

April 30, 2013

Council Members

Fredric D. Bright
Chair
District Attorney
Ocmulgee Judicial Circuit

Stephanie Woodard
Vice Chair
Solicitor-General
Hall County

Denise Fachini
Secretary
District Attorney
Cordele Judicial Circuit

Nina Markette Baker
Solicitor-General
Troup County

Richard Currie
District Attorney
Waycross Judicial Circuit

J. David Miller
District Attorney
Southern Judicial Circuit

Tasha Mosley
Solicitor-General
Clayton County

Danny Porter
District Attorney
Gwinnett Judicial Circuit

Brian Rickman
District Attorney
Mountain Judicial Circuit

State v. Hill***Court Of Appeals Holds That Right Of State To Take Direct Appeal From Dismissal Of Less Than All Counts Of Indictment Or Accusation Under O.C.G.A. § 5-7-2(b)(2) Does Not Apply Retroactively To Any Offense Occurring Prior To July 1, 2012***

In *State v. Hill*, A13A0610 (April 30, 2013), the State appealed from an order granting in part the defendant's general demurrer. The record showed that on January 18, 2012 the State indicted Victor Hill, the current Sheriff of Clayton County, for criminal offenses occurring between 2007 and 2011. Prior to trial, the court dismissed 5 of the 37 counts against him. The State filed a direct appeal from the dismissal pursuant to O.C.G.A. § 5-7-2, as amended July 1, 2012.

In *State v. Outen*, 289 Ga. 579, 580-82 (2011), the Supreme Court found that the State may file a direct appeal under O.C.G.A. § 5-7-2 from an order of the trial court dismissing an indictment in its entirety. However, if less than all counts of an indictment are dismissed, the appeal is interlocutory and must be made by certificate of immediate review and application to the appellate court. *Id.* In the following legislative session, the General Assembly "overruled" *Outen* by amending O.C.G.A. § 5-7-2 to provide that a trial court's dismissal of fewer than all counts of an indictment may be directly appealed by the State. O.C.G.A. §5-7-2(b)(2) (effective July 1, 2012).

The State argued that the amended appellate procedural rules created by the legislature in its 2012 legislative session apply retroactively and therefore, its direct appeal was proper. The Court of Appeals disagreed and dismissed the appeal for want of jurisdiction. A statutory amendment of procedural law generally will be applied retroactively unless the legislature expresses a contrary intent. O.C.G.A. § 5-7-2(b)(2) was amended as part of the omnibus 2012 Criminal Justice Reform Act. Ga.L.2012, Act 709/HB1176, Part I, §§ 1-1, 1-2. The legislature also provided that "this Act shall become effective on July 1, 2012 and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012 shall be governed by the statute in effect at the time of such offense." Thus, the Court found, the legislative intent is "clear and expressed unambiguously" that O.C.G.A. § 5-7-2(b)(2), allowing a direct appeal from an order dismissing fewer than all counts of an indictment, applies only to offenses occurring after July 1, 2012. Since the charged offenses against Hill occurred between 2007 and 2011, the holding in *Outen* applies and the appeal must be dismissed for failure to follow the proper interlocutory appellate procedure.

The decisions in *Outen* and *Hill* severely limit the State's right to appeal. But, *Hill* will also impact the expansion of the State's right of appeal contained in Sections 1 through 3 of the 2013 Criminal Justice Reform Act, 2013 HB 349, because Section 21 of that Act also provides, "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

The *Hill* case will further impact several other procedural provisions in the 2012 Criminal Justice Reform Act, including § 2-1 (drug courts), § 2-2 (mental health courts), § 2-3 (prosecution pre-trial diversion fee), § 2-4 (drug abuse treatment fees), §§ 4-1, 4-2 (statute of limitations), §§ 4-3, 4-4 (sentencing), and § 5-1 (child abuse reporting).