

# Court of Appeals of the State of Georgia

ATLANTA, January 18, 2019

*The Court of Appeals hereby passes the following order:*

## **A19A1100. SHANNON BRADLEY v. THOMAS A. COX, JR.**

Shannon Bradley was convicted of armed robbery and other crimes, and we affirmed his convictions in an unpublished opinion. See Case No. A12A0526 (May 9, 2012). In November 2017, Bradley filed a motion to set aside judgment and a motion in arrest of judgment, in which he asserted that his convictions are void. On November 22, 2017, the superior court denied both motions and ordered its clerk to accept no further pleadings in Bradley's criminal case. Bradley appealed, but his appeal was dismissed because it was untimely. See Case No. A19A0090 (dismissed Aug. 23, 2018). In our dismissal order, however, we noted that to the extent that Bradley's right to timely appellate review was frustrated by trial court error, his remedy was to petition the trial court to vacate and re-enter its order pursuant to *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980).

Thereafter, Bradley filed a petition for mandamus in superior court. He has now filed an original mandamus petition in this Court, in which he asserts that the superior court has failed to take action on the petition he filed there. He asks this Court to order the superior court to vacate and re-enter its order of November 22, 2017 so that he can appeal his motion to set aside judgment and motion in arrest of judgment.

As an initial matter, we note that the superior court cannot issue a blanket ban on filings in a criminal case. See *Howard v. Sharpe*, 266 Ga. 771, 773 (1) (470 SE2d 678) (1996) (holding that orders restricting filings by criminal defendants must be "narrowly drawn"); *Hooper v. Harris*, 236 Ga. App. 651, 653 (3) (512 SE2d 312) (1999) ("An order that bars adequate, effective and meaningful access to the courts is unconstitutional."). Here, it is unclear whether the superior court's ban on filings

has resulted in its alleged inaction in Bradley's mandamus petition filed below. But in any event, Bradley is not entitled to the mandamus relief he seeks in this Court.

"Generally, the superior courts of this state have the power, in proper cases, to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction, and hence the need to resort to the appellate courts for such relief by petition filed in the appellate courts will be extremely rare." *Brown v. Johnson*, 251 Ga. 436, 436 (306 SE2d 655) (1983); see Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (providing that an appellate court has limited original mandamus authority in aid of its jurisdiction). And mandamus will issue "only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief." *Bibb County v. Monroe County*, 294 Ga. 730, 734 (2) (755 SE2d 760) (2014).

Bradley ultimately seeks to set aside his criminal convictions, but "a petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case," *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009), and any appeal from an order denying or dismissing such a motion must be dismissed, see *id.* at 218 (2); see also *Roberts v. State*, 286 Ga. 532, 532 (690 SE2d 150) (2010). Moreover, Bradley's motion in arrest of judgment was untimely because it was not filed during the term of court at which the judgment was obtained and, thus, the trial court was without authority to grant it. See OCGA § 17-9-61 (b); *Hammond v. State*, 292 Ga. 237, 238 (734 SE2d 396) (2012). Accordingly, Bradley has no clear legal right to the relief sought.

As such, this is not one of the extremely rare instances in which this Court will exercise original mandamus jurisdiction, and Bradley's action is hereby DISMISSED. See *Gay v. Owens*, 292 Ga. 480, 482-483 (2) (738 SE2d 614) (2013).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 01/18/2019*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*



*Stephen E. Carter*

*, Clerk.*



SUPREME COURT OF GEORGIA

Case No. S19C0743

September 03, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

SHANNON BRADLEY v. THOMAS A. COX, JR.

The Supreme Court today denied the petition for certiorari in this case.

*All the Justices concur, except Boggs, J., disqualified.*

Court of Appeals Case No. A19A1100

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

A handwritten signature in black ink, appearing to read "Thavis I. Barnes".

, Clerk

# Court of Appeals of the State of Georgia

ATLANTA, August 23, 2018

*The Court of Appeals hereby passes the following order:*

## **A19A0090. SHANNON BRADLEY v. THE STATE.**

In 2009, a jury found Shannon Bradley guilty of five counts each of armed robbery and aggravated assault with intent to rob and one count of possession of a firearm during the commission of a felony. The trial court merged the armed robbery convictions with the aggravated assault convictions and imposed a total sentence of life in prison without the possibility of parole. We affirmed Bradley's judgment of conviction on direct appeal in an unpublished opinion. See *Bradley v. State*, No. A12A0526 (May 9, 2012).

In November 2017, Bradley filed two motions seeking to challenge the legality of his convictions: a motion to set aside judgment and a motion in arrest of judgment. The trial court denied both motions in a single order entered on November 22, 2017. The court's November 22 order also directed the trial court clerk not to accept any further filings in this case. On April 10, 2018, Bradley filed a "Notice of Out of Time Appeal," seeking review of the trial court's November 22 order.<sup>1</sup> We lack jurisdiction.

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<sup>1</sup> Bradley's "Notice of Out of Time Appeal" is dated February 22, 2018, but was not filed in the trial court until April 10, 2018. In his "Notice of Out of Time Appeal," Bradley indicates that he first learned in January or February 2018 that his November 2017 motions had been denied. If, as he appears to suggest, his right to timely seek appellate review was frustrated due to a trial court error, his remedy is to petition the trial court to vacate and re-enter the order at issue in the manner described in *Cambron v. Canal Ins. Co.*, 246 Ga. 147, 148-149 (1) (269 SE2d 426) (1980).

Pretermitted whether a direct appeal may lie from the trial court's November 22 order, a notice of appeal must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-38 (a). The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction on this Court. *Rowland v. State*, 264 Ga. 872, 872 (1) (452 SE2d 756) (1995). Bradley's "Notice of Out of Time Appeal" is untimely, as it was filed 139 days after entry of the order he seeks to appeal. To the extent that Bradley seeks an out-of-time appeal, (a) any such request must be directed to the trial court, see *Gulledge v. State*, 276 Ga. 740, 742 (583 SE2d 862) (2003), and (b) regardless, an out-of-time appeal is not available to a criminal defendant who already has had a direct appeal, see *Richards v. State*, 275 Ga. 190, 191 (563 SE2d 856) (2002). Consequently, this untimely appeal is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 08/23/2018*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Stephen E. Carlton*, Clerk.

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

STATE OF GEORGIA, )  
 )  
v. ) Indictment No. 08SC64772  
 )  
SHANNON BRADLEY ) Judge Cox  
 )  
Defendant.

**ORDER ON DEFENDANT'S MOTION IN ARREST OF JUDGMENT AND  
MOTION TO SET ASIDE JUDGMENT**

This Court having considered Defendant's Motion In Arrest of Judgment and Motion To Set Aside, both filed on November 7, 2017, and the Court having reviewed the same, hereby denies both motions.<sup>1</sup> In essence, although the factual details are sparse, Defendant is seeking a new trial. The record in this case establishes that Defendant previously filed a Motion For New Trial that was ultimately denied on July 20, 2011.

Defendant's present motions do not appear to be based on newly discovered evidence and do not constitute the basis for an extraordinary motion for new trial. See, Coalley v. State, 146 Ga. App. 526(1), 246 S.E.2d 512 (1978).<sup>2</sup> Rather, Defendant's Motions appear to seek to review previous decisions about this case.

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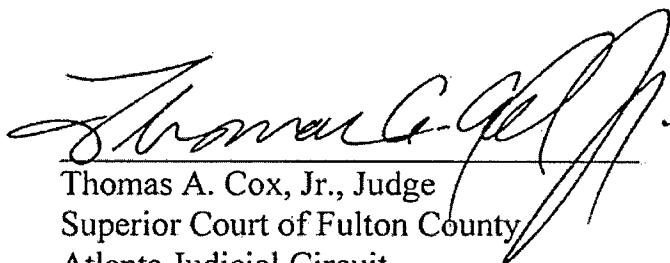
<sup>1</sup> This Order also denies Defendant's Motion In Arrest of Judgment, filed on October 5, 2017, Defendant's Motion To Set Aside Judgment, filed on September 28, 2017, along with a related pleading filed on September 21, 2017 and the same motion filed by Defendant on July 20, 2017.

<sup>2</sup> In the case of Holder v. Farmers Exchange Bank of Stillmore, 30 Ga. App. 400 (3), 118 S.E. 467 (1923), the court held that the rule is stricter in the case of an extraordinary motion trial, thus enhancing the requisite requirement that the motion be based on newly discovered evidence.

EXHIBIT # S 9.

Based upon the complete record in this case, as well as the recent repetitive filings by Defendant regarding settled matters of law for purposes of this case, the Court hereby **DENIES** the motions and hereby **ORDERS** that the Clerk of Court accept no further pleadings in this case. The case is further directed to remain in a "Closed" status.

**SO ORDERED** this 21st day of November, 2017.

  
Thomas A. Cox, Jr., Judge  
Superior Court of Fulton County  
Atlanta Judicial Circuit

**Additional material  
from this filing is  
available in the  
Clerk's Office.**