

SUPREME COURT OF GEORGIA

State v. Outen, 289 Ga. 579

714 S.E.2d 581 (2011) · No. S10G1596 · Decided June 27, 2011

SUMMARY

The Supreme Court of Georgia held that the State's appeal from an order granting a special demurrer as to one count of a multi-count indictment was not properly before the Court of Appeals. Because another count remained pending, the trial court's order was nonfinal and required a certificate of immediate review under OCGA § 5-7-2. The court vacated the Court of Appeals' judgment and remanded with direction to dismiss the appeal.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	June 27, 2011
DOCKET	S10G1596
DISPOSITION	vacated
PROCEDURAL POSTURE	The Supreme Court of Georgia granted the State's petition for a writ of certiorari to review the Court of Appeals' affirmance of a trial court order granting Outen's special demurrer to Count One of a two-count vehicular-homicide indictment. The Supreme Court concluded that the Court of Appeals lacked appellate jurisdiction because the State had not obtained a certificate of immediate review for the nonfinal order.
STANDARD OF REVIEW	The appellate courts independently examine their own jurisdiction. Whether the State's appeal was authorized under OCGA §§ 5-7-1 and 5-7-2 was decided as a matter of statutory interpretation and jurisdictional law.
PRECEDENTIAL VALUE	Published binding precedent of the Supreme Court of Georgia
PARTIES	The State v. David V. Outen

TOPICS

appellate jurisdiction

interlocutory appeal

final judgment rule

appellate procedure

criminal procedure

PRACTICE AREAS

Criminal procedure

Appellate procedure

Statutory interpretation

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction over the State's appeal from an order granting a special demurrer as to one count of a multi-count indictment when another count remained pending and the State had not obtained a certificate of immediate review.
2. Whether an order dismissing one count of a multi-count indictment is final under OCGA § 5-7-2 when other counts remain pending.

HOLDINGS

1. Because the trial court's order dismissed only Count One and Count Two remained pending, the order was not final, and OCGA § 5-7-2 required the trial judge to issue a certificate of immediate review within ten days. The State's failure to obtain that certificate deprived the appellate courts of jurisdiction.
2. The Court of Appeals erred by affirming the trial court's order because it lacked jurisdiction over the State's appeal. The Supreme Court vacated the Court of Appeals' judgment and remanded with direction that the appeal be dismissed.

KEY QUOTATIONS

“Although no question of the jurisdiction of the Court of Appeals was raised in that Court, it is incumbent upon the appellate courts of this State to inquire into their own jurisdiction, regardless of whether an issue of jurisdiction is raised by the parties.” (289 Ga. at 582)

“The trial court's order dismissing Count One of the indictment is not a final order; Count Two remains in the trial court.” (289 Ga. at 583)

“It was error for the Court of Appeals to affirm the trial court; the appeal should have been dismissed by that Court.” (289 Ga. at 584)

FACTUAL BACKGROUND

David V. Outen was driving an automobile that struck and killed Trina Heard. A grand jury returned a two-count indictment charging first-degree vehicular homicide predicated on reckless driving and vehicular homicide predicated on failure to maintain lane. Outen filed a special demurrer to the reckless-driving count, arguing that the indictment lacked sufficient factual detail, and the trial court granted the demurrer while leaving the second count pending.

PROCEDURAL HISTORY

After Outen was indicted on two counts arising from a fatal automobile collision, the trial court granted a special demurrer as to Count One, while Count Two remained pending. The State filed a notice of appeal without obtaining a certificate of immediate review, and the Court of Appeals affirmed. The Supreme Court vacated that judgment and remanded with direction that the appeal be dismissed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the Court of Appeals for proceedings consistent with the opinion, specifically dismissal of the State's appeal for lack of appellate jurisdiction.

CASES CITED

- State v. Outen, 304 Ga. App. 203, 695 S.E.2d 654 (2010)
- In the Interest of K.R.S., 284 Ga. 853(1), 672 S.E.2d 622 (2009)
- State v. Evans, 282 Ga. 63, 64, 646 S.E.2d 77 (2007)
- State v. Ware, 282 Ga. 676, 678, 653 S.E.2d 21 (2007)
- State v. Martin, 278 Ga. 418, 419, 603 S.E.2d 249 (2004)
- State v. Lynch, 286 Ga. 98, 103(2), 686 S.E.2d 244 (2009)
- State v. Ramirez-Herrera, 306 Ga. App. 878, 879(1), 703 S.E.2d 429 (2010)
- State v. Barrett, 215 Ga. App. 401, 402 n. 1, 451 S.E.2d 82 (1994)
- State v. Tuzman, 145 Ga. App. 481, 482(1), 243 S.E.2d 675 (1978)
- State v. Jones, 274 Ga. 287, 553 S.E.2d 612 (2001)
- State v. Mills, 268 Ga. 873, 495 S.E.2d 1 (1998)
- Heard v. State, 274 Ga. 196, 197(1), 552 S.E.2d 818 (2001)
- Gordy Tire Co. v. Dayton Rubber Co., 216 Ga. 83, 89(1), 114 S.E.2d 529 (1960)