

## THIS WEEK:

- Habeas Corpus; Municipal Courts
- Motions to Withdraw Plea; Ineffective Assistance of Counsel
- Verdict Forms; Lesser Included Offenses
- Prosecutorial Misconduct; Pleas of Codefendants

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### Habeas Corpus; Municipal Courts

*Phillips v. Jackson, S22A0503 (8-9-22)*

Appellant received a speeding ticket and attempted to enter a negotiated plea to a reduced speeding charge, but the municipal court rejected it. Over appellant's objection, the court decided to apply a "quasi bond" to appellant that restricted his ability to drive for only work, medical and schooling appointments, religious activities, and essential shopping until further judicial order. Notwithstanding these permissible driving purposes, the court also ordered him to surrender his license. Appellant then filed a habeas petition against the judge and city solicitor. The habeas court denied the petition.

The Court noted that under the first article of Georgia's habeas corpus statute, "[a]ny person restrained of his liberty under any pretext whatsoever, except under a sentence of a state court of record, may seek a writ of habeas corpus to inquire into the legality of the restraint." OCGA § 9-14-1 (a). This article applies to pretrial habeas petitions like that of appellant, but the ability to seek relief under it is subject to an important limitation. Habeas corpus under this article is unavailable where the proceedings under which the petitioner's liberty is restrained are still pending undisposed of, and the ordinary established procedure is still available to him, as long as there is another adequate remedy and so no necessity for issuance of this high extraordinary writ. And here, the Court found, appellant's prosecution was still pending at the time of his habeas petition, and he had an adequate remedy at law in that pending proceeding. Appellant's case was bound over to state court and he could have sought relief there. "All bonds taken under requisition of law in the course of a judicial proceeding may be amended and new security given if necessary." OCGA § 17-6-18. The state court, then, had authority to modify appellant's bond, including by removing all conditions other than his appearance in court. This would have restored appellant to the position he was in before the municipal court acted and so adequately remedied any deficiency in the municipal court's order.

Furthermore, the Court stated, if the state court declined to modify the order, appellant could have then sought a certificate of immediate review to pursue an interlocutory appeal. If the state court declined to

issue the certificate, only then could appellant have sought habeas relief. And the Court found, based on the record, it appeared that all these potential remedies remain still available to appellant.

In so holding, the Court stated that it has "serious concerns about the municipal court's actions" and noted that counsel for the respondents "d[id] not attempt to defend the order of the municipal court on its merits."

### **Motions to Withdraw Plea; Ineffective Assistance of Counsel**

*Wright v. State, S22A0588 (8/9/22)*

Appellant entered a non-negotiated guilty plea to murder and other offenses. The superior court informed him of the sentences that it would impose. The court gave appellant the opportunity to discuss the sentences with his plea counsel. Off the record, appellant and counsel discussed how to proceed. Thereafter, appellant decided to move forward with entering a plea of guilty to the charges. After pleading guilty, the court imposed the sentences that it told appellant it would impose. Ten days later, appellant filed a motion to withdraw his guilty plea. After an evidentiary hearing, the superior court denied the motion, finding that appellant had "knowingly, intelligently, and voluntarily entered his guilty pleas with the assistance of effective counsel."

Appellant argued that plea counsel was ineffective because he failed to inform him that he could no longer withdraw his plea as a matter of right if he chose to withdraw his plea after sentencing; instead, he faced an "increased burden" of showing that the plea was the result of a "manifest injustice." The Court disagreed.

The Court noted that the trial court found that the undisputed evidence showed 1) plea counsel advised appellant that after the sentence, any request to withdraw would be by motion and at the court's discretion; and 2) appellant was properly advised by his counsel of his right to withdraw his guilty plea before sentencing and after sentencing. And, the Court found, because these factual findings were not clearly erroneous, appellant failed to show that his plea counsel's performance was deficient and that he would have chosen to proceed to trial but for that deficient performance. Therefore, the Court concluded, the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Nevertheless, appellant contended, *Nelson v. Wilkey*, 309 Ga. 203, 207-208 (2) (2020) required that he be granted a new trial. The Court again disagreed. In *Nelson*, the defendant was not told by his counsel that he had the absolute right to withdraw his plea prior to sentencing and as a result, the proceedings resulted in the imposition of an unnecessary burden on the defendant, as he had to show a manifest injustice in his motion to withdraw his guilty plea after sentencing. But, the Court noted, *Nelson* did not expand the law to require plea counsel to inform a defendant *in every case* that, if the defendant waits

to withdraw the guilty plea until after sentencing, the defendant faces an increased burden to show a manifest injustice. And here, the circumstances were very different than in *Nelson* because appellant's plea counsel told him he had the absolute right to withdraw his plea prior to sentencing. Further, the record supported the superior court's conclusion that, under the circumstances of this case, appellant made an informed decision to plead guilty based on accurate information provided by his counsel and that no manifest injustice occurred. Consequently, the Court held, the superior court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea on the ground of ineffective assistance of plea counsel.

### **Verdict Forms; Lesser Included Offenses**

*Ruff v. State*, S22A0709 (8/9/22)

Appellant was convicted of felony murder and related offenses. He alleged that the trial court erred by providing a verdict form to the jury that did not include the lesser offenses of voluntary manslaughter and reckless conduct. He further alleged that the trial court failed to fully instruct the jury on how a verdict on those lesser offenses could be included on the form. The Court disagreed.

The Court stated that in deciding whether a verdict form accurately presented the law and properly guided the jury, it must review the language of the form along with the trial court's instructions to the jury. In a criminal case, a verdict form is erroneous when the form would mislead jurors of reasonable understanding, or the trial court erroneously instructed the jury on the presumption of innocence, the State's burden of proof, the possible verdicts that could be returned, or how the verdict should be entered on the printed form.

And here, the Court found, the trial court properly instructed the jury on the charged offenses, the lesser offenses, and the State's burden of proof. The court then thoroughly explained to the jury how to enter a verdict on the lesser offenses if it chose to do so by writing "voluntary manslaughter" or "reckless conduct" on the blank line provided on the form. Thus, the Court determined, viewed in conjunction with the jury instructions as a whole, the verdict form used would not mislead jurors of reasonable understanding, and there was no indication in the record that the jurors had any difficulty completing the verdict form according to the court's instructions. Accordingly, the Court concluded, the trial court did not err by providing a verdict form to the jury that did not include the lesser offenses of voluntary manslaughter and reckless conduct.

**Prosecutorial Misconduct; Pleas of Codefendants**

*Carter v. State*, S22A0432 (8/9/22)

Appellant was convicted of malice murder. The evidence showed that appellant and his codefendants killed the victim during a drug deal and then buried the victim on appellant's property in South Carolina. One codefendant pled guilty prior to trial and testified against appellant.

Appellant argued that the trial court should have granted his motion for new trial to "correct the manifest injustice of the District Attorney allowing the actual murderer to plead guilty to concealing the death of another . . . while disallowing [appellant's] request to allow the jury to have the verdict option of finding [him] guilty of concealing the death of another." The Court disagreed.

The Court found that appellant failed to explain how the jury finding him guilty of another crime — that is, concealing the death of another — would have affected his guilty verdict on the murder count. The crime of concealing a death, as defined in OCGA § 16-10-31 is distinct from malice murder, and appellant conceded that it is not a lesser-included offense. The two offenses have entirely different elements and require proof of different facts. The trial court noted the same when it denied the requested charge during the charge conference. Accordingly, the Court found no error in the trial court's refusal to give the instruction, and appellant's argument regarding the injustice or unfairness of this outcome failed to set forth a sound legal basis for deciding otherwise.