



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **TAYLOR V. THE STATE (S15A0612) AND BESSENT V. THE STATE (S15A0613)**

A young man who is currently in prison under two consecutive life sentences has had his convictions reversed and his sentences thrown out with a decision today by the Supreme Court of Georgia.

In the unanimous opinion, written by **Justice Harold Melton**, the high court has reversed the convictions of Abdul Bessent for his role in the 2008 murders of Michael Key and Phyllis Frazier in **Camden County**, finding that the evidence against Bessent was insufficient to support the verdict. As a result, he cannot be retried.

At the same time, the court has upheld the convictions and double life prison sentences given in a joint trial to one of his co-defendants, Roderick Taylor. In their appeal to the state Supreme Court, both Taylor and Bessent argued in part that the evidence against them was insufficient because the testimony linking them to the crimes by another co-defendant, Robert Brown, was not sufficiently corroborated.

“For the reasons set forth below, we affirm Taylor’s convictions, but we must reverse the judgment in **Bessent’s** case,” today’s opinion says.

According to Brown’s testimony at trial, on Dec. 21, 2008, Brown and Taylor were playing football in Jacksonville, FL when Taylor told Brown that Bessent “needed to get something up in Georgia.” Brown assumed that meant Bessent wanted to purchase drugs so he agreed to drive Bessent, Taylor and Joseph Stuckey to Kingsland, GA in Camden County. According to Brown’s testimony, on the way, Bessent used Stuckey’s cell phone to make calls to the dealer, Michael Key, and he also gave Brown directions to Key’s apartment. Phone records later revealed that calls were made from Stuckey’s phone to Key’s phone three times around 6

that evening. One last call was made at 6:39, shortly before the killings. At the apartment complex in Kingsland, again according to Brown, Bessent, Taylor and Stuckey, who was armed with an AK-47 assault rifle, went inside while Brown remained outside.

Key was roommates with several people, including victim Phyllis Frazier. Also living there were Meagan Molix and Roney Wilson. Molix testified that she and Wilson were in bed when a short armed man came into their bedroom with a taller man and turned on the light. At trial, Molix identified Taylor as the taller man, although she expressed uncertainty about the identification on cross examination. The two men asked where "it" was and searched the closet before going into the hallway. Molix said she then heard a third person ask Key, who was in the kitchen with Frazier, "Where's it at? Where's the drugs at?" Molix then heard gunshots and called 911.

Brown, who testified he had stayed behind in the car, said that after a few minutes he heard the gunshots and saw Bessent, Taylor and Stuckey run back outside. At the same time, a pickup truck pulled into the parking lot next to Brown's vehicle. Brown testified that when Stuckey saw the truck he began shooting at it. Jermaine Banks, a passenger in the truck, testified that when he and the truck's driver, Jamie Riddle, pulled into the parking lot, he heard gunshots and saw someone with a gun running from Key's apartment, followed by two other men.

When police and medical personnel arrived at the scene, they found Riddle dead in the truck. Inside the apartment they also found the bodies of Key and Frazier. Banks, the truck's passenger, had been shot in the thigh. Brown testified that he then drove Bessent, Taylor and Stuckey back to Stuckey's house. Stuckey's girlfriend testified that she saw Stuckey being dropped off with Taylor and observed Bessent moving from the back seat to the front.

Other evidence admitted at trial included lyrics from a rap song Taylor had written in jail, which said: "ME AND STUCKEY GOT THE CHOPPAS, ANY REASON WE SPRAYIN', AND THAT'S WHEN A LOT OF SH-T CHANGE; AND ME AND LIL STUCKEY HAD ANGER BUILT UP IN US. NOW ME, HIM CODEFENDANTS." (A "choppa" is street slang for an AK-47.)

Following the joint trial of Taylor, Bessent and Stuckey, Taylor and Bessent were found guilty of the murders of Key and Frazier, but were acquitted of the murder of the truck driver, Riddle. They were also convicted of conspiracy to commit armed robbery, conspiracy to possess cocaine, and aggravated assault. Both Taylor and Bessent were sentenced to two consecutive life prison sentences.

Today's opinion points out that under the Georgia statute in effect at the time: "In felony cases where the only witness is an accomplice, the testimony of a single witness shall not be sufficient. Nevertheless, corroborating circumstances may dispense with the necessity for the testimony of a second witness..."

While that corroborating evidence may be circumstantial, it must be "independent of the accomplice testimony and must directly connect the defendant with the crime, or lead to the inference that he is guilty," the opinion says.

"Brown's testimony that Taylor participated in the crimes was corroborated both by Molix's identification of Taylor at trial as well as the rap lyrics Taylor composed in his jail cell which referenced the use of an AK-47 that resulted in becoming Stuckey's co-defendant," the opinion says. "The evidence, therefore, was sufficient to enable a rational trier of fact to

conclude beyond a reasonable doubt that Taylor was guilty of the crimes for which he was convicted.”

However, “Brown’s testimony that Bessent participated in the crimes was corroborated only by [Stuckey’s girlfriend’s] testimony that she saw Bessent exit Brown’s vehicle with Stuckey and Taylor on the evening after the murder,” the opinion says. “This evidence, however, does nothing to indicate that Bessent actually *participated* in the crimes. At best, it merely shows that Bessent was with his co-defendants in Florida after the crime was committed. As a result, Brown’s testimony was not sufficiently corroborated with regard to Bessent, and the evidence was insufficient to enable the jury to find Bessent guilty of the crimes for which he was convicted.” Furthermore, there is no evidence corroborating Brown’s testimony that Bessent made the phone calls right before the murders using Stuckey’s phone. “Bessent’s convictions must be reversed,” the opinion says.

**Attorney for Appellant (Taylor):** Jimmonique Rodgers

**Attorney for Appellant (Bessent):** Clare Nolan

Attorneys for Appellee (State): Jackie Johnson, District Attorney, Andrew Ekonomou, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Clint Malcolm, Asst. A.G.

### **ALEXANDER V. THE STATE (S14G1762)**

A man who pleaded guilty to aggravated child molestation and other child sexual offenses may get the chance to withdraw his guilty plea under a ruling today by the Georgia Supreme Court.

With today’s unanimous opinion, the high court has reversed a Georgia Court of Appeals decision and is sending the case back to **Fulton County** Superior Court to determine whether Calvin Alexander was denied his constitutional right to effective legal counsel because his trial attorney failed to tell him that under the law, he would be ineligible for parole.

Alexander was indicted on three counts each of aggravated child molestation and child molestation, and two counts each of statutory rape and enticing a child for indecent purposes. According to the indictment, the offenses involved minors and allegedly occurred between Jan. 1, 2005 and June 30, 2006. A jury trial began in March 2011, but before jury selection was completed, Alexander agreed to plead guilty. According to briefs filed in the case, at the plea hearing, he stated he believed the plea was in his best interest, and he understood the sentence would be decided by the judge. After he pleaded, the judge sentenced Alexander to 30 years with 15 to be spent in prison and the other 15 on probation.

Under state law, aggravated child molestation is one of the offenses that is ineligible for parole. However, Alexander’s attorney neglected to tell him before he pleaded guilty that he would have to spend every day of the 15 years in prison, with no chance he could get out early on parole. In April 2011, Alexander – representing himself (“pro se”) – filed a motion asking to withdraw his guilty plea. He argued he had received “ineffective assistance of counsel” in violation of his constitutional rights because his attorney failed to advise him that his guilty plea would render him ineligible for parole. At the hearing on his motion, his trial attorney testified he did not remember telling his client that he would not be eligible for parole if he pleaded guilty. Alexander testified at the motion hearing that he would not have entered a guilty plea had he known he would be ineligible for parole. At the end of the hearing, the trial court denied

Alexander's motion to withdraw his appeal, finding that Alexander's plea "was knowingly, voluntarily, and intelligently entered with the competent advice of counsel." Alexander then appealed to the Georgia Court of Appeals, which upheld the ruling, stating it was "constrained to apply" the Georgia Supreme Court's 1999 decision in *Williams v. Duffy*.

At issue in this case is the *Williams* decision, as well as a later 2010 decision by the U.S. Supreme Court, *Padilla v. Kentucky*, and the difference between "collateral consequences" and "direct consequences." In *Williams*, the Georgia Supreme Court held that a trial attorney's failure to inform a defendant entering a guilty plea that he would be ineligible for parole does not constitute ineffective assistance of counsel because parole ineligibility is a "collateral consequence" as opposed to a "direct consequence." Direct consequences are described as those within the authority of the trial court, such as sentencing a defendant, as opposed to the many collateral consequences over which the trial court has no control, such as parole eligibility – which is controlled by the Georgia Board of Pardons and Paroles – deportation, the right to own a firearm, registration as a sex offender, and others. In its 2010 decision in *Smith v. State*, the Georgia Supreme Court ruled that "before a defendant pleads guilty, the trial court must advise him of the 'direct' consequences of entering the plea, but not of all the potential 'collateral' consequences, in order for the guilty plea to be considered knowing and voluntary."

Under *Padilla v. Kentucky*, however, the U.S. Supreme Court used a different analysis and ruled that a trial attorney performs deficiently if he/she fails to advise a client that entering a plea would result in automatic *deportation*. In his appeal, Alexander argued that under *Padilla*, the Court of Appeals should have ruled that the failure of Alexander's trial attorney to inform him of the collateral consequence of parole ineligibility constitutes deficient performance. Specifically, Alexander argued that *Padilla* held that the collateral consequences doctrine does not apply where a defendant's motion to withdraw his guilty plea is based on a claim of ineffective assistance of counsel, which is what Alexander is claiming. In upholding the trial court, the Court of Appeals nevertheless stated it found that "Alexander's argument as to the inapplicability of the collateral consequences doctrine to an ineffective assistance of counsel claim has significant support in the law." But "we are constrained to apply *Williams* and find that because parole ineligibility is a collateral consequence of a guilty plea, Alexander cannot prove that his trial counsel performed deficiently by failing to discuss that consequence with him."

Alexander then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether *Williams v. State* remains "good law."

"We hold today that *Williams* is no longer good law and that it, and its progeny, must be overruled," **Chief Justice Hugh Thompson** writes in today's opinion.

Since the *Williams* decision, the U.S. Supreme Court's more recent decision in *Padilla*, has "required us to rethink our course," the opinion says. In *Padilla*, the U.S. Supreme Court did not use a direct versus collateral consequences analysis, but instead held that the Sixth Amendment's guarantee of effective assistance of counsel protects a defendant from erroneous advice about deportation.

With today's opinion, the Georgia Supreme Court rules that "whether a guilty plea gives rise to a direct or collateral consequence, when a criminal defendant seeks to withdraw a guilty plea on the ground of ineffective assistance of counsel, the ineffective assistance claim must be evaluated under the two-prong test set forth in *Strickland v. Washington*."

Under the U.S. Supreme Court’s 1984 *Strickland* decision, to prove he was denied his Sixth Amendment right to effective counsel, a defendant must show both that his trial attorney’s performance was deficient, and that the deficiency “prejudiced” or harmed his defense. In other words, he must also show that had it not been for the attorney’s deficiency, there was a “reasonable probability” that the outcome of his trial would have been more favorable to him.

“We hasten to add that counsel’s failure to offer advice concerning a collateral consequence will not rise to the level of constitutional deficiency in every instance,” today’s opinion says. “Rather, our courts should weigh a deficient performance claim ‘by looking to the practice and expectations of the legal community,’” and prevailing professional norms. In addition to considering professional guidelines, today’s opinion offers three additional factors trial courts can consider when weighing legal advice that involves a collateral consequence. Based on these factors, “we conclude that an attorney’s failure to inform his or her client that he or she would be ineligible for parole as a recidivist for the entirety of a lengthy prison sentence is constitutionally deficient performance.”

In Alexander’s case, “we hold that appellant was entitled to advice from his lawyer about parole ineligibility.” However, “the trial court did not make a finding in that regard.” Under *Williams*, such a finding would have been unnecessary. “Because we now overrule *Williams*, it is incumbent upon the trial court to again evaluate appellant’s motion to withdraw his guilty plea with the two-prong *Strickland* test. Accordingly, we reverse and remand for the trial court to determine whether defense counsel performed deficiently and, if so, whether the deficient performance prejudiced [Alexander].”

**Attorneys for Appellant (Alexander):** Kenneth Kondritzer, T. Natasha Crawford

**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Lenny Krick, Sr. Asst. D.A.

**MCHUGH FULLER LAW GROUP, PLLC V. PRUITTHEALTH-TOCCOA, LLC**  
**(S15A0362)**

**MCHUGH FULLER LAW GROUP, PLLC V. PRUITTHEALTH-TOCCOA, LLC**  
**(S15A0641)**

The Supreme Court of Georgia has thrown out a permanent injunction that was awarded to a Toccoa nursing home owner after it sued a Mississippi-based law firm for “false and misleading” advertising.

In today’s unanimous opinion, **Justice Carol Hunstein** writes that a **Stephens County** judge made a procedural error by granting a permanent injunction at the conclusion of what the law firm thought was an interim hearing, without first giving the firm clear notice that it intended to issue a final ruling at that time. As a result, the high court is sending the case back to the trial court to follow the proper procedures.

According to briefs filed in the case, on April 17, 2014, McHugh Fuller – a Mississippi-based law firm – posted an advertisement in “The Toccoa Record” newspaper in Stephens County where PruittHealth has provided nursing home services since 1969. The law firm said the ad was based on a 2012 survey report about a PruittHealth-owned nursing facility published by the federal Centers for Medicare and Medicaid Services. The ad featured a photo of the nursing home and said: “ATTENTION! The government has cited HERITAGE HEALTHCARE OF TOCCOA for failing to assist those residents who need total help with eating/drinking, grooming

and personal and oral hygiene. If you suspect that a loved one was NEGLECTED or ABUSED at Heritage Healthcare of Toccoa, call **McHugh Fuller** today! Has your loved one suffered? Bedsores, Broken Bones, Unexplained Injuries, Death.” At the bottom of the ad was the law firm’s 800 number.

The following day, on April 18, PruittHealth sued, seeking a temporary restraining order and an injunction. That day, the trial judge granted the temporary restraining order until a hearing could be held, requiring McHugh Fuller to pull the ad until further notice. The judge scheduled a hearing for three weeks later to address “whether injunctive relief should continue.”

At the May 13 hearing, PruittHealth presented testimony that the government had never found that its nursing home failed to help residents with “eating” or “drinking;” that the government citation on which the ad was based had been issued two years earlier in May of 2012; that it involved one resident who had long, dirty fingernails, and another who stated she did not have swabs or mouthwash for her gums; and that the nursing home had resolved these problems immediately. Furthermore, a more recent survey had found no such deficiencies. PruittHealth argued it was entitled to an injunction because McHugh Fuller had commissioned a deceptive newspaper ad aimed at recruiting new clients to bring suit against its Toccoa nursing facility, and that the ad violated several provisions of the state Uniform Deceptive Trade Practices Act because it contained false and misleading statements. The facility’s administrator testified that since the ad had run, the number of new admissions to the nursing home had declined by about half. For its part, the law firm presented testimony to justify the language used in the ad, as well as expert testimony from an Emory University School of Law ethics professor, who expressed his opinion that the ad was neither false nor deceptive.

Following the May 13 hearing, the judge stated he found the ad to be deceptive and in violation of state law. An order issued May 23, 2014 stated that McHugh Fuller was prohibited from “publishing or causing the offending advertisement to be published in the future. In addition, within 20 days from the date of this order, defendant shall remove or cause to be removed at its expense all electronic postings of the advertisement by *The Toccoa Record*, including any electronic archived versions of the advertisement.” McHugh Fuller filed a motion asking the trial court to amend or reconsider its order. The law firm argued that a final order granting permanent injunctive relief was improper because McHugh Fuller had not been notified that the trial court intended to combine a hearing on the “interlocutory” (or interim) injunction with a final trial on the merits of the case. While that is allowable, the parties must have notice beforehand of the consolidation so they can prepare, McHugh Fuller argued, and it claimed it did not have notice. The trial court never ruled on the motion, and the law firm then appealed to the state Supreme Court.

Following issuance of the court’s May 23 order, McHugh Fuller also claimed it was not clear that the trial court’s ruling was final and that it was issuing a permanent injunction, and it had therefore filed additional arguments and documents to be included in the record, pending a final ruling. The trial court ruled, however, that the case had been terminated, and any materials filed after the termination date were not properly part of the record and could not be considered on appeal. McHugh Fuller, in a separate action, appealed that ruling as well.

“We conclude that the trial court did err, both in granting a permanent injunction following only an interlocutory hearing and in its exclusion of filings from the appellate record,”

today's opinion says. "Accordingly, we vacate the award of the permanent injunction, reverse the order designating the appellate record, and remand for further proceedings."

Under the Civil Practice Act, once a temporary restraining order has been issued, the trial court must schedule an interlocutory hearing "at the earliest possible time," which is "to be followed by a trial on the merits," the opinion points out. While the Act permits a trial court to consolidate a trial on the merits with an interlocutory hearing, the court's authority to do so is "tempered by the due process principle that fair notice and an opportunity to be heard must be given the litigants before the disposition of a case on the merits."

"Here, while McHugh Fuller clearly had notice of the interlocutory hearing, it had no notice that the trial court intended at that hearing to consider the merits of permanent injunctive relief," the opinion says. "Moreover, at no time during the May 13 hearing did the trial court expressly state that it intended to make a final ruling on the merits of a permanent injunction; rather, it referred merely to 'injunctive relief' without specifying whether it was intended as temporary or permanent."

"We also find error in the trial court's conclusion that the appellate record in McHugh Fuller's initial appeal should not include any filings in the trial court submitted after the entry of the permanent injunction on June 2, 2014," the opinion says. While Georgia law would allow PruittHealth to request *inclusion* of portions of the record McHugh Fuller designated for exclusion, it does not authorize PruittHealth to request *exclusion* of items the law firm wants to include. "Contrary to PruittHealth's contention, the fact that certain filings may not be relevant to the issues on appeal – for example, as here, filings with new evidence not before the trial court when it made the ruling being appealed – does not mean that such filings do not constitute part of the trial record eligible for inclusion in the record on appeal."

**Attorneys for Appellant (McHugh Fuller):** Shannon Sprinkle, Tyler Wetzel

**Attorneys for Appellee (PruittHealth):** Jason Bring, J. Ryan Hood

### **WILSON V. THE STATE (S15A0340)**

The Supreme Court of Georgia has upheld the convictions and life prison sentence, with no chance of parole, given to a woman in **Liberty County** for the abuse and murder of her cousin's 2½-year-old son.

Andrea Renee Wilson argued on appeal that the evidence was insufficient to support the jury's verdict. But in today's unanimous opinion, **Justice Robert Benham** writes for the court, "We disagree."

According to the facts of the case, Prince Davis was born June 15, 2004 to Charmika "Kia" West in Atlanta. His first year and a half were typical, and his regular baby checks showed he was a normal toddler – walking, talking and having a good appetite. In 2005, his mother was sent to prison when her first offender conviction for forgery was revoked. For about six months, Prince's paternal great grandmother kept him. Although the baby had asthma, she reported he was never sick or hurt, and only once needed the breathing machine. But ultimately Kia wanted her cousin and friend, Andrea Wilson, to take care of Prince, as well as his four older sisters, while Kia was incarcerated. When Wilson and her boyfriend, Corey Brown, went to Atlanta in March 2006, they only picked up Prince and took him back to their home in Riceboro in south Georgia.

On Jan. 16, 2007, Wilson rushed over to a neighbor's home holding Prince, who was not breathing. Emergency medical technicians responded to the neighbor's 911 call, finding the child unresponsive. He was rushed to the hospital where he was later declared dead.

At a joint trial of Wilson and Brown in October 2010, the medical examiner testified the toddler had died from battered child syndrome and had approximately 200 injuries in various stages of healing. The injuries included bruises and scars all over his body, bruised kidneys, a gangrenous toe (caused by a burn), blunt force trauma to the brain, and bruised and swollen genitalia. The medical examiner testified the toddler was malnourished and had signs of starvation. Brown told police she believed that the toddler had a devil or demon in him, that he often had seizures, "fell out," and injured himself. She said he was constantly sick and crying and refused to eat. She had tried prayer oil and laying the Bible on Prince while praying. According to briefs filed in the case, Wilson said Prince would sometimes growl when she did this; his eyes looked as if they were popping out; and he foamed at the mouth like the Devil. She admitted to a detective that she hesitated to seek medical help because she was afraid she might be blamed. After his arrest, Brown said that Wilson believed Prince was possessed, that demons were taunting both of them to hurt the baby, and that they were planning an exorcism.

At trial, Wilson testified that she and Brown both hit the boy, although she stated that she only hit his legs and hands with a switch or wet washcloth. She said Brown hit the little boy hard on his back and beat him with a belt. The medical examiner concluded the child's death was caused by the totality of his 200 chronic and acute injuries and that his body itself was a "smoking gun."

Following trial, Wilson was convicted of felony murder and child cruelty, and she was sentenced to life without parole. (Brown was also convicted of murder.) Wilson then appealed to the state Supreme Court, arguing that the evidence was insufficient to convict her because the medical examiner could not pinpoint any one injury she had inflicted that caused the toddler's death.

But in today's opinion, the high court finds that the "evidence was sufficient to convict appellant of the crimes for which the jury returned verdicts of guilt." It has also rejected Wilson's argument that her trial attorney provided "ineffective assistance of counsel" for failing to object to the statements Brown made to police after they arrested him. Those statements merely echoed her own statements that she made while she was in custody and at trial.

"Judgment affirmed," the opinion says. "All the Justices concur."

**Attorney for Appellant (Wilson):** Robert Persse

**Attorneys for Appellee (State):** John Durden, Jr., District Attorney, Sandra Dutton, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Christian Fuller, Asst. A.G.

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**IN OTHER CASES,** the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

\* Maurice Marquez Dugger (Bibb Co.)

**DUGGER V. THE STATE (S15A0578)**

\* Takeyia Guthridge (Clayton Co.)

**GUTHRIDGE V. THE STATE (S15A0589)**

- \* Brandon Henry (Lowndes Co.)                    **HENRY V. THE STATE (S15A0189)**
- \* Kevin Deshawn Lamar (Fulton Co.)           **LAMAR V. THE STATE (S15A0341)**
- \* Willie Lee Mann (Fulton Co.)                **MANN V. THE STATE (S15A0421)**
- \* Peter McLean (DeKalb Co.)                   **MCLEAN V. THE STATE (S15A0308)**
- \* Cornelius Price (Richmond Co.)            **PRICE V. THE STATE (S15A0299)**
- \* Jennifer Renay McLeod (Crisp Co.)        **MCLEOD V. THE STATE (S14A0370)**  
 (While the Georgia Supreme Court has upheld McLeod’s two murder convictions and life prison sentences, the court has reversed her conviction for arson and vacated the additional 20-year prison sentence for that crime.)

**IN DISCIPLINARY MATTERS**, the Georgia Supreme Court has **disbarred** attorney:

- \* Robert Gist                                        **IN THE MATTER OF: ROBERT GIST (S15Y0228, S15Y0229)**

The Court has accepted a petition for voluntary discipline and ordered the **6-month suspension**, with conditions for reinstatement, of attorney:

- \* Kimberly L. Copeland                        **IN THE MATTER OF: KIMBERLY L. COPELAND (S15Y1040)**