

In the Supreme Court of Georgia

Decided: January 23, 2012

S12A0025. WILKINSON v. THE STATE.

THOMPSON, Justice.

Appellant Ralph Wilkinson pled guilty to felony murder and was sentenced to life in prison in November 2007. On April 4, 2011, he filed an extraordinary motion in arrest of judgment, arguing his indictment failed to charge the critical elements of the alleged offenses and failed to charge venue. The trial court dismissed the motion because it had dismissed substantially the same motion in October 2010, and the prior dismissal was conclusive between Wilkinson and the State. Wilkinson appeals the dismissal, and we affirm.

Pretermitted the issue of whether the trial court's prior denial was conclusive as to Wilkinson, his motion in arrest of judgment, filed nearly three years after the entry of his guilty plea, was untimely. Under Georgia law, motions in arrest of judgment must be filed within the same term of court as the judgment. OCGA § 17-9-61 (b). Even considering Wilkinson's motion as a motion to withdraw a guilty plea based on his argument that his plea was made

unknowingly, motions to withdraw guilty pleas also must be made within the same term of court as the plea. See Rubiani v. State, 279 Ga. 299 (612 SE2d 798) (2005); Thompson v. State, 274 Ga. 818 (559 SE2d 730) (2002).

Accordingly, regardless of the nomenclature, Wilkinson's motion was untimely filed and the trial court did not err in dismissing the motion.

Judgment affirmed. All the Justices concur.