

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 28, 2011

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THIS WEEK:

- Habeas Hearings; Transcripts
- Jury Charges; Good Character
- DUI; Equal Protection
- Probation Revocation

Habeas Hearings; Transcripts

Edwards v. State, S11A0448 (1/14/11)

Appellant was granted a certificate of probable cause after the denial of his petition for a writ of habeas corpus. A transcript was not sent with the record on appeal. The Court stated that in habeas corpus proceedings brought by persons under OCGA § 9-14-41, it is statutorily mandated that “[a]ll trials . . . shall be transcribed by a court reporter designated by the superior court hearing the case.” OCGA § 9-14-50. The Court held that “[t]his provision is mandatory rather than directory. Without such a transcript, the merits of the habeas court’s final order cannot be reached by this Court. In accordance with the foregoing legislative mandate, we hold that a habeas corpus petitioner is entitled to have the hearing of his case transcribed by a court reporter and that an indigent petitioner is entitled to have the transcript of the hearing prepared at the expense of the State. To the extent that *York v. Jarvis*, 248 Ga. 774 (286 SE2d 296) (1982) and *Shaw v. Jones*, 226 Ga. 291 (1) (174 SE2d 444) (1970) suggest otherwise, they are overruled.” In addition, the Court “direct[ed] all habeas corpus courts henceforth to provide certification on the record that an indigent petitioner has been provided with a copy of

the habeas hearing transcript at the State’s expense, and the manner and date such service was effectuated.”

Jury Charges; Good Character

State v. Hobbs, S09G2078 (11/22/10)

Hobbs was convicted of crimes relating to the sexual abuse of his daughter. During the trial, two witnesses testified as to his good character in the community and so he timely requested the pattern jury charge on good character. The trial court gave a charge on good character, but not the pattern charge. The Court of Appeals found that the charge given was deficient and constituted reversible error. In a 4-3 decision, the Supreme Court affirmed the Court of Appeals.

While it was not necessary for the trial court to give the pattern jury charge verbatim as requested, the charge given was insufficient because it failed to explain the role such evidence would play in the jury’s deliberations. Although the charge mentioned that good character evidence could be used to determine “whether or not [the jury has] reasonable doubt about the accused,” the charge failed to 1) explain how good character was a positive and/or substantive fact and to 2) explain how good character evidence could generate reasonable doubt sufficient to acquit. The Court, citing *Sapp v. State*, 271 Ga. 446, 449 (3) (1999), found that the trial court should have given a charge that incorporated the minimal elements of the pattern jury charge. Specifically, a proper good character charge should effectively advise the jury that 1) it has a duty to consider good character evidence along with any other evidence in the case; 2) that good character is a positive and/or substantive fact;

3) that good character evidence may generate a reasonable doubt sufficient to acquit; and 4) that a conviction is warranted if the jury believes beyond a reasonable doubt that the defendant is guilty. Since the jury charge here did not include these minimal elements, it was improper.

DUI; Equal Protection

Sandlin v. State, A10A2197 (1/19/11)

Appellant was acquitted of driving under the influence of drugs to the extent that he was less safe (OCGA § 40-6-391 (a) (2)), and was convicted of driving under the influence of a controlled substance (OCGA § 40-6-391 (a) (6)). He contended that OCGA § 40-6-391 (a) (6) was unconstitutional under the Equal Protection Clause. The Court agreed and reversed.

The evidence showed that appellant was under the influence of alprazolam, a schedule IV drug that is only available by prescription. OCGA § 40-3-391 (a) (6) provides that a person with any amount of marijuana or a controlled substance in his or her urine or blood can be convicted of driving under the influence. Under OCGA § 40-6-391 (b), however, a person who legally uses a controlled substance can only be convicted of DUI if that person “is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.” The Court found that under *Love v. State*, 271 Ga. 398 (1999), the statute denied appellant equal protection under the law because it disparately treats legal and illegal users of alprazolam. Although *Love* dealt with the distinction between users of legal and illegal marijuana, the same result was warranted here because alprazolam is also a controlled substance that can be legally prescribed. In so holding the Court rejected the State’s argument that appellant was required to show that he was legally authorized to use the alprazolam because *Love* did not require such a showing to assert an equal protection challenge to the statute. Therefore, appellant’s conviction of violating OCGA § 40-6-391 (a) (6) was reversed.

Probation Revocation

Johnson v. State, A10A2099 (1/19/11)

Appellant was convicted of felony possession of marijuana and sentenced to fines

and fees in an amount exceeding \$1500.00. When he failed to pay his fines, a probation revocation hearing was held. At the hearing, the trial court focused on appellant’s failure to obtain a job and revoked his probation because he was able to work. On appeal, the Court reversed.

In *Bearden v. Georgia*, 1461 U. S. 660 (1983), the U. S. Supreme Court held that “in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternative measures are not adequate to meet the State’s interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.”

Here, the trial court committed a manifest abuse of discretion by inquiring only as to appellant’s fitness to work before deciding to revoke his probation. In order to revoke his probation based solely on the failure to pay these costs, the trial court was required to make a finding as to appellant’s willfulness, and if it concluded that appellant was not at fault, it was required to consider other punishment alternatives, which it failed to do. Because the trial court revoked appellant’s probation without making the findings required by *Bearden*, it committed reversible error.

In so holding, the Court distinguished the Court of Appeals’ decision in *Dickey v. State*, 257 Ga. App. 190 (2002). Although both *Dickey* and this case involve negotiated pleas, *Dickey* was inapposite because unlike here, *Dickey* involved the failure to pay monies in accordance with a negotiated restitution provision whereas here, appellant was sentenced only to general fines, costs, and fees.