

SUPREME COURT OF GEORGIA

Henderson v. State

811 S.E.2d 388 (Ga. 2018) · Decided March 5, 2018

SUMMARY

The Georgia Supreme Court held that it had jurisdiction over Henderson's appeal because it arose from a murder case in which a sentence of death could have been imposed. The Court overruled precedent treating similar post-conviction transcript requests as separate civil mandamus actions. It dismissed the appeal because a post-conviction motion for a free trial transcript, filed after the opportunity for direct appeal had ended, was not legally cognizable.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Boggs, Justice                                                                                                                                                                                                                                                    |
| JURISDICTION          | Georgia                                                                                                                                                                                                                                                           |
| DECIDED               | March 5, 2018                                                                                                                                                                                                                                                     |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Henderson appealed pro se from the Rockdale County Superior Court's denial of his objection to the denial of his motion for disclosure of grand-jury testimony and evidence. The Georgia Court of Appeals transferred the appeal to the Supreme Court of Georgia. |
| STANDARD OF REVIEW    | Subject-matter jurisdiction was addressed de novo. The legal cognizability of the requested post-conviction remedy was also determined as a matter of law.                                                                                                        |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Georgia                                                                                                                                                                                                    |
| PARTIES               | Sylvester Henderson v. State                                                                                                                                                                                                                                      |

TOPICS

- appellate jurisdiction
- appellate procedure
- post-conviction relief
- criminal procedure
- remedies

PRACTICE AREAS

- appellate jurisdiction
- criminal procedure
- post-conviction relief
- mandamus
- constitutional law

## QUESTIONS PRESENTED

1. Whether the Supreme Court of Georgia had appellate subject-matter jurisdiction over an appeal from post-trial motions filed in a murder case after the effective date of OCGA § 15-3-3.1.
2. Whether Henderson's motion seeking a transcript or records at public expense after the expiration of the time for a direct appeal presented a legally cognizable remedy.
3. Whether Henderson was entitled to invoke the Supreme Court's original mandamus jurisdiction through his pro se pleading.

## HOLDINGS

1. The Supreme Court of Georgia had subject-matter jurisdiction because the appeal arose from a case in which a sentence of death could have been imposed, within the meaning of Ga. Const. Art. VI, Sec. VI, Par. III (8).
2. A post-trial motion seeking a record or transcript filed under the original criminal docket number in a murder case is not a separate civil action in the nature of mandamus under *Coles v. State*.
3. After the opportunity for a direct appeal has expired, a motion for a transcript at public expense filed in a criminal case is not a legally cognizable remedy absent a showing of necessity or justification; Henderson's motion was properly treated as a nullity and the appeal was dismissed.
4. Henderson did not properly invoke the Supreme Court's original mandamus jurisdiction and the case did not present the type of extremely rare circumstance warranting its exercise.

## KEY QUOTATIONS

*"We conclude that we have subject matter jurisdiction because this appeal falls within Ga. Const. Art. VI, Sec. VI, Par. III (8) as a case "in which a sentence of death was imposed or could be imposed," rather than a separate civil "petition in the nature of mandamus" as posited in Coles v. State, 223 Ga. App. 491, 491 (1), 477 S.E.2d 897 (1996)." (811 S.E.2d at 390)*

*"Because the law does not recognize a motion for a transcript at public expense filed in a criminal case after the opportunity for a direct appeal has ended, the trial court should have dismissed Henderson's motion as a nullity, and he has nothing cognizable to appeal." (811 S.E.2d at 392)*

## FACTUAL BACKGROUND

Henderson pleaded guilty to felony murder in the Superior Court of Rockdale County and was sentenced to life imprisonment. He did not pursue a timely direct appeal, and his later motion for an out-of-time appeal was denied and affirmed. He then filed, under the original murder-case docket number, motions seeking disclosure of grand-jury testimony and evidence and related post-conviction records.

## PROCEDURAL HISTORY

Henderson pleaded guilty to felony murder in 2011 and received a life sentence. After the time for a direct appeal expired, his motion for an out-of-time appeal was denied, and the Supreme Court of Georgia affirmed that denial in *Henderson v. State*, 300 Ga. 526, 796 S.E.2d 681 (2017). Henderson subsequently filed motions

seeking grand-jury materials and related relief under the original criminal docket number. The trial court denied the motions, and the present appeal was transferred from the Court of Appeals to the Supreme Court of Georgia, which retained jurisdiction but dismissed the appeal because the requested remedy was not legally cognizable.

## DISPOSITION

dismissed

## CASES CITED

- Coles v. State, 223 Ga. App. 491, 491-492, 477 S.E.2d 897 (1996)
- Henderson v. State, 300 Ga. 526, 796 S.E.2d 681 (2017)
- Ga. Assn. of Professional Process Servers v. Jackson, 302 Ga. 309, 310 n. 1, 806 S.E.2d 550 (2017)
- McCoy v. Bovee, 300 Ga. 759, 759 n. 1, 796 S.E.2d 679 (2017)
- Neal v. State, 290 Ga. 563, 567, 722 S.E.2d 765 (2012)
- In re Brinson, 299 Ga. 859, 791 S.E.2d 804 (2016)
- In re Paul, 270 Ga. 680, 513 S.E.2d 219 (1999)
- Turner v. State, 280 Ga. 174, 626 S.E.2d 86 (2006)
- Wright v. State, 277 Ga. 810, 811 n.2, 596 S.E.2d 587 (2004)
- Smith v. State, 289 Ga. 839, 716 S.E.2d 143 (2011)
- Mitchell v. State, 280 Ga. 802, 802 (1), 633 S.E.2d 539 (2006)
- McDowell v. Balkcom, 246 Ga. 611, 272 S.E.2d 280 (1980)
- Harper v. State, 286 Ga. 216, 218 (1), 686 S.E.2d 786 (2009)
- Graham v. Cavender, 252 Ga. 123, 124, 311 S.E.2d 832 (1984)
- Nelson v. State, Case Nos. S16C1296, S17O0203 (Ga. Sept. 6, 2016)

## OPINION

BOGGS, J.

Boggs, Justice. In Sylvester Henderson's pro se appeal from the trial court's order denying his "Objection to Order Denying Defendants Motion for Disclosure Grand Jury Testimony and Evidence," we address the scope of this Court's appellate jurisdiction in light of the changes imposed by OCGA § 15-3-3.1 on appeals filed after January 1, 2017.

We conclude that we have subject matter jurisdiction because this appeal falls within Ga. Const. Art. VI, Sec. VI, Par. III (8) as a case "in which a sentence of death was imposed or could be imposed," rather than a separate civil "petition in the nature of mandamus" as posited in *Coles v. State*, 223 Ga. App. 491, 491 (1), 477 S.E.2d 897 (1996). Consequently, we retain jurisdiction of this appeal, overrule *Coles*, and dismiss the appeal because the remedy Henderson seeks here is not legally cognizable. \*390The procedural history of this case is somewhat complex.

In 2011, Henderson pled guilty to felony murder in the Superior Court of Rockdale County and was sentenced to life imprisonment. He did not file a timely direct appeal, but, over two years later, he attempted to withdraw his guilty plea pro se. That motion was dismissed for lack of jurisdiction. While he did not file a timely direct appeal, in 2016 Henderson filed a pro se motion for out-of-time appeal.

The trial court denied the motion, and Henderson appealed to the Court of Appeals, which transferred the appeal to this Court. In *Henderson v. State*, 300 Ga. 526, 796 S.E.2d 681 (2017), this Court affirmed the judgment of the trial court.<sup>1</sup> On March 7, 2017, under the criminal docket number of his murder prosecution in Rockdale County Superior Court, Henderson filed a pro se "Motion to Disclose Grand Jury Testimony and Evidence," which was denied in a brief order on March 13, 2017.

On March 22, 2017, Henderson filed an "Objection to Order Denying Defendants Motion for Disclosure Grand Jury Testimony and Evidence," which the trial court denied on March 28, 2017.<sup>2</sup> In his notice of appeal, filed April 10, 2017, Henderson appealed to the Georgia Court of Appeals "from the judgment of denial of defendants 'Objection To Order Denying [sic] Motion for Disclosure Grand Jury Testimony And Evidence' filed March 22, 2017."

He further directed that nothing be omitted from the record, and that "[a] transcript of evidence and proceedings will be filed for inclusion in the Record on Appeal." By order of June 5, 2017, this appeal was transferred to this Court. 1.

We first address the question of the jurisdiction of this Court, as it affects this appeal. Ga. Const. Art. VI, Sec. VI, Par. III provides: Unless otherwise provided by law, the Supreme Court shall have appellate jurisdiction of the following classes of cases: (1) Cases involving title to land; (2) All equity cases; (3) All cases involving wills; (4) All habeas corpus cases; (5) All cases involving extraordinary remedies; (6) All divorce and alimony cases; (7) All cases certified to it by the Court of Appeals; and (8) All cases in which a sentence of death was imposed or could be imposed.

Review of all cases shall be as provided by law. For all notices of appeal or applications for leave to appeal filed on or after January 1, 2017, (a) Pursuant to Article VI, Section VI, Paragraph III of the Constitution of this state, the Court of Appeals rather than the Supreme Court shall have appellate jurisdiction in the following classes of cases: (1) Cases involving title to land; (2) All equity cases, except those cases concerning proceedings in which a sentence of death was imposed or could be imposed and those cases concerning the execution of a sentence of death; (3) All cases involving wills; (4) All cases involving extraordinary remedies, except those cases concerning proceedings in which a sentence of death was imposed or could be imposed and those cases concerning the execution of a sentence of death; (5) All divorce and alimony cases; and (6) All other cases not reserved to the Supreme Court or conferred on other courts.

OCGA § 15-3-3.1; Ga. L. 2016 p. 883, § 6-1 (c). See *Ga. Assn. of Professional Process Servers v. Jackson*, 302 Ga. 309, 310 n. 1, 806 S.E.2d 550 (2017) (extraordinary remedies); *McCoy v. Bovee*, 300 Ga. 759, 759 n. 1, 796 S.E.2d 679 (2017) (equity). This Court traditionally has taken an expansive view of its jurisdiction over murder cases. See, e.g., *Neal v. State*, 290 Ga. 563, 567, 722 S.E.2d 765 (2012) (Hunstein, C.J. concurring, opinion joined in by all Justices, reiterating that this Court's constitutional jurisdiction extends to all direct appeals in murder cases).

In *In re Brinson*, 299 Ga. 859, 791 S.E.2d 804 (2016), this Court took jurisdiction of a contempt citation arising from a murder case. Similarly, an appeal by a reporter asserting the reportorial privilege under former OCGA § 24-9-30 in connection with his interview of the defendant in a murder prosecution, *In re Paul*, 270 Ga. 680, 513 S.E.2d 219 (1999); a motion to recuse a judge in a pending murder prosecution, *Turner v. State*, 280 Ga. 174, 626 S.E.2d 86 (2006); and post-conviction motions to vacate a void judgment, *Wright v. State*, 277 Ga. 810, 811 n.2, 596 S.E.2d 587 (2004), or to correct the transcript in a murder case, *Smith v. State*, 289 Ga. 839, 716 S.E.2d 143 (2011), have been determined by this Court to lie within the scope of its murder jurisdiction.

Prior to the enactment of OCGA § 15-3-3.1, if an appeal in a murder case invoked our equity or extraordinary remedy jurisdiction, it was not necessary to decide which provision of the Constitution established jurisdiction in this Court.

We retained such appeals in murder cases without the necessity of clarifying the provision under which we did so. But with the transfer of most equity and extraordinary remedies jurisdiction to the Court of Appeals by OCGA § 15-3-3.1 (2) and (4), some clarification is necessary, particularly in light of the Court of Appeals' decision in *Coles*, *supra*. There, the Court of Appeals considered a prisoner's appeal from the denial of a post-conviction copy of the transcript of his murder trial at public expense.

Treating the motion as "a petition in the nature of mandamus," the Court of Appeals concluded that, while the denial of a petition for mandamus is generally directly appealable, that was not the case when a discretionary appeal was required by the Prison Litigation Reform Act of 1996, OCGA § 42-12-8. 223 Ga. App. at 492 (1), 477 S.E.2d 897.

The Court declared: Henceforth, if no petition for habeas corpus is pending at the time an indigent prisoner makes any application for a transcript of his trial for purposes of collateral attack upon his conviction or sentence, that application will be treated as a separate civil action subject to the procedures and requirements of the Prison Litigation Reform Act of 1996.

*Id.* But, after declaring that the defendant's post-conviction motion for a transcript was a civil action subject to the appeal provisions of OCGA § 42-12-8, the Court of Appeals pretermitted the question of appellate subject matter jurisdiction, instead dismissing that appeal because the notice of appeal was not timely filed. *Id.* at 492 (2), 477 S.E.2d 897.

The language of OCGA § 15-3-3.1 (2) and (4), excluding from Court of Appeals jurisdiction those cases concerning proceedings "in which a sentence of death was imposed or could be imposed," duplicates the constitutional language under which this Court has taken jurisdiction over matters that arise in the course of a murder case.

However, the appeal before us is neither an equity nor a mandamus case, but simply a motion filed in Henderson's original murder case in the Superior Court of Rockdale County. Henderson has filed no separate petition, but has continued to file this and other pleadings under the original criminal docket number.<sup>3</sup> Accordingly, such a post-trial motion seeking a record or transcript filed in a murder case is not a "civil action in the nature of mandamus" as described in Coles, supra, and that holding of the Court of Appeals is overruled.

Instead, this Court will retain jurisdiction because the appeal arises from a case "in which a sentence of death was imposed or could be imposed" under Ga. Const. Art. VI, Sec. VI, Par. III (8). 2. Having established that we have subject matter jurisdiction, we now address Henderson's appeal. It is well established that "an indigent, on appeal, is entitled as a matter of right to a free copy of the transcript of trial court proceedings in which he has been a party."

(Citations and punctuation omitted.) Mitchell v. State, 280 Ga. 802, 802 (1), 633 S.E.2d 539 (2006). But [w]hile an indigent is entitled to a copy of his trial transcript for a direct appeal of his conviction, such is not the case in collateral post-conviction proceedings.

After \*392the time for appeal has expired there is no due process or equal protection right to a free copy of one's court records absent a showing of necessity or justification. (Citations and punctuation omitted.) McDowell v. Balkcom, 246 Ga. 611, 272 S.E.2d 280 (1980). Henderson failed to file a direct appeal, his motion for an out-of-time appeal was denied, and the denial was affirmed on appeal by this Court.

Because the law does not recognize a motion for a transcript at public expense filed in a criminal case after the opportunity for a direct appeal has ended, the trial court should have dismissed Henderson's motion as a nullity, and he has nothing cognizable to appeal. This appeal therefore is dismissed. See, e.g., Harper v. State, 286 Ga. 216, 218 (1), 686 S.E.2d 786 (2009) (petition to vacate or modify judgment not appropriate remedy in criminal case; appeal dismissed).

3. Henderson has also filed a pro se pleading styled "Writ of Mandamus/Request for Discovery." The style of the pleading is somewhat ambiguous, as it names the clerk of the Superior Court of Rockdale County as "Defendant" and is filed under both a Court of Appeals docket number and the original superior court docket number, but not the docket number of the instant appeal.

In this pleading, Henderson declares that he seeks relief "pursuant to OCGA § 9-6-20 and Ga. Const. Art. VI, Sec. I, Par. IV." To the extent that Henderson is attempting to invoke the original

mandamus jurisdiction of this Court, he has failed to follow the procedure required by *Graham v. Cavender*, 252 Ga. 123, 311 S.E.2d 832 (1984).

Moreover, this is not one of those "extremely rare" cases in which this Court will exercise its original jurisdiction. *Id.* at 124, 311 S.E.2d 832; see also *Nelson v. State*, --- Ga. ---- (Case Nos. S16C1296, S17O0203, decided September 6, 2016).

The State's motion to strike this pleading is dismissed as moot. Appeal dismissed. All the Justices concur. We note that Henderson's habeas corpus petition filed on April 13, 2015 in the Superior Court of Coffee County was denied on February 13, 2017, and not appealed, and that he has filed with this court an Application for a Certificate of Probable Cause to appeal from the October 17, 2017 dismissal of a habeas corpus petition in the Superior Court of Jenkins County.

Additionally, on March 20, 2017, Henderson filed a document headed "Writ of Error Coram Nobis" but styled "Affidavit in Support of Motion to Challenge Subject Matter and Personum [sic] Jurisdiction and to Dismiss with Prejudice for Lack of Jurisdiction," which the trial court denied on March 24, 2017. Henderson does not appeal from that order.

As we note in Division 3, below, Henderson's apparent attempt to invoke this Court's mandamus jurisdiction fails.