



MARCH 5, 2018

## Owens v. State

### Council Members

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**The Supreme Court directs the Council of Superior Court Judges of Georgia to submit for approval a proposed Uniform Rule of Superior Court to address and prevent inordinate and unjustified post-conviction, pre-appeal delays in our criminal justice system.**

In *Owens v. State*, S17A1905 (3/5/18), appellant was convicted in June, 1998 of voluntary manslaughter as a lesser offense of malice murder, felony murder based on aggravated assault, and possession of a firearm during the commission of a crime, all in connection with the shooting death of her husband. The trial court sentenced her to serve life in prison for felony murder and a consecutive term of five years on the firearm count; the court merged the voluntary manslaughter verdict into the felony murder conviction. Appellant contended – and the State conceded – that pursuant *Edge v. State*, 261 Ga. 865 (1992), in light of the jury’s finding that she was guilty of voluntary manslaughter, the trial court should have vacated the jury’s guilty verdict on the felony murder charge. The Court agreed and vacated appellant’s conviction and sentence for felony murder and remanded this case to the trial court to *promptly* resentence her for voluntary manslaughter instead of felony murder.

The Court noted that this case endured extensive and largely unexplained delays between appellant’s sentencing in June 1998 and the docketing of her appeal in the Supreme Court 19 years later, in July 2017. The maximum sentence for voluntary manslaughter is 20 years in prison, and there is no mandatory minimum prison sentence, so even with the consecutive five-year sentence appellant received on the firearm count, on remand the trial court would be entitled to impose a sentence many years shorter than the time appellant already spent in prison. Indeed, had the parties identified and agreed on the court’s obvious sentencing error not on appeal but at the motion for new trial stage, the court might well have corrected the error then, rather than having to do so more than 11 years later.

Moreover, in *Shank v. State*, 290 Ga. 844 (2012), the Court stated that it does not condone inordinate delays in the motion for new trial proceeding. It further reiterated that it is the duty of all those involved in the criminal justice system, including trial courts and prosecutors as well as defense counsel and defendants, to ensure that the appropriate post-conviction motions are filed, litigated, and decided without unnecessary delay. Nevertheless, the Court stated, over the past six years, it has found that despite its repeated *Shank* admonishment, there have been many more cases involving long unjustified delays in cases appearing before it and the Court of Appeals.

Therefore, the Court stated, it “now moves from request to direction. No later than September 17, 2018, the Council of Superior Court Judges of Georgia shall submit to this Court for approval a proposed Uniform Rule of Superior Court designed to address this problem.” The Court directed the Council to develop the

State Prosecution Support Division



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proposed rule in consultation with the State Bar of Georgia, the Georgia Public Defender Council, the Georgia Association of Criminal Defense Lawyers, the Prosecuting Attorneys' Council of Georgia, the Council of Superior Court Clerks of Georgia, and other interested organizations.