Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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ANDERSON V. SENTINEL OFFENDER SERVICES, LLC (S15Q1816)

The Supreme Court of Georgia has ruled that under the body of law derived from court decisions dating back to the 1800s, when someone fails to comply with his misdemeanor probation sentence, a court is authorized to delay the ending date of his original sentence.

However, in today's 6-to-1 decision, written by **Justice Carol Hunstein**, the majority notes that "the mere failure of a defendant to abide by the terms of a misdemeanor sentence" will not automatically delay the sentence's end but rather requires a finding by the judge that the violation was "sufficiently serious that the defendant was not serving the sentence imposed."

The appeal stems from a lawsuit filed in federal court against a private probation company by a probationer seeking damages for false arrest, malicious prosecution, and false imprisonment. Before ruling on the matter, the U.S. District Court for the Southern Division of Georgia asked the Georgia Supreme Court to answer two questions about Georgia law.

According to the facts of the case, on May 6, 2009, Richard Lamar Anderson was sentenced to 12 months' probation by the Brunswick Municipal Court in **Glynn County** for driving with a suspended license. Anderson signed a probation agreement with Sentinel Offender Services, LLC, a private probation company, agreeing to make a minimum monthly payment toward his court-ordered fees, which included a $500 fine, $150 in court costs, and a monthly probation supervisory fee. According to Anderson, he made some payments but then was told by his probation officer that "he was through with his case." In July 2009, however, Anderson's probation officer secured an arrest warrant for Anderson on the grounds that he had failed to report, pay his fines, and pay his probation supervision fees. The arrest warrant, dated July 8, 2009, reflected that Anderson's probation was scheduled to expire in May

2010, but the warrant also included the following language: "This sentence is automatically tolled upon Judge's signature." ("Tolling" refers to the practice of suspending – or stopping the clock from running on – the sentence of a probationer who has absconded or violated his probation terms.) On Feb. 11, 2011, Anderson was arrested on the July 2009 warrant and released soon after when, according to Anderson, the detention center realized the warrant was invalid as his probation had ended nine months and six days earlier. Following his release, Anderson did not appear at a probation-revocation hearing and refused to report to his probation officer, insisting that his probation had expired. Consequently, in August 2011, Anderson was arrested again for failing to report and pay as directed. That time he spent six days in jail, and he said, lost his job as a result. At a subsequent revocation hearing, the trial court terminated Anderson's probation, gave him credit for time served, and credited all of his unpaid fees and unfulfilled conditions. Anderson claimed he was released because the second warrant, like the first, was invalid as by then, his probation had expired more than a year earlier.

In December 2013, Anderson sued Sentinel in U.S. District Court, Southern District of Georgia, in Brunswick. In response, Sentinel filed a motion for "summary judgment," which a judge grants after deciding that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on one side or the other. The federal court postponed acting on Anderson's lawsuit while awaiting the Georgia Supreme Court's ruling in another private probation case involving Sentinel. In that case, *Sentinel Offender Services, LLC., v. Glover et al.*, the Georgia Supreme Court ruled in 2014 that under Georgia's private probation statute (Georgia Code § 42-8-100), courts are prohibited from continuing a misdemeanor probationer's sentence beyond what was originally ordered. In the *Glover* decision, however, this Court left unaddressed whether "such tolling might be permissible as a matter of common law." (Common law is the body of law derived from *case law* or judicial decisions made by the courts, as opposed to law derived from *statutes* made by the legislature.) The Supreme Court specifically noted in a footnote in its *Glover* decision that it was only addressing whether the practice was allowed under any Georgia statute, but it had not been asked to address whether it was allowed under common law. Following the *Glover* decision, Sentinel took the position that the Brunswick Municipal Court had the authority to toll Anderson's misdemeanor probation sentence under Georgia common law and that the common law had not been repealed by any legislation. According to the federal court, Anderson's civil case hinged on the resolution of the issues left unaddressed in *Glover* and asked the state Supreme Court to answer two questions: Is the tolling of misdemeanor probation authorized under Georgia common law and if so, did the state's private probation act abolish that authority? In the meantime, in 2015, the General Assembly enacted House Bill 310, which allows for the tolling of misdemeanor probation sentences.

In today's majority opinion, the high court has ruled in favor of Sentinel, answering the first question posed by the federal court in the affirmative, and the second in the negative. "[W]e conclude that, as a matter of common law, the mere passage of time does not extinguish an unserved sentence and that the common law principle has not been abrogated by the Statewide Probation Act."

In its 2014 *Sentinel* decision, the high court ruled that "with respect to a misdemeanor conviction, sentences are fixed at one year *and once a sentence has been served,* jurisdiction over the defendant ceases." Under common law, "the actual fulfillment of the terms of a misdemeanor sentence – the 'service' of that sentence – dictates the completion of that

sentence," the opinion says. In 1898, the Georgia Supreme Court ruled in *Neal v. State* that it was proper to enforce an unserved six-month prison sentence, which had been suspended, "even though that sentence was imposed more than six months after it was pronounced."

"Under common law, a misdemeanor sentence – even one to be served on probation – is not extinguished by the mere passage of time, and any unserved term of that sentence may be enforced beyond the expiration of that original sentence; this principle, in effect, tolls [i.e. postpones] the expiration of the sentence and concomitantly extends the jurisdiction of the sentencing court."

As to whether the state's private probation statute abolishes common law tolling, such a construction of the statute "would render misdemeanor probation unenforceable in some situations, as it would allow defendants to avoid their sentences by simply avoiding apprehension until the expiration of their original sentence," today's opinion says. "We cannot say that the General Assembly meant to enact an ineffective misdemeanor probation scheme without any mention of abrogating the well-established common-law and common-sense principle of tolling. Accordingly, we conclude that common law tolling of misdemeanor probation sentences was not abrogated by the Statewide Probation Act, and we answer the second certified question in the negative."

In the dissent, **Chief Justice Hugh Thompson** argues that statutory law has indeed abolished the common law authority of tolling misdemeanor probation sentences that are supervised by private probation companies, and that authority has never been revived. "Because the 1986 amendment to the Statewide Probation Act abrogated common law tolling in significant part with regard to all felony and misdemeanor probationers, I cannot conclude that when the General Assembly removed some misdemeanor probationers in 1991 from the scope of the Statewide Probation Act, it intended to revive the common law of tolling for those probationers."
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PYATT V. THE STATE (S15A1734)

In a split 4-to-3 decision, the Georgia Supreme Court has upheld the murder conviction of Tremaine Pyatt, who was sentenced to life in prison for his role in the shooting death of a man following an altercation at a nightclub in **Muscogee County**.

The facts of the case are as follows: The evening of June 16, 2007, Meredith "Tag Rhodes, who was then a suspended deputy sheriff, and three friends decided to go to some nightclubs in the Columbus area. They went first to the VIP Lounge, but it was too crowded. Before leaving, they picked up Saletta Perry and another woman who asked for a ride. Rhodes, his friends, and the two women then proceeded to the Rogers Tap Room. After Rhodes parked the car behind the nightclub, he and his friends struck up a conversation with another group of women while Perry and her friend stood nearby. At some point, Pyatt and his friends came out of Rogers Tap Room. Pyatt and Perry had previously been involved in a romantic relationship, and they began to argue. Rhodes got into his car to leave, and Perry and her friend joined him. As Rhodes drove away, Perry and her friend were hanging out of the car, shouting at Pyatt and continuing the argument. Pyatt shouted back and fired a handgun in the direction of the car. One of Pyatt's friends recognized Rhodes and said that if he returned, he would shoot Rhodes, to

which Pyatt responded, "I'm shooting." Rhodes and the young women drove away, but Rhodes eventually turned around and headed back to Rogers Tap Room. As they drove by the nightclub, several more gunshots were fired. The women were scared and got out of the car. But Rhodes, now driving alone, turned the car around and again drove past the nightclub. As he did, Pyatt and several other men standing along the street fired multiple shots at Rhodes as he passed the nightclub. Rhodes was hit and crashed his car into a parked vehicle. His friend found him, pulled him from the car, and he and Rhodes' other friends tried to drive him to a hospital. Rhodes later died from a gunshot wound to his neck, which severed his spinal cord. At the scene of the shooting, investigators found cartridge casings that had been ejected from at least three different handguns. One was consistent with the projectile that had killed Rhodes.

In August 2009, a jury found Pyatt guilty of the felony murder, based on the aggravated assault of Rhodes, and guilty of the aggravated assaults of Saletta Perry and her friend, Breanna Broadnax. The jury acquitted Pyatt of malice murder, and he was sentenced to life in prison. He then appealed to the state Supreme Court, arguing that the evidence was insufficient to prove his guilt, the trial court erred by admitting certain evidence, the trial judge made an improper comment in the presence of the jury, the judge also erred in instructing the jury, he was denied a trial before a fair and impartial judge, and he was denied the effective assistance of counsel in violation of his constitutional rights.

In today's majority opinion, written by **Justice Keith Blackwell**, the high court has rejected all his arguments, finding that "Pyatt was among a group that fired at least three handguns, one of which fatally wounded Rhodes. The State was not required to prove that Pyatt himself fired the fatal shot, so long as it proved that he was a party to the fatal shooting." Here, "we conclude that it was sufficient to permit a rational jury to find beyond a reasonable doubt that Pyatt was guilty of the crimes of which he was convicted, whether as a principal or only an accomplice."

At issue in the disagreement among the justices is Pyatt's last argument. Specifically, Pyatt contends that his trial attorney was ineffective for failing to object on "ultimate issue" grounds when Detective Robert Jackson testified that in his opinion the shot fired by Rhodes as he drove away from the Rogers Tap Room the first time was an aggravated assault. On direct examination, Jackson testified at length about his investigation, including that he had obtained a warrant for Pyatt's arrest for aggravated assault. During the examination by the State prosecutor, he stated he had spoken to a number of witnesses, and the aggravated assault warrant "was based on the car being fired at. There has been some comments made [about] a warning shot by [defense counsel] and yourself, you picked up on. At no time did I ever consider this a warning shot. The initial round was fired, according to witnesses, in the direction of the car, over the car…I wasn't there. But I can tell you according, including his own aunt, that it was fired toward the car. *In my opinion and in what I consider the law, that is aggravated assault.* That's why he was charged with three counts of aggravated assault."

Q – "For the shot toward the car," the prosecutor asked.

A – "The first shot, yes, sir," the detective responded.

"Under our old Evidence Code, it was settled that 'a witness [ordinarily] may not express his opinion as to an ultimate fact, because to do so would invade the province of the jury,'" today's majority opinion says. While the majority "assumes – without deciding" that the testimony was improper and the defense attorney should have objected, Pyatt must still show that

his trial attorney's failure to object was "prejudicial," meaning had the attorney objected, the jury's verdict likely would have been more favorable. "We conclude that Pyatt has failed to make that showing," the majority says.

First, the jury already knew the detective had obtained a warrant for Pyatt's arrest for aggravated assault. "Although it may have been improper for Detective Jackson to share his subjective belief with the jury explicitly, any rational juror would have guessed that Detective Jackson believed as much without being told." Furthermore, "this is not a case in which an improper opinion about the ultimate issue would have confused or misled the jury about the law to the prejudice of the defendant," the opinion says. "Detective Jackson specified clearly that he believed the initial shot was an aggravated assault *because* he understood the witnesses to say that Pyatt fired the initial shot *at* Rhodes' car." Even more important, Pyatt's trial attorney elicited essentially the same testimony on cross examination, stating: "I want to start with a statement by you at the beginning of your testimony that from the get-go you felt like Tremaine Pyatt was guilty of aggravated assault because when he fired that first shot from the parking lot of the Tap Room at the car as it was leaving that you felt like that was aggravated assault because he shot at the car." The detective answered: "Well, you said guilty. I don't determine the guilt part."

Q – "All right. You charged him with aggravated assault based on that act?" the defense attorney asked.

A – "That is correct," the detective responded.

"First, the concern about opinions on the ultimate issue is that they invade the province of the jury, but that concern is mitigated in this case by Detective Jackson's explicit concession on cross-examination that 'I don't determine the guilt part,' which refers to the responsibility of the jury to decide the ultimate issue," the majority opinion says. "Second, the cross-examination called into question the basis for Detective Jackson's opinion, thereby reducing the likelihood that the jury would blindly accept that opinion. Third, and most important, the cross-examination elicited substantially the same opinion – that Detective Jackson believed that the first shot amounted to aggravated assault – as the direct examination to which Pyatt now says his lawyer should have objected."

"On the peculiar facts of this case, we conclude that Pyatt has failed to show a reasonable probability that, if only his lawyer had objected to the opinion offered by Detective Jackson on direct examination about the first shot amounting to an aggravated assault, the outcome of the case would have been different," the majority states. "As such, Pyatt has failed to show that he was prejudiced by the allegedly deficient performance of his lawyer. His claim that he was denied the effective assistance of counsel is unavailing." Joining the majority opinion are Chief Justice Hugh Thompson and Justices Harold Melton and David Nahmias.

In the dissent, however, **Presiding Justice P. Harris Hines** writes that, "I have no hesitation in finding that it was deficient performance for trial counsel to fail to object to the cited portion of Detective Jackson's testimony; it was an impermissible comment on the ultimate issue of Pyatt's guilt regarding the charges of aggravated assault, and resulted in prejudice to Pyatt. For a witness to express an opinion at trial as to the commission of the charged crime clearly invades the province of the jury."

"Further, my view of Detective Jackson's testimony on the ultimate issue is different from that of the majority," the dissent says. "Although the majority focuses on excerpts of the

testimony that suggest a conclusion on Detective Jackson's part that Pyatt's first shot constituted an assault because Pyatt shot 'at' the car in which Rhodes was driving…, a complete reading of the testimony shows that Detective Jackson took the witnesses' statements not to be that Pyatt fired 'at' the car, but 'toward' it, and specifically 'over' it….Thus, Detective Jackson told the jury that the act of shooting over the car constituted an assault, intruding on its role of determining whether an aggravated assault had been committed…." The jury "was charged with determining whether Pyatt attempted to cause violent injury by that act, and Detective Jackson told the jury that he did."

"As there is a reasonable probability that the jury considered the improper testimony in its deliberation of all aggravated assault charges, including the fatal shooting, Pyatt should be retried as to all charges," says the dissent, which is joined by Justices Robert Benham and Carol Hunstein.

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GEORGIA DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES ET AL. V. UNITED CEREBRAL PALSY OF GEORGIA, INC. ET AL. (S15G1183)

The Supreme Court of Georgia has ruled against several non-profit groups that sued two state government agencies for allegedly reducing funding for people with disabilities without first giving them notice they were about to do so.

In today's unanimous ruling, written by **Justice David Nahmias**, the high court has reversed a Georgia Court of Appeals decision and ruled that the lawsuit may not go forward in **Fulton County** Superior Court because the service providers failed first to bring their complaints to the government agencies before taking the matter to court.

Under the decision, "we conclude, contrary to the Court of Appeals, that the plaintiffs were required to present their claims regarding improper notice of rate reductions and service limitations to the Department of Community Health for administrative review before filing this lawsuit."

Medicaid is a federal program that provides subsidies to the states to furnish medical assistance and other services to low-income families with children and to the elderly, blind, and disabled. With federal approval, states may enact "waiver programs" that exempt them from certain federal Medicaid requirements. In 2007, the federal government approved two such waiver programs in Georgia to enable organizations, including United Cerebral Palsy of Georgia, Inc., to deliver services for intellectually and developmentally disabled people in their homes and communities rather than in institutions. In Georgia, the Department of Community Health is charged with administering Georgia's Medicaid plan.

In August 2013, United Cerebral Palsy of Georgia and three other nonprofit corporations that provide services to Medicaid patients with disabilities, along with four recipients of the services, filed a class action lawsuit in Fulton County Superior Court against the two state departments and their commissioners, alleging breach of contract, noncompliance with federal Medicaid statutes, violation of their constitutional rights, and other things. They claimed that

beginning in 2008, the Department of Community Health and the Department of Behavioral Health and Developmental Disabilities unilaterally reduced the rates they paid to providers and limited the services available to disabled people, sometimes to below what was medically necessary. The service providers and recipients alleged that the state agencies made these reductions without notice to the public so citizens could comment, and without giving the providers or recipients proper advance notice as required by contracts and federal and state law. It is undisputed that the providers and recipients did not seek any sort of formal administrative review of their claims but rather took their case directly to court.

In response, the departments filed a motion asking the court to dismiss the lawsuit on the ground that the service providers failed to first seek an administrative review of their complaints by the departments themselves. The trial judge granted the departments' motion. On appeal, however, the Georgia Court of Appeals reversed that decision, finding that because the agencies had failed to give proper notice, the service providers were excused from having to seek administrative review. The agencies then appealed to the state Supreme Court which agreed to review the case to determine whether exhaustion of all available administrative remedies is required when a state agency fails to give proper notice of its adverse decision.

"Under long-standing Georgia law, the failure of plaintiffs to exhaust their available administrative remedies ordinarily precludes judicial relief," today's opinion says. "This Court has never recognized a wholesale exception to the exhaustion doctrine for alleged procedural errors by an administrative agency."

"The General Assembly has recognized the need for a robust formal administrative review process to address complaints…by providers and recipients of Medicaid services, including disputes concerning reimbursement rates and service limitations," the opinion says, referring to Georgia Code § 49-4-153. Under the statute, any Medicaid provider or recipient dissatisfied with the reimbursement rates or available services may obtain a hearing before an administrative law judge from the Office of State Administrative Hearings. If dissatisfied with that judge's decision, the party may appeal to the commissioner of the Department of Community Health for a final agency decision. Only after completing this process may the aggrieved provider petition for review by a superior court.

As the state Supreme Court has previously ruled, the rationale for requiring exhaustion of administrative remedies is to "permit the agency to apply its expertise, protect the agency's autonomy, allow a more efficient resolution, and result in the uniform application of matters within the agency's jurisdiction." Only in rare situations is a plaintiff allowed to skip the administrative review and go directly to court, and this case does not involve any such situation, today's opinion says. To the contrary, the "exhaustion requirement is particularly important in this case, given that the plaintiffs question the methods by which the defendants determined and applied the service allotments for potentially thousands of Medicaid recipients and the reimbursement amounts for their providers. Resolving these issues inherently involves the defendants' expertise in the contours of the Medicaid program, applicable federal and state statutes and regulations, and the policies and procedures set forth in the Georgia Medicaid manuals."

"The concept is straightforward: If a party believes an administrative agency made a procedural mistake regarding notice of an adverse decision, the aggrieved party should ordinarily

give the agency the opportunity to correct the mistake (if indeed it was a mistake) through the established administrative review process…."

For these reasons, "the plaintiffs were required to raise their defective notice claims in the administrative review process in the first instance," today's opinion says. "Accordingly, we reverse the judgment of the Court of Appeals."

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