



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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WILLIAMS V. DEKALB COUNTY ET AL. (S19A1163)

The Supreme Court of Georgia has partially ruled in favor of a man who sued the **DeKalb County** Board of Commissioners for raising members' salaries by 60 percent. In his lawsuit, **Edward E. Williams** claimed in part that the board violated the Georgia Open Meetings Act by not giving proper notice of its intent to pass the pay increase. The trial court dismissed that claim as well as others.

In today's 7-to-1 decision, however, the majority finds that "the trial court erred in dismissing Williams' claim for civil penalties against the commissioners individually for violating the Open Meetings Act," and it has reversed that portion of the trial court's order.

Williams, a DeKalb County taxpayer and citizen, alleged that on Jan. 18, 2018, the DeKalb Board of Commissioners sent a notice to the county's "legal organ" and other newspapers that it would hold a "special call" legislative retreat workshop at 9 a.m. the next day. Although a proposed pay increase did not appear on the meeting agenda, the board discussed it at the meeting. The meeting minutes did not reflect the discussion. The board later placed an ad in the legal organ notifying the public of the board's intent to consider the salary increase at a Feb.

27, 2018 board meeting. The ad ran for three consecutive weeks on Feb. 8, 15, and 22. However, the pay increase did not appear on the board's pre-published agenda for the Feb. 27 meeting. At the meeting, Williams and several other citizens publicly expressed concerns about the pay change before the board voted 7-to-0 to add the salary increase to the agenda as a "walk-on" item. The board then voted 6-to-1 to pass the increase, raising commissioners' salaries from \$40,530.55 to \$65,000.

Williams asked the Georgia Attorney General and the DeKalb County Solicitor General to investigate and bring civil and criminal enforcement actions against DeKalb County, the Board of Commissioners, and Chief Executive Officer Michael Thurmond. (The trial court later dismissed the case against the CEO.) Both the Attorney General and the Solicitor General expressed concern about the board's actions but declined to pursue punitive action against the county.

In August 2018, Williams sued the county and the others, claiming the board violated the Open Meetings Act, thus invalidating the increase and subjecting the board members to civil and criminal penalties. He also claimed that although the General Assembly had given county governing authorities the power to increase their pay through Georgia Code § 36-5-24, the Georgia Constitution and the DeKalb County Organizational Act prohibited them from having that power. Williams' complaint asked for mandamus, declaratory, and injunctive relief, as well as civil and criminal penalties under the Open Meetings Act, and attorney fees and litigation costs. In response, the county filed a motion to dismiss the case, asserting that Williams' claims were barred by sovereign, legislative, and official immunity; that he lacked standing; and that his complaint failed to state a claim upon which relief could be granted. Following a January 2019 hearing, the trial court ruled in favor of the county. The judge dismissed Williams' writ of mandamus, finding Williams had failed to produce any evidence and had failed to state a claim for mandamus relief. The judge ruled he could not adjudicate Williams' claims without a certified copy of the salary ordinance in the record, and dismissed the remainder of the complaint based on sovereign, legislative, and official immunity, lack of standing, and failure to state a claim upon which relief may be granted. Williams then appealed to the state Supreme Court, arguing that the trial court erred in dismissing his claims.

In today's majority opinion, written by **Justice John J. Ellington**, the high court has vacated the portion of the trial court's order dismissing Williams' claim for injunctive relief against Thurmond, and it has dismissed his claim for declaratory judgment and injunctive relief against the commissioners. But, "we reverse that portion of the court's order dismissing Williams' claim against the commissioners for civil penalties under the Open Meetings Act; and we remand the case to the trial court."

In a discussion about Williams' Open Meetings Act claims, the majority opinion addresses whether Williams had standing as a private person to seek to impose a civil penalty for noncompliance with the Act. "[W]e conclude that Williams had standing to request that a civil penalty be imposed against the commissioners under [Georgia Code] § 50-14-6 and to receive any penalty paid," the opinion says.

Williams argued that despite acting collectively, the commissioners as individuals were subject to civil penalties under the Open Meetings Act for participating in a meeting in violation of the Act, and that neither official immunity nor legislative immunity applies to an official who violates the Act.

In today's 40-page opinion, the majority writes that, "One of the ways the General Assembly has provided to encourage compliance with the Act by *agencies* is by creating a mechanism for holding accountable the *individuals* who make decisions for the agency." Accountability under the Act, "includes being held *financially* liable personally for civil or criminal penalties," the majority opinion says.

"The trial court's theory that the board acted 'as a whole,' not as individual persons, in this conduct and that the commissioners are therefore shielded from individual accountability for the alleged violation contravenes the plain text of the Open Meetings Act," the majority opinion says. "It follows that, contrary to the trial court's ruling, a person participating in a violation of the Open Meetings Act may be subject to the criminal and civil penalties authorized by § 50-14-6, notwithstanding the agency or committee acting 'as a whole.'"

As to whether the commissioners were protected by official immunity, "we conclude that Williams' complaint sufficiently alleges that the commissioners acted with actual malice in intentionally violating the agenda requirements of the Act – a criminal act," the opinion says. "Consequently, taking the allegations of Williams' complaint as true for the purpose of reviewing the dismissal of the complaint, the commissioners are not entitled at this stage to official immunity from the penalty provisions of the Open Meetings Act. We also find no merit in the trial court's determination that Williams' claim is barred by legislative immunity."

Therefore, "the trial court erred in dismissing Williams' claim for civil penalties against the commissioners individually for violating the Open Meetings Act," the majority concludes.

In a partial dissent, **Justice Charles J. Bethel** writes that the language of the Open Meetings Act makes clear that "although a posted agenda for a public meeting is required and must include items which are 'expected' to come before the body in the meeting, the failure to list an item of business in the agenda 'shall not preclude considering and acting upon' that item if it 'becomes necessary' to do so during the course of the meeting." "By asking the courts to substitute their own judgment for that of the Commissioners as to whether they were 'expected' to consider salaries for themselves and the Chief Executive Officer at the meeting or whether it became 'necessary' to add that item to the agenda from which it had been omitted, Williams' lawsuit asks the courts to engage in a task for which they are ill-equipped and which has been committed wholly to the discretion of legislative bodies subject to the Open Meetings Act," the dissent says. "Because I believe the language of the Act confers on the Commissioners the sole authority to decide when and whether it becomes necessary to take up an item that was not listed on the agenda, I would affirm the dismissal of Williams' claims under the Open Meetings Act."

Attorneys for Appellant (Williams): Thomas Burch, John Kenerly, Student Counsel, UGA School of Law, Addison Smith, Student Counsel

Attorneys for Appellees (County): Laura Johnson, Deputy County Attorney, Bennett Bryan, Sr. Asst. Co. Attorney, Shaheem Williams, Sr. Asst. Co. Attorney, Ken Jarrard

THE STATE V. GATES (S19A1130)

GATES V. THE STATE (S19X1131)

A man convicted more than 40 years ago of the rape and murder of a 19-year-old woman is entitled to a new trial under an opinion today by the Supreme Court of Georgia.

With the opinion, written by **Justice Charles J. Bethel**, the high court has upheld a **Muscogee County** court's grant of a new trial to **Johnny Lee Gates**. In February 1977, Gates,

an African-American who was then 21 years old, was charged with the murder, rape, and armed robbery of Katharina Wright, a white 19-year-old, in Columbus, GA. Gates was found guilty on all counts in late summer, 1977 by an all-white jury and was sentenced to death. In October 1979, the Supreme Court of Georgia upheld his conviction and sentence. In 2003, Gates and the State agreed to remove the possibility of the death penalty following a mistrial on the question of intellectual disability, and he was resentenced to life in prison without the possibility of parole.

In 2015, Gates’s attorneys located several items in the office of the district attorney that had been introduced as evidence against him in his 1977 trial. Those items – a bathrobe belt and four neckties – had been used to tightly bind the victim. According to the findings of the trial court, the items were thought to have been destroyed at some point after Gates’s trial. Gates was granted the right to have the belt and one of the ties tested for DNA evidence, and the analysis of those results showed that, while DNA was present on the items, Gates’s DNA was not. On the basis of this evidence, and in light of the fact that the State’s case was premised on Gates having been barehanded when he committed the crimes, in January 2019, the Muscogee County Superior Court granted Gates a new trial.

In today’s 62 page-opinion, the Supreme Court of Georgia has determined that the trial court properly applied the law on the granting of new trials to the newly discovered DNA evidence. The high court concludes that “although the State presented strong evidence of Gates’s guilt, Gates could have much more effectively countered such evidence had he also been able to present the newly discovered DNA evidence. In light of the weight given to such evidence by jurors, we cannot say that the trial court abused its discretion when it determined that the newly discovered evidence – the TrueAllele analysis of the DNA test results and the testimony supporting it – is so material that it would probably produce a different verdict.”

“We therefore affirm the judgment of the trial court granting his motion on that basis,” the opinion states.

Attorneys for State: Julia Slater, District Attorney, Frederick Lewis, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Sabrina Graham, Sr. Asst. A.G., Channell Singh, Asst. A.G.

Attorneys for Gates: Patrick Mulvaney, Southern Center for Human Rights, Clare Gilbert, Georgia Innocence Project

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

- * Rosano Wensley Bundel (Cobb Co.)
- * Vivian Corley (Chatham Co.)

BUNDEL V. THE STATE (S20A0173)

CORLEY V. THE STATE (S20A0214)

(The Supreme Court has upheld Corley’s murder conviction, but it has vacated his conviction for aggravated assault, which the trial court should have merged into the murder for sentencing purposes.)

- * Demarquis Antonio Glenn (Decatur Co.) **GLENN V. THE STATE (S20A0058)**
- * Charles Mattox (Evans Co.) **MATTOX V. THE STATE (S20A0026)**
- * Eric Simmons (Lowndes Co.) **SIMMONS V. THE STATE (S20A0232)**
- * Robert Earl Wilson, Jr. (Telfair Co.) **WILSON V. THE STATE (S20A0027)**

IN LAWYER DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

- * Marc Ceello **IN THE MATTER OF: MARC CELELLO (S20Y0679)**