

## THIS WEEK:

- Negotiated Pleas; Sentencing
- Criminal Contempt; Right to Initiate Proceedings
- Mental Competency; Right to a Hearing
- Juveniles; Violations of Probation

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## Negotiated Pleas; Sentencing

*Francis v. State, A22A0466 (3/17/22)*

In 2016, appellant entered a negotiated guilty plea in Gwinnett County to three counts of armed robbery. The disposition entered at the time of his plea shows that he was sentenced to 40 years to serve 17 years in confinement on each of the three counts, with Counts 2 and 3 to be served concurrently with Count 1. In 2020, appellant sent a letter to the court seeking a clarification of his sentence regarding credit for time served on his Rockdale County sentence he entered prior to 2016 and in which he received a 17-year prison sentence. In January 2021, the trial court amended appellant's sentence to 40 years with 17 years to serve "[c]oncurrent with any other sentence the Defendant is serving." Nevertheless, in August 2021, appellant filed a "Motion to Correct Clerical Error" and again asserted that as part of his negotiated plea, he was to serve the 17-year sentence concurrently with his sentence in another jurisdiction - Rockdale County. The trial court denied the motion, concluding that at the plea hearing "[t]here was no discussion of any kind regarding a credit for time served date. The discussion on the record pursuant to the negotiated plea was simply that the sentences were to run concurrently to each other as well as the other sentence he was currently serving. There is no clerical error on defendant's sentence."

Appellant argued that the trial court abused its discretion in allowing him to serve more time when the error in his sentence was brought to the court's attention. He contended that it was the intent of the parties and the trial court for him to receive credit for time served in the Rockdale County case so that his sentence in Gwinnett County would end on the same day of his release from the Rockdale County sentence. He argued further that his sentence could not be increased once he began to serve it.

The State responded that the trial court was without authority to modify appellant's sentence because more than a year had passed since the sentence was entered. The State agreed that "the transcript indicates that [ ] plea counsel may have intended for [appellant] to be sentenced in such a way that his sentence for his offenses in this case would end on the same date as his offense in the other crime." But it argued that "the sentence negotiated by plea counsel did not accomplish this intent and may reflect a misunderstanding of the effect of a 'concurrent' sentence," and that appellant did not raise an ineffective assistance claim.

The Court stated that although a sentencing court has no power to modify a valid sentence of imprisonment after the term of court in which it was imposed has expired, it does possess inherent power to correct its records at any time to show the

true intent of the sentencing court at the time the original sentence was imposed. And here, the Court found, in denying appellant's motion to correct clerical error, the trial court ruled that there was no discussion of credit for time served at the plea hearing. But after reviewing the transcript of the 2016 plea hearing, the Court noted that while the judge and plea counsel did not use the phrase "credit for time served" specifically, the transcript reflected that plea counsel requested a 17-year sentence that would not add any time to appellant's "max-out date of 2027." The State presented to the court that it was recommending appellant's sentence be served concurrently with the sentence he was serving in Rockdale County, without any mention of not adding any time beyond the existing max-out date. In sentencing appellant, however, the trial court stated that everyone understood "that there won't be any additional time" and that the sentence will be "as negotiated between the attorneys."

Thus, the Court concluded, it appeared that there was some understanding that appellant's sentence would result in no "additional time," which could only be accomplished by giving appellant credit for time served on the Rockdale County sentence. Thus, in denying appellant's motion to correct clerical error, the court erred in finding that there was no discussion of credit for time served during the plea hearing. Accordingly, the Court vacated the trial court's order and remanded the case for the court to consider appellant's motion without this improper factual finding. In doing so, the Court noted that the case does not involve credit for time served under OCGA § 17-10-11, which is the duty of the Department of Corrections.

## **Criminal Contempt; Right to Initiate Proceedings**

*Collins v. State, A22A0442 (4/4/22)*

Appellant is the sister of a woman who was involved in a civil matter with appellant's brother-in-law. Appellant attempted at first to represent her sister, but the court disallowed it because appellant is not a lawyer. Appellant then violated the rule of sequestration. The State brought criminal contempt proceeding against appellant for engaging in allegedly improper conduct in the courtroom. Two months after this incident, the State filed a motion for criminal contempt in the pending civil case based upon appellant's conduct in the courtroom. According to the State, "[appellant] looked straight at the judge, made a "gun" symbol with her right hand by extending her thumb and forefinger, putting it to her head, then pointed it at the judge and made a motion as if 'pulling the trigger' with the imaginary gun's hammer coming down." Appellant moved to dismiss the State's motion which was denied. Appellant was then granted an interlocutory appeal.

The Court noted that it was the trial judge who had instituted criminal contempt proceedings against appellant, but the State of Georgia, which has the ability to seek an indictment of appellant for any crime she may have committed in the courtroom. But here, the State did so in a civil action between private parties to which it was a stranger. The proper procedure was for the trial judge, not the State, to institute criminal contempt proceedings. Accordingly, the Court reversed the superior court's denial of appellant's motion to dismiss the State's action for criminal contempt against her.

## **Mental Competency; Right to a Hearing**

*Williams v. State, A22A0058 (4/6/22)*

Appellant was convicted of two counts of armed robbery. The record showed that on January 25, 2018, after the deadline for filing motions had passed, appellant's trial counsel filed a motion for a mental competency evaluation. At the January

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29 hearing, counsel explained that his concerns about appellant's competency had become "more intense" in the recent weeks preparing for trial, as a result of which he "felt" it was "necessary" to file the motion. The trial court then asked appellant some questions regarding the charges, his counsel, and the trial proceedings. Following the questioning, the trial court denied the motion, finding that appellant did not demonstrate any irrational behavior and understood the nature of the trial, his counsel's role, and the possible consequences of a guilty verdict.

Appellant argued that the trial court erred by failing to hold a hearing on his mental competency and denying his motion for a mental evaluation. The Court disagreed.

The Court stated that mental competency is presumed, so absent evidence of a defendant's incompetency, a trial court need not conduct a competency hearing. But if the court has sufficient information at the time of trial to raise a bona fide doubt about the defendant's ability to understand the proceedings, appreciate their significance, or assist his lawyer in presenting his defense, the court must conduct a competency hearing. In determining whether the trial court violated a defendant's procedural due process rights by failing to hold a competency hearing, it must focus on three factors: (1) evidence of the defendant's irrational behavior; (2) the defendant's demeanor at trial; and (3) prior medical opinions regarding the defendant's competence to stand trial. Such an analysis focuses on what the trial court did considering what it knew at the time of the trial or plea hearing.

And here the Court found, at the time of the motion, there was nothing before the trial court that raised a bona fide doubt about appellant's ability to understand the proceedings. Notably, in his written motion for a mental evaluation, appellant did not make a single factual allegation calling into question his competency. During the January 2018 motions hearing, appellant's counsel similarly made no argument that reasonably would call into question appellant's competency; counsel's explanation of the basis for his motion was limited to the following: "I've had some concerns since I've represented this young man. They became more, my concerns became more intense, if you would, in, in recent weeks in preparing for today and for trial and also talking again with my client and also the, the family of my client . . ." Moreover, during that hearing, the trial court engaged in an extended colloquy with appellant, in which the court ensured that appellant — who is a high school graduate — was able to communicate with his counsel and understood the charges against him, the roles of counsel and the trial judge, the State's burden, his right to testify, and the consequences of a guilty verdict. The trial court also ensured that the State was unaware of any evidence that appellant "may have been . . . operating under some kind of delusion or compulsion or that he was in any way unable to distinguish right from wrong."

Thus, the Court found, appellant neither alleged any facts nor identified any record evidence that would raise a bona fide doubt as to his ability to understand and meaningfully participate in the proceedings. And while appellant contended that the trial court did not "permit [him] to present his evidence and argument on the motion," he did not identify what evidence or argument he would have presented, had he been able to do so. Therefore, the Court concluded, absent such evidence, there were no grounds to cast doubt on the trial court's conclusion that there was insufficient information to call into question appellant's comprehension of and ability to participate in his trial. Consequently, appellant failed to show that the trial court erred in denying his motion for a mental evaluation.

## Juveniles; Violations of Probation

*In re J. W., A22A0311 (4/8/22)*

In January 2020, a juvenile court adjudicated appellant delinquent for acts which, if committed by an adult, would have constituted two felony terroristic threats and two controlled substance offenses. Although the juvenile court was authorized to place appellant in restrictive custody because he committed an act of delinquency designated as a felony, the juvenile court instead placed him on probation. A year later, the State filed a delinquency petition against appellant. Specifically, the petition and its attachment charged appellant with “the offense of VIOLATION OF PROBATION, O.C.G.A. 15-11-2 (19) (B),” for (a) leaving the presence of his DFCS behavioral aide on January 26, 2021, and remaining absent until he was located on February 14, 2021, (b) failing to recharge his ankle monitor during that time, and (3) failing to update his probation officer regarding his whereabouts. At the subsequent hearing, appellant admitted the charges and over appellant’s objection, adjudicated appellant delinquent for “the offense of DELINQUENCY VIOLATION OF PROBATION” and committed him to DJJ custody “for the remainder of his probation expiring January 24, 2023.”

Appellant argued that the juvenile court unlawfully committed him to DJJ custody after finding him delinquent solely for violating his probation. The Court noted that if a juvenile is adjudicated delinquent, placed on probation, and subsequently violates his probation, the State is afforded two alternative procedural avenues for addressing the violation of probation: (1) it may file a motion to revoke probation under OCGA § 15-11-608; or (2) it may file a new delinquency petition alleging the probation violation as a delinquent act pursuant to OCGA § 15-11-2 (19) (B). The method chosen by the State determines the punishment that may be imposed by the juvenile court.

And here, the Court found, the record, on its face demonstrated that the State filed a new delinquency petition under OCGA § 15-11-2 (19) (B) to address appellant's probation violations rather than a motion for revocation of probation under OCGA § 15-11-608 (b). Thus, the Court concluded, because the State did not file a motion to revoke appellant's probation, the juvenile court erred when it treated the dispositional hearing as a probation revocation proceeding, concluded it was authorized to revoke appellant's probation, and “commit[ted] him to DJJ for the rest of [his original] sentence.”

Nevertheless, the State argued, the juvenile court's disposition committing appellant to DJJ custody nonetheless was proper. The Court disagreed. Premitting whether the facts admitted by appellant would constitute the offense of felony escape, it is well settled that due process is required in juvenile delinquency proceedings. Here, appellant was never put on notice that he was being charged with the felony offense of escape or that by admitting that he violated the terms of his probation he was admitting to committing acts constituting a new felony offense. In fact, the Court noted, neither the word “escape” nor the escape statute appeared in the appellate record. And neither the State's complaint, nor its petition for delinquency and attachment “set forth plainly and with particularity” that appellant was being charged “with a class A designated felony act or class B designated felony act” as required by statute. OCGA § 15-11-522 (5). Therefore, the Court concluded, the State’s argument that the juvenile court was authorized to commit appellant to DJJ custody based on his commission of an act that would constitute felony escape ignored the clear mandates of due process. Accordingly, the State’s arguments were held to be meritless.

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Next, the State argued that the juvenile court properly committed appellant to DJJ custody under OCGA § 15-11-601 (a) (3) (B), which authorizes the court to place a juvenile on probation under the supervision of “[a]ny public agency authorized by law to receive and provide care for such child.” According to the State, the DJJ qualifies as such an agency. Again, the Court disagreed. First, the juvenile court's disposition in this case did not place appellant on probation under the supervision of a public agency; it committed him to DJJ custody. Second, OCGA § 15-11-601 (a) (11) specifically addresses when a juvenile court may commit a juvenile to DJJ custody, and this plain and unambiguous language prevails over the State's “stretched interpretation” of the DJJ as a public agency authorized to supervise a juvenile placed on probation under OCGA § 15-11-601 (a) (3) (B).

Finally, the State contended that the juvenile court properly committed appellant to DJJ custody because, under OCGA § 15-11-32 (b), the juvenile court was within its authority to change, modify, or vacate its prior order — placing appellant on probation - “on the ground that changed circumstances so require in the best interests of a child.” But, the Court found, even if a juvenile court is permitted to sua sponte change, modify, or vacate its prior order, that was not what was done in this case; the trial court's dispositional order specifically adjudicated appellant delinquent for the offense of violation of probation. Accordingly, because the juvenile court's sentence exceeded that allowed by law, it was void and the case was remanded for a new dispositional order.