

In the Supreme Court of Georgia

Decided: October 1, 2012

S12A1488. MULLINS v. THE STATE.

NAHMIAS, Justice.

On August 24, 1985, Appellant Timothy Monroe Mullins unlawfully entered the Long County home of Ina L. Murray and suffocated her to death. Just two days later, the grand jury indicted Appellant for malice murder and burglary, and the State later filed a notice of intent to seek the death penalty. On January 6, 1986, the State filed a motion to nolle prosequi the burglary count, which was based on Appellant's alleged unlawful entry into the victim's home with the intent to commit a felony therein, to wit, murder. The trial court granted the motion, and on January 17, 1986, the grand jury returned a separate indictment charging Appellant with burglary for unlawfully entering the victim's home with the intent to commit a theft therein.

On January 26, 1986, a jury was selected and sworn to try both indictments, but three days into the trial, Appellant pled guilty to both charges. The jury then determined that Appellant should be spared the death penalty, and

on January 29, 1986, the trial court sentenced Appellant to life in prison for murder plus five years consecutive for burglary. Appellant did not appeal. In 2006, Appellant filed a habeas petition, which was denied. On September 8, 2008, this Court denied his application for a certificate of probable cause to appeal, and on October 27, 2008, we denied his motion for reconsideration.

On September 24, 2010, Appellant filed a pro se motion in arrest of judgment in the trial court, which he re-filed on December 3, 2010. After a hearing, on June 27, 2011, the trial court dismissed the motion as untimely. On August 11, 2011, this Court dismissed Appellant's application for discretionary appeal as duplicative, because he has a right to direct appeal and had filed a timely notice of appeal.

Appellant's motion in arrest of judgment was untimely by almost 25 years. See OCGA § 17-9-61 (b) ("A motion in arrest of judgment must be made during the term at which the judgment was obtained."); Smith v. State, 290 Ga. 856, 856 (725 SE2d 279) (2012); Lay v. State, 289 Ga. 210, 211 (710 SE2d 141) (2011). Accordingly, the trial court properly dismissed it.

Judgment affirmed. All the Justices concur.