos*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 11, 2012

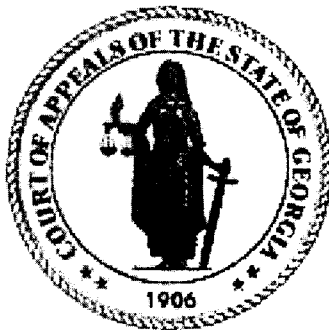
*The Court of Appeals hereby passes the following order*

**A12D0365 DAVID DICK et al v. TEXAR CORPORATION et al**

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

LC NUMBERS:

10G3615



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 11, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 10, 2012

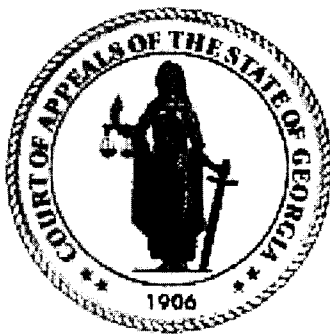
*The Court of Appeals hereby passes the following order*

**A12D0366 ESSA L. RIGGINS v. ERIC A. STIRGUS**

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.

LC NUMBERS:

10110888



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 10, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 17, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0367. OLIVIA WINTZ, ET AL. v. DEUTSCHE BANK NATIONAL TRUST CO.**

This is the second application for discretionary appeal filed by Olivia Wintz in this dispossessory action. In the first, Case No. A12D0270, Olivia Wintz sought appellate review of the Newton County magistrate court's order, which entered a writ of possession in favor of Deutsche Bank National Trust Co. Because Wintz was not authorized to file a direct appeal of the magistrate court's judgment to this Court, we entered an order transferring the case to the Newton County superior court on February 15, 2012. See OCGA § 15-10-41 (b) (1); *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991).

In the instant case, Olivia Wintz seeks review of an order, dated April 19, 2012, which she states denied her motion to set aside the writ of possession. However, there is no such order in her application materials. Pursuant to OCGA § 5-6-35 (c) and Court of Appeals Rule 31 (b), an application for discretionary review must include a copy of the order being appealed. As the applicant, Wintz bears the burden of establishing that her application should be granted. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989). In the absence of the appealable order, we are unable to assume jurisdiction. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989) ("The requirements of OCGA § 5-6-35 are jurisdictional and this court cannot accept an appeal not made in compliance therewith."). Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 05/17/2012*

*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.*

*Holly K. D. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 18, 2012

*The Court of Appeals hereby passes the following order*

**A12D0367. OLIVIA WINTZ et al v. DEUTSCHE BANK NATIONAL TRUST CO.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 18, 2012.*

*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.*

*Hally K. O. Spaw* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 17, 2012

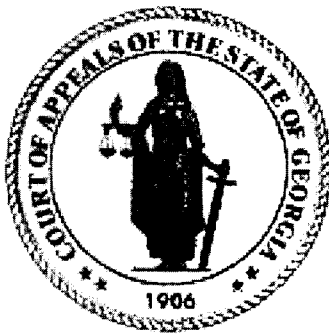
*The Court of Appeals hereby passes the following order*

**A12D0368 COLIN WEBB v. TANISHA TURNER, O/B/O, CAMERON WEBB**

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.

LC NUMBERS:

12F00272



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 17, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 18, 2012

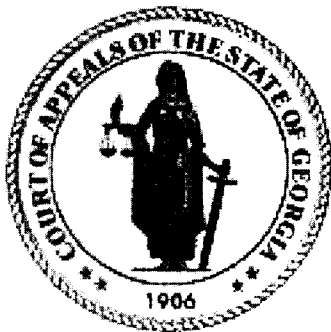
*The Court of Appeals hereby passes the following order*

**A12D0369. GLADYS E. MAPP, AS REPRESENTATIVE OF THE ESTATE OF VERA L. TRAVIS v. WE CARE TRANSPORTATION SERVICES, INC., 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

LC NUMBERS:

10EV010021



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 18, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 15, 2012

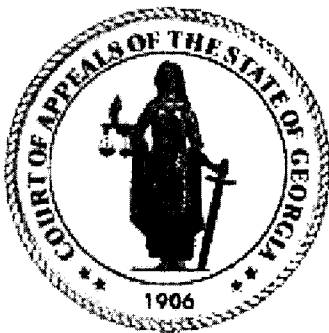
*The Court of Appeals hereby passes the following order*

**A12D0370 IN THE INTEREST OF: R. L. P. R., B. L. R., CHILDREN (MOTHER)**

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.

LC NUMBERS:

10JV070 10JV057



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 15, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 23, 2012

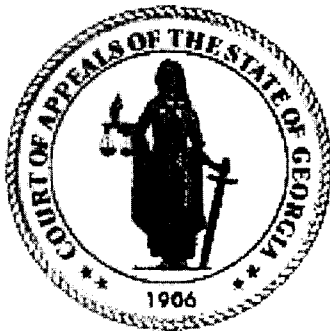
*The Court of Appeals hereby passes the following order*

**A12D0371. HOLIDAY HOSPITALITY FRANCHISING, INC v. THOMAS F. NOONS et  
al .**

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

LC NUMBERS:

11GR059734



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 23, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 29, 2012

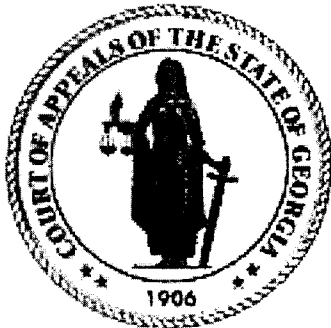
*The Court of Appeals hereby passes the following order*

**A12D0372. IN THE INTEREST OF: J. S. G., A CHILD (MOTHER) .**

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

LC NUMBERS:

1200083



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 29, 2012.*

*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.*

*Holly K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 30, 2012

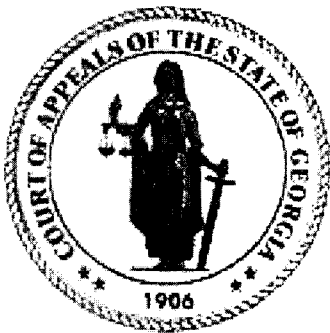
*The Court of Appeals hereby passes the following order*

**A12D0373. IN THE INTEREST OF: K. P. B., A CHILD (FATHER) .**

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.

LC NUMBERS:

04411J03783



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 30, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 22, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0374. SUNDAY N. UDOINYION v. ROBERT W. MOCK, CHIEF JUDGE.**

Sunday N. Udoinyion filed a product liability action against Michelin North America, Inc. for damages allegedly sustained when a tire blew out on his car. The trial court granted summary judgment to Michelin on all claims, and we affirmed the summary judgment ruling on appeal. See *Udoinyion v. Michelin North America*, 313 Ga. App. 248 (721 SE2d 190) (2011). We issued our remittitur on December 28, 2011. Over one month later, Udoinyion moved to recuse the trial judge, asserting that the case should be “re-heard” by a different judge. The trial court found the motion frivolous under OCGA § 9-15-2 (d) and instructed the clerk’s office not to file it. Udoinyion seeks discretionary review of that ruling.

We lack jurisdiction. An appeal is subject to dismissal when the questions presented are moot. See OCGA § 5-6-48 (b) (3). Mootness results “if the rights insisted upon could not be enforced by a judicial determination.” *Randolph Count v. Johnson*, 282 Ga. 160 (1) (646 SE2d 261) (2007). A matter is also moot if a ruling would have no practical effect on the alleged controversy. See *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997). Applying these principles, we have dismissed as moot appeals from orders entered *after* final judgment on a motion to recuse. See OCGA § 5-6-48 (b) (3); *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992) (Beasley, J., concurring specially).

Our decision affirming the trial court’s summary judgment order served as a final adjudication of this matter. See *Aetna Casualty & Surety Co. v. Bullington*, 227

Ga. 485 (2) (181 SE2d 495) (1971); OCGA § 9-11-60 (h). The dispute, therefore, was over well before the trial court ruled on the motion to recuse. Nothing remains to be resolved, and review of the trial court's recusal ruling would have no practical effect at this point. Accordingly, because the issues raised in Udoinyion's application for discretionary appeal are moot, the application is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/22/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 23, 2012

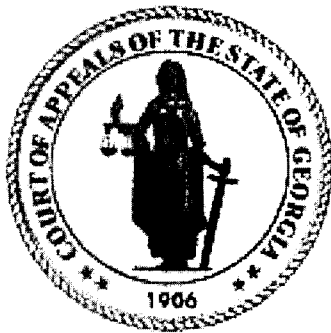
*The Court of Appeals hereby passes the following order*

**A12D0375. DBL, INC., d/b/a SAIL HARBOR MARINA v. GEORGIA COASTAL  
MARSHLANDS PROTECTION COMMITTEE et al .**

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

LC NUMBERS:

CV111966



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 23, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 25, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0376. HECTOR MORENO v. THE STATE.**

By order entered March 28, 2012, the trial court denied Hector Moreno's extraordinary motion for new trial. On April 9, Moreno filed a motion requesting an extension of time in which to file an application for discretionary appeal. On April 30, Moreno filed the instant application.

Moreno's request for an extension of time is hereby GRANTED. Upon considering the merits of Moreno's application for discretionary appeal, however, it is DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 05/25/2012*

*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.*

*Holly K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 06, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0377. CHARLES ANTHONY WILLIS v. THE STATE.**

On October 18, 2011, Charles Anthony Willis filed a motion in arrest of judgment in which he challenged the validity of his 2002 armed robbery conviction. The trial court denied the motion on January 26, 2012, and Willis filed an application for discretionary review of the order on May 7, 2012. We lack jurisdiction.

In accordance with *Lay v. State*, 289 Ga. 210 (710 SE2d 141) (2011), the denial of an untimely motion in arrest of judgment is directly appealable. Ordinarily, when a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v State*, 204 Ga App 582 (420 SE2d 393) (1992). Willis filed his application 102 days after the trial court entered its order. Accordingly, we lack jurisdiction to consider the application, which is hereby *DISMISSED* as untimely.<sup>1</sup>

---

<sup>1</sup> Willis filed a motion for reconsideration of the trial court's order on February 21, 2012. Willis has not included in his application materials the court's ruling on his motion, but in any event, the denial of a motion for reconsideration is not directly appealable. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). And the filing of such a motion does not extend the time for appealing the underlying judgment. See *id.*



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/06/2012*

*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.*

*Hally A. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 22, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0378. JOSIAH BENNETT v. THE STATE.**

On May 3, 2012, Josiah Bennett filed this application for discretionary appeal to challenge the trial court's October 6, 2011, order denying his motion to modify his sentence.<sup>1</sup> To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Because Bennett filed his application 210 days after the trial court entered its order, it is untimely. Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 05/22/2012*

*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.*

*Holly H. R. Spencer* , Clerk.

---

<sup>1</sup> Bennett, who was convicted in 1996, has apparently filed numerous such motions. In its order, the trial court noted that "[a]ny further requests by Defendant to correct or reduce his sentence shall be deemed frivolous and shall be denied filing by the McIntosh County Clerk of Court."

# Court of Appeals of the State of Georgia

ATLANTA, May 18, 2012

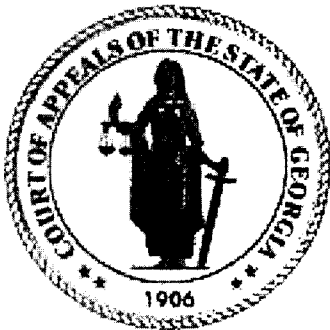
*The Court of Appeals hereby passes the following order*

**A12D0379. IN THE INTEREST OF: A. M. P., A CHILD (MOTHER).**

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

LC NUMBERS:

11CV4490



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 18, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 24, 2012

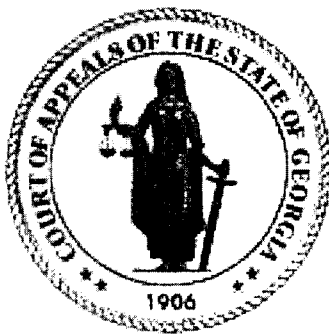
*The Court of Appeals hereby passes the following order*

**A12D0380. DEPARTMENT OF COMMUNITY HEALTH v. JOHN BOTTESCH.**

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.

LC NUMBERS:

11CV612



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 24, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 24, 2012

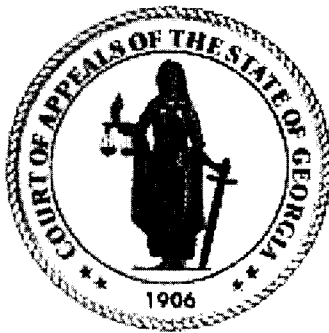
*The Court of Appeals hereby passes the following order*

**A12D0381. DEPARTMENT OF COMMUNITY HEALTH v. CAROL SHOREY.**

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.

LC NUMBERS:

11CV611



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 24, 2012.*

*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.*

*Hally K. O. Spano*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 24, 2012

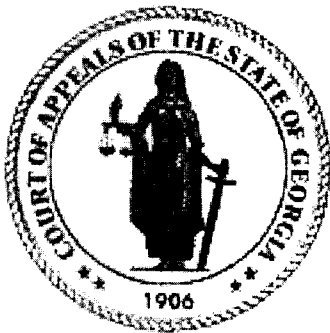
*The Court of Appeals hereby passes the following order*

**A12D0382. DEPARTMENT OF COMMUNITY HEALTH v. BOYCE ROBERTSON .**

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.

LC NUMBERS:

11CV325



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, May 24, 2012.*

*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.*

*Hally K. O. Spanow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, May 31, 2012

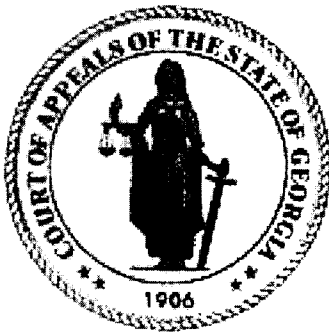
*The Court of Appeals hereby passes the following order*

**A12D0383. JOHN ESHUN et al v. FEDERAL HOME LOAN MORTGAGE  
CORPORATION .**

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

LC NUMBERS:

2011CV2084



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, May 31, 2012.*

*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.*

*Holly K. O. Sparrow* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

*The Court of Appeals hereby passes the following order*

**A12D0383. JOHN ESHUN et al v. FEDERAL HOME LOAN MORTGAGE  
CORPORATION .**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 03, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 04, 2012

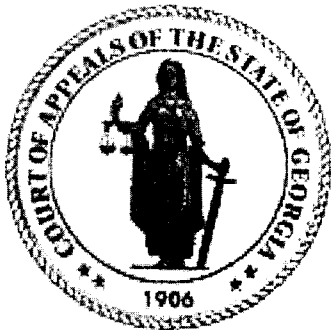
*The Court of Appeals hereby passes the following order*

**A12D0384. RICKEY HORTON v. THE STATE.**

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

LC NUMBERS:

2000CR478 2003CR720



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 04, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 25, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0385. DEMETRIC DEMONS CHATMAN v. THE STATE.**

Following the revocation of his probation, Demetric Demons Chatman filed a motion for new trial, which the trial court denied on February 23, 2012. Chatman did not file a timely discretionary application from this ruling.<sup>1</sup> On May 4, 2012, the trial court granted Chatman's request for an out-of-time appeal, and Chatman filed this application for discretionary appeal. We lack jurisdiction.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Here, Chatman was required to file his application within 30 days of the February 23 order. Although the trial court purported to grant Chatman the right to file an out-of-time appeal, there is no right to an out-of-time application for discretionary appeal. See *Gable v. State*, 290 Ga. 81 (720 SE2d 170) (2011) (out-of-time appeal only available for deprivation of constitutional right). For these reasons, this application is hereby DISMISSED.

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<sup>1</sup> Chatman's attorney improperly filed a direct appeal from the revocation order, which was docketed as Case Number A12A1645. This appeal was dismissed by order entered April 25, 2012.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 05/25/2012*

*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.*

*Holly K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 18, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0386. BERNARD GREEN v. THE STATE.**

Bernard Green was convicted of the felony murder of his wife. The Supreme Court affirmed his conviction on appeal. *Green v. State*, 266 Ga. 758 (470 SE2d 884) (1996). Green subsequently filed an extraordinary motion for new trial, which the trial court denied. He now seeks discretionary review of the trial court's ruling.

Under our Constitution, the Supreme Court has appellate jurisdiction over "[a]ll cases in which a sentence of death was imposed or could be imposed." See Ga. Const. of 1983, Art. IV, Sec. VI, Par. III (8). Because a penalty of death can be imposed for the crime of murder, jurisdiction is proper in the Supreme Court. See OCGA § 17-10-30 (b); *Neal v. State*, 290 Ga. 563, 567 (722 SE2d 765) (2012) (Hunstein, J., concurring). Accordingly, Green's application for discretionary review is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 05/18/2012*

*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.*

*Halley H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 06, 2012

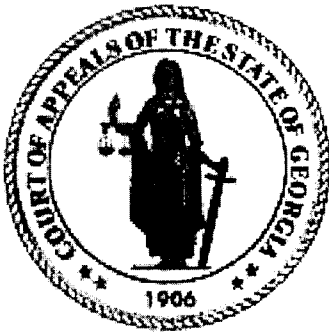
*The Court of Appeals hereby passes the following order*

**A12D0387. DANE E. NESBIT et al v. DALE NESBIT.**

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

LC NUMBERS:

11CV10466



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, June 06, 2012.*

*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.*

*Hally K. O. Spawort*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 24, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0388. CHRISTOPHER SCOTT WILLIAMS v. TYRA CRAWL.**

Christopher Scott Williams seeks discretionary review of an order that finds him in contempt for failing to meet child support and alimony obligations that arose from the parties' 2009 divorce decree. The Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). In Georgia, when the obligation to pay child support arises from a prior divorce proceeding, child support is a form of alimony. See *Spurlock v. Dept. of Human Resources*, 286 Ga. 512, 513 (1) (690 SE2d 378) (2010); *Jones v. Jones*, 280 Ga. 712, 715-716 (2) (632 SE2d 121) (2006). As the trial court's contempt finding was based on Williams's failure to pay child support and alimony, it appears that jurisdiction lies in the Supreme Court. See *Spurlock*, supra; *Rogers v. McGahee*, 278 Ga. 287, 287-88 (1) (602 SE2d 582) (2004); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985). This application is therefore TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 05/24/2012*

*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.*

*Hally H. O. Spencer* , Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, June 07, 2012

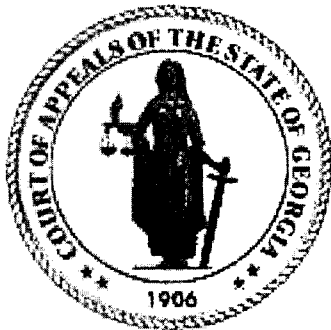
*The Court of Appeals hereby passes the following order*

**A12D0389. QUILLIAN DEMOND SMITH v. THE STATE.**

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

LC NUMBERS:

10041



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, June 07, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 05, 2012

*The Court of Appeals hereby passes the following order*

**A12D0390. UHS PEACHFORD, LP d/b/a PEACHFORD BEHAVIORAL HEALTH  
SYSTEM OF ATLANTA et al v. GEORGIA DEPARTMENT OF COMMUNITY  
HEALTH et al .**

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

LC NUMBERS:

2011CV209452



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, June 05, 2012.*

*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.*

*Hally K. O. Spanos* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 05, 2012

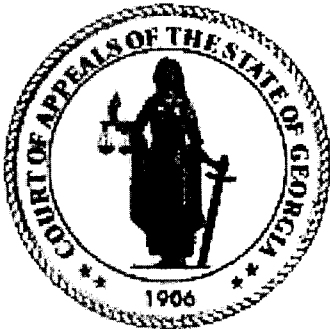
*The Court of Appeals hereby passes the following order*

**A12D0390. UHS PEACHFORD, LP d/b/a PEACHFORD BEHAVIORAL HEALTH  
SYSTEM OF ATLANTA et al v. GEORGIA DEPARTMENT OF COMMUNITY  
HEALTH et al .**

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

LC NUMBERS:

2011CV209452



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, June 05, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 11, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0391. ELMORE SPOONEY, JR. v. THE STATE.**

On March 6, 2012, the trial court entered an order revoking Elmore Spoonney, Jr.'s probation. On March 21, 2012, Spoonney submitted a pro se application for discretionary appeal to this Court. We could not accept the application for filing because it did not contain the requisite filing fee or a pauper's affidavit. See 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 and contained in the record."); see also Court of Appeals Rule 30(c). On May 11, 2012, Spoonney submitted a pauper's affidavit and his application was docketed.

To be valid, 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); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Spoonney's application was filed 66 days after entry of the order he wishes to appeal and is therefore untimely. While this Court may grant an extension of time under OCGA § 5-6-39 to file an application for discretionary appeal, as long as the request for an extension is made before the original filing deadline, see *Gable v. State*, 290 Ga. 81, 85 (2) (a) (720 SE2d 170) (2011), Spoonney's initial submission on March 21, 2012 cannot be construed as a request for an extension of time and this case is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/11/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0392. JERRY LARRY COLLIER v. ECONOMY AUTO SALES, INC.**

Jerry Larry Collier seeks discretionary review of the trial court's order denying his motion to strike answer and for entry of default judgment against Economy Auto Sales, Inc. The denial of a motion for default judgment is an interlocutory ruling. *Ware v. Handy Storage*, 222 Ga. App. 339 (474 SE2d 240) (1996); see also *Standridge v. Spillers*, 263 Ga. App. 401, 403 (1) (587 SE2d 862) (2003). The trial court's order was not otherwise designated as a final order under OCGA § 9-11-54 (b), and the underlying case is still pending below. Therefore, the order is interlocutory and requires an application for interlocutory review under OCGA § 5-6-34 (b).

A party seeking appellate review of an interlocutory order must follow the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b), which includes obtaining a certificate of immediate review from the trial court. Because Collier failed to follow the interlocutory appeal procedure, we lack jurisdiction to consider this application, which is therefore DISMISSED. See *Ware*, supra; see also *Pace Constr. Corp. v. Northpark Associates, L. P.*, 215 Ga. App. 438, 439 (450 SE2d 828) (1994).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/07/2012*

*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.*

*Holly H. O. Spencer*

, Clerk.

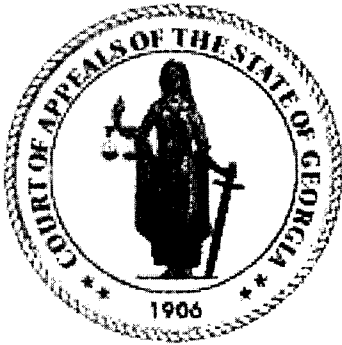
# Court of Appeals of the State of Georgia

ATLANTA, July 18, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0392. JERRY LARRY COLLIER v. ECONOMY AUTO SALES, INC.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 18, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 08, 2012

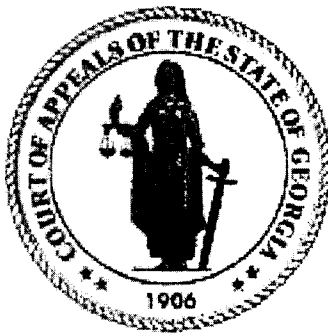
*The Court of Appeals hereby passes the following order*

**A12D0393. IN THE INTEREST OF: A. H. M., A CHILD (MOTHER) .**

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.

LC NUMBERS:

0111TP05111 0112DP01637



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 08, 2012.*

*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.*

*Hally K. O. Spawor*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, June 04, 2012

*The Court of Appeals hereby passes the following order*

**A12D0394. ALONZO FREEMAN v. MICHAEL L. THURMOND, COMMISSIONER OF  
GEORGIA DEPARTMENT OF LABOR et al .**

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

LC NUMBERS:

11V105072



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 04, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 11, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0395. JAMES EDMONDS v. NYLA EDMONDS.**

James Edmonds filed this discretionary application seeking leave to appeal the trial court's orders entered on April 18, 2012, granting a final judgment and decree of divorce. The Georgia Supreme Court has jurisdiction over all divorce and alimony cases. See Ga. Const. 1983, Art VI, Sec. VI, Par. III (6). Accordingly, this application is TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/11/2012*

*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.*

*Holly K. D. Spawr*

*, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, June 15, 2012

*The Court of Appeals hereby passes the following order*

**A12D0396. IN THE INTEREST OF: E. E. AND P. E., CHILDREN (FATHER) .**

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

LC NUMBERS:

02811J1170 02811J1171



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 15, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0397. JASON BRADLEY KALB v. THE STATE.**

Jason Kalb filed an application for discretionary review, seeking to appeal the trial court's order revoking his probation. Kalb included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e). On May 21, 2012, this Court ordered Kalb to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the May 21, 2012 order, and Kalb has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Kalb's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/07/2012*

*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.*

*Hally H. O. Spencer* , Clerk.



**SUPREME COURT OF GEORGIA**

Case No. S12I1245

Atlanta May 3, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**ALLEN ALPHONZO ADAMS v. THE STATE**

From the Superior Court of Putnam County.

The trial court's order denying applicant's extraordinary motion for new trial does not invoke this Court's subject matter jurisdiction where applicant is incarcerated on drug charges and no basis for subject matter jurisdiction appears in the record. See Ga. Const. of 1983, Art. VI, Sec. VI, Para. II-III. Therefore, it is hereby ordered that the application be transferred to the Court of Appeals.

All the Justices concur.

**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.

*Lee C. Fulton*, Chief Deputy Clerk

RECEIVED IN OFFICE  
2012 MAY 18 AM 8:35  
COURT OF APPEALS OF GA

# Court of Appeals of the State of Georgia

ATLANTA, June 13, 2012

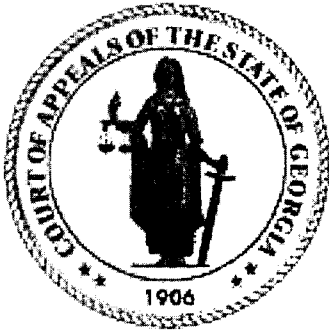
*The Court of Appeals hereby passes the following order*

**A12D0398. ALLEN ALPHONZO ADAMS v. THE STATE.**

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

LC NUMBERS:

92CR138



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 13, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 08, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0398. ALLEN ALPHONZO ADAMS v. THE STATE.**

After filing an application for discretionary appeal, Allen Alphonzo Adams filed a "Motion to Stay" the application for further development.<sup>1</sup> Under OCGA § 5-6-35 (f), however, this Court must decide applications for discretionary appeal within 30 days. And the requirements of this code section are jurisdictional. See, e. g., *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Accordingly, we lack authority to stay this application, and Adams's motion is hereby DENIED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/08/2012*

*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.*

*Holly H. D. Spencer*, Clerk.

---

<sup>1</sup> Adams filed his application in the Supreme Court, which transferred the application to this Court.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: July 19, 2012**

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 **S12C1831**.

ALLEN ALPHONZO ADAMS v. THE STATE

Clerk, Supreme Court of Georgia

JUL 30 2012

Case No. A12D0398

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia



# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1831

Atlanta, November 05, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ALLEN ALPHONZO ADAMS v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0398

RECEIVED IN OFFICE  
2012 NOV 21 AM 10:27  
CLERK OF APPEALS OF CA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta November 20, 2012

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.



*Sw. C. Pittman*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, June 08, 2012

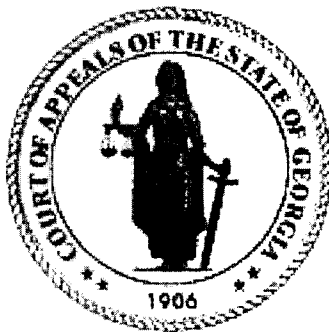
*The Court of Appeals hereby passes the following order*

**A12D0399. CORNERSTONE GRILL, LLC v. CALVARY PORTFOLIO SERVICES  
LLC, et al.**

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

LC NUMBERS:

09CI1502



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, June 08, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 14, 2012

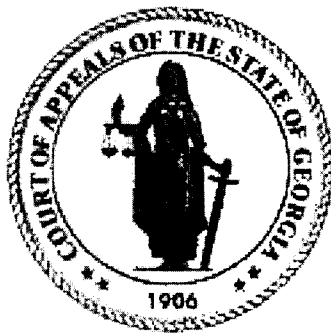
*The Court of Appeals hereby passes the following order*

**A12D0400. IN THE INTEREST OF: T. G., A CHILD (MOTHER).**

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.

LC NUMBERS:

03912J008



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 14, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 20, 2012

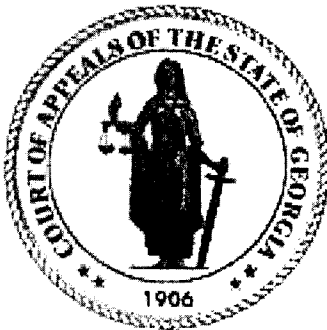
*The Court of Appeals hereby passes the following order*

**A12D0401. DANA GIBBS v. HOSPITAL AUTHORITY OF VALDOSTA/LOWNDES.**

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

LC NUMBERS:

12CV655



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 20, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 21, 2012

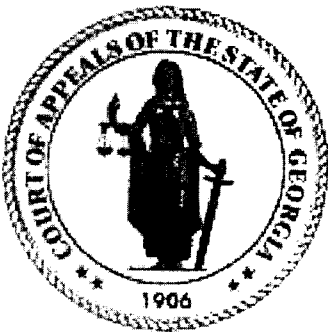
*The Court of Appeals hereby passes the following order*

**A12D0402. LINDSAY NORMAN v. SHANE DOBY.**

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.

LC NUMBERS:

11A12776



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 21, 2012.*

*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.*

*Hally H. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 18, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0403. DANNY HAWK v. THE STATE.**

Danny Hawk is facing prosecution for traffic violations, and he filed several pre-trial motions, including a motion to set aside his arraignment, a motion to stay his prosecution, and a motion to recuse the trial judge. On April 24, 2012, the judge denied the motions and refused to certify its ruling for interlocutory appeal under OCGA § 5-6-34 (b). Hawk then filed this application for discretionary appeal.

Because it appears that the prosecution of Hawk remains pending below, the order that Hawk wishes to appeal is interlocutory in nature. And “a party seeking appellate review from an interlocutory order must follow the interlocutory-application subsection, OCGA § 5-6-34 (b), seek a certificate of immediate review from the trial court, and comply with the time limitations therein.” (Citation omitted.) *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996); see also *Boyd v. State*, 191 Ga. App. 435 (383 SE2d 906) (1989). OCGA § 5-6-35, which governs discretionary appeal procedure, does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). See *Bailey v. Bailey*, 266 Ga. 832 (471 SE2d 213) (1996). Accordingly, Hawk’s failure to comply with the interlocutory appeal procedure deprives us of jurisdiction, and this application for discretionary appeal is hereby DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/18/2012

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.

Hally K. O. Spencer, Clerk.

FILED IN OFFICE

CLERK OF COURT OF GEORGIA

S12C1926

FILED IN OFFICE

AUG 7 2012

*Olson*

SUPREME COURT OF GEORGIA



# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2012

*The Court of Appeals hereby passes the following order*

**A12D0403. DANNY HAWK v. THE STATE.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, July 30, 2012.*

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

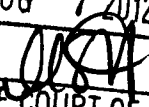
*Witness my signature and the seal of said court hereto  
affixed the day and year last above written.*

*Hally K. O. Sparrow*

, Clerk.

30 JUL 2012

RECEIVED

S12C1926  
FILED IN OFFICE  
AUG 7 2012  
  
SUPREME COURT OF GEORGIA

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: August 03, 2012**

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 **S12C1926**.

**DANNY HAWK v. THE STATE**

Clerk, Supreme Court of Georgia

AUG - 6 2012

Case No. A12D0403

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1926

Atlanta, November 19, 2012

The Honorable Supreme Court met pursuant to adjournment.

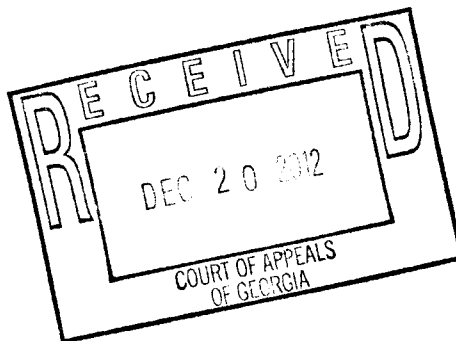
The following order was passed:

**DANNY HAWK v. THE STATE**

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0403



RECEIVED IN OFFICE  
2012 DEC 13 PM 4:26  
CLERK'S OFFICE  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta December 13, 2012

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.



*Lia C. Pittman*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, June 28, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0404. IN THE INTEREST OF D. E. T., B. P. L., C. P., D. B. P., K. P., AKA  
G. J., CHILDREN (MOTHER).**

On May 29, 2012, Sandtoro Pearson filed this application for discretionary review of the trial court's order terminating her parental rights. In her application, she indicates that the court entered its order on April 27, 2012. However, the termination order included in her application is dated March 27, 2012.<sup>1</sup>

To be timely, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Pearson's application was filed 63 days after the order terminating her parental rights. We lack jurisdiction to consider an untimely application for discretionary appeal. See *Hill*, supra. Accordingly, the application is hereby DISMISSED.

---

<sup>1</sup> Pearson's application also includes a May 18, 2012, order finalizing the termination of Richard Lee's parental rights. But that order makes no mention of Pearson.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/28/2012

*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.*

*Hally K. O. Spaw*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 21, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0405. LEIGH NEELY v. COREY HABEGGER.**

The superior court entered a final judgment in this legitimation, custody, and visitation case on April 27, 2012. The mother, Leigh Neely, filed a motion for new trial and, subsequently, this application for discretionary appeal. According to the application, the motion for new trial remains pending in the trial court.

A motion for new trial extends the time for filing an application for discretionary appeal. See OCGA § 5-6-35 (d). Thus, this Court declines to review this application on the merits while the motion for new trial is pending. This application is hereby DISMISSED without prejudice to either party's right to seek review after the trial court rules on the motion for new trial.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/21/2012*

*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.*

*Holly H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 19, 2012

*The Court of Appeals hereby passes the following order*

**A12D0406. EMORY L. LAGUIN v. THE STATE.**

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

LC NUMBERS:

2006CC251



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 19, 2012.*

*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.*

*Hally K. O. Spanow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, June 20, 2012

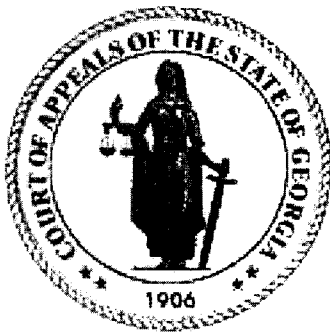
*The Court of Appeals hereby passes the following order*

**A12D0407. JOSHUA FARMER 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.

LC NUMBERS:

07CR708 07CR709 07CR710 07CR711



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 20, 2012.*

*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.*

*Holly K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 19, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0408. GEORGIA DEPARTMENT OF HUMAN SERVICES v. JOHNNY WRIGHT.**

The Georgia Department of Human Services brought a complaint against Johnny Wright to recover child support for minor child J. B. W. Although Wright is married to the child's mother and no divorce action is pending, the spouses are living separately. The Department claims that it is entitled to pursue a child support award under OCGA § 19-6-10, which "provides for alimony when spouses are living separately but there is no action for divorce pending." *Goodman v. Goodman*, 253 Ga. 281 (319 SE2d 455) (1984). The trial court ruled that the Department has no claim under that statute, and the Department seeks discretionary review in this Court.

The Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). This jurisdiction extends to cases "involving an original claim for child support which arose in either a divorce or alimony proceeding." *Spurlock v. Department of Human Resources*, 286 Ga. 512, 513 (1) (690 SE2d 378) (2010) (emphasis supplied). Because this case appears to fit that definition, it is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 06/19/2012*

*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.*

*Hally F. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 22, 2012

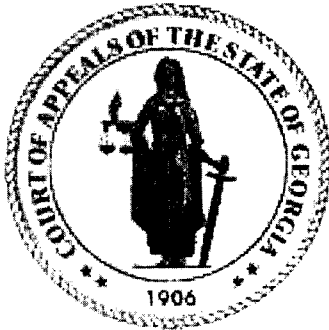
*The Court of Appeals hereby passes the following order*

**A12D0409. ALEXANDER PUSTELNIK v. GREGORY C. DOZIER.**

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

LC NUMBERS:

2012CV212547



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 22, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 20, 2012

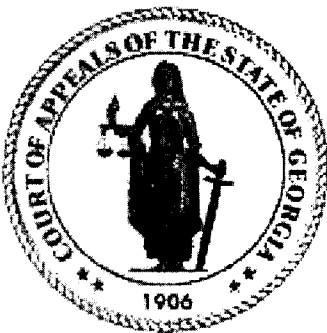
*The Court of Appeals hereby passes the following order*

**A12D0410. JERRY L. GLOVER v. DAVID COOK 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.

LC NUMBERS:

2011CV3066



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 20, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 02, 2012

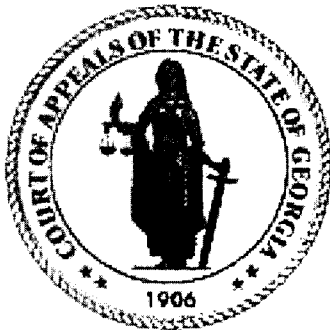
*The Court of Appeals hereby passes the following order*

**A12D0411. JOHNNY BRETT GREGORY v. CLAYTON M. WHITTAKER et al .**

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

LC NUMBERS:

10CI698



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, July 02, 2012.*

*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.*

*Hally H. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 14, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0412. HUYNH HUNG v. THE STATE.**

Huynh Hung filed this application for discretionary appeal to challenge the trial court's order denying his motion in arrest of judgment. See OCGA § 17-9-61 (b). The Supreme Court has made clear, however, that the denial of a motion in arrest of judgment – even if untimely – may be appealed directly. See *Lay v. State*, 289 Ga. 210, 212 (2) (710 SE2d 141) (2011).

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Hung shall have 10 days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal, he need not file a second notice. The clerk of the trial 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, 06/14/2012*

*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.*

*Hally H. D. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 28, 2012

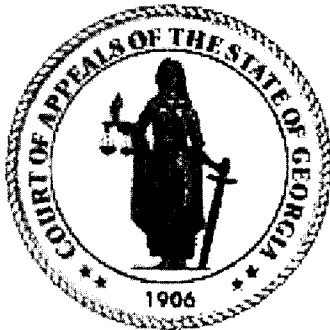
*The Court of Appeals hereby passes the following order*

**A12D0413. JAMES L. BRUCE et al v. FIFTH THIRD BANK.**

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

LC NUMBERS:

11ST122



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 28, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, June 20, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0414. ANDRE ATES v. CALVARY PORTFOLIO SERVICES, LLC.**

Andre Ates seeks discretionary review of the trial court's order granting summary judgment in favor of plaintiff Calvary Portfolio Services, LLC in this debt collection action. Orders granting summary judgment are subject to direct appeal. See OCGA § 9-11-56 (h). Ordinarily, if a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d) & (j); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). The trial court's order was entered on April 30, 2012, but Ates did not file this application until 31 days later, on May 31, 2012. Accordingly, his untimely application is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/20/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 28, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0415. TARIQ H. MIRZA v. LAW OFFICE OF ESTHER PANITCH, P.C.**

Tariq H. Mirza seeks discretionary review of the trial court's final order and judgment, awarding \$20,000 to plaintiff Law Office of Esther Panitch, P.C in its action on open account. The trial court's order is directly appealable, pursuant to OCGA § 5-6-34 (a) (1).

Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely application for discretionary appeal if the order is subject to direct appeal. As the order at issue is subject to direct appeal, this application is hereby GRANTED. The appellant shall have 10 days from the date of this order to file a notice of appeal with the state court, if he has not already done so. The state court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/28/2012*

*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.*

*Hally H. D. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0416. FRANK X. MOORE v. BANK OF NORTH GEORGIA .**

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

LC NUMBERS:

11G42612



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 09, 2012.*

*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.*

*Hally K. O. Spawr*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 28, 2012

*The Court of Appeals hereby passes the following order*

**A12D0417. TESS MARKET, INC., d/b/a BIG T SUPERMARKET v. CLYDE L. REESE,  
ESQ., COMMISSIONER OF GEORGIA DEPARTMENT OF COMMUNITY  
HEALTH.**

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

LC NUMBERS:

2010CV189608



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 28, 2012.*

*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.*

*Holly K. O. Spanow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0418. IRINA RIVERA, et al. v. MARTHA SANCHEZ, et al.**

Irina Rivera and Moises Sanguinetti filed a tort claim in superior court against several defendants. The trial court granted the defendants' motion for summary judgment on the basis that the plaintiffs' claims were barred by Rivera's prior settlement of a workers' compensation claim. Rivera and Sanguinetti filed this application for discretionary appeal seeking to challenge the trial court's ruling.

An order granting summary judgment is subject to direct appeal. See OCGA § 9-11-56 (h); *Culwell v. Lomas & Nettleton Co.*, 242 Ga. 242, 243 (248 SE2d 641) (1978). Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely application for discretionary appeal if the order is subject to direct appeal. As the order at issue is subject to direct appeal, this application is hereby GRANTED. The appellants shall have 10 days from the date of this order to file a notice of appeal with the superior court, if they have not already done so. The superior court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/03/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0419. MARTHA OVIEDO v. MARTHA SANCHEZ, et al.**

Martha Oviedo filed a tort claim in superior court against several defendants. The trial court granted the defendants' motion for summary judgment on the basis that Oviedo's claims were barred by her prior settlement of a workers' compensation claim. Oviedo filed this application for discretionary appeal seeking to challenge the trial court's ruling.

An order granting summary judgment is subject to direct appeal. See OCGA § 9-11-56 (h); *Culwell v. Lomas & Nettleton Co.*, 242 Ga. 242, 243 (248 SE2d 641) (1978). Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely application for discretionary appeal if the order is subject to direct appeal. As the order at issue is subject to direct appeal, this application is hereby GRANTED. Oviedo shall have 10 days from the date of this order to file a notice of appeal with the superior court, if she has not already done so. The superior court is directed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/03/2012*

*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.*

*Holly H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0420. ISAAC K. ZICO FORMERLY ISAAC OBENG v. THE STATE.**

In 2001, Isaac K. Zico, formerly known as Isaac Obeng, pled guilty to obstruction of a law enforcement officer. On June 11, 2012, he filed in this Court a “Motion to Reopen, Withdraw Plea and Set Aside Conviction,” which we docketed as an application for discretionary appeal. From the materials submitted, it appears that Zico has not filed this motion in the trial court. The only orders included with his application are the judgment of conviction and sentence from 2001, and an order for change of name from 2000.

We lack jurisdiction to grant Zico the relief he requests. To the extent he seeks to appeal his 2001 conviction, we lack jurisdiction because this application is untimely. See OCGA § 5-6-35 (d) (applications for discretionary appeal must be filed within 30 days of the order on appeal). To the extent he seeks review of his motion to reopen, withdraw plea, and set aside conviction, we lack jurisdiction because the trial court apparently has not yet considered that motion. See *Amica v. State*, 307 Ga. App. 276, 282 (2) (704 SE2d 831) (2010) (in the absence of a ruling by the trial court, we have nothing to review); see also *Ward v. State*, 299 Ga. App. 826, 827 (683 SE2d 894) (2009) (“Inasmuch as we are a court for the correction of errors, we do not consider issues which were not raised below and ruled on by the trial court.”). Accordingly, this application is hereby DISMISSED.<sup>1</sup>

---

<sup>1</sup> It appears that Zico’s motion/application would be more appropriately addressed by the trial court. Accordingly, we note that Zico may wish to file his motion in the Superior Court of Douglas County.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/03/2012*

*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.*

*Hally H. D. Spawr*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, July 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0421. MIA HARMON v. BRITT JOHNSON.**

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

LC NUMBERS:

11A13081



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 09, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 16, 2012

*The Court of Appeals hereby passes the following order*

**A12D0421. MIA HARMON v. BRITT JOHNSON.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 16, 2012.*

*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.*

*Hally K. O. Spaw*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 22, 2012

*The Court of Appeals hereby passes the following order*

**A12D0422. BENNON L. PRINE, JR., v. CHAILLAND, INC., 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.

LC NUMBERS:

11V991



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, June 22, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 13, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0423. DANIEL ERIC COBBLE v. STEPHANIE ANNE LOCKHART.**

Daniel Eric Cobble, plaintiff in the civil action below, seeks review of the trial court's order of March 7, 2012.<sup>1</sup> In that order, the court denied his "Emergency Motion for Impeachment," which it construed as a motion for recusal.

"Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992). Accordingly, Cobble's failure to comply with the interlocutory appeal procedures and obtain a certificate of immediate review deprives this Court of jurisdiction, and his application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/13/2012*

*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.*

*Hally H. O. Spawr*, Clerk.

---

<sup>1</sup> Cobble filed his application in the Supreme Court, which transferred it here.

312C1954

FILED IN OFFICE

AUG 13 2012

Adrian P. Wood

SUPREME COURT OF GEORGIA

# Court of Appeals of the State of Georgia

ATLANTA, September 12, 2012

*The Court of Appeals hereby passes the following order*

**A12D0423. DANIEL ERIC COBBLE v. STEPHANIE ANNE LOCKHART .**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, September 12, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C1954

Atlanta, November 19, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**DANIEL ERIC COBBLE v. STEPHANIE ANNE LOCKHART**

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0423

DEC - 5 2012

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2012 DEC - 4 PM 3:39  
CLERK OF APPEALS OF GA.

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta December 04, 2012

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.



*Joan C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, July 06, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0424. BRENDA PARKER v. DEPARTMENT OF BEHAVIORAL  
HEALTH ET AL**

The Honorable M. Yvette Miller, Judge of the Third Division of the Court of Appeals of Georgia, is hereby recused in the above appeal. The Honorable Anne Elizabeth Barnes, Judge of the Second Division of the Court of Appeals of Georgia, is hereby assigned to the Third Division for the purposes of determining the above appeal.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/06/2012*

*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.*

*Hally H. D. Spencer* , Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, July 10, 2012

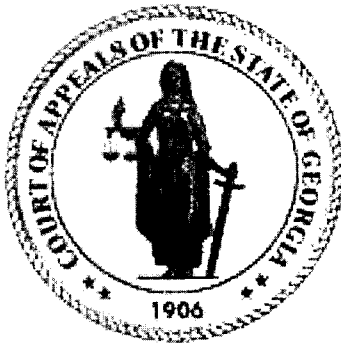
*The Court of Appeals hereby passes the following order*

**A12D0424. BRENDA PARKER v. DEPARTMENT OF BEHAVIORAL HEALTH et al .**

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

LC NUMBERS:

11A10455



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 10, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

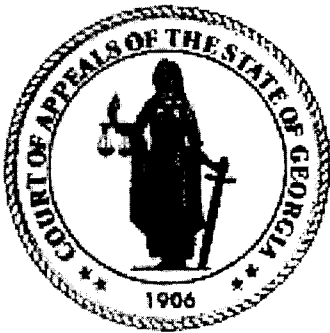
# Court of Appeals of the State of Georgia

ATLANTA, August 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0424. BRENDA PARKER v. DEPARTMENT OF BEHAVIORAL HEALTH et al .**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 09, 2012.*

*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.*

*Hally K. O. Spawort*

, Clerk.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: August 27, 2012**

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 **S12C2089**.

**BRENDA PARKER v. DEPARTMENT OF BEHAVIORAL HEALTH et al.**

Clerk, Supreme Court of Georgia

Case No. A12D0424

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C2089

Atlanta, March 25, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

BRENDA PARKER v. DEPARTMENT OF BEHAVIORAL HEALTH et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur, except Blackwell, J., disqualified.

Court of Appeals Case No.

A12D0424

CLERK OF THE SUPREME COURT  
COURT OF APPEALS OF GA

2013 APR 11 PM 4:03

RECEIVED IN OFFICE

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta April 11, 2013



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, June 29, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0425. CARL E. BUTLER v. JUDY M. BUTLER.**

Carl Butler and Judy Butler were divorced in May 2009. The trial court entered an amended final judgment and divorce decree in June 2009. In August of 2011, Judy Butler filed a motion for contempt, alleging that Carl Butler had failed to comply with the provisions of the decree related to the division of property. The trial court found Carl Butler in contempt, and he filed this application for discretionary appeal to the Court of Appeals.

The Supreme Court has appellate jurisdiction over “[a]ll divorce and alimony cases.” Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). See also *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). Accordingly, this application is hereby TRANSFERRED to the Supreme Court of Georgia for disposition.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 06/29/2012*

*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.*

*Holly H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 16, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0426. LLOYD E. DALEY v. U. S. BANK N. A.**

This case began in magistrate court as a dispossessory proceeding brought by U. S. Bank N. A., in its capacity as Trustee, against Lloyd E. Daley. The magistrate found in favor of U. S. Bank and issued a writ of possession. Daley appealed to superior court. On June 6, 2012, the superior court entered writ of possession. Eight days later, on June 14, 2012, Daley filed this application for discretionary appeal.

Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. See *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994). The underlying subject matter of this discretionary application is a dispossessory judgment. OCGA § 44-7- 56, which governs dispossessory actions, requires that an appeal from a dispossessory ruling be filed within seven days of the date judgment was entered.

Because Daley did not file its application for discretionary appeal within seven days of the date of entry of the order he seeks to appeal, this Court lacks jurisdiction over this application. Accordingly, the motion to dismiss is GRANTED, and this appeal is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/16/2012*

*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.*

*Hally K. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 16, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0426. LLOYD E. DALEY v. U. S. BANK N. A.**

This case began in magistrate court as a dispossessory proceeding brought by U. S. Bank N. A., in its capacity as Trustee, against Lloyd E. Daley. The magistrate found in favor of U. S. Bank and issued a writ of possession. Daley appealed to superior court. On June 6, 2012, the superior court entered writ of possession. Eight days later, on June 14, 2012, Daley filed this application for discretionary appeal.

Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. See *Rebich v. Miles*, 264 Ga. 467, 467-468 (448 SE2d 192) (1994). The underlying subject matter of this discretionary application is a dispossessory judgment. OCGA § 44-7- 56, which governs dispossessory actions, requires that an appeal from a dispossessory ruling be filed within seven days of the date judgment was entered.

Because Daley did not file its application for discretionary appeal within seven days of the date of entry of the order he seeks to appeal, this Court lacks jurisdiction over this application. Accordingly, the motion to dismiss is GRANTED, and this appeal is hereby DISMISSED.



# Court of Appeals of the State of Georgia

ATLANTA, July 13, 2012

*The Court of Appeals hereby passes the following order*

**A12D0427. CHRISTOPHER JOHNSTON v. THE STATE.**

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

LC NUMBERS:

2007SUCR757



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 13, 2012.*

*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.*

*Hally K. O. Spawr*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 31, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0428. JAMIE CONNER v. THE STATE.**

We dismissed as untimely Jamie Conner's application for discretionary appeal from the trial court's order denying her motion to modify her sentence. The order that Conner seeks to appeal was entered on May 14, 2012, but her application was not filed until 31 days later, on June 14, 2012. Conner now seeks reconsideration of our dismissal.

First, Conner asks that we apply the "mailbox rule" to excuse her late filing. However, "[t]he mailbox rule applies only in the context of habeas corpus proceedings." (Citation and punctuation omitted.) *Jackson v. State*, 313 Ga. App. 483, 484 (722 SE2d 80) (2011). It does not excuse a pro se prisoner from complying with other statutory filing deadlines. *Id.* Second, Conner contends that her delay in filing was occasioned by the lower court clerk's failure to provide her with a stamped, "filed" copy of the court's order. But that delay did not affect Conner's filing date, as her application was docketed upon receipt even though she had not yet provided this Court with a stamped, "filed" copy of the order.

Because Conner has not met the standard of Court of Appeals Rule 37 (e) for granting reconsideration, her motion for reconsideration is hereby DENIED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 08/31/2012*

*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.*

*Hally H. O. Spaw* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 29, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0429. THOMAS MARSHALL v. THE STATE.**

Thomas Marshall seeks to appeal the trial court's order denying his motions for out of time appeal and to withdraw his guilty plea. An order denying a motion to withdraw a guilty plea and an order denying a motion for an out of time appeal are both directly appealable orders. See, e.g., *McKiernan v. State*, 286 Ga. 756 (692 SE2d 340) (2010); *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999).

When a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Marshall shall have 10 days from the date of this order to file a notice of appeal with the trial court. The trial court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/29/2012*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, June 26, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0430. CIRCLE B ENTERPRISES, INC. v. DOUGLAS MACGINNITIE.**

Circle B Enterprises, Inc., d/b/a Precision Homes filed suit in superior court against the Commissioner of the Georgia Department of Revenue seeking a refund of taxes. On February 14, 2012, the trial court entered summary judgment in favor of the Commissioner, and Circle B filed a motion for reconsideration. The trial court denied the motion on April 20, 2012, and on May 18, 2012, Circle B filed this application for discretionary appeal.<sup>1</sup>

An order denying a motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Moreover, a motion for reconsideration does not extend the time for filing an application to appeal. See *Harris v. State*, 278 Ga. 280 282 n.3 (600 SE2d 592) (2004). Thus, in order to appeal, Circle B was required to file its application within 30 days of the trial court's February 14 order. See OCGA § 5-6-35 (d). Its failure to do so deprives us of jurisdiction over this application, which is hereby DISMISSED.

---

<sup>1</sup> Circle B filed its application for discretionary appeal in the Supreme Court, which transferred the application to this Court.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 06/26/2012*

*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.*

*Holly K. O. Spawr*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0431. THOMAS G. DEAN v. REGENCY SQUARE APARTMENTS AND TOVOLLI II, LLC.**

Thomas G. Dean, plaintiff in the case below, has filed an application to appeal from the trial court's May 17, 2012, order. In that order, the court granted summary judgment to the defendant.

Pursuant to OCGA § 9-11-56 (h), the grant of summary judgment is reviewable by direct appeal. *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989). Therefore, the order in this case is subject to direct appeal.

We will grant an otherwise timely application for discretionary appeal if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED, and Dean shall have ten days from the date of this order to file a notice of appeal with the trial court. If Dean has already filed a notice of appeal, he need not file a second notice. The clerk of the trial 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, 07/03/2012*

*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.*

*Hally H. D. Spawr* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 11, 2012

*The Court of Appeals hereby passes the following order*

**A12D0432. DAVID MCCLURE, d/b/a MCCLURE CONTRACTING v. CHRIS MCCURRY 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.

LC NUMBERS:

08CV1781



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 11, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, July 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0433. HARVEY GIBSON v. STATE OF GEORGIA.**

On June 14, 2012, Harvey Gibson filed an application for discretionary review to challenge the trial court's April 5, 2012, order denying his motion to suspend his sentence.

To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Because Gibson filed his application 70 days after the trial court entered its order, it is untimely.<sup>1</sup> Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/03/2012*

*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.*

*Healy, K. O. Spencer* , Clerk.

---

<sup>1</sup> It appears that Gibson attempted to file his application on May 25, 2012, but it was returned for failure to include a certificate of service. Even if he had properly filed the application on that date, however, it would still be untimely.

# Court of Appeals of the State of Georgia

ATLANTA, July 13, 2012

*The Court of Appeals hereby passes the following order*

**A12D0434. ALEX HIGDON v. JANE HIGDON.**

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

LC NUMBERS:

12GR062949



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 13, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.

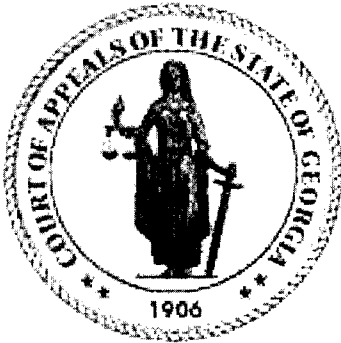
# Court of Appeals of the State of Georgia

ATLANTA, December 06, 2012

*The Court of Appeals hereby passes the following order*

**A12D0434. ALEX HIGDON v. JANE HIGDON.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, December 06, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 18, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0435. DEMARCUS MARRELL SMITH v. NAKKORIA SHARON SMITH.**

Demarcus Marrell Smith and Nakkoria Sharon Smith divorced, and a final divorce decree was entered on May 25, 2012. Demarcus Smith filed an application for discretionary appeal in this Court. The Supreme Court, however, has general appellate jurisdiction over divorce and alimony cases. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6). Accordingly, Smith's application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/18/2012*

*I certify that the above is a true extract from  
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*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 12, 2012

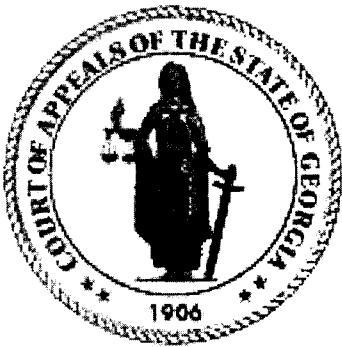
*The Court of Appeals hereby passes the following order*

**A12D0436. CHERESE R. HENDERSON v. MARK BUTLER, COMMISSIONER OF THE  
GEORGIA DEPARTMENT OF LABOR et al .**

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

LC NUMBERS:

11CV736510



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 12, 2012.*

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the Court of Appeals of Georgia.*

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

*Hally K. O. Sparrow* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 11, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0437. FREDRIC EUGENE PRESTON v. THE STATE.**

Fredric Preston filed a motion to correct clerical error, in which he sought credit for time served. The trial court denied the motion on November 23, 2011, and Preston seeks discretionary review of the trial court's order. We lack jurisdiction.

The trial court's order denying Preston's motion to correct a clerical error is directly appealable. See *Cochran v. State*, Case No. A11A1601 (decided January 31, 2012). Ordinarily, if a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d) & (j); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). The trial court's order was entered on November 23, 2011, but Preston did not file this application until 210 days later, on June 20, 2012. Accordingly, his untimely application is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/11/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 10, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0438. ALMA R. CUTTINO v. MICHAEL J. THURMOND, et al.**

Alma R. Cuttino appealed to superior court from the decision of the Georgia Department of Labor, which denied her claim for unemployment compensation. The superior court affirmed the decision on July 7, 2010. Cuttino has filed several motions for reconsideration from this ruling, including one filed on July 5, 2011. By order dated July 18, 2011, the superior court dismissed the motion for reconsideration on the basis that it no longer had jurisdiction. On June 19, 2012, Cuttino filed this application for discretionary appeal.

An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Here, however, Cuttino filed her application 337 days after the trial court's order denying the motion for reconsideration and thus it is untimely. Furthermore, Cuttino had no right to appeal the order denying her motion for reconsideration, which is not an appealable order. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Although Cuttino had a right to seek appellate review of the trial court's July 7, 2010, order affirming the decision of the Department of Labor, her filing of a motion for reconsideration did not extend the time in which she could seek review. See *id.* For these reasons, we lack jurisdiction to consider this application for discretionary appeal, which is hereby DISMISSED. See 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, 07/10/2012*

*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.*

*Holly K. O. Spencer*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0439. JOHNNY BRETT GREGORY v. THE STATE.**

Johnny Brett Gregory seeks discretionary review of the trial court's order of February 6, 2012, dismissing the state's forfeiture action against him and directing the return of certain of his property. In his application, Gregory contends that the trial court neglected to include all of the items that the state seized. We lack jurisdiction.

To be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because this application was filed 72 days after entry of the order Gregory seeks to appeal,<sup>1</sup> it is untimely and we lack jurisdiction to consider it. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/26/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

---

<sup>1</sup> Gregory initially filed his application in the Supreme Court on April 8, 2012, which transferred it to this Court.

# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2012

*The Court of Appeals hereby passes the following order*

**A12D0440. STEVEN D. SIMON v. CITY OF ATLANTA, et al .**

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

LC NUMBERS:

04VS065494



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, July 30, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

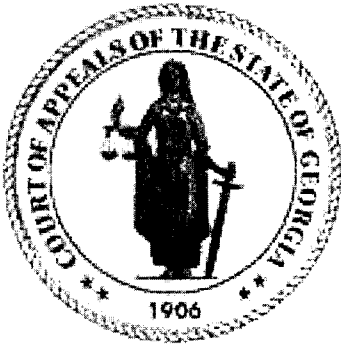
# Court of Appeals of the State of Georgia

ATLANTA, October 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0440. STEVEN D. SIMON v. CITY OF ATLANTA, et al .**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, October 09, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: October 29, 2012**

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 **S13C0274**.

STEVEN D. SIMON v. CITY OF ATLANTA, et al.

Clerk, Supreme Court of Georgia

OCT 30 2012

Case No. A12D0440

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S13C0274

Atlanta, February 04, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STEVEN D. SIMON v. CITY OF ATLANTA, et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

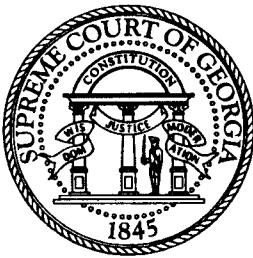
Court of Appeals Case No.

A12D0440

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CLERK OF APPEALS OF CA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 18, 2013



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.

*Lia C. Rilton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, July 20, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0441. CYNTHIA MORRIS v. RICKY WELDON MORRIS, JR.**

Cynthia Morris seeks discretionary review of the trial court's order finding her in contempt for failing to comply with a visitation order pertaining to the parties' minor children.<sup>1</sup> Under OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including . . . awarding or refusing to change child custody" are directly appealable. A party seeking to challenge a child custody order, therefore, may file a direct appeal. See *Cohen v. Cohen*, 300 Ga. App. 7, 8 (1) (684 SE2d 94) (2009); *Taylor v. Curl*, 298 Ga. App. 45 (679 SE2d 80) (2009). And visitation "is considered a custody issue." *Daniels v. Barnes*, 289 Ga. App. 897, 899 n.1 (658 SE2d 472) (2008); see also OCGA § 19-9-41 (4) (defining "child custody proceeding" as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue."). Thus, the order at issue here is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court's order is directly appealable and the applicant has not already filed a notice of appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Cynthia Morris shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, she has already filed a notice of appeal, she need not file a second notice. The clerk of the trial court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

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<sup>1</sup> In *Morris v. Morris*, 309 Ga. App. 387 (710 SE2d 601) (2011), we affirmed the trial court's order legitimating the children but vacated portions of the court's order pertaining to visitation. On remand, the court entered a revised visitation order.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 07/20/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 25, 2012

*The Court of Appeals hereby passes the following order*

**A12D0442. CAROLYN WILLIAMS et al v. VICTOR WARREN.**

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.

LC NUMBERS:

09CV01495



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, July 25, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0443. JOHNNY BRETT GREGORY v. PAT GIDDENE, et al.**

Johnny Brett Gregory filed a civil action against various defendants. On March 22, 2012, the trial court dismissed Gregory's case. On May 23, 2012, Gregory filed a "petition for a writ of certiorari," which has been docketed as an application for discretionary appeal.<sup>1</sup> In his application, Gregory asserts that he did not receive notice of the dismissal until May 7, 2012. We lack jurisdiction because the application is untimely.

To be valid, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Gregory's application was filed 62 days after the superior court entered its order. The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). We have held that, even when untimeliness is attributable to the clerk of the court, it does not cure the jurisdictional defect. See *Cranman Ins. Agency v. Wilson Marine Sales & Svc.*, 147 Ga. App. 590, 591 (249 SE2d 631) (1978); *Banks v. Green*, 205 Ga. App. 589 (423 SE2d 31) (1992). Accordingly, we lack jurisdiction, and this application is hereby DISMISSED.<sup>2</sup> Gregory's Motion to Strike is DENIED as moot.

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<sup>1</sup> Gregory filed his petition/application in the Supreme Court, which transferred the matter here.

<sup>2</sup> Gregory may be entitled to have the order re-entered by the trial court in order to restart the time in which to file an application. See *Cambron v. Canal Ins. Co.*, 246 Ga. 147 (1) (269 SE2d 426) (1980).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 07/26/2012*

*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.*

*Hally K. O. Spawr*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0444. JACOB DWAYNE MOYERS v. THE STATE.**

On February 17, 2012, the trial court entered an order revoking Jacob Dwayne Moyers's probation upon finding that he had committed the new offense of aggravated assault. Moyers filed a motion for reconsideration of the revocation order, which the trial court denied. On June 28, 2012, Moyers filed this discretionary application. We, however, lack jurisdiction.

An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Moyers filed this application 132 days after entry of the order revoking his probation. Although Moyers sought reconsideration of the revocation order, a motion for reconsideration does not extend the time for filing. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Moreover, an order denying a motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). For these reasons, we lack jurisdiction over this untimely discretionary application, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 07/30/2012*

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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.*

*Hally K. O. Spawor*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 10, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0445. LEWIS PARKER WALKER v. SHELIA H. PERRY.**

Lewis Parker Walker's petition for mandamus was denied on March 12, 2012. Walker filed a direct appeal to the Supreme Court, which was dismissed for failure to follow discretionary application procedures. Walker has now filed a "Motion for Out-Of-Time Discretionary Appeal" in this Court. Because the case involves the denial of mandamus, we lack jurisdiction.

"[C]ases involving the grant or denial of mandamus are within the exclusive jurisdiction of [the Supreme] Court without regard to the underlying subject matter or the legal issues raised." (Citations and punctuation omitted.) *Ladzinske v. Allen*, 280 Ga. 264 (626 SE2d 83) (2006). Because the Supreme Court has appellate jurisdiction in cases involving extraordinary remedies, this motion is TRANSFERRED to the Supreme Court. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (5); OCGA § 9-6-28.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/10/2012*

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hereto affixed the day and year last above written.*

*Hally H. D. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 16, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0446. ROBERT EDWARD MORGAN, JR. v. JOHN KELLY, et al.**

Robert Edward Morgan, Jr., filed this application for discretionary appeal seeking to appeal the trial court's ruling in his habeas corpus action. Under our Constitution, however, the Supreme Court has appellate jurisdiction over all cases involving habeas corpus. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4). Accordingly, Morgan's application is hereby TRANSFERRED to the Supreme Court for disposition.<sup>1</sup>



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/16/2012*

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the minutes of the Court of Appeals of Georgia.*

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*Hally H. O. Spaw* , Clerk.

---

<sup>1</sup> Morgan's motion to transfer is hereby GRANTED.

# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0447. ROBERT EDWARD MORGAN, JR. v. THE STATE.**

Robert Edward Morgan, Jr., pled guilty to child molestation in October 2007, and his sentence included a period of probation. After Morgan violated the terms of his probation, the State filed a petition for revocation. On May 30, 2012, the trial court entered an order revoking a portion of Morgan's probation. On July 2, 2012, Morgan filed this application for discretionary appeal. We lack jurisdiction because Morgan's application is untimely.

OCGA § 5-6-35 (d) provides that applications for discretionary appeal must be filed within 30 days of entry of the order on appeal. Morgan filed his application 33 days after the order was entered. Accordingly, we lack jurisdiction to consider it, and it is hereby DISMISSED. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

The State has filed a motion to dismiss this application as untimely. That motion is GRANTED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 07/26/2012*

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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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 25, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0448. GREGORY ROGER CHAMBERS v. JENNIFER MICHELLE CHAMBERS.**

Gregory Roger Chambers and Jennifer Michelle Chambers were divorced in 1995, and the final divorce decree directed Gregory Chambers to pay child support to Jennifer Chambers for the parties' minor son. In 2009, Jennifer Chambers moved to modify Gregory Chambers's support obligation. The trial court entered a temporary order changing the amount of the obligation, and it later found Gregory Chambers in contempt for failing to comply with that order. Gregory Chambers now seeks discretionary review in this Court.

The Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6). In Georgia, child support is a form of alimony. See *Jones v. Jones*, 280 Ga. 712, 715-716 (1) (632 SE2d 121) (2006). Jurisdiction over actions to modify a divorce decree's child support provisions or to hold a party in contempt for failing to comply with those provisions lies in the Supreme Court. See *Spurlock v. Dept. of Human Resources*, 286 Ga. 512, 513 (1) (690 SE2d 378) (2010); *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). Accordingly, because this matter involves child support modification, we lack jurisdiction over the application, which is hereby TRANSFERRED to the Supreme Court for disposition.





*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/25/2012*

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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.*

*Hally H. O. Spawr*

*, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, July 18, 2012

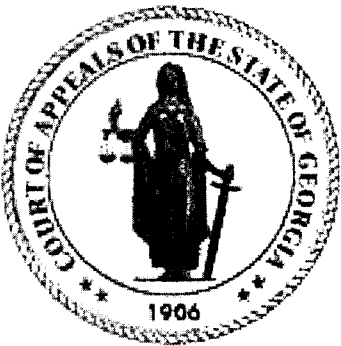
*The Court of Appeals hereby passes the following order*

**A12D0449. YERO BANDELE et al v. DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE.**

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

LC NUMBERS:

2012880



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 18, 2012.*

*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.*

*Hally H. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0450. ABDIYEL YISRAEL v. THE STATE.**

On June 29, 2012, Abdiyel Yisrael filed this application seeking discretionary review of the trial court's May 9, 2012 order denying his extraordinary motion for new trial. 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. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Yisrael filed his application 51 days after entry of the order he seeks to appeal, the application is untimely and is thus DISMISSED for lack of jurisdiction



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/30/2012*

*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.*

*Hally H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0451. DANIELLE MARIE LAWSON v. MATTHEW TIMOTHY LAWSON.**

Danielle and Matthew Lawson divorced in 2010. Danielle filed a "Complaint for Contempt of Visitation Order," seeking clarification and modification of the divorce decree's provisions as to child custody and visitation. On April 30, 2012, the court entered a "Final Custody Order." Danielle then filed this application for discretionary appeal.<sup>1</sup>

Danielle's attorney, Rosemary G. Florence, is licensed to practice law in the State of Pennsylvania and the District of Columbia, but she is not admitted to practice before this Court. Before an attorney is permitted to file a document in this Court, including having a discretionary application docketed with the Clerk of Court, the attorney must first either be admitted to practice before this Court or move for appearance by courtesy. See Court of Appeals Rule 9 (c). To this end, attorney Florence has filed a motion for courtesy appearance. This motion is hereby GRANTED and the application is accordingly accepted for docketing.

As to the application, OCGA § 5-6-34 (a) (11) provides that "[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody or holding or declining to hold persons in contempt of such child custody judgment or orders" are now directly appealable. See also *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704-05 (1) (678 SE2d 152) (2009); OCGA

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<sup>1</sup> Applicant filed her application in the Supreme Court, which transferred the matter here.

§ 19-9-41 (4) (defining “child custody proceeding” as “a proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue.”).

This Court will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Danielle Lawson’s application is GRANTED. She shall have ten days from the date of this order to file a notice of appeal with the trial court, if she has not already done so. See OCGA § 5-6-35 (g). The clerk of the trial 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, 07/26/2012*

*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.*

*Holly H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 31, 2012

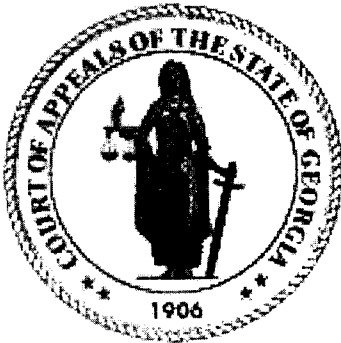
*The Court of Appeals hereby passes the following order*

**A12D0452. XAVIER MIDDLETON v. THE STATE.**

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

LC NUMBERS:

SU09CR028



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 31, 2012.*

*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.*

*Hally K. O. Spawr*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 19, 2012

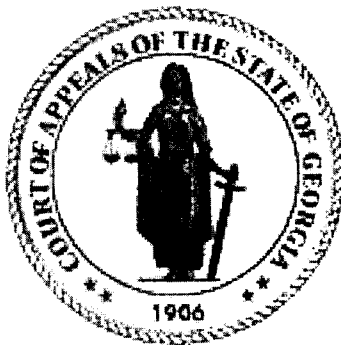
*The Court of Appeals hereby passes the following order*

**A12D0453. GLEN WILLIAMS v. THE GEORGIA DEPARTMENT OF HUMAN SERVICES, EX. REL., IAN ARMAND WILSON 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.

LC NUMBERS:

2011CS06628



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 19, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0454. GARY LEWIS v. THE STATE.**

Gary Lewis was serving a probated sentence imposed by Judge T. Jackson Bedford, Jr. Following the alleged commission of a new offense, the state sought to revoke his probation. A hearing was held, and on May 17, 2012, a different judge entered an order revoking one year of probation. On June 6, 2012, Judge Bedford entered an order vacating the revocation order and requiring Lewis to be returned for a second revocation hearing. Lewis filed this discretionary application seeking to appeal the June 6 order.

Because Lewis's probation revocation remains pending below, the order that Lewis wishes to appeal is interlocutory in nature. A party seeking appellate review from an interlocutory order must follow the interlocutory appeal procedure, which requires a certificate of immediate review from the trial court and compliance with requisite time limitations. See OCGA § 5-6-34 (b); *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996); *Boyd v. State*, 191 Ga. App. 435 (383 SE2d 906) (1989). OCGA § 5-6-35, which governs discretionary appeal procedure, does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of OCGA § 5-6-34 (b). See *Bailey*, supra. Accordingly, Lewis's failure to comply with the proper appeal procedure deprives us of jurisdiction, and this application for discretionary appeal is thus DISMISSED.<sup>1</sup>

---

<sup>1</sup> After the trial court enters a final revocation order, Lewis may file a discretionary application seeking to appeal both that order and the June 6, 2012 order vacating the prior revocation ruling. See, e. g., OCGA § 5-6-34 (d).





*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/26/2012*

*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.*

*Holly K. O. Spencer, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0455. JAMES R. THOMAS, JR., et al. v. KIA AUTO SPORT OF COLUMBUS, INC.**

James R. Thomas, Jr., and Sabrina R. Thomas filed an application for discretionary appeal from the trial court's orders staying discovery, denying a motion to recuse, dismissing several claims, and granting defendant Kia Auto Sport of Columbus, Inc.'s motion to compel arbitration as to the remaining claims. No final order has been entered in the case.

The orders that the Thomases wish to appeal are interlocutory in nature. See *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002) (order denying motion to recuse is interlocutory); *Pace Constr. Corp. v. Northpark Assocs.*, 215 Ga. App. 438, 439 (450 SE2d 828) (1994) (order compelling arbitration is interlocutory); *Johnson v. Hospital Corp. of America*, 192 Ga. App. 628, 629 (385 SE2d 731) (1989) (order adjudicating fewer than all the claims of all the parties is interlocutory, unless the court expressly directs the entry of final judgment pursuant to OCGA § 9-11-54 (b)). A party seeking appellate review from an interlocutory order must follow the interlocutory application procedure set forth in OCGA § 5-6-34 (b), which includes obtaining a certificate of immediate review from the trial court." *Pace Constr. Corp.*, *supra*. The Thomases' failure to follow the interlocutory appeal procedure deprives us of jurisdiction over this application, which is therefore DISMISSED.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/03/2012

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0455. JAMES R. THOMAS, JR., et al. v. KIA AUTO SPORT OF COLUMBUS, INC.**

James R. Thomas, Jr., and Sabrina R. Thomas filed an application for discretionary appeal from the trial court's orders staying discovery, denying a motion to recuse, dismissing several claims, and granting defendant Kia Auto Sport of Columbus, Inc.'s motion to compel arbitration as to the remaining claims. No final order has been entered in the case.

The orders that the Thomases wish to appeal are interlocutory in nature. See *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002) (order denying motion to recuse is interlocutory); *Pace Constr. Corp. v. Northpark Assocs.*, 215 Ga. App. 438, 439 (450 SE2d 828) (1994) (order compelling arbitration is interlocutory); *Johnson v. Hospital Corp. of America*, 192 Ga. App. 628, 629 (385 SE2d 731) (1989) (order adjudicating fewer than all the claims of all the parties is interlocutory, unless the court expressly directs the entry of final judgment pursuant to OCGA § 9-11-54 (b)). A party seeking appellate review from an interlocutory order must follow the interlocutory application procedure set forth in OCGA § 5-6-34 (b), which includes obtaining a certificate of immediate review from the trial court." *Pace Constr. Corp.*, supra. The Thomases' failure to follow the interlocutory appeal procedure deprives us of jurisdiction over this application, which is therefore DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 08/03/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

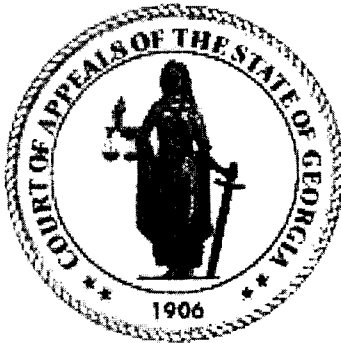
*The Court of Appeals hereby passes the following order*

**A12D0456. MICHAEL WILLIAM BRYANT v. THE STATE.**

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

LC NUMBERS:

09CR00347



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 03, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 26, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0457. MACK HENRY LOTT v. RALPH KEMP, WARDEN, et al.**

In this application for discretionary appeal filed on June 6, 2012,<sup>1</sup> Mack Henry Lott seeks review of either the trial court's order of June 16, 2011, dismissing his complaint pursuant to OCGA § 42-12-7.2, or its order of September 30, 2011, in which the court dismissed a document filed by Lott that it construed as a notice of appeal. We, however, lack jurisdiction.

Because Lott was incarcerated when he filed his action, his appeal is controlled by the Prison Litigation Reform Act of 1996, which requires that an appeal of a civil action filed by a prisoner "be as provided in Code Section 5-6-35." OCGA § 42-12-8. However, to be timely, a discretionary application must be filed within 30 days of entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because this application was filed 356 days after the entry of the order dismissing Lott's complaint and 250 days after the order dismissing Lott's notice of appeal, it is untimely as to both orders, and we lack jurisdiction to consider it. See *Hill*, supra. Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 07/26/2012*

*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.*

*Hally K. O. Spencer*

, Clerk.

---

<sup>1</sup> Lott initially filed his application in the Supreme Court on June 6, 2012, which transferred it to this Court.

**COURTESY COPY**

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

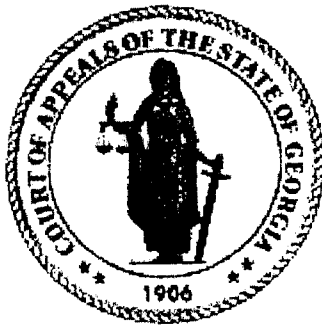
| PROPOSED ORDER     |          |
|--------------------|----------|
| (A12D0457)         |          |
| 09/04/2012         |          |
| Agree              | Disagree |
| <i>[Signature]</i> |          |

ATLANTA, September 04, 2012

*The Court of Appeals hereby passes the following order*

**A12D0457. MACK HENRY LOTT v. RALPH KEMP, WARDEN et al .**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DISMISSED as untimely filed.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, September 04, 2012.*

*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.*

*Hally K. O. Spanow* , Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, November 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0457. MACK HENRY LOTT v. RALPH KEMP, WARDEN et al .**

Upon consideration of the APPELLANT'S motion FOR PERMISSION TO FILE A SECOND MOTION FOR RECONSIDERATION in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, November 09, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

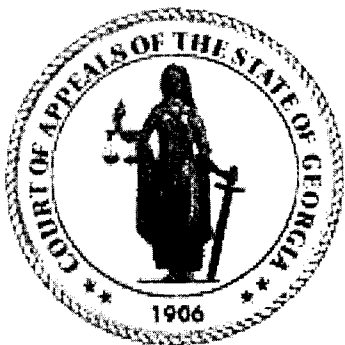
*The Court of Appeals hereby passes the following order*

**A12D0458. IN THE INTEREST OF: A. M., A CHILD (FATHER) v. STATE OF  
GEORGIA .**

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

LC NUMBERS:

112885



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 03, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 08, 2012

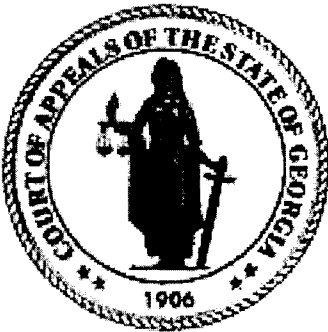
*The Court of Appeals hereby passes the following order*

**A12D0459. CITY OF ATLANTA et al v. SODHI PROPERTIES, LLC et al .**

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

LC NUMBERS:

2011CV209286



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, August 08, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

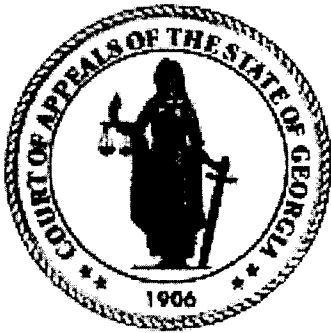
# Court of Appeals of the State of Georgia

ATLANTA, August 10, 2012

*The Court of Appeals hereby passes the following order*

**A12D0459. CITY OF ATLANTA et al v. SODHI PROPERTIES, LLC et al .**

Upon consideration of the APPELLEE'S motion TO DISMISS in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 10, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 29, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0460. MICHAEL LAKE v. THE STATE.**

Michael Lake, who is charged with aggravated stalking, applied to this Court for review of the trial court's order directing the Department of Human Resources to evaluate his competency to stand trial. We dismissed the application because the order that Lake sought to appeal is interlocutory, yet Lake had not followed the interlocutory appeal procedures set forth in OCGA § 5-6-34 (b).

Lake has filed a motion for reconsideration, arguing that his application was indeed one for interlocutory review, but was erroneously docketed as a discretionary application. However, a party seeking appellate review from an interlocutory order must obtain a certificate of immediate review from the trial court and comply with the time limitations set forth in OCGA § 5-6-34 (b). See *Bailey v. Bailey*, 266 Ga. 832, 833 (471 SE2d 213) (1996). Because Lake failed to meet these requirements, his application was docketed as a discretionary application and was then properly dismissed. The motion for reconsideration is DENIED.

Lake has also filed an "Emergency Injunction for Applicant's Release From Cobb County Jail." Lake has "misconstrued the function of an appellate court, which is to correct errors of law by a lower court. Although we will, in limited circumstances, grant an emergency motion to preserve our jurisdiction or to prevent an issue from becoming moot, we lack original jurisdiction and do not address substantive issues other than for purposes of reviewing a lower court's ruling." *Wilshin v. State*, 289 Ga. App. 683, 684-685 (3) (658 SE2d 224) (2008). Accordingly, Lake's emergency motion is DENIED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 08/29/2012*

*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.*

*Holly K. O. Jones* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2012

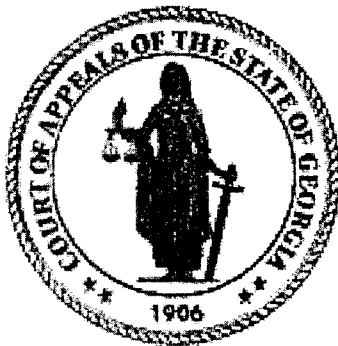
*The Court of Appeals hereby passes the following order*

**A12D0461. STEVEN D. SIMON v. STATE OF GEORGIA et al.**

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

LC NUMBERS:

HC00763



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, July 30, 2012.*

*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.*

*Halley K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 21, 2012

*The Court of Appeals hereby passes the following order*

**A12D0461. STEVEN D. SIMON v. STATE OF GEORGIA et al.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 21, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: August 29, 2012**

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 **S12C2086**.

STEVEN D. SIMON v. STATE OF GEORGIA et al.

Clerk, Supreme Court of Georgia

**AUG 30 2012**

Case No. A12D0461

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C2086

Atlanta, January 22, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STEVEN D. SIMON v. STATE OF GEORGIA et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0461

RECEIVED IN OFFICE  
2013 MAR -8 PM 3:37

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 08, 2013



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.

*Lia C. Pittman*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, July 17, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0462. LORENZO CRUZ-SANTANA v. THE STATE.**

Lorenzo Cruz-Santana filed an application for discretionary appeal seeking to challenge the trial court's order denying his motions for an out-of-time appeal. An order denying a motion for out-of-time appeal may be appealed directly. See, e.g., *Ingram v. State*, 300 Ga. App. 834 (686 SE2d 440) (2009); *Lewis v. State*, 300 Ga. App. 586 (685 SE2d 485) (2009). Accordingly, this application for discretionary appeal is GRANTED pursuant to OCGA § 5-6-35 (j). Cruz-Santana shall have ten days from the date of this order to file a notice of appeal with the trial court. If he has already filed a notice of appeal from the order at issue, he need not file a second notice. The clerk of the trial 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, 07/17/2012*

*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.*

*Hally H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 07, 2012

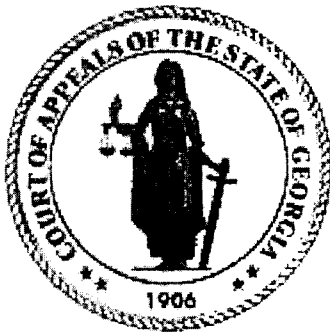
*The Court of Appeals hereby passes the following order*

**A12D0463. JILL PARKER v. SCOTT EDWARD PHILLIPS.**

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.

LC NUMBERS:

11CV00327



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 07, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 09, 2012

*The Court of Appeals hereby passes the following order*

**A12D0464. IN THE INTEREST OF: B. A. T. M., A. J. T., J. E. T., L. M. T., CHILDREN  
(MOTHER) .**

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

LC NUMBERS:

1100358 1100356 1100357 1200034



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 09, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: August 29, 2012**

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 **S12C2091**.

IN THE INTEREST OF B.A.T.M., et al., CHILDREN.

Clerk, Supreme Court of Georgia

SEP - 7 2012

Case No. A12D0464

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C2091

Atlanta, January 22, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN THE INTEREST OF B.A.T.M., et al., CHILDREN.

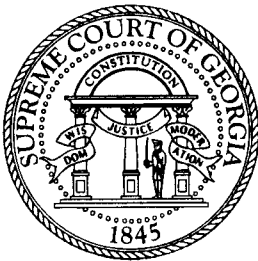
Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0464

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta February 25, 2013



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.

*Lia C. Britton*, Chief Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S12C2091

Atlanta, January 22, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**IN THE INTEREST OF B.A.T.M., et al., CHILDREN.**

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A12D0464

RECEIVED IN OFFICE  
2013 FEB 26 PM 4:01  
CLERK OF APPEALS OFFICE

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I 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.

*Theresa A. Bama*, Clerk



# Court of Appeals of the State of Georgia

ATLANTA, August 02, 2012

*The Court of Appeals hereby passes the following order*

**A12D0465. HIGHWOOD TOWERS, LLC v. FAYETTE COUNTY, GEORGIA et al .**

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

LC NUMBERS:

2011V1422



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 02, 2012.*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 07, 2012

*The Court of Appeals hereby passes the following order*

**A12D0466. DON COLEMAN v. US BANK, N.A. RASC 2006-EMX7, ISAOA.**

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

LC NUMBERS:

2011CV0767



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 07, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

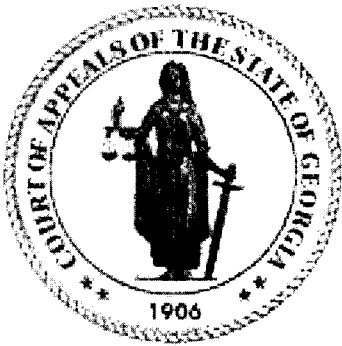
# Court of Appeals of the State of Georgia

ATLANTA, September 11, 2012

*The Court of Appeals hereby passes the following order*

**A12D0466. DON COLEMAN v. US BANK, N.A. RASC 2006-EMX7, ISAOA.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, September 11, 2012.*

*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.*

*Hally K. O. Sparrow*, Clerk.



**SUPREME COURT OF GEORGIA**  
Case No. S12D1622

FILED IN OFFICE

JUL 16 2012

CLERK, COURT OF  
APPEALS OF GEORGIA

Atlanta June 28, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**BRANDON COKER v. THE STATE**

From the Superior Court of Muscogee County.

Applicant, who plead guilty to various drug-related offenses in August 2009, has filed a motion for discretionary appeal in this Court asking it to review the "unlawful and unjust" prison sentences and fine imposed on the grounds that they violate the constitutional prohibition against cruel and unusual punishment. However, applicant's direct request to this Court seeking review of the sentence entered in his criminal case fails to invoke this Court's original jurisdiction, Ga. Const. of 1983, Art. VI, Sec. I, Para. IV; Brown v. Johnson, 251 Ga. 436 (1983). Moreover, neither his convictions nor his constitutional arguments, which were not distinctly ruled on below, see Santana v. Georgia Power Co., 269 Ga. 127, 129 (6) (498 SE2d 521 (1988)), invoke this Court's subject matter jurisdiction. See Ga. Const. of 1983, Art. VI, Sec. VI, Para. II-III. Accordingly, the Court hereby orders that the case be transferred 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.

*Lee C. Fulton*, Chief Deputy Clerk

RECEIVED IN OFFICE  
2012 JUL 16 PM 3:20  
CLERK OF COURT  
COURT OF APPEALS OF GA

# Court of Appeals of the State of Georgia

ATLANTA, August 08, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0467. BRANDON COKER v. THE STATE.**

Brandon Coker filed a motion to withdraw his guilty plea, which the trial court denied as untimely. Coker then filed this application for discretionary appeal.

An order denying an out-of-time motion to withdraw a guilty plea is directly appealable. *Smith v. State*, 283 Ga. 376 (659 SE2d 380) (2008). This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Coker's application is GRANTED. He shall have ten days from the date of this order to file a notice of appeal with the trial court, if he has not already done so. See OCGA § 5-6-35 (g). The clerk of the trial 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, 08/08/2012*

*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.*

*Hally H. O. Spawar*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 15, 2012

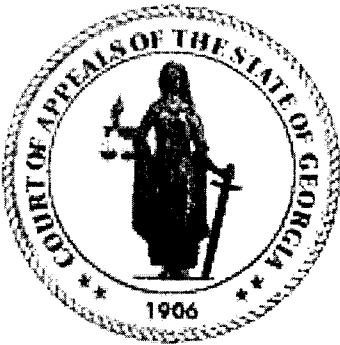
*The Court of Appeals hereby passes the following order*

**A12D0468. PRESTON YOUNGBLOOD v. WANDA DORETTE CRUMLEY, AS  
EXECUTRIX .**

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

LC NUMBERS:

E11204



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, August 15, 2012.*

*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.*

*Hally K. O. Spanow*

, Clerk.



**SUPREME COURT OF GEORGIA**

Case No. S12D1618

A1200469

Atlanta June 28, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**VERNEEL WYLEY v. THE STATE**

From the Superior Court of DeKalb County.

Applicant seeks to appeal the denial of a post-trial, post-appeal motion and seeks to challenge his convictions for child molestation and enticing a child for indecent purposes. No basis for subject matter jurisdiction in this Court appears, Ga. Const. of 1983, Art. VI, Sec. VI, Para. II-III, and therefore, the Court hereby directs that the application be transferred to the Court of Appeals.

RECEIVED IN OFFICE

2012 JUL 16 PM 3:21

CLERK COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

**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.

*Suzanne C. Fulton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, August 03, 2012

*The Court of Appeals hereby passes the following order*

**A12D0469. VERNEEL WYLEY v. THE STATE.**

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

LC NUMBERS:

01CR5262



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 03, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, August 07, 2012

*The Court of Appeals hereby passes the following order*

**A12D0470. IN THE INTEREST OF: K. L. Y., A CHILD (MOTHER) .**

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

LC NUMBERS:

1200400



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 07, 2012.*

*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.*

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 14, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0471. CHRISTOPHER M. HUNT v. CAROLYN M. HUNT.**

Christopher Hunt's application for discretionary appeal, filed on July 19, 2012, is hereby DENIED. In addition, his "Motion [for] Extraordinary Extension per Emergency Rule 40(b)" is DENIED as moot.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/14/2012*

*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.*

*Hally H. O. Spencer* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 14, 2012

*The Court of Appeals hereby passes the following order*

**A12D0472. GARY FULLER v. ROSELLA ORDAZ SANCHEZ.**

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.

LC NUMBERS:

11A10199



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 14, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 07, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0473. AMBER IVERY v. JERMAINE L. BROWN.**

In the parties' second appearance before this Court, Amber Ivery seeks discretionary review of the trial court's order setting aside and vacating its order of September 14, 2009, in which it dismissed with prejudice Jermaine Brown's petitions for legitimation, custody, and modification of child support. In the first appearance of this case in this Court, Ivery appealed the trial court's order of April 27, 2010, which amended the September 14, 2009, order to indicate that Brown's legitimation petitions were dismissed without prejudice. This Court reversed the trial court, concluding that the September 14, 2009, order could not be changed, and therefore, the dismissal was with prejudice. See *Ivery v. Brown*, 307 Ga. App. 732, 734 (706 SE2d 120) (2011).

On May 20, 2011, the trial court entered an order dismissing yet another petition for legitimation filed by Brown,<sup>1</sup> based on this Court's opinion in *Ivery*, supra. Brown filed a motion to set aside that order. On June 28, 2012, the trial court ruled on Brown's motion to set aside, vacating and setting aside its order of September 14, 2009, but leaving to stand its order of May 20, 2011, which dismissed Brown's petition. Ivery filed her application to challenge the June 28, 2012, order. We, however, dismiss the application as moot.

An appeal is subject to dismissal when the questions presented are moot. See OCGA § 5-6-48 (b) (3). Mootness results if a ruling would have no practical effect

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<sup>1</sup> This petition (Brown's fourth) was filed on November 9, 2009, before this Court's opinion in *Ivery*, supra, but the order on appeal did not reference it.

on the alleged controversy. See *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997). Here, this Court held that Brown's legitimation petitions were dismissed with prejudice. *Ivery*, supra at 734. This ruling is binding on the lower court. See OCGA § 9-11-60 (h). Any subsequent appeal is thus moot and subject to dismissal. See OCGA § 5-6-48 (b) (3); *Wilkinson v. Household Finance Corp., III*, 250 Ga. App. 131, 132 (550 SE2d 677) (2001) (ruling in first appeal moots second appeal). Presumably, in accordance therewith, the trial court entered an order dismissing Brown's petition on May 20, 2011, which stands. Accordingly, because nothing remains to be resolved, this application is dismissed as moot.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/07/2012*

*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.*

*Holly K. O. Spawr*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 10, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0474. TRACI EVELYN WEST v. BENJAMIN DANIEL WEST.**

Traci Evelyn West seeks discretionary review of the trial court's award of OCGA § 9-15-14 attorney fees to Benjamin Daniel West following the parties' divorce action. The Georgia Supreme Court has jurisdiction over all divorce and alimony cases. Ga. Const. 1983, Art. VI, Sec. VI, Par. III (6). Because the order that West seeks to appeal is ancillary to the divorce action, the Supreme Court has jurisdiction over this application. See *Evers v. Evers*, 277 Ga. 132 (587 SE2d 22) (2003). This application is therefore TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/10/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 16, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0475. JAMES DODSON v. THE STATE.**

The state filed a petition to revoke James Dodson's probation, and he filed a "Motion for Order Declaring that Defendant is no Longer on Probation," arguing that his probation could not be revoked because he had already completed his term. After the trial court denied his motion, Dodson filed this application for discretionary appeal.

Generally, a party must follow the discretionary appeal procedures to appeal a probation revocation order. OCGA § 5-6-35 (a) (5). However, the materials provided in support of this application suggest that this matter is still pending in the superior court. Therefore, Dodson was required to follow the interlocutory appeal procedures. See OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). His failure to do so deprives this Court of jurisdiction to consider this application, which is therefore DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/16/2012*

*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.*

*Hally H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 16, 2012

*The Court of Appeals hereby passes the following order*

**A12D0476. IN THE INTEREST OF: A. B. P., f/k/a A. B. M., A CHILD (MOTHER).**

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

LC NUMBERS:

11001291



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 16, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, August 09, 2012

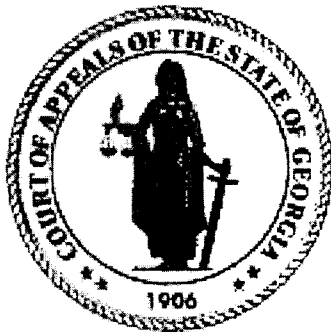
*The Court of Appeals hereby passes the following order*

**A12D0477. OMAR MCDOUGAL v. THE STATE.**

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

LC NUMBERS:

SU02CR1604R2



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 09, 2012.*

*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.*

*Hally K. O. Spano*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 15, 2012

*The Court of Appeals hereby passes the following order*

**A12D0478. CHUGH SHOPPING CENTER, INC., v. AMERIS BANK.**

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.

LC NUMBERS:

09CV2919



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 15, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 19, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0479. PRYOR v. BUTLER.**

On August 30, 2012, Perry Pryor filed a motion for reconsideration of this court's August 16, 2012, order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be physically filed with the Clerk of Court within 10 days from the rendition of the order of dismissal. Pryor's motion for reconsideration is untimely and is therefore **DISMISSED**.

We observe that Pryor urges reconsideration on the ground that the trial court failed to timely send him a copy of the order he sought to appeal. The trial court was required to provide Pryor notice of its ruling. See OCGA § 15-6-21 (c); *Miranda v. Stewart*, 312 Ga. App. 290, 292 (718 SE2d 123) (2011). If Pryor's right to seek appellate review was frustrated due to the trial court's failure to send him a copy of the order, his remedy is to petition the trial court to vacate and re-enter the order as a means of correcting the problem. See *id.*; *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980). The re-entry of the order will begin anew the time for seeking appellate review. See *Cambron*, *supra*.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 10/19/2012

*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.*

*Hally H. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 15, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0480. ERICK WILLIAMS v. JIMMY COLSON.**

Erick Williams has applied to this Court for discretionary review of the denial of his petition for writ of habeas corpus. Under our Constitution, however, the Supreme Court has appellate jurisdiction over all cases involving habeas corpus. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (4). Accordingly, this application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/15/2012*

*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.*

*Hally H. O. Spaw*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 27, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0481. IN RE: ESTATE OF JOHN ASA ZACHERY, SR. DECEASED.**

John Asa Zachery, Jr. seeks discretionary review of the probate court's order denying his emergency petition to remove temporary administrator. The order sought to be appealed is not a final appealable judgment within the meaning of OCGA § 5-6-34 (a), and the case remains pending below. Zachery's failure to comply with the interlocutory appeal requirements deprives this Court of jurisdiction to consider this appeal. OCGA § 5-6-34 (b). *Pruett v. Commercial Bank of Georgia*, 211 Ga. App. 692, 694 (440 SE2d 85) (1994). Therefore, this appeal is ordered DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/27/2012*

*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.*

*Hally K. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 20, 2012

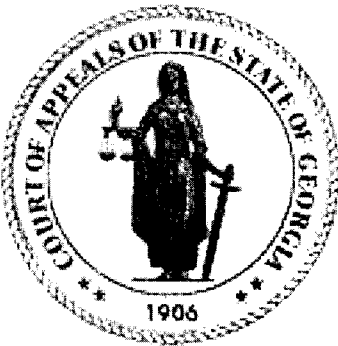
*The Court of Appeals hereby passes the following order*

**A12D0482. ANTONIO MANGRAM v. GEORGIA DEPARTMENT OF LABOR, et al .**

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

LC NUMBERS:

CE1200653063



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 20, 2012.*

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

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 27, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0483. WILLIAM K. DAVIDSON v. J. W. RECOIL, LLC.**

After the magistrate court entered a writ of possession, William K. Davidson appealed to superior court. The superior court affirmed the magistrate court's ruling, and, on May 10, 2012, denied Davidson's motion for new trial. On June 11, 2012, Davidson filed this application for discretionary appeal.<sup>1</sup>

Generally, an application for discretionary appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). But the underlying subject matter of an appeal controls over the relief sought in determining the proper appellate procedure. *Rebich v. Miles*, 264 Ga. 467, 467-68 (448 SE2d 192) (1994). OCGA § 44-7-56 provides that an appeal from any dispossession judgment – such as the one here – must be filed within seven days of the date the judgment was entered. See *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999). Here, Davidson filed his application 32 days after the order on appeal was entered. Accordingly, his application is untimely, and it is hereby DISMISSED for lack of jurisdiction.

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<sup>1</sup> Davidson filed his application in the Supreme Court, which transferred the matter here.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/27/2012*

*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.*

*Hally H. O. Spencer*, Clerk.





**SUPREME COURT OF GEORGIA**

Case No. S12D1595  
A12D0483

Atlanta June 22, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WILLIAM K. DAVIDSON v. J.W. RECOIL, LLC

From the Superior Court of Gwinnett County.

Applicant filed this application for discretionary appeal seeking review of the trial court's May 10, 2012 order in the underlying dispossessory action. He contends that this Court has subject matter jurisdiction because "there is a Motion Challenging the Constitutionality of a Statute at issue in this matter," but a review of the application reveals that although applicant contends that certain statutes have been applied or interpreted in a manner that violates the constitution, his issues fail to invoke this Court's subject matter jurisdiction since they do not actually draw into question the constitutionality of a statute, ordinance, or constitutional provision. See 1983 Ga. Const., Art. VI, Sec. VI, Par. II; Zepp v. Mayor and Council of the City of Athens, 255 Ga. 449 (339 SE2d 576) (1986). Furthermore, even if the challenge applicant raised in the trial court could be construed to be a direct constitutional challenge to a statute, it appears that applicant failed to obtain a ruling on that challenge and this Court therefore will not consider the issue on appeal. See In re D.H., 283 Ga. 556 (1) (663 SE2d 139) (2008); GHG, Inc. v. Bryan, 275 Ga. 336, 337 (566 SE2d 662) (2002). For the reasons stated above, this application must be and hereby is transferred 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.

*Suzanne C. Bullock*, Chief Deputy Clerk

**FILED IN OFFICE**

**JUL 27 2012**

**CLERK, COURT OF  
APPEALS OF GEORGIA**

FILED IN OFFICE  
JUL 27 11 11 AM '12

# Court of Appeals of the State of Georgia

ATLANTA, October 22, 2012

*The Court of Appeals hereby passes the following order*

**A12D0483. WILLIAM K. DAVIDSON v. J.W. RECOIL, LLC.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, October 22, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S13C0371

Atlanta, February 04, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WILLIAM KEITH DAVIDSON v. J. W. RECOIL, LLC

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.  
A12D0483

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2013 MAR -0 PM 3:37

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 08, 2013



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.

*Lia C. Pittman*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, August 21, 2012

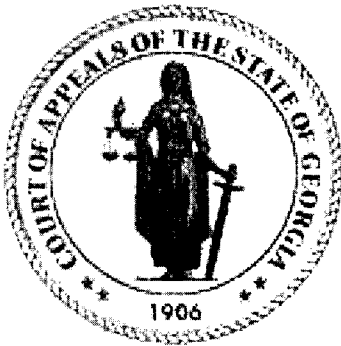
*The Court of Appeals hereby passes the following order*

**A12D0484. IN THE INTEREST OF: M. N., E. N., AND C. N., CHILDREN (MOTHER).**

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

LC NUMBERS:

1200312 1200114 1200313 1200116 1200314 1200115



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 21, 2012.*

*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.*

*Hally K. O. Spanow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 15, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0485. JOEY HALL v. ANN L. HALL.**

Ann L. Hall filed a contempt action against her ex-husband, Joey Hall, seeking a citation of contempt against Hall based upon his failure to comply with provisions of the parties' divorce decree. The trial court found Joey Hall in willful contempt of the parties' divorce decree, and Hall filed this application for discretionary appeal. This Court, however, lacks jurisdiction.

The pending suit involves a petition for contempt based on alleged violations of a divorce decree. Jurisdiction, therefore, lies in the Supreme Court, which has appellate jurisdiction over "[a]ll divorce and alimony cases." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); see *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); see also *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). Accordingly, this application is hereby TRANSFERRED to the Supreme Court of Georgia for disposition.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/15/2012*

*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.*

*Hally H. O. Spawor* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 27, 2012

*The Court of Appeals hereby passes the following order*

**A12D0486. CAROLYN GREENE v. CENTRAL STATE HOSPITAL 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.

LC NUMBERS:

12CV45795



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 27, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 21, 2012

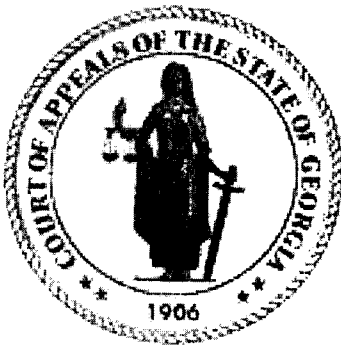
*The Court of Appeals hereby passes the following order*

**A12D0487. AARON MICHELMAN et al v. FAIRINGTON PARK CONDOMINIUM  
ASSOCIATION, 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.

LC NUMBERS:

11A36624



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, August 21, 2012.*

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the Court of Appeals of Georgia.*

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affixed the day and year last above written.*

*Hally K. O. Spawor*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 22, 2012

*The Court of Appeals hereby passes the following order*

**A12D0488. TERRY LEE DICKERSON v. GEORGIA DEPARTMENT OF HUMAN  
SERVICES EX. REL. LONDON T. JOHNSON.**

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

LC NUMBERS:

10CV3151



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 22, 2012.*

*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.*

*Hally K. O. Spanos*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, August 28, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0489. WALLACE WILKERSON v. THE STATE.**

Wallace Wilkerson filed this pro se application for discretionary appeal from an order denying his motion to vacate his sentence as void. Wilkerson, however, has already challenged his conviction by direct appeal, and his conviction and sentence were affirmed in an unpublished opinion in *Wilkerson v. State*, (Case No. A11A0236, decided July 1, 2011).

Even though a void sentence may be attacked at any time, a sentence is void only when the trial court imposes a punishment that the law does not allow. *Jordan v. State*, 253 Ga. App. 510, 511 (1) (559 SE2d 528) (2002). The sentence imposed here does not fall outside the statutory range of permissible punishment. Although Wilkerson apparently titled his motion as a challenge to the validity of the sentence, he does not raise a valid void sentence claim. Instead, he attacks the sufficiency of the evidence and the legality of the search that led to his arrest. These arguments challenge his underlying conviction, and an appeal from an order denying or dismissing such a challenge is subject to dismissal. See *Williams v. State*, 287 Ga. 192 (695 SE2d 244) (2010); *Harper v. State*, 286 Ga. 216 n.1 (686 SE2d 786) (2009).

Because Wilkerson does not raise any issue that could not have been raised in his first appeal and because he does not raise any issue to suggest that the sentence is a legal nullity, this application is DISMISSED for lack of jurisdiction. See *Wright v. State*, 277 Ga. 810 (596 SE2d 587) (2004).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 08/28/2012*

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 15, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0490. ANTHONY BERNARD KING v. THE GEORGIA DEPARTMENT OF HUMAN RESOURCES.**

On July 30, 2012, Anthony Bernard King filed an application for discretionary appeal from the trial court's June 18, 2012, order denying a motion to set aside.<sup>1</sup> We lack jurisdiction because this application is untimely.

To be timely, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). King, however, filed his application 42 days after the trial court entered its order. Because we lack jurisdiction to consider an untimely application for discretionary appeal, this application is hereby DISMISSED. See *Hill*, supra.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 08/15/2012*

*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.*

*Hally A. O. Spencer*, Clerk.

---

<sup>1</sup> Although we initially received King's application on July 18, 2012, we could not accept it for filing because he failed to include either a proper certificate of service or the filing fee or a sufficient pauper's affidavit. See OCGA § 5-6-4; Court of Appeals Rules 5 & 6.

# Court of Appeals of the State of Georgia

ATLANTA, August 21, 2012

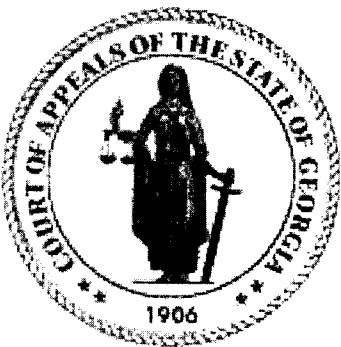
*The Court of Appeals hereby passes the following order*

**A12D0491. DEWAYNE EVAN DOWDY v. LAURA LEE NELSON.**

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.

LC NUMBERS:

12CV60332



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 21, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 29, 2012

*The Court of Appeals hereby passes the following order*

**A12D0492. IN THE INTEREST OF: I. K., A CHILD (MOTHER) .**

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.

LC NUMBERS:

115231



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 29, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 22, 2012

*The Court of Appeals hereby passes the following order:*

**A12D0493. JIM LINZELL JACKSON SR. v. LEHERN MCGOVERN BOVIS, INC.**

Jim Jackson, Sr., filed a civil action against Lehrer McGovern Bovis, Inc., seeking damages for injuries he sustained on April 9, 1999. On June 19, 2001, the trial court granted the defendant's motion to dismiss. Jackson appealed to this Court, and we affirmed the trial court's ruling. See *Jackson v. Lehrer McGovern Bovis, Inc.* (Case Number A03A2094, decided Dec. 16, 2003). In 2009, Jackson filed a pleading, which he entitled "Petition Writ of Prohibition," seeking to recover damages and relief from the same injury claim. The trial court dismissed the case on February 16, 2010.

In Case No. A10D0361, Jackson filed his first application for discretionary appeal from the trial court's order of dismissal, which this Court dismissed as untimely on May 13, 2010. Jackson has now filed a second application for discretionary appeal from the same order, which we dismiss for the same reason. To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Jackson filed his application more than two years after entry of the order he seeks to appeal. His application is therefore untimely and is hereby *DISMISSED* for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/22/2012*

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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.*

*Hally K. O. Spencer*

*, Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, August 29, 2012

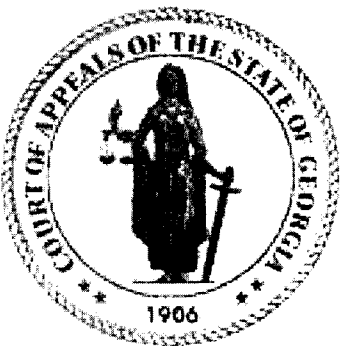
*The Court of Appeals hereby passes the following order*

**A12D0494. HERITAGE HEALTHCARE OF TOCCOA LLC et al v. MARTHA AYERS.**

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.

LC NUMBERS:

12SUCV299



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 29, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, August 31, 2012

*The Court of Appeals hereby passes the following order*

**A12D0495. WALTER R. SCOTT JR. v. THE STATE.**

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

LC NUMBERS:

97CR18



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 31, 2012.*

*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.*

*Hally K. O. Spaworth*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, December 26, 2012

*The Court of Appeals hereby passes the following order*

**A12D0495. WALTER R. SCOTT JR. v. THE STATE.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, December 26, 2012.*

*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.*

*Hally H. O. Spaw*

, Clerk.

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: January 09, 2013**

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 **S13C0739**.

**WALTER R. SCOTT, JR. v. THE STATE**

Clerk, Supreme Court of Georgia

01/28/13  
Sent to S.C.

Case No. A12D0495

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S13C0739

Atlanta, June 03, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WALTER R. SCOTT, JR. v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

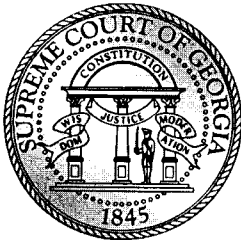
All the Justices concur.

Court of Appeals Case No.  
A12D0495

RECEIVED IN OFFICE  
2013 JUN 19 PM 3:27  
CLERK'S OFFICE  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta June 18, 2013



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.

*Lia C. Britton*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, August 29, 2012

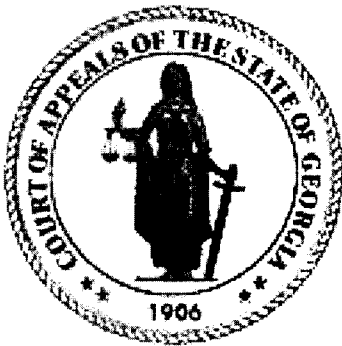
*The Court of Appeals hereby passes the following order*

**A12D0496. CELESTE GLASS-FRANCIS v. ESTATE OF MARTHA ANN FLOYD, et al.**

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

LC NUMBERS:

11A354713



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 29, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 24, 2012

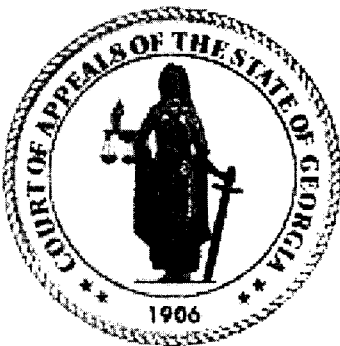
*The Court of Appeals hereby passes the following order*

**A12D0497. NICOLE PATTERSON v. CRAIG HRAGYIL.**

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.

LC NUMBERS:

2011CV206074



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, August 24, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 10, 201

*The Court of Appeals hereby passes the following order:*

## **A12D0498. FRED JONES ENTERPRISES, LLC v. DEWEY WILLIAMS.**

Fred Jones Enterprises, LLC filed a motion to set aside the trial court's order granting default judgment in favor of Dewey Williams. Fred Jones Enterprises argued, inter alia, that the trial court failed to give notice of the entry of final judgment and thus was required to vacate and re-enter the order as set forth in *Cambron v. Canal Ins. Co*, 246 Ga. App. 147, 148 (1) (269 SE2d 426) (1980). The trial court denied the motion, and Fred Jones Enterprises filed this application for discretionary appeal.

A motion to vacate and re-enter an order in keeping with *Cambron* is a motion to set aside under OCGA § 9-11-60 (g). See *Crawford v. Kroger Co.*, 183 Ga. App. 836 (360 SE2d 274) (1987). Thus, no application for discretionary appeal is required from a trial court's order denying such a motion. See *id.* We will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Fred Jones Enterprises shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, a notice of appeal has already been filed, Fred Jones Enterprises does not need to file a second notice. The clerk of the trial 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, 09/10/2012*

*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.*

*Holly K. O. Spawr*

*, Clerk.*



# Court of Appeals of the State of Georgia

ATLANTA, September 07, 2012

*The Court of Appeals hereby passes the following order*

**A12D0499. JOZELL JOHNSON v. AUTO CREDIT INVESTMENTS OF GEORGIA, INC..**

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

LC NUMBERS:

11A370615



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, September 07, 2012.*

*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.*

*Hally H. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 06, 2012

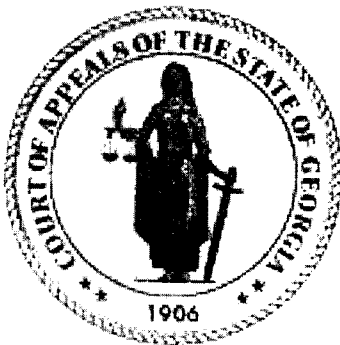
*The Court of Appeals hereby passes the following order*

**A12D0500. THE GEORGIA DEPARTMENT OF HUMAN SERVICES, EX. REL. JAMIE  
LYNN GREGORY v. CRYSTAL PATTON.**

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.

LC NUMBERS:

12CV59895



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, September 06, 2012.*

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the Court of Appeals of Georgia.*

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

*Hally K. O. Spaw*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 28, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0501. REGINALD K. CARSON v. THE STATE.**

Reginald Carson was convicted of armed robbery, and his conviction was affirmed on appeal in 2003. See *Carson v. State*, 264 Ga. App. 763 (592 SE2d 161) (2003). In March of 2011, Carson filed an extraordinary motion for new trial. On May 4, 2012, the trial court entered an order denying Carson's motion.<sup>1</sup> On August 3, 2012, Carson filed an application for discretionary appeal.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Carson filed his application 91 days after entry of the order he seeks to appeal, the application is untimely and is thus DISMISSED for lack of jurisdiction.

---

<sup>1</sup> Carson also filed a motion for an out-of-time appeal, which was denied. The denial of a motion for out-of-time appeal is directly appealable. *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999). However, Carson is not entitled to an out-of-time appeal because he has already had a direct appeal from his conviction and sentence. See *Richards v. State*, 275 Ga. 190, 191 (563 SE2d 856) (2002). In any event, his appeal from the denial of his motion for an out-of-time appeal is untimely. See 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, 08/28/2012*

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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.*

*Hally K. O. Samra*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 11, 201

*The Court of Appeals hereby passes the following order:*

## **A12D0502. MARION SCOTT LASETER v. DEPARTMENT OF HUMAN RESOURCES.**

Marion Scott Laseter filed this application for discretionary appeal seeking to challenge a superior court order holding him in contempt for failure to pay child support. Laseter has not, however, provided a copy of the order he seeks to appeal. According to Laseter, he did not receive a copy of the order prior to being incarcerated.

Pursuant to OCGA § 5-6-35 (c) and Court of Appeals Rule 31 (b), an application for discretionary review must include a copy of the order being appealed. In the absence of the appealable order, we are unable to assume jurisdiction. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989) (“The requirements of OCGA § 5-6-35 are jurisdictional and this court cannot accept an appeal not made in compliance therewith”). Accordingly, we are unable to consider the merits of Laseter’s application for discretionary appeal, which is hereby DISMISSED.

We note, however, that the trial court was required to provide Laseter notice of its ruling. See OCGA § 15-6-21 (c); *Miranda v. Stewart*, 312 Ga. App. 290, 292 (718 SE2d 123) (2011). If Laseter’s right to seek appellate review was frustrated due to the trial court’s failure to send him a copy of the order, his remedy is to petition the trial court to vacate and re-enter the order as a means of correcting the problem. See *id.*; *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980). The re-entry of the order will begin anew the time for seeking appellate review. See *Cambron*, *supra*.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta, 09/11/2012*

*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.*

*Hally H. O. Spencer*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 11, 2012

*The Court of Appeals hereby passes the following order*

**A12D0503. I-TECH E-SERVICES,LLC v. CATLIN SPECIALTY INSURANCE  
COMPANY.**

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

LC NUMBERS:

11A35485



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, September 11, 2012.*

*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.*

*Hally K. O. Sparrow*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 12, 2012

*The Court of Appeals hereby passes the following order:*

## **A12D0504. LINCOLN C. MCGAHEE v. THE STATE.**

Lincoln McGahee filed an application for discretionary review, seeking to appeal the trial court's order denying various pro se motions. McGahee included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e).<sup>1</sup> On August 15, 2012, this Court ordered McGahee to supplement his application within ten days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

More than ten days have passed since we issued the August 15, 2012 order, but McGahee has not submitted a stamped "filed" copy of the trial court's order. Accordingly, McGahee's application is hereby DISMISSED.

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<sup>1</sup> In order for this Court to have jurisdiction, an application for discretionary appeal must be timely filed. *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). An application is timely if it is filed within 30 days of the entry of the order the applicant seeks to appeal. OCGA § 5-6-35 (d). A stamped "filed" copy of the order to be appealed is necessary for us to determine whether an application was timely filed. In this case, the court signed the order on July 11, 2012. If the order was entered that same day, then this application – filed 33 days later – is untimely.





*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 09/12/2012*

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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.*

*Hally K. O. Spaw*, Clerk.