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Legal News and Information



GRAND JURY CRITICAL OF OFFICERS TESTIFY- ING WITHOUT KNOWING CASE

A Fulton County grand jury issued a statement criticizing the practice of police officers testifying before the grand jury who were neither the arresting officer, nor the investigating officer.

The grand jury stated that in most of these cases, the failure to bring the police officer with knowledge of the case before the grand jury was a matter of convenience. The substitute officer sometimes, but not always, had the arresting/investigating officer's report in hand.

The grand jury stated, "When a substitute witness is permitted to testify without personal knowledge of the charges in the bill, the grand jury's ability to question and assess the factual situation supporting the charges is impaired and the oath is undermined. (Report of the Grand Jury March/April term 2008.)"

The grand jury recommended that the practice of presenting substitute officers should be discontinued, unless there are exceptional circumstances, and then the grand jury should be made aware of the situation prior to the testimony of the substitute officer.

HOW MUCH TIME WILL SHE SERVE? Understanding The Parole Guidelines

Rapper "Da Brat", real name Shawntae Harris, was recently sentenced by a DeKalb County judge to serve 3 years in prison. Harris, age 34, is eligible for parole and likely will not have to serve the entire three years in prison. How much time she will do will be determined by the State Board of Pardons and Paroles (the Parole Board), a five member board appointed by the Governor. In making its decision, the Parole Board will likely rely upon its guidelines. The guidelines set forth the criteria for parole eligibility determinations and allows the Parole Board to set a tentative parole month. The Parole Board reserves its right to deny parole even though the guidelines criteria are met by an inmate.



Rapper Shawntae Harris, known as Da Brat was sentenced to 10 years to serve 3 years on an Aggravated Assault charge

The Parole Board first uses the guidelines to determine a recommended months to serve range. Two factors determine the recommended months to serve range: the Crime Severity Level and the Parole Risk Factor. There are eight crime severity levels covering crimes other than the "seven deadly" charges: Aggravated Sexual Battery, Aggravated Child Molestation, Ag-

gravated Sodomy, Armed Robbery, Kidnapping, Rape, and Murder. If the inmate is serving for multiple offenses, the most serious offense will determine the Crime Severity Level.

Harris is charged with Aggravated Assault. There are two Crime Severity Levels for Aggravated Assault. An Aggravated Assault with no injury or weapon has a Level 5 crime severity. Aggravated Assault with injury or weapon has a Level 7 crime severity. Harris was convicted of hitting a woman with a nearly full bottle of liquor. The woman sustained a severe facial cut and has a permanent scar. Therefore, the guidelines range applicable to Harris is likely to be Level 7. A level 7 crime carries a recommended range to serve of 65% to 90% of the prison sentence. Cont p.4

THE END OF AN ERA: PTI TO END; BOOT CAMP TO CLOSE

For over thirty years, first time non-violent offenders in Fulton County might have been offered an opportunity to attend the Atlanta Pre-trial Diversion program. PTI, as it was commonly known, offered a chance for participants to have their charges dismissed if they successfully completed a 13 week counseling and enrichment program. PTI is set to close on December 31, 2008 as a result of budget cuts by the Department of Corrections

(DOC).

The DOC announced earlier in the year the closing of the last boot camp in Georgia. Boot camps were established by then Governor Zell Miller as a place for young nonviolent offenders to receive structure and discipline in hopes of turning them from a path of crime. Probation detention centers and diversion centers throughout the state are also closing. These centers gave inmates a place to work during the day, paying room and board, as well as any fines, fees and restitu-

tion that was a part of their sentence.

The DOC will open less costly non-residential nine month Day Report Centers where low-level, drug and property crime offenders, can get drug treatment and job assistance. The DOC is also working to develop Community Impact Programs designed to assist with an inmates return to so-

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COURT DECISIONS

CREDIBILITY Not Related to INTELLIGENCE

The Georgia Court of Appeals has ruled that a judge was wrong in telling a jury that they could consider the intelligence of a witness in determining the credibility of the witness. *McKenzie v. State*, A08A0842.

Juries are routinely instructed during trials that intelligence is one factor they may consider when deciding how credible a witness is who testifies during the trial. The Court of Appeals found that including intelligence in this instruction is confusing, because it does not tell a jury how to utilize intelligence as a factor in determining credibility.

Prosecutor's Questions of Defendant's Mom Improper

The Court of Appeals reversed a man's conviction because the prosecutor called the Defendant's mother as a witness and had the mother admit that her son knew the police were looking for him, but failed to contact the police. *Johnson v. State*, A08A0921.

The Defendant argued that his lawyer should have objected to the questioning. The Court of Appeals agreed with the Defendant

stating that the State may not comment at trial "upon a defendant's silence or failure to come forward, even when the defendant testifies on his own behalf."

MR. JONES, ARE YOU TELLING THE TRUTH? = BOLSTERING?

A prosecutor cannot bolster, or add to, the truthfulness of its own witness by asking the witness if he is telling the truth until the witness has been questioned and impeached by the defense. *Miller v. State*, 275 Ga. 32 (2002). However, if the witness has made a prior contradictory statement, the prosecutor can confront the witness about the prior statement and then ask the witness whether he told the truth then or is telling the truth now. *Loomis v. State*, 78 Ga. App. 153 (1948); *Hardy v. State*, A08A1592.

RUNNING FROM POLICE IS NOT OBSTRUCTION

The Court of Appeals upheld a trial court's suppression of evidence against a man who ran from the police. *State v. Crawford*, A08A1828. Crawford was standing outside a car, in the parking lot of a convenience store, when a police car turned into the parking lot. Crawford first walked, then ran, from the police. He was caught and arrested for obstruction. He had keys to the vehicle that he had been standing near. During a search of the car, officers found drugs. The Court of Appeals held that the police did not have probable cause to arrest Crawford. The Court said under *Black v. State*, 281 Ga. App. 40 (2006), a person can walk away from initial contact with the police, and under *State v. Dukes*, 279 Ga. App. 247 (2006), merely running from police "does not, as a matter of law or fact, constitute obstruction of an officer and thus can provide police no probable cause to arrest the person." Since the police arrested Crawford without probable cause, the evidence discovered was properly suppressed.

JUDGE CAN'T ORDER SENTENCE BE SERVED IN PRISON WORK CAMP

A defendant who was sentenced to eight years with the first eighteen months to be served in the Gwinnett County Prison Work Camp (PWC), claimed that his sentence should be set aside. The Court of Appeals agreed that a judge cannot direct the Department of Corrections to place a defendant in a particular facility. *Stewart v. State*, 285 Ga. App. 760 (2007). "All convicted felons sentenced to a term of incarceration are to be committed to the custody of the Department of Corrections, to be incarcerated at a correctional institution selected by the Department, and the sentencing judge has no jurisdiction or authority to designate ... a correctional institution to which the felon is to be assigned." Op. Atty.Gen. No. 93-17. The judge cannot order the sentence be served in PWC. However, the error of the judge did not require that the sentence be set aside.

STOP REPORTING TO PROBATION OFFICER AND PROBATION MAY GET LONGER

A person who fails to report to his probation officer faces having a warrant taken for his arrest. Once arrested, the probationer may find that he did not receive any credit for the time that he was on probation, if he failed to report to his probation officer. His probation is tolled, or frozen, until the person reports to the probation officer or is taken into custody. *Wilson v. State*, A08A1260. The probationer will end up being on probation longer than would have been the case if he had reported. However, in order for the probation to be tolled the probation officer must either submit a sworn affidavit or file what is called a return of the warrant, stating that the probationer cannot be found. O.C.G.A. § 42-8-36

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In Memoriam

ATTORNEY MAURICE BENNETT



Maurice Bennett, age 37, died August 28, 2008 at Piedmont Hospital. Maurice graduated from the University of North Carolina at Chapel Hill and Emory University School of Law. He was a criminal defense attorney known for representing celebrities Whitney Houston, Bobby Brown, T.I., Monica and the American Idol twins Derrell and Terrell Brittenum. Prior to starting his own criminal defense and entertainment practice, Maurice served as an Assistant Solicitor in DeKalb County.

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COMMUNITY SPOTLIGHT

CHOOSE FREEDOM

THE ATLANTA TRANSITIONAL CENTER CHOIR

Big Miller Grove Baptist Church served as host to the Atlanta Transitional Center Choir in a Sunday service dedicated to the reformation of convicted felons and deterrence of youth from the criminal justice system. The message was clear: CHOOSE FREEDOM. The choir made use of song & spirit to encourage the youth of Big Miller Grove to choose freedom through God, rather than incarceration by way of the streets.

The program, held over Labor Day weekend, featured guest speakers: Chaplain Claimon Nix, DeKalb Juvenile Court Chief Judge Desiree Peagler, former attorney Renee Snead (disbarred following a mortgage fraud conviction), and David Koonce, Chief Probation Officer, Central DeKalb Probation.

Atlanta Transitional Center Choir.

The Atlanta Transitional Center provides job training and other services to prisoners preparing to re-enter society. When inmates go to the transitional center they participate in classes relevant to their particular needs including drug and alcohol education, employment instruction, communication skills and financial management. A job coordinator helps inmates find jobs and participate in the work release program.

Dorsee Savage, a former prisoner and member of the choir told the youth to follow their dreams. He spoke of his own youth when he was a good student, then began making poor choices that led to his incarceration. He told the youth to follow their dreams instead of their peers.

another inmate spoke these words to him, "Don't you ever give up, don't you ever stop fighting." Martin thought it was as if God was speaking to him. His thoughts were reinforced when he saw that same inmate months later in prison, and the man who spoke such reassuring words, acted as if he barely knew Martin. Yet it didn't matter because the transforming effect on Martin's heart had begun.

While in prison Martin never gave up and never stopped fighting. He fought to get into a minimum security classification. He never gave up even though fellow prisoners would tell him he would be in prison for 25-30 years. He worked his way to becoming a trustee and then earned a place in the Atlanta Transitional Center. All the while he turned to God for guidance and protection. Fifteen years later he is fighting for parole.

Martin told the youth that if you work hard there is nothing you can't be, an astronaut or even President of the United States. Martin humbly stated, "But don't give in, when people say to you, 'man you can't be no astronaut' as they offer you a hit of drugs as an alternative to your dreams." He told the youth "Everything we went through, we went through so you don't have to."


The Atlanta Transitional Center is located at 322 Ponce De Leon Avenue in Atlanta, Georgia.




Choir members Paul Tubbs and Roderick Miller performed a rap song skit called Reality Check, in which Tubbs, lay on his death bed due to his life on the streets, having a heart felt conversation with the voice of God, played by Miller.

Judge Peagler spoke of the number of youth of every race, sex, and economic status that come before her in juvenile court. She told the youth that in order to choose freedom, they could not lead a double life, speaking the right speech, singing the right songs and dressing the right way in church, but outside of church, speaking, dressing and singing songs at odds with the good that is in them. However, the inspiration dominating the day came from the testimonials of the members of the

Kendrick Martin may have given the most emotional plea. At age 19, Martin was in a holding cell facing murder charges. He was the driver during a series of events that was not intended to, but led to someone's death. Rather than tell on those who were responsible, Martin refused to 'snitch' and ended up facing more time than the triggerman. As he cried in the noisy holding cell asking God for answers, he looked over and



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CRIMINAL DEFENSE ATTORNEY

Understanding The Parole Guidelines (cont)

The second factor considered in determining the recommended months to serve range is the parole risk factor. The parole risk factor is determined by examining the inmate's history including: number of felony convictions, number of prior prison incarcerations, age, history of drug or alcohol problems, and employment. For each category points are added for bad factors or subtracted for good factors. The total number of points determines if the inmate is a low, medium or high parole risk. Harris was sentenced as a first offender because she had no prior felony convictions (0 points). She reportedly has a misdemeanor conviction from 2000. She has never been to prison (0 points). Because she is age 34, she actually gets a (-1) credit. Although Harris was ordered to get substance abuse treatment, this is a standard condition of probation and does not mean she will have points added for drug or alcohol problems. Even if the 2 points for drug or alcohol problems is added to Harris' risk factor, the three points subtracted for employment at the time of arrest, means her overall risk factor is likely to be a (-2). She is a low parole risk.

TIME TO SERVE GRID

CRIME SEVERITY LEVEL	LOW RISK	MEDIUM RISK	HIGH RISK
I	15-19 MONTHS	17-22 MONTHS	20-26 MONTHS
II	18-22 MONTHS	20-24 MONTHS	24-28 MONTHS
III	20-24 MONTHS	22-28 MONTHS	26-32 MONTHS
IV	22-26 MONTHS	24 - 34 MONTHS	28 - 38 MONTHS
V	30 - 40 MONTHS	34- 52 MONTHS	40- 60 MONTHS
VI	36 - 52 MONTHS	40-60 MONTHS	52-78 MONTHS
VII	40-60 MONTHS	48-78 MONTHS	60-76 MONTHS
VIII	65 % OF SENTENCE	75 % OF SENTENCE	90 % OF SENTENCE

The time to serve grid, also known as the grid sheet, gives the final guidelines recommended for months to serve range. For example, the grid recommended months to serve for a crime Severity Level 7 low risk inmate is 40-60 months. This grid recommendation is actually more than Harris' sentence of 3 years (36 months). The Parole Board policy for Crime Severity Level 5-8 offenses is one third of the court sentence or the grid recommendation, whichever is greater. Given that the greater of the grid recommendation and one third of Harris sentence is actually more than 3 years, the Parole Board will exercise its discretion and depart from the Guidelines recommendation. How much of a departure? Nobody knows. Harris' sentence may also be affected by what is called the Performance Incentive Credit Program. Under this program, inmates can earn time off of their tentative parole month by satisfactory performance in education, treatment programs, work, and good behavior.