



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Thursday, September 12, 2019**

### **10:00 A.M. Session**

#### **STUBBS V. HALL, WARDEN (S19A1253)**

A man serving a life sentence for his 2005 convictions for armed robbery and other crimes is appealing a lower court's dismissal of his petition for a "writ of habeas corpus." The court ruled he filed it outside the four-year statute of limitations.

**FACTS:** Following a trial, a **Houston County** jury found **Henry Lee Stubbs III** guilty of several offenses including armed robbery and hijacking a motor vehicle. He was sentenced to life plus 31 years in prison. On Sept. 24, 2008, the Georgia Court of Appeals upheld Stubbs's convictions and sentence. He had 10 days, or until Oct. 6, 2008, either to request reconsideration by the Court of Appeals or file a notice of intent to seek review of his case by the state Supreme Court. He did neither. More than four years later, Stubbs, who is in prison, filed a petition for a writ of habeas corpus, challenging his convictions. Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action, a "petition for a writ of habeas corpus," against the prison warden, who in this case was **Phil Hall**. Georgia's habeas corpus statute includes a four-year statute of limitations for filing petitions challenging non-capital felony convictions. Code § 9-14-42 states in subsection (c) that, "Any action brought pursuant to this article shall be filed . . . within four years in the case of a felony... from: (1) The judgment

of conviction becoming final by the conclusion of direct review or the expiration of the time for seeking such review.” Subsection (d) of the habeas corpus statute states that, “At the time of sentencing, the court shall inform the defendant of the periods of limitation set forth in subsection (c) of this Code section.” In Stubbs’s case, his conviction became final Oct. 6, 2008 as he did not seek to appeal. Therefore on Oct. 6, 2008 the clock began running on his four-year statute of limitations, but his petition was not filed until Dec. 19, 2012. In his habeas petition, Stubbs alleged that he had not been informed by either his prior attorney or the trial judge that there was a four-year deadline. Stubbs’s case was transferred to Telfair County and then to Hancock County where the State filed a motion to dismiss the habeas petition as untimely. Following a hearing, the habeas court dismissed Stubbs’s petition as untimely. Stubbs now appeals to the Georgia Supreme Court, which agreed to review his case to determine whether the Court of Appeals erred in dismissing Stubbs’s habeas petition as untimely “when Stubbs presented evidence, via his verified habeas petition, that he had not been advised of the time limitations governing habeas corpus actions.”

**ARGUMENTS:** “The habeas court erred in dismissing Mr. Stubbs’s petition as untimely in light of un rebutted evidence, including verified statements in the habeas petition, that he was not informed at sentencing by the trial court regarding the prescriptive period for filing a habeas corpus action, in violation of statutory law whose obvious purpose is to ensure that defendants are promptly apprised as to non-obvious rules and time calculations on which their constitutional right of access to habeas corpus remedies depend,” Stubbs’s attorneys argue in briefs. “In addition, the lower court improperly ignored evidence that Mr. Stubbs’s prior counsel failed to inform him of the § 9-14-42 (c) (1) limitations period, and that this impacted the timing of the filing of his petition to his detriment. Finally, the court ignored evidence that Mr. Stubbs’s habeas counsel misled him to believe that he had more time than he did to file his petition. Given evidence of statutory non-compliance on the part of the trial court and deficiencies and even misconduct on the part of Mr. Stubbs’s counsel – along with the fact that Mr. Stubbs had, for years, diligently and expeditiously sought to avail himself of habeas remedies – the lower court should have found that the limitations period had been tolled the petition timely filed.” (“Tolled” is a legal term meaning suspended.) The statutory mandate to inform defendants promptly of the four-year limitations period for filing a habeas petition “serves to ensure meaningful access to the constitutionally guaranteed right of habeas corpus review, and its violation should toll the limitations period,” the attorneys argue. “Due process or ‘equitable’ tolling should be available where the evidence shows that the petitioner has been diligent in pursuing his remedies and circumstances beyond his control prevented him from filing on time.”

The State, represented by the Attorney General’s office, argues that the habeas court properly dismissed Stubbs’s petition as untimely. “The petition was not filed within four years of when Petitioner’s challenged convictions were final and Petitioner, either represented or as a pro se litigant [i.e. representing himself without counsel], is presumed to know the law, including the limitations provision of Section 9-14-42 (c),” the State argues in briefs. A trial court’s lack of compliance with Section 9-14-42 (d) “does not excuse Petitioner’s untimely filing.” “That is because Petitioner is presumed to have knowledge of the provisions of subsection (c),” the State argues. “The question of what remedy, if any, exists for a petitioner who is not apprised of subsection (d) at sentencing is a question for the legislature to answer.” “Simply put, there is no statutory rule granting petitioners an exception to the four-year period of limitations if the trial

court did not fully or correctly advise a defendant of the four-year period of limitations defined in Georgia Code § 9-14-42 (c), much less a rule granting petitioners who are represented by habeas counsel such consideration.” “Petitioner and his attorney are presumed to know the statute of limitations regardless of whether the trial court informed him of it.” The Georgia Supreme Court “should not engage in judicial lawmaking and adopt equitable tolling in circumstances such as those alleged in Petitioner’s case,” the State argues.

**Attorneys for Appellant (Stubbs):** Brian Kammer, Randall Edwards

**Attorneys for Appellee (State):** Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

### **JONES V. THE STATE (S19A1264)**

A man is appealing his convictions and life-without-parole prison sentence for his role in the murder of a drug dealer in the Pittsburgh neighborhood of Atlanta.

**FACTS:** According to state prosecutors, the victim, Rodney “Man Man” Stafford, worked odd jobs and sold marijuana before obtaining a settlement in a lawsuit over an automobile wreck. Stafford then expanded his operation to include the sale of cocaine in the south Atlanta neighborhood of Pittsburgh in **Fulton County**. According to the State, represented by the District Attorney’s and Attorney General’s offices, Pittsburgh is the heart of the “Goodfellas” gang’s territory. **Demiko Santwon Jones** was a member of the gang and didn’t like that Stafford, a non-member, was encroaching on the Pittsburgh-area drug market. Jones and Todd Demetrius Richardson were friends. After Richardson got out of prison in 2015, the two reconnected, and Richardson began selling marijuana for Jones. Jones told Richardson about Stafford, said that he was making a lot of money as a drug supplier in Pittsburgh, and that he would be an easy target. Richardson wanted to become a member of the Goodfellas, and Jones offered to vouch for Richardson the Goodfellas – or “stamp” him into the gang – if he robbed, killed, or extorted Stafford.

According to the State, the morning of Oct. 23, 2015, Stafford and his friend, Joshua Russell, were walking to a store in Pittsburgh when Jones and Richardson spotted them as they cruised through the neighborhood in Jones’s fiancée’s vehicle. Jones used his fiancée’s black sedan as a “cash taxi,” earning money by taking people where they needed to go. According to prosecutors, Jones stopped the car, handed Richardson a handgun, and told him to “go to work.” Richardson got out of the car, armed with the handgun. As he approached Stafford, Stafford yelled at Russell to run, then Richardson and Stafford began arguin loudly. The pastor from a nearby church called 911. As Russell fled, Richardson fired five times at Stafford, killing him with a gunshot wound to the head. Later at trial, Richardson testified that Stafford had pulled his gun first and fired twice before Richardson returned fire.

After the shooting, Jones picked up Richardson and dropped him off at Jones’s cousin’s house, telling his cousin they’d been involved in a homicide. Richardson did not have a gun on him when he arrived at Jones’s cousin’s house because he had given it back to Jones. Jones returned to the crime scene and at 10:37 a.m., texted his cousin and asked him to tell Richardson that “the n\*\*\*a a\*\* gone.” Investigating officers recovered several shell casings later identified as .45 caliber ammunition. A firearms expert with the GBI testified that the evidence recovered from the scene and the bullet removed from the victim’s head were consistent with a Taurus .45 caliber automatic pistol. Additionally, the firearms expert examined the picture of a firearm

recovered from Jones's cell phone and determined it was a Taurus firearm model that comes in 9MM, .40 and .45 calibers.

In February 2016, a Fulton County grand jury indicted Jones and Richardson in a 17-count indictment. The grand jury indicted Jones with malice murder (count 1), felony murder (counts 2 and 3), aggravated assault with a deadly weapon (counts 6 and 7), possession of a firearm during the commission of a felony (count 8), and possession of a firearm by a first offender probationer (count 13) in connection with the death of Rodney Stafford. Following a 2016 trial, the jury found Jones guilty of all counts but one. The jury was unable to return a unanimous verdict on malice murder. Jones was sentenced to life without parole for felony murder plus 10 years for the two firearms counts. Jones now appeals to the state Supreme Court.

**ARGUMENTS:** Attorneys for Jones argue the evidence was insufficient to sustain counts 3 and 13 – felony murder and possession of a firearm by a first offender probationer. “Counts 3 and 13 must be reversed because Richardson’s accomplice testimony was the sole evidence admitted to prove that Jones knowingly possessed the handgun, as alleged,” the attorneys argue in briefs. “Absent Richardson’s statement that Jones handed him the gun, the evidence failed to exclude the exceedingly reasonable theory that Richardson – a felon with *four* prior gun convictions – brought the handgun in his green backpack without Jones’s knowledge.” Also, the trial court violated Georgia Code § 15-12-172 when it excused a juror without good or legal cause, the attorneys argue. Here, deliberations already were underway. “No legal cause existed to excuse the juror,” the attorneys contend. “The testimony of the juror, the foreperson, and the jury’s notes, taken together, do not establish ‘good cause’ to rebut the presumption that [the juror] could, and did, follow the trial court’s deliberation instructions. Absent ‘other legal cause,’ the sole remaining statutory basis for [the juror’s] substitution was ‘good cause’ that she was ‘unable’ to perform her duty. But no ‘good cause’ existed.” Furthermore, although the judge questioned the juror in open court and received minimal evidence from the foreperson, the trial court omitted numerous important steps in its inquiry, Jones’s attorney contend. The Supreme Court should reverse counts 3 and 13 for insufficient evidence, set aside Jones’s remaining convictions and sentences, and remand his case to Fulton County for a new trial on counts 2, 6, 7, and 8.

The State argues the evidence was sufficient to sustain the jury’s verdict. Since count 3 – one of two felony murder counts – was “vacated by operation of law, any argument as to the sufficiency of the evidence for that count is moot,” the State argues in briefs. “Count 13 was supported by the evidence.” Statutory law prohibits a first offender probationer from possessing a firearm. “And because he was a party to a crime, Appellant [i.e. Jones] can constructively possess a firearm in fact possessed by a co-conspirator.” The trial judge also properly excluded the juror, the State argues. “Among the acceptable reasons to remove a juror is that juror’s mental distress or inability to continue deliberating.” Here, the trial court clearly conducted an appropriate investigation on the record, made its analysis on the record, and appropriately dismissed the juror, the State contends.

**Attorneys for Appellant (Jones):** Ash Joshi, Matthew Winchester

**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Dustin Lee, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith Sr. Asst. A.G., Michael Oldham, Asst. A.G.

## **BOWEN ET AL. V. SAVOY (S19G0278)**

Two sisters who were sued by another sister over the handling of their mother's estate are appealing a Georgia Court of Appeals decision. The Court of Appeals ruled that the sisters who were sued failed to respond to the lawsuit in a timely manner and therefore, when they filed a motion asking a **Coweta County** trial court to dismiss the lawsuit, the trial court appropriately ruled against them.

**FACTS: Priscilla A. Savoy** sued her three sisters – **Eleanor M. Bowen**, Margaret M. Innocenti, and Suzanne E. Douglas – alleging that they had colluded to transfer funds from their infirm mother's account for their own use, thereby diminishing the value of their mother's estate upon her death. (Douglas was subsequently dismissed from the lawsuit). In her complaint, Savoy sought more than \$70,000 in damages for breach of fiduciary duty, as well as punitive damages and attorney's fees. On June 20 and 22, 2016, Bowen and Innocenti were served with a summons and the complaint. They filed a motion to dismiss the case but otherwise failed to file an answer, which under state law must be filed 30 days after service of the summons and complaint. Apparently, their attorney mistakenly believed that an answer was not required due to the pending motion. Following the trial court's hearing on Bowen's and Innocenti's motion to dismiss, on Feb. 21, 2017, the two sisters did finally file their answer to Savoy's lawsuit – 216 days after the statutory deadline. Because their answer was filed long after the 30-day deadline, Savoy immediately filed a motion requesting default judgment in her favor, which the trial court granted on Aug. 23, 2017. The next day, Bowen and Innocenti filed a motion asking the court to set aside the default judgment. Following a hearing, the trial court denied the motion, finding that the sisters had failed to raise a "meritorious defense," which is a required condition for opening default under Georgia Code § 9-11-55 (b). The trial court also ruled that the two sisters had failed to provide a "reasonable explanation" for their failure to provide a timely answer to Savoy's lawsuit. Bowen and Innocenti then appealed to the Court of Appeals, the state's intermediate appellate court. That court upheld the trial court's ruling, stating: "While we are sympathetic to defense counsel's mistake, we cannot say that the trial court abused its discretion in finding this explanation unreasonable and thus concluding that the case was not a proper one for the opening of default." Bowen and Innocenti now appeal to the Georgia Supreme Court, which has agreed to review the case to determine whether § 9-11-55 (b) requires that to open default, a defendant must provide a "reasonable explanation" for having failed to file an answer within the deadline.

**ARGUMENTS:** Bowen's and Innocenti's attorney argues that the statute, as construed by this Court, requires a "proper case, not a reasonable excuse." "The 'proper case' ground for opening default is construed to reach 'every conceivable case where injustice might result if the default were not opened,'" the attorneys argue. "The statute neither states nor implies that one must establish a 'reasonable excuse or explanation for opening the default' under the 'proper case' ground. While it is appropriate to interpret the statutory language for the 'excusable neglect' ground as implying the defendant must provide some reasonable explanation for the default, the inquiry for the 'proper case' ground is far broader and imposes no such requirement; it focuses on whether the interests of truth and justice will be served by opening default. To impose a requirement for a reasonable excuse for opening default on the 'proper case' ground conflates the 'proper case' ground with the 'excusable neglect' ground, contrary to the principle that 'a statute must be viewed so as to make all its parts harmonize and to give a sensible and

intelligent effect to each part,” the attorney for Bowen and Innocenti argues. The statute itself states that, “At any time before final judgment, the court, in its discretion...may allow the default to be opened...where the judge, **from all the facts, shall determine that a proper case has been made for the default to be opened....**” In its 1974 decision in *Axelroad v. Preston*, the Georgia Supreme Court stated that this particular statute “conveys very ample powers as to opening defaults...as if reaching out to take in every conceivable case where injustice might result if the default were not opened.” The defendants here “have made a ‘proper case’ to open default as a matter of law,” the sisters’ attorney argues.

Savoy’s attorneys argue that the language of § 9-11-55 (b) has remained substantially the same for more than a century. During that time, this Court has repeatedly held that the opening of default, under any of the three grounds listed in the statute, requires some showing of reasonableness or legal excuse. Also during that time, the General Assembly has issued four subsequent iterations of the statute, all substantially similar to the original language, implicitly approving of this Court’s and the Court of Appeals’s construction of the statute. Furthermore, the “reasonable explanation” standard serves both to guide and to limit the exercise of judicial discretion when considering whether a particular case is a “proper case” for the opening of default. Bowen’s and Innocenti’s proposed interpretation would imbue the trial court with boundless discretion even where no reasonable explanation exists for the failure to answer.

**Attorney for Appellants (Bowen):** Patrick McKee

**Attorneys for Appellee (Savoy):** Robert Carlson, Lauren Miller