



SUPREME COURT OF GEORGIA

Case No. S10W0548

Atlanta December 16, 2009

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

CARLTON GARY v. THE STATE

The application for discretionary appeal and motion for stay of execution having been read and considered, and it appearing that, in his motion for DNA testing, applicant demonstrated that he complied with the requirements of paragraphs (3) and (4) of OCGA § 5-5-41 (c), and it further appearing that the trial court erred in failing to order a hearing on the motion, it is hereby ordered that the application be granted and the case be reversed and remanded for a hearing pursuant to the aforementioned Code section.

It is further ordered that the Muscogee County order dated December 3, 2009, setting the execution window commencing on December 16, 2009, and ending on December 23, 2009, is stayed.

All the Justices concur, except Hunstein, C. J., and Carley, P. J., who dissent.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes, Clerk

