



Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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OWENS V. THE STATE (S17A1905)

The Supreme Court of Georgia has voided the felony murder conviction of a woman who has been in prison for nearly 20 years under a life sentence for shooting and killing her husband.

In today's decision, **Justice David E. Nahmias** writes for a unanimous court that given the jury also found **Margie Owens** guilty of voluntary manslaughter, the trial court in **Walker County** should have vacated her felony murder charge. As this Court ruled in 1992 in *Edge v. State*, "where the jury renders a verdict for voluntary manslaughter, it cannot also find felony murder based on the same underlying aggravated assault." Therefore, "we affirm Appellant's conviction and sentence on the firearm count, we vacate her conviction and sentence for felony murder, and we remand the case to the trial court with direction to enter – promptly – a conviction and sentence for voluntary manslaughter."

"But we do more," today's opinion says.

In a rare directive to the bench and bar, the high court is instructing judges, prosecutors, defense attorneys and others to take steps to rein in unnecessary delays in the appeals process in criminal cases. It took more than eight years from the time Owens filed a motion requesting a new trial until the trial court denied her motion. It took 19 years from the time Owens was sentenced for murder to the time her appeal reached this Court.

"This Court and the Court of Appeals have for several years now repeatedly admonished criminal defense lawyers, prosecutors, and trial court judges to address and prevent inordinate and unjustified post-trial, pre-appeal delays of the sort this case exemplifies," today's opinion says. Therefore, "we direct further action to address this continuing problem in our criminal justice system."

According to the evidence at trial, in April 1997, less than a month before the shooting, Owens' sister and adult daughter had Owens committed involuntarily to a mental hospital due to their concerns about her excessive drinking, violent behavior, and threats to kill her husband, Randall Owens. The hospital released her several days later. On May 17, 1997, Owens' daughter, niece, and her niece's husband came to the Owens' trailer for a cookout. Margie Owens had been drinking heavily that day and began arguing with her husband, threatening to kill him. She accused him of having an affair with her daughter and crudely suggested that her daughter perform oral sex on her stepfather. Her husband said he was tired of listening to her and went inside to lie down. The three guests tried to leave, but Margie Owens pulled the wires out of her daughter's car to stop them. Eventually, they were able to fix the car and did leave.

Later that night, Owens went to her brother-in-law's home nearby and asked to use his phone to call 911. She told the operator that she "may have shot her husband." Officers found Randall lying face down on the floor in the couple's trailer. He was dead from a gunshot wound to his back. A trail of blood led from near the living room where he was found back to the bedroom, where there was a bloodstain on the bed. As officers interviewed neighbors, Owens walked up, acting intoxicated and belligerent. She told officers she and her husband had been in an argument and that she shot him.

At trial, she testified that her husband had been abusive to her the day of the shooting, shoving her, slapping her, holding a gun to her head, and threatening to blow her brains out. She said that after their guests had left the cookout, he had gotten on top of her and was slapping and choking her, and when she grabbed for something to knock him off her, she heard a gun fire. She claimed she did not know she had shot him. At trial, Owens recounted a long history of domestic violence by her husband.

The trial judge instructed jurors before their deliberation on the three charges in the indictment – malice murder, felony murder, and possession of a weapon during commission of a crime. At Owens' request, the judge also instructed them on the law of voluntary manslaughter, which is a lesser offense of both malice murder and felony murder. In June 1998, the jury found Owens guilty of felony murder, voluntary manslaughter, and the firearm count. She was sentenced to life in prison for the murder, plus five years for the firearm count. Owens filed a motion for new trial in June 1998. The hearing on that motion was not held until July 2006 – more than eight years later. In August 2006, the trial court denied the motion for new trial. Owens filed an appeal, but the trial court clerk did not send the record in the case to the state Supreme Court until June 2017.

In her appeal, Owens argued – and the State concedes – that 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 charged. "The parties are correct," today's opinion says. "Accordingly, we vacate Appellant's conviction and sentence for felony murder and remand this case to the trial court to promptly resentence her for voluntary manslaughter instead of felony murder."

She also argued that her trial attorney rendered "ineffective assistance of counsel" for failing to call four witnesses who could have testified about her husband's violence over the years, and for failing to offer photographs into evidence from her hospital visits that showed the injuries she had sustained at his hands. However, the high court has rejected that claim, finding

she failed to meet the burden of proving ineffective assistance under the standard set in the U.S. Supreme Court’s 1984 decision in *Strickland v. Washington*.

Nevertheless, the Georgia Supreme Court has found unacceptable the “extensive and largely unexplained delays between Appellant’s sentencing in June 1998 and her appeal arriving at this Court 19 years later, in July 2017.” The Court notes in its opinion that the maximum sentence for voluntary manslaughter is 20 years in prison, and there is no mandatory minimum prison sentence for that crime. Therefore, even with the consecutive five-year sentence Owens received on the firearm count, “on remand the trial court would be entitled to impose a sentence many years shorter than the time she has 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.”

The opinion goes on to recount other cases in which there have been inordinate delays. In one, the Court noted in 2012 that, “This Court is unfortunately seeing such extraordinary post-conviction, pre-appeal delays with greater frequency,” and it issued an admonition, reiterating that it is the duty of all those in the criminal justice system “to ensure that the appropriate post-conviction motions are filed, litigated, and decided without unnecessary delay.”

After repeating the admonishment in many other cases in the past six years, with today’s opinion, “this Court 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,” today’s opinion says. The opinion instructs the Council to consult with a number of organizations that represent prosecutors, criminal defense lawyers, and court clerks in constructing the rule. To ensure that all those involved in the criminal justice system “understand this Court’s concern about this problem,” the Georgia Supreme Court will deliver a copy of this opinion to the Council of Superior Court Judges and other organizations “with the expectation that they will promptly provide a copy to each of their members.”

“Some delay is inherent in any legal system, particularly one as busy as Georgia’s,” the opinion concludes. “But we must all work to prevent delays, particularly in the most serious of our criminal cases, that cannot be explained or justified to the parties in those cases, the victims of crimes, and the public we serve.”

Attorney for Appellant (Owens): Jennifer Hildebrand

Attorneys for Appellee (State): Herbert “Buzz” Franklin, District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew O’Brien, Asst. A.G.

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Reno Byron (Tift Co.)

BYRON V. THE STATE (S17A1555)
(The Supreme Court has upheld Byron’s

murder conviction and life prison sentence. But it points out in today's opinion that like *Owens v. State* (see above), "this is yet another criminal case with an inordinate delay between the trial and the direct appeal reaching this court." "We trust that the rule that will emerge from *Owens* will help eliminate these sorts of unjustified delays.")

* Willie Morris (Fulton Co.)

MORRIS V. THE STATE (S17A1402)

(The Supreme Court has upheld Morris's murder conviction and life prison sentence. But this opinion also points out that like *Owens v. State* (see above), "This is yet another criminal case with an inordinate delay between the defendant's trial and his direct appeal." "We trust that the rule that will emerge from our directive in *Owens* will help eliminate these sorts of unjustified delays.")