Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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THE STATE V. DAVIS (S17G1333)

The Supreme Court of Georgia has reversed a **Chatham County** court decision and ruled that a man convicted of sexually abusing his daughter, but later pardoned by the Georgia Board of Pardons and Paroles, must be released from the lifelong requirement that he register as a sex offender.

In 1995, **Barry Craig Davis** pleaded guilty to the aggravated sodomy of his 6-year-old daughter. Under Georgia law, a person commits sodomy by performing or submitting to a sexual act involving the sex organs of one person and the mouth or anus of another. Aggravated sodomy involves sodomy by force, against a person's will, or with a child younger than 10 years old. Davis was sentenced to 10 years with the first two to be served in prison. Following his release from prison, Davis served the remainder of his sentence on probation until it ended July 15, 2005. Under Georgia statutory law (Georgia Code § 42-1-12), Davis was required to register as a sex offender, which he did.

Davis subsequently applied to the Board of Pardons and Paroles for a pardon. The Georgia Constitution vests the parole board with exclusive power and authority over "executive clemency, including the powers to grant reprieves, pardons, and paroles; to commute penalties; to remove disabilities imposed by law; and to remit any part of a sentence for any offense against the state after conviction." On Feb. 13, 2013, the parole board granted Davis a pardon, stating in the pardon that its investigation had revealed that Davis "is a law-abiding citizen and is fully rehabilitated" and that the board therefore, "without implying innocence, hereby unconditionally pardons said individual, and it is hereby ordered that all disabilities under Georgia law resulting from the above stated conviction and sentence…are hereby removed; and ordered further that all

civil and political rights, except the right to receive, possess, or transport in commerce a firearm…are hereby restored."

About a month after receiving the pardon, Davis moved from Savannah to Charlotte, NC without giving notice to the Chatham County Sheriff's Office. Georgia Code § 42-1-12 requires convicted sex offenders to give notice at least 72 hours before moving. When Davis returned to Georgia, the sheriff's office informed Davis of his failure to register as a sex offender and give notice of his plan to move. Davis claimed that his pardon removed the previous requirement for him to register as a sex offender. Nevertheless, the sheriff's office obtained a warrant for Davis' arrest, and on Feb. 26, 2014, the State charged Davis in an indictment with failing to register as a sex offender, which is a felony.

Davis subsequently filed a motion in court, arguing that the requirement to register as a sex offender constituted a "legal disability," which the parole board's pardon had removed. In January 2016, the trial judge denied Davis' motion, finding that the registration requirement was not a "legal disability" and therefore was not removed by the pardon. Davis then appealed to the Georgia Court of Appeals, which is the state's intermediate appeals court. That court reversed the trial court's decision. Citing the parole board's "unconditional" pardon of Davis' aggravated sodomy conviction, the appeals court ruled: "Because the separation-of-powers doctrine requires us to adhere to the decision of the Board to issue Davis a pardon, and the plain meaning of the sweeping language used by the Board in that pardon removed the duty of Davis to register as a sex offender, we are constrained to reverse the trial court's denial of Davis' motion…." The Court of Appeals stated that, "Given that the registration statute requires one to provide law enforcement with significant details as to where one lives, where one works, and where one travels, it strains credulity to characterize compulsory registration as a sex offender as merely regulatory but not as an 'incapacity' in the eyes of the law," and the Court of Appeals concluded that "we are constrained to conclude that [the registration requirement' is a disability."

The State then appealed to the Georgia Supreme Court, the state's highest court, which agreed to review the case to determine first, whether the Court of Appeals had the authority even to rule on this case given the Supreme Court's exclusive authority over constitutional questions; and second, whether the registration requirements are a "disability" that was removed by the pardon.

In today's opinion, **Justice Michael P. Boggs** writes for a unanimous Court that, "The Court of Appeals lacked jurisdiction to decide this appeal….We therefore vacate the judgment of the Court of Appeals and undertake to decide the question that should have been presented to this Court in the first instance: whether the sex offender registration requirements are a legal disability removed by the Board's order granting a pardon and removing all disabilities and restoring all rights other than firearms rights."

Today's opinion concludes that the extensive registration and reporting requirements placed upon persons on the registry restrict an individual's personal liberty interest and therefore constitute a disability.

The opinion points out that Georgia's Board of Pardons and Paroles has broad constitutional powers. Its regulations state that, "A pardon is a declaration of record that a person is relieved from the legal consequences of a particular conviction. It restores civil and political rights and removes all legal disabilities resulting from the conviction."

Although the State argued in its appeal that the rights restored by a pardon are limited to the right to vote, to hold public office, and to serve on a jury, that assertion is rejected by the Georgia Supreme Court's 2013 decision in *Ferguson v. Perry*. "And the State's argument that the pardon is not unconditional because the Board did not restore Davis' firearm rights, and therefore did not intend to remove the requirement to register as a sex offender, is likewise foreclosed by *Ferguson*," today's opinion says. As noted in *Ferguson*, the Board is well aware of its authority to exclude from pardons the restoration of a civil right or the removal of a disability. For instance, in some pardons, including Davis's, the Board has specifically excluded the restoration of firearm rights.

"We therefore hold that inclusion on the sex offender registry pursuant to Georgia Code § 42-1-12 is a legal consequence of the underlying criminal offense and a disability imposed by law; that Davis' pardon by its express terms removed all disabilities under Georgia law resulting from his conviction and relieved all the legal consequences thereof; and that it restored all of his civil and political rights, excepting only his firearm rights," today's opinion says. "The judgment of the trial court therefore must be reversed."

Attorneys for Appellant (State): Margaret Heap, District Attorney, Christine Barker, Asst. D.A., Lyndsey Rudder, Dep. D.A.

Attorneys for Appellee (Davis): Amy Lee Ihrig, Robert Lawrence Persse

PALMER V. THE STATE (S18A0426)

The Supreme Court of Georgia has upheld the convictions and life prison sentences given to **Qutravius Palmer**, who witnesses say urged a 14-year-old to shoot and kill an art student who was in the neighborhood to photograph graffiti.

In today's opinion, **Justice Britt C. Grant** writes for a unanimous court that, "we conclude that the evidence admitted at trial was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Palmer was guilty of the crimes of which he was convicted."

The day after Christmas in 2013, 21-year-old Army reservist Xavier Arnold and his girlfriend, Xenia Aims – both art students – decided to drive to Kirkwood in **DeKalb County** to photograph the graffiti on many of the Atlanta neighborhood's abandoned industrial buildings. On the way, they picked up their friend, Ibrahim Sanusi, arriving in Kirkwood around 4:45 p.m. As the three exited Aims' rental car, Aims saw two males down the street but did not think much of it. As the friends walked down a bike path, Aims noticed that the two men seemed to be following them. At one point, they stepped aside to let the two men pass. Eventually, the three friends turned around and started walking back to the car when one of the two men, who was actually a boy, ran up to them and started yelling, "What's up? Why are you acting so hard?" The other, who was later identified as 20-year-old Palmer, ran up with the boy, who was later identified as Palmer's 14-year-old cousin Zion Wainwright, but remained behind him. According to later testimony, Arnold tried to diffuse the situation, told them they were leaving, and urged Palmer and Wainwright to "chill." Wainwright then pulled out a handgun while Palmer grabbed Arnold under his arms and Palmer and Arnold fell to the ground. Wainwright pointed the gun at Aims and Sanusi, demanding that Sanusi empty his pockets. Sanusi complied, but the boy shot him in the leg anyway, then pointed the gun at Arnold. Sanusi said he heard the older man, Palmer, tell the boy to "shoot him." As Arnold tried to stand up, Wainwright shot him in the back of the head.

Neighbors heard the gunshots and called 911 around 5:40 p.m. One of the neighbors, an off-duty firefighter, tried to help Arnold, but Arnold died from his head injury shortly after arriving at Grady hospital. Aims later testified that Palmer and Wainwright seemed to be acting as a "unit," with the older of the two seemingly in charge. Following a joint trial in May 2015, Palmer was found guilty of a number of crimes, including two counts of felony murder, two counts of armed robbery and three counts of aggravated assault. (Wainwright also was convicted.) Palmer was sentenced to three consecutive life sentences and later appealed to the state Supreme Court.

Among the arguments in his appeal, Palmer contended that the trial court erred in going forward with his trial because of doubts regarding his competency to stand trial. "We disagree," today's opinion says. "Because Palmer has failed to show the type of behavior or demeanor at trial that would reasonably raise a bona fide question about his competence, and because the only medical opinion in evidence indicates that Palmer was competent to stand trial, Palmer's competency argument fails," the opinion says.

Palmer also argued on appeal that the trial court erred in denying his motion to sever his trial from Wainwright's. "But we see no error," the opinion says. "When two or more defendants are jointly indicted for non-capital offenses, 'such defendants may be tried jointly or separately in the discretion of the trial court.'" The burden is on the defendant who is requesting the severance "to do more than raise the possibility that a separate trial would give him a better chance of acquittal. He must make a clear showing that a joint trial would lead to prejudice and a consequent denial of due process," the opinion says. "Palmer has made no such showing."

Finally, Palmer argued that he received "ineffective assistance of counsel" from his trial attorney, first for failing to adequately investigate Palmer's competency, and second for failing to object to a witness's testimony or to the State's alleged bolstering of her testimony. But the Court has rejected his arguments. "Accordingly, Palmer's claims of ineffective assistance of trial counsel fail," the opinion says. "Judgment affirmed. All the Justices concur."

Attorney for Appellant (Palmer): Rachel Kaufman

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Arthur Walton, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

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

* Antonio Faust (DeKalb Co.)
* Michael Jordan (Clayton Co.)

FAUST V. THE STATE (S18A0453)

JORDAN V. THE STATE (S18A0114)

(The Supreme Court has upheld Jordan's convictions for felony murder and other crimes, and his life prison sentence with no chance of parole, but it is sending the case back to the trial court to correct a sentencing error. Jordan received a 20-year prison sentence for the crime of possession of a

firearm by a convicted felon, when under the law, the sentencing range is one to five years.)

* Marvin Charlton Manning (DeKalb Co.)	**MANNING V. THE STATE (S18A0369)**
* Kevin Randolph Puckett (Forsyth Co.)	**PUCKETT V. THE STATE (S18A0203)**
* Christopher Szorcsik (Worth Co.)	**SZORCSIK V. THE STATE (S18A0461)**
* Maurice D. Thomas (Emanuel Co.)	**THOMAS V. THE STATE (S18A0003)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorney:

* Jerry Ricardo Caldwell	**IN THE MATTER OF: JERRY RICARDO CALDWELL (S18Y0680)**

The Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

* Raymond Juiwen Ho	**IN THE MATTER OF: RAYMOND JUIWEN HO (S18Y1037)**

The Court has accepted a petition for voluntary discipline and ordered the **suspension from the practice of law in Georgia until further order of this Court** of attorney**:**

* Shannon D. Patterson	**IN THE MATTER OF: SHANNON D. PATTERSON (S18Y0794)**