



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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PARK V. THE STATE (S18A1211)

The Supreme Court of Georgia has struck down as unconstitutional the statutory requirement that “sexually dangerous predators” who have completed their sentences remain on electronic monitoring for the rest of their lives.

In today’s unanimous opinion, written by **Chief Justice Harold D. Melton**, the high court finds that Georgia Code § 42-1-14 (e) “authorizes a patently unreasonable search that runs afoul of the protections afforded by the Fourth Amendment to the United States Constitution, and, as a result, subsection (e) of the statute is unconstitutional to the extent that it does so.”

The Fourth Amendment protects individuals against “unreasonable searches and seizures.”

This case involves the appeal of **Joseph Park**, who was convicted in 2003 in **Douglas County** of child molestation and nine counts of sexual exploitation of a minor. He was sentenced to 12 years in prison, with a requirement to serve eight. Shortly before Park was released from prison in 2011, the Sex Offender Registration Review Board classified him as a “sexually dangerous predator.” Section (e) of § 42-1-14 states that any sex offender classified as a “sexually dangerous predator” must wear and pay for an electronic monitoring system linked to a global positioning satellite (GPS) system “for the remainder of his or her natural life.”

As background, in 1996, the Georgia General Assembly created the Georgia Sexual Offender Registry. In 2006, it passed statutes to address the problem of recidivism among sex offenders. Georgia Code § 42-1-14 set up a risk classification system on the ground that “recidivist sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety.”

The statute established a three-tiered review by the Sex Offender Registration Review Board of a sexual offender's classification. Level III is the most severe classification and is reserved for "sexually dangerous predators," based on data including criminal histories, sexual history polygraph information, and psychological evaluations, and an analysis of the likelihood that the sexual offender "will engage in another crime against a victim who is a minor or a dangerous sexual offense." Under the law, an offender classified as a sexually dangerous predator is subject to certain requirements beyond those for sex offenders generally, including the requirement that the offender wear an electronic monitoring system for the rest of his or her life.

Following Park's release on probation, Park sought re-evaluation of his classification by the Board; the Board upheld the classification. Park then petitioned for judicial review in Fulton County Superior Court, challenging the classification on constitutional grounds. The trial court also upheld the classification, and the state Supreme Court denied Park's application to appeal to Georgia's highest court, making his classification as a sexually dangerous predator final and requiring him to wear the GPS monitoring device for the duration of his life. By April 2015, Park had completed his criminal sentence, including probation, and he was released from state custody.

In February 2016, Park was arrested and indicted for tampering with his ankle monitor, a criminal offense carrying a punishment of a one-to-five year prison sentence. Park challenged the indictment, arguing he could not be prosecuted in part because the electronic monitoring required by Georgia Code § 42-1-14 (e) was unconstitutional. Following a 2017 hearing, the trial court found the statute to be constitutional. Park again sought to appeal to the Georgia Supreme Court, which this time agreed to review his pre-trial appeal to determine whether the trial court erred in rejecting Park's claim that the statute is unconstitutional.

In his appeal, Park has argued that § 42-1-14 (e) is unconstitutional "because it authorizes an unreasonable lifelong warrantless search of sex offenders who are classified as sexually dangerous predators by requiring such offenders to wear and be monitored at all times through a GPS monitoring device," today's 26-page opinion says.

The opinion points out that in 2015, the U.S. Supreme Court ruled in *Grady v. North Carolina* that, "a State...conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements." However, the Fourth Amendment prohibits only *unreasonable* searches.

"Accordingly, we must determine if a lifelong search of the individuals required to wear a GPS monitoring device pursuant to § 42-1-14 (e) is reasonable." In today's opinion, "we find that the specific search created by § 42-1-14 (e) cannot stand under the Fourth Amendment, at least with respect to individuals who have completed their criminal sentences."

"The permanent application of a monitoring device and the collection of data by the State about an individual's whereabouts 24 hours a day, seven days a week, through warrantless GPS monitoring for the rest of that individual's life, even after that person has served the entirety of his or her criminal sentence, constitutes a significant intrusion upon the privacy of the individual being monitored," the opinion says. Furthermore, the purpose of collecting the data generated by the GPS monitoring device "is to collect evidence of potential criminal wrongdoing that can later be used against the individuals being searched. Based on the foregoing, we must conclude that individuals who have completed their sentences do not have a diminished expectation of privacy that would render their search by a GPS monitoring device reasonable."

The opinion points out that other states have passed statutes authorizing a lifelong GPS search of sexually dangerous predators that “have passed constitutional muster.” In Michigan, for instance, statutes allow lifetime GPS monitoring “as part of the sex offender’s *actual sentence for the crime or crimes committed*,” the opinion says. A North Carolina statute allows for sexual offenders to file for termination of the monitoring requirement one year following completion of their sentences, including probation, parole, or other post-release supervision imposed as part of their sentence. “Instead, § 42-1-14 (e), on its face, simply allows for warrantless searches of individuals – that these individuals must pay for – to find evidence of possible criminality for the rest of their lives, despite the fact that they have completed serving their entire sentences and have had their privacy rights restored.”

In today’s opinion, the high court concludes that such searches are “patently unreasonable” and therefore § 42-1-14 (e) is unconstitutional “to the extent that it authorizes such searches of individuals, like Park, who are no longer serving any part of their sentences in order to find evidence of possible criminal conduct.”

In a concurrence, **Justice Keith Blackwell** writes that he agrees with the decision but writes to emphasize that it “does not foreclose other means by which the General Assembly might put the same policy into practice.”

Nothing in today’s decision “precludes the General Assembly from authorizing life sentences for the worst sexual offenders, and nothing in our decision prevents the General Assembly from requiring a sentencing court in the worst cases to require GPS monitoring as a condition of permitting a sexual offender to serve part of a life sentence on probation.” Georgia law already provides that those convicted of forcible rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery must be sentenced to life imprisonment or imprisonment followed by probation for life. And Georgia law already provides that a sentencing court may provide as a condition of probation that an offender wear an electronic monitoring device. “Nothing in our decision today calls the constitutionality of these sentencing laws into question.” Today’s decision, the concurrence says, “does not foreclose the possibility that the General Assembly could (at least prospectively) authorize or require that the worst sexual offenders be subjected to GPS monitoring for life as a condition of a sentence of probation for life.”

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Attorneys for Appellee (State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Tina Piper, Sr. Asst. A.G., Rebecca Dobras, Asst. A.G., Andrew Pinson, Dep. Sol. Gen., Ross Bergethon, Dep. Sol. Gen.

FULTON COUNTY V. CITY OF ATLANTA (S18A1156)

Under an opinion today, the Supreme Court of Georgia has upheld the **City of Atlanta’s** annexation in late 2017 of property located within the **Fulton County** Industrial District.

Fulton County had sued the City, arguing that the annexation of property within the district was prohibited by a local constitutional amendment that was ratified in 1979.

But in today’s unanimous opinion, written by **Justice Keith R. Blackwell**, the high court has affirmed a decision by the Fulton County Superior Court, which found that the 1979 amendment was void from its inception 40 years ago because it violated the “single subject” rule

of the Georgia Constitution. That rule states that any constitutional amendment may only deal with one change to the Constitution, unless the changes in a single amendment are “related.”

In adopting the local constitutional amendment in 1979, the Georgia General Assembly created the “Fulton County Industrial District,” an area of industrial development in unincorporated Fulton County along the east side of the Chattahoochee River. The amendment prohibited Atlanta or any other municipalities from encroaching on the property or annexing it. In addition, the amendment addressed taxation matters, stating that the properties within the Fulton Industrial District “shall be subject to all taxes for school purposes.” It prohibited the County from taxing for educational purposes any property that is also located within the City limits.

In 2015, the City of Atlanta sought to annex a parcel of land it already owned within the Fulton Industrial District. At the same time, it filed a lawsuit against the County asking the court to declare the 1979 local constitutional amendment invalid. The trial court ruled in favor of the City and declared the amendment void. The County appealed, and the Georgia Supreme Court vacated the trial court’s ruling because the City had not yet consummated the annexation, and the high court said the ruling was therefore premature. In late 2017, the City completed the process by adopting an annexation ordinance to annex the parcel of land located in the industrial district into the City. In response, Fulton County sued the City, challenging the annexation based on the 1979 local constitutional amendment. In March 2018, the trial court again ruled in favor of the City, declaring the 1979 local constitutional amendment void. Fulton County then appealed to the state Supreme Court.

(In 2018, the General Assembly approved legislation calling for a referendum to allow Fulton County voters to decide whether to repeal the 1979 amendment. Subsequently, the voters repealed the amendment, effective Jan. 1, 2019. The issue in this case, however, is whether the 1979 amendment was in force when the City adopted the annexation ordinance in 2017.)

In today’s opinion, the high court rules that it was not, as “we agree that the 1979 amendment violated the single subject rule....” “Here, the County identifies the sole objective of the 1979 amendment as the creation of the District...,” the opinion says. “But we fail to see how a provision that would prohibit the County from levying a school tax anywhere within the City has anything to do with the District, given that the 1979 amendment itself provides that no portion of the District ever could be within the City (or any other municipality).”

“Simply put, because the 1979 amendment provided that there could be no overlap between the District and the City, the taxation of properties in the City did not (and could not) relate to the creation of the District,” the opinion says. “This complete absence of relatedness falls far short of the relation required by the single subject rule. As a result, the trial court correctly concluded that the 1979 amendment was never properly adopted because its enactment violated the single subject rule” of the Georgia Constitution in effect at the time.

Attorneys for Appellant (County): Patrise Perkins Hooker, Kaye Burwell, Denval Stewart, Emily Hirst

Attorneys for Appellee (City): Emmet Bondurant, David Brackett, Robert Ashe, III, Nina Hickson, Jeffrey Haymore, Robert Highsmith, Jr.

CONLEY, WARDEN, V. PATE (S18A1121)

A young man whose convictions and 20-year prison sentence for statutory rape and aggravated assault were thrown out by a lower court as “cruel and unusual punishment” has had them reinstated under an opinion today by the Georgia Supreme Court.

According to the facts at trial, in December 2008, M.R. reported that nearly two years earlier, when she was 13, **Brandon Myles Pate**, who was 15 at the time, had entered her bedroom, demanded sex, brandished a knife, and threatened to slit her father’s throat if she refused. In 2009, a **Gwinnett County** grand jury indicted Pate and charged him with forcible rape, statutory rape, unlawful possession of a knife during the commission of felony statutory rape, aggravated assault and other charges. A friend who was with M.R. the night of the incident witnessed Pate having sexual intercourse with M.R. and corroborated M.R.’s testimony. As “similar transaction evidence,” the State also presented testimony of another girl, M.K., who said she was dating Pate in 2007 when he came to her house and forced her to have sex. He did not have a weapon, she said, but he threatened to kill her father if she told anyone. M.K. did not report the incident to police, but she later told a friend and then her parents.

Following the April 2010 trial, the jury found Pate guilty of statutory rape, aggravated assault, and possession of a knife during commission of a felony. The jury acquitted Pate of rape and the other charges. Pate was sentenced to 20 years in prison for the statutory rape followed by 25 years on probation for the other convictions. Pate appealed, but the Georgia Court of Appeals upheld his convictions and sentence in March 2012.

In December 2013, representing himself “pro se,” Pate filed a petition for a “writ of habeas corpus.” (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their convictions on constitutional grounds in the county where they’re incarcerated. They generally file the action against the prison warden, who in this case was **T.J. Conley**.) In his petition, Pate raised one ground, alleging he had received “ineffective assistance of counsel” from his trial lawyer, in violation of his constitutional rights. By June 2017, Pate was represented by an attorney who amended Pate’s petition, alleging that Pate’s sentence for statutory rape was illegal because both Pate and M.R. were juveniles at the time of the offense, making his statutory rape conviction a misdemeanor. The attorney argued that the felony knife charge therefore could not stand because it was based on a misdemeanor statutory rape charge. The attorney further argued that Pate’s total sentence of 45 years, to serve 20 in prison, was “cruel and unusual punishment” under the U.S. and Georgia constitutions.

In February 2018, the habeas court granted Pate relief on these amended claims and set aside his convictions. The judge stated that Pate’s “youth, immaturity, and impulsivity should have been considered during charging and sentencing” and called Pate’s 20-year sentence for statutory rape “grossly disproportionate” as both he and his victim were below “the age of consent.” The judge characterized Pate’s statutory rape offense as consensual sexual intercourse. The habeas judge said Pate’s crime would have been a misdemeanor in other jurisdictions and he should have received a misdemeanor sentence for statutory rape. The habeas court also held that the felony knife possession conviction “must be” reversed because it was based on what was a misdemeanor statutory rape under the facts of this case. Finally, the habeas court vacated the felony aggravated assault conviction, ruling that the Youthful Offender Act should have been considered when imposing sentence given the “compelling” testimony offered in mitigation. The State then appealed to the Georgia Supreme Court.

In today's opinion, written by **Justice Keith R. Blackwell**, the high court has reversed the habeas court's ruling.

"We first consider the determination of the habeas court that the statutory rape of which Pate was found guilty is only a misdemeanor," the opinion says. The habeas court based that determination on Georgia Code § 16-6-3 (c), which states that, "If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor."

"Here, M.R. was only 13 years of age at the time of the statutory rape," the opinion says. "Accordingly, subsection (c) does not apply, the statutory rape of which Pate was found guilty is punishable as a felony, and the statutory rape is an adequate predicate for the conviction for possession of a knife in the commission of a felony."

As to the claim that Pate's 20-year prison sentence constituted cruel and unusual punishment that was grossly disproportionate to the crime, the high court disagrees. "In this case, the habeas court's inference of gross disproportionality rested principally on its view that the conduct underlying Pate's conviction for statutory rape was merely 'consensual sex with an individual younger than him' and was only a 'passive felony,'" the opinion says. "But the record shows that this characterization is wrong." After repeatedly refusing to have sex with Pate, M.R. finally gave in only after he brandished a knife and threatened to kill her father. "To call such conduct 'consensual sex' and only a 'passive felony' is to grossly mischaracterize what Pate did to M.R.," the opinion says. "Pate's sentence of 20 years' imprisonment for statutory rape does not meet even the threshold inference of gross disproportionality, and so, despite his young age, his sentence for statutory rape must stand."

Finally, the habeas court erred in concluding that the sentencing court failed to consider the Youthful Offender Act when sentencing Pate for aggravated assault. "Such a claim is not of constitutional dimensions and so 'is not cognizable in a habeas action,'" today's opinion says.

In a concurrence, **Justice Nels S.D. Peterson** agrees with the judgment, but "I am skeptical that our analytical approach to the Cruel and Unusual Punishment Clause of the Georgia Constitution is consistent with the original public meaning of that clause." In its 1872 decision in *Whitten v. State*, the Georgia Supreme Court explained the meaning of the prohibition on cruel and unusual punishment as follows: "so long as [the General Assembly does] not provide cruel and unusual punishments, such as disgraced the civilization of former ages, and make one shudder with horror to read of them, as drawing, quartering, burning, etc., the Constitution does not put any limit upon legislative discretion." "We strongly endorsed this history-bound construction as to both the federal and state constitutions as late as the early 1970s," the concurrence says. "But then the United States Supreme Court's dramatic shift in interpretation of the Eighth Amendment during the 1970s – including the invalidation of Georgia's death penalty – knocked us off course. And by the late 1980s, we had reversed course entirely." In its 1989 decision in *Fleming v. Zant*, the state Supreme Court "flatly ignored" over 100 years of Georgia precedent in stating that, "whether a particular punishment is cruel and unusual is not a static concept, but instead changes in recognition of the 'evolving standards of decency that mark the progress of a maturing society.'"

"Ever since, we have applied the United States Supreme Court's 'evolving standards of decency' analysis to decide questions under the Georgia Constitution," the concurrence says. "It

seems to me quite likely that such an approach cannot be squared with the original public meaning of the Georgia Constitution, and if it cannot, we should reconsider our approach in the proper case.”

Attorneys for Appellant (Warden/State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

Attorneys for Appellee (Pate): Ecleyne Mercy, Timothy McCalep

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

- * Coleman Crouch (Houston Co.) **CROUCH V. THE STATE (S18A1610)**
- * Dearies Demond Favors (DeKalb Co.) **FAVORS V. THE STATE (S18A1394)**
- * Alandis Jackson (DeKalb Co.) **JACKSON V. THE STATE (S18A1598)**
- * Clarence McCord (Clarke Co.) **MCCORD V. THE STATE (S18A1045)**
- * Aaron Overton (Fulton Co.) **OVERTON V. THE STATE (S18A1273)**
- * George Edward Price (Morgan Co.) **PRICE V. THE STATE (S18A1491)**
- * Larry Stanford (Spalding Co.) **STANFORD V. THE STATE (S18A1609)**
- * Justin Cody Tuggle (Spalding Co.) **TUGGLE V. THE STATE (S19A0296)**
- * Curtis Tyner (Fulton Co.) **TYNER V. THE STATE (S18A1071)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **rejected the petition for reinstatement** from attorney:

- * Alvis Melvin Moore **IN THE MATTER OF: ALVIS MELVIN MOORE (S19Y0552)**