



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Thursday, April 14, 2016**

**Special Session**

**Savannah Law School**

**4<sup>th</sup> Floor Courtroom**

**Savannah, GA**

**2:00 P.M. Session**

### **THE STATE V. BAXTER (S16G0184)**

State prosecutors are appealing a Georgia Court of Appeals ruling that upheld a **Bryan County** superior court's decision transferring to juvenile court the case of a 16-year-old who was arrested for aggravated sexual battery.

**FACTS:** On Feb. 4, 2014, Jason Baxter was arrested for the alleged aggravated sexual battery of his 3-year-old stepsister. Baxter, 16, was locked up at the Regional Youth Detention Center, i.e. youth jail, in Claxton, GA. According to Georgia law, a person commits aggravated sexual battery when he "intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person." Because of the seriousness of his alleged crime, Baxter was charged as an adult in superior court. Under Georgia's Juvenile Code (§ 15-11-56), the superior court has "exclusive original jurisdiction over the trial of any child 13 to 17 years" alleged to have committed any of eight violent crimes, one of which is aggravated sexual

battery. On March 13, 2014, Baxter's attorney met with State prosecutors in the judge's chambers to discuss the case. The meeting was not transcribed, but the Assistant District Attorney later testified that there was some discussion about whether Baxter's case could be transferred to juvenile court once he was indicted. As a result, Baxter's attorney indicated Baxter would waive his right to be indicted within 180 days to give the State and defense more time to investigate. Georgia Code § 17-7-50.1 states that any child charged as an adult under the jurisdiction of the superior court "who is detained shall within 180 days of the date of detention be entitled to have the charge against him or her presented to the grand jury." The statute says the State may be granted one 90-day extension. On March 17, the day Baxter's case was due to go to the grand jury, Baxter's attorney filed a "Waiver of Statutory Right to Indictment Within 180 Days." As a result, the State did not present Baxter's case to the grand jury.

On Oct. 3, 2014, Baxter's attorney filed a Motion for Bond and Preliminary Hearing. He also filed a Motion to Transfer to Juvenile Court, arguing that Baxter had been held in the youth jail for 237 days. On Oct. 15, State prosecutors informed Baxter's attorney that they would be bringing additional charges against Baxter involving the same 3-year-old child. That same day, Baxter's attorney amended the motion to transfer the case, stating that because Baxter had been incarcerated more than 180 days, under the language of Georgia Code § 17-7-50.1, the transfer was "mandatory, not permissive, directing that the case 'shall' be transferred to juvenile court if not indicted within 180 days of the juvenile's incarceration." On Oct. 16, the State filed a motion requesting time extension to present the case to the grand jury. At a hearing, Baxter's attorney argued the previous waiver of the 180-day time limit was invalid because Baxter was still in custody. The State argued "unclean hands," i.e. bad faith, on the part of the defense attorney for agreeing to the waiver and then seeking a transfer to juvenile court when it was too late for the State to do anything about it. Following arguments, the trial court transferred the case to juvenile court and denied the State's motion for an extension of time. Referring to the strong language of the statute, the judge commented, "I don't think the Court had any option." The word, "shall," the trial judge noted, was a "magic word." The Court of Appeals agreed that under "the plain language of the statute, it was therefore mandatory that the case be transferred to the juvenile court." It also agreed that the State's motion for an extension could not be granted because the State filed it more than 180 days after Baxter was detained. Finally the appellate court ruled that the waiver of the 180-day time limit was invalid, rejecting the State's argument that the time limit is merely a procedural statute of limitation, which is subject to being waived, as opposed to a change in the court's jurisdiction (or its authority to consider a case), which cannot be waived. "The crucial distinction here is that the 180-day requirement does affect the court's jurisdiction – if the State does not present a juvenile's case to the grand jury within the time limit or obtain a timely extension to do so, the superior court loses jurisdiction," the Court of Appeals wrote in its decision. The State now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals was correct that under § 17-7-50.1, a juvenile cannot waive the 180-day time limitation for the State to obtain an indictment.

**ARGUMENTS:** Attorneys with the District Attorney's office, representing the State, argue that the Court of Appeals erred in finding that the waiver of the time limit was invalid. "The Court of Appeals failed to distinguish between a procedural 180-day statute of limitation and non-waivable subject matter jurisdiction," the State argues in briefs. "The 180-day time limit under § 17-7-50.1, requiring that the State bring the case of a detained juvenile before the grand

jury within 180 days, acts as a statute of limitation, which is waivable, because both the juvenile court and the superior court share jurisdiction over the subject matter.” Under Georgia Code § 15-11-560, the district attorney has the discretion to transfer the case to juvenile court at any time prior to indictment. Baxter’s main argument is that subject matter jurisdiction of a court cannot be consented to or waived, and that is correct. “Yet the very fact that the district attorney, at his or her discretion, may transfer a case from superior court to juvenile court prior to the expiration of the 180 days demonstrates that both courts share subject matter jurisdiction,” the State argues. The State argues it did not file for an extension in a timely fashion because it “simply had no reason to file for an extension of a waived deadline based on a document which the State was in good faith relying upon.” Baxter’s attorney executed a waiver of the 180-day time limit for indictment, “let the time run, and then complained to the judge that the State had not met its burden to indict within 180 days of the youth’s detention,” the State argues. “Based on the principle of induced error, the trial court should not have allowed the defense to prevail on its motion to transfer, because the error he complained of (that the waiver was ineffective) was a problem of his own making.” With this ruling, the Court of Appeals has failed to acknowledge the legislative purposes of the Juvenile Code. By giving superior courts original jurisdiction over juveniles 13-17 years old who committed the most serious violent crimes, the legislature “clearly demonstrated an intent to subject these juveniles to the more rigid mandates of superior court and to more severe sentencing.”

An attorney with the Public Defender’s Office, who represents Baxter, argues that the Court of Appeals properly ruled that the 180-day time limitation cannot be waived by a juvenile. The appellate court correctly distinguished the time limit “as one that affects the superior court’s jurisdiction and not a statute of limitations that is merely procedural, and further noted that failure to indict within the 180-day time limit has consistently resulted in a divesting of jurisdiction of the superior court over the case,” the attorney argues in briefs. “The Court of Appeals correctly determined that the plain language of § 17-7-50.1 indicates that the legislature intended to set time limitations for Appellant [i.e. the State] to act in those cases in which a juvenile is detained, in accordance with the purpose of the Juvenile Code.” And while the State claims that Baxter’s attorney acted in bad faith, it failed to offer any evidence that the attorney realized at the time he filed his waiver that it was invalid. “The waiver of the 180 days in which an indictment must be obtained on a juvenile charged in superior court was not a waiver of a statute of limitations which is procedural in nature, but instead an invalid waiver of subject matter jurisdiction,” Baxter’s attorney argues. “Because such a waiver is invalid as a matter of law, principles of waiver and bad faith are not applicable, and this case must be transferred to the juvenile court.”

**Attorney for Appellant (State):** Sandra Dutton, Assistant District Attorney

**Attorney for Appellee (Baxter):** Cheryl Quick, Public Defender’s Office

### **CHATHAM COUNTY ET AL. V. MASSEY, CLERK (S16A0682)**

The appeal in this case stems from a dispute between the **Chatham County** Board of Commissioners and the Chatham County Clerk of Superior Court over whether in addition to *state* cost of living increases, the court clerk is also entitled to *local* cost of living increases.

**FACTS:** Daniel W. Massey was elected Chatham’s Clerk of Superior Court in November 2004. When he took office in 2005, he was paid an annual salary of \$78,667. In 2006,

Massey asked the Board of Commissioners to raise his salary to \$110,000, and by passing a resolution, the Board did so. At the time, the state mandated minimum for a superior court clerk in a county with a population the size of Chatham County's was \$58,744, according to Georgia Code § 15-6-88, so Massey earned an additional \$51,256 over the state minimum. In 2007, the County asked its state representatives to pass a "local act" that restructured salary arrangements for local officials, and Georgia's legislature passed the local act. Among its provisions was one setting the minimum salary for the Clerk of Superior Court at \$56,000 a year, which was lower than the state mandated minimum of \$58,744 under § 15-6-88. That law states that the "county governing authority may supplement the minimum annual salary of the clerk of the superior court in such amount as it may fix from time to time; but no clerk's compensation supplement shall be decreased during any term of office." Because the minimum salary under the local act was lower than the minimum salary under the state act, Massey was to be paid in accordance with the state's statutory structure, which included receiving state-granted cost of living adjustments (called COLAs) and longevity pay. At issue in this case is whether Massey is also entitled to county-granted cost of living adjustments. The County claimed it was not required to pay Massey local cost of living increases. But Massey claimed that under the 2007 local act, the County was required to pay him the local COLAs. The 2007 local act requires the County to grant every official listed in the act, including the court clerk, "the same percentage increases in salary that it grants as cost-of-living increases to employees of Chatham County."

In August 2013, Massey sent a letter to the County and county attorney claiming they had been miscalculating his salary and he should be paid for all past due salary. The County claimed he was not owed the local COLAs, arguing the 2007 local act was unconstitutional and therefore did not apply to Massey. In December 2014, Massey sued the County, filing a Petition for Writ of Mandamus and Complaint in Equity. Mandamus is considered an "extraordinary remedy" that is used to compel public officials to perform a required duty. In June 2015, the trial court ruled in Massey's favor, finding that he had a right to be paid the local COLAs and instead of being paid \$128,523, which was the amount the County argued he was due and which included State COLAs and longevity pay, he should have been paid \$133,701.75. The trial court also awarded Massey attorney's fees. The County now appeals to the state Supreme Court.

**ARGUMENTS:** The County's attorneys argue the trial court was wrong to grant Massey a writ of mandamus that states he has a clear legal right to receive state and local COLAs in addition to longevity pay, thereby raising his salary by more than \$5,000 a year over what it should be. Mandamus is considered an extraordinary remedy, and under state law, a writ of mandamus may only be issued "if there is no other specific legal remedy for the legal rights." Here, Massey had other specific remedies. "First and foremost, it is undisputed that the clerk has refused to ask the Board of Commissioners to raise his salary as a part of the budget process," the attorneys argue in briefs. Each year, the clerk submits a budget request for his office, including his own salary. He did not include a change in his budget request for fiscal years 2015 and 2016. "The refusal to engage in the budget process prior to filing suit means the clerk has not exhausted his legal remedies and mandamus cannot lie in such circumstances by the plain language of Georgia Code § 9-6-20," the County's attorneys argue. Furthermore, under a 2002 Georgia Supreme Court opinion, "public officials' exercise of discretion will not be disturbed by a mandamus order unless the officials' actions were arbitrary, capricious and unreasonable." If this court upholds the trial court's decision and adopts Massey's argument, the "clerk's salary at

such a high rate as compared to the other officials of Chatham County is an absurd result.” As to the merits of Massey’s arguments, because the local legislation itself provides for a minimum salary that is less than the salary in the State general legislation, the Clerk has never been compensated according to the local act. “In fact to do so would be a clear constitutional violation as it would have lowered the salary of a seated constitutional officer during his term,” the County’s attorneys contend. The local act as it applied to Massey was unconstitutional first because it lowered the salary of a seated elected official from \$110,000 to \$56,000 during his term in office and second because “the set salary at \$56,000 was below the state mandated minimum for a clerk of a county with the population of Chatham County.” “Since the local legislation is invalid, the Clerk would not be entitled to local COLAs as provided in the local act,” the attorneys argue. And there is no provision in the state law that allows for the application of local COLAs for a clerk of superior court.

Massey’s attorneys argue first that the County failed to argue in the trial court that mandamus is not an appropriate remedy and therefore it cannot bring it up for the first time on appeal. Even if it had not waived the issue, however, the County’s argument is without merit. The trial court did not err in granting Massey’s petition for a writ of mandamus. “Mandamus is available when there is a clear legal right to relief and the petitioner has no other adequate remedy at law to avail him/herself of such right,” the attorneys argue in briefs. The County’s contention that Massey “refused” to ask for a raise in salary “is absolutely false.” His August 2013 letter made clear what he was seeking. “More troubling is Appellant’s [i.e. the County’s] continued false allegation Massey is seeking a ‘raise in his salary.’ Massey has at no time asked for a ‘raise’ in salary. Massey has merely demanded Appellant follow the black and white letter of the law, and pay him the appropriate salary owed.” Furthermore, “any budget request, which Appellant contends is an available legal remedy, would be nothing more than an exercise in futility,” as the County has flatly denied that Massey is entitled to county COLAs since he first sent his 2013 letter. Also, the trial court correctly found that the 2007 act is not unconstitutional. The 2007 act “states unequivocally Massey’s salary *shall be no less* than \$56,000. The language does not *set* the salary at \$56,000,” the attorneys argue. Even assuming that particular section of the act is unconstitutional, the part regarding local COLAs is not. Finally, the County improperly reduced the local supplement due to Massey in violation of Georgia statutory law. “The true error by Appellant here is the failure to properly calculate Massey’s salary by applying state mandated base salary increases, state granted COLAs, and state mandated longevity increases, all while not reducing the local supplement,” Massey’s attorneys contend. The record shows that the County’s finance office “simply deducted from the local supplement the amount(s) Massey was due for state mandated increases and longevity pay, in direction violation of § 15-6-88 (d).” “The facts undeniably require Massey be paid the state mandated minimum base salary, state COLAs, state longevity increases, and County COLAs under the 2007 Act,” his attorneys argue. “Massey respectfully requests this Court affirm the correct ruling of the trial court.”

**Attorneys for Appellants (County):** R. Jonathan Hart, Jennifer Burns

**Attorneys for Appellee (Massey):** Steven Scheer, Craig Call