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James O. Wilson Jr.

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JUVENILE LAW — EXCLUSIVE ORIGINAL JURISDICTION OF JUVENILE CASES IN JUVENILE COURTS

In *J.W.A. v. State*,[1] the Supreme Court of Georgia laid to rest a jurisdictional problem that had plagued the Georgia juvenile system for almost a half of a century[2] when the court held that exclusive original jurisdiction of non-capital juvenile cases is vested in the juvenile courts with concurrent jurisdiction of the superior courts becoming effective *only* when activated by a proper transfer from the juvenile courts.[3]

A petition was filed for an adjudicatory hearing in the Juvenile Court of White County.[4] The petition alleged in part that the youth, 16 years of age, was delinquent and in need of treatment because of his participation with three adults in setting fire to a church located in White County.

The adjudicatory hearing was held before the superior court judge sitting as judge of the juvenile court.[5] After the hearing, the case was transferred to the district attorney for presentation to the superior court. The youth was subsequently indicted by the grand jury for arson.

An appeal was taken to the court of appeals[6] on the ground that the transfer was not a valid transfer under the law[7] and therefore the superior court did not have jurisdiction over the case. The court of appeals, in upholding the action of the lower court, stated that it was bound by previous court decisions[8] and held that the indictment by the grand jury operated to divest the juvenile court of further jurisdiction over the case, regardless of any deficiencies in the transfer.[9]

For almost 20 years the Georgia General Assembly had been trying by statute to vest exclusive jurisdiction over juveniles in the juvenile courts.[10] This the legislature had attempted despite a constitutional provision which explicitly conferred upon the superior courts "exclusive jurisdiction . . . in criminal cases where the offender is subjected to loss of life or

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1. 233 Ga. 683, 212 S.E.2d 849 (1975).
2. *See* Henritze, *Annual Survey of Georgia Law: Persisting Problems of Georgia Juvenile Court Practice*, 23 MERCER L. REV. 341 (1972).
3. 233 Ga. at 686, 212 S.E.2d at 851.
4. Petition was filed pursuant to GA. CODE ANN. §24A-2201(a) (Supp. 1974).
5. This is allowed in some jurisdictions. *See* GA. CODE ANN. §24A-201 (Supp. 1974).
6. J.W.A. v. State, 133 Ga. App. 102, 210 S.E.2d 24 (1974).
7. There was evidence here that neither the juvenile nor his mother received notice of the hearing as required by GA. CODE ANN. §24A-2501(a)(2) (Supp. 1974). *See* 133 Ga. App. at 105, 210 S.E.2d at 26 (dissenting opinion). For full requirements for transfer see note 25, *infra*.
8. 133 Ga. App. at 102, 210 S.E.2d at 24 (1975). The court was referring to J.E. v. State, 127 Ga. App. 589, 194 S.E.2d 288 (1972); and Mathis v. State, 231 Ga. 401, 202 S.E.2d 73 (1973).
9. 133 Ga. App. at 103, 210 S.E.2d at 25.
10. The 1951 Juvenile Court Act was the first legislative attempt to confer "exclusive original" jurisdiction upon the juvenile courts. *See* Henritze, *Annual Survey of Georgia Law: Juvenile Law and the Juvenile Court System*, 24 MERCER L. REV. 187 (1973).

confinement in the penitentiary . . . ."[11] In the landmark decision of *Jackson v. Balkcom*,[12] the Georgia Supreme Court stated:

> Jurisdiction to try persons charged with felonies, who are accountable under the law, is fixed by the Constitution to be in the superior courts . . . .
>
> . . . Should any of the provisions of the Juvenile Court Act of 1951 have been intended to withdraw the jurisdiction of the superior courts to try an offender within the age of accountability under the law, for an offense punishable by death or life imprisonment, ... such provisions would be unconstitutional and could be given no effect.[13]

Undaunted by *Jackson*, the legislature attempted, in the 1971 Georgia Juvenile Code,[14] to vest the juvenile courts with the same *original and exclusive jurisdiction* as that declared unconstitutional in the 1951 Act in *Jackson*. In again granting the same broad power to the juvenile courts, the legislature clearly evidenced its intent to set up an entirely separate judicial system for juveniles.[15] Once again, however, the courts were constrained to point out that the Juvenile Code did not exist in a void, but had to exist within the bounds set by the Georgia Constitution and the Georgia Criminal Code.[16] In *J.E. v. State*,[17] the Georgia Supreme Court held that "[n]othing in the Juvenile Court Code or in the proceedings of a juvenile court can abrogate [the superior court's jurisdiction] . . . ."[18]

Finally, in 1972, the Georgia General Assembly initiated an amendment to the Georgia Constitution[19] which provided that the jurisdiction of the superior courts over felony offenders was exclusive, "except in the case of juvenile offenders as provided by law."[20] With this authority,[21] the legislature, in 1973, amended the Juvenile Court Code to state that "[t]he court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action . . . ."[22]

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11. GA. CONST. art. VI, §4, ¶1, GA. CODE ANN. §2-3901 (Rev. 1973).
12. 210 Ga. 412, 80 S.E.2d 319 (1954).
13. *Id.* at 414-15, 80 S.E.2d at 320-21.
14. Ga. Laws, 1971, p. 712; GA. CODE ANN. §24A-301 (Rev. 1971).
15. Henritze, *Annual Survey of Georgia Law: Persisting Problems of Georgia Juvenile Court Practice*, 23 MERCER L. REV. 341 (1972).
16. GA. CODE ANN. §26-701 (Rev. 1972) sets 13 as the minimum age at which a child can be held accountable for the commission of a crime.
17. 127 Ga. App. 589, 194 S.E.2d 288 (1972).
18. *Id.* at 590, 194 S.E.2d at 289.
19. Ga. Laws, 1972, p. 1544; GA. CODE ANN. §2-3901 (Rev. 1973).
20. *Id.*
21. The 1972 Constitutional Amendment did not change the law as it existed at that time. In an opinion, the Georgia Attorney General stated that the amendment neither changed the juvenile courts' jurisdiction nor revitalized the 1971 Juvenile Court Code. The amendment simply *allowed* the legislature to alter the existing jurisdictional alignment. OP. GA. ATT'Y GEN. No. 72-179 (1972).
22. Ga. Laws, 1973, p. 882, 883; GA. CODE ANN. §24A-301(a) (Supp. 1974). There is an exception in the case of capital felonies, in which the two courts still have concurrent jurisdic-

However, uncertainty still haunted the system, caused primarily by the decision of the Georgia Supreme Court in *Mathis v. State.*[23] In that case, delinquent acts of aggravated assault and armed robbery[24] were allegedly committed by Mathis and others. The case was transferred to the superior court pursuant to Ga. Code Ann. §24A-2501 (Supp. 1974).[25] Deficiencies in compliance with that section were the grounds argued on appeal. The court in *Mathis*, relying on *Jackson* and *J.E. v. State*, restated the proposition that the superior court had constitutional jurisdiction to try a person accused of a felony if he had reached the age of criminal responsibility. Speaking through Justice Undercofler, the court pointed out that the 1972 constitutional amendment provided only that the superior court's jurisdiction over juveniles was not exclusive.[26]

The majority of the court of appeals in *J.W.A. v. State*,[27] in light of the language used in *Mathis* and the date on which it was decided,[28] gave the decision a liberal reading.[29] In writing the opinion of the court in *J.W.A.*,

tion with all of its attendant problems. *See* GA. CODE ANN. §24A-301(b) (Supp. 1974). For an excellent history of the Georgia Juvenile system and its problems, see Stubbs, *The Juvenile Court of 1968*, 5 GA. ST. B.J. 219 (1968); Henritze, *Annual Survey of Georgia Law: Persisting Problems of Georgia Juvenile Court Practice*, 23 MERCER L. REV. 341 (1972); Clark, *The New Juvenile Court Code of Georgia*, 7 GA. ST. B.J. 409 (1971); and Henritze, *Annual Survey of Georgia Law: Juvenile Law and the Juvenile Court System*, 24 MERCER L. REV. 187 (1974).

23. 231 Ga. 401, 202 S.E.2d 73 (1973).

24. Armed robbery is a capital felony. As such the superior court would have concurrent jurisdiction over the case even under the present law. However, this point was not mentioned in either the court of appeals or the supreme court opinion, probably because the first offense, aggravated assault, is a non-capital felony. *Mathis* was construed by the court of appeals as depriving the juvenile court of jurisdiction on *both* counts.

25. 231 Ga. 401, 202 S.E.2d 73 (1973). GA. CODE ANN. §24A-2501(a) (Supp. 1974) provides that a juvenile court may transfer a case to another court if:

> (1) a hearing on whether the transfer should be made is held in conformity with sections 24A-1801, 24A-2001, and 24A-2002; and
>
> (2) notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing; and
>
> (3) the court in its discretion determines there are reasonable grounds to believe that (i) the child committed the delinquent act alleged, (ii) the child is not amenable to treatment or rehabilitation through available facilities, (iii) the child is not committable to an institution for the mentally retarded or mentally ill, and (iv) the interests of the child and the community require the child be placed under legal restraint and the transfer should be made; and
>
> (4) the child was at least 15 years of age at the time of the alleged delinquent conduct or the child was 13 or 14 years of age and committed an act for which the punishment is loss of life or confinement for life in the penitentiary.

26. 231 Ga. at 405, 202 S.E.2d at 77.

27. 133 Ga. App. 102, 210 S.E.2d 24 (1974). Judge Clark dissented.

28. The decision was handed down on November 9, 1973. The constitutional amendment became effective on January 1, 1973, and the statutory amendment to the juvenile code became effective on April 17, 1973. However, see text accompanying note 38, *infra*.

29. One commentator felt that a strict reading of *Mathis* would cause no trouble:

> Strictly construed, the Mathis case simply enunciates the state of the law prior to the ratification of a constitutional amendment and subsequent implementing ac-

Judge Quillian remarked that,

> [i]n construing the constitutional amendment, the Supreme Court (in *Mathis*) pointed out that such amendment "only provides that the jurisdiction of the superior courts . . . is not exclusive . . . ." The Act of 1973 . . . insofar as it might conflict with the 1972 Constitutional Amendment must yield to such paramount authority.[30]

From this it appears that the court of appeals was of the impression that the 1973 amendment to the juvenile code was not capable of giving the juvenile courts *exclusive original* jurisdiction over any type of case, capital or non-capital. Therefore, once the superior court accepted jurisdiction through the indictment, the juvenile court, which admittedly had had jurisdiction, was divested of any further authority over the case. This impression was certainly derived from the *Mathis* opinion.[31]

In *J.W.A. v. State*,[32] the Georgia Supreme Court went directly to the heart of the controversy. Realizing that the case did not turn upon the validity of the transfer,[33] Justice Ingram, writing for the court, stated the issue in the following manner: "Does an indictment of a juvenile for a noncapital felony in the superior court oust the juvenile court of its first obtained jurisdiction under the Georgia Constitution and statute law?"[34] Although the supreme court recognized that the court of appeals had based its decision primarily on *Mathis*, in reversing the court of appeals, the court declined to overrule *Mathis*. Stating that in *Mathis* the court was dealing "with the contention that the superior court did not have jurisdiction to try the juvenile for the offenses charged against him,"[35] the court explained the holding of *Mathis* as it applied to the 1973 amendment:

> We did not hold in *Mathis* that, under the 1972 Constitutional Amendment and 1973 legislation implementing it, an indictment automatically ousts the previously acquired jurisdiction of a juvenile court. More importantly, we did not consider the 1973 legislation implementing the constitutional amendment because it was not briefed or argued in the case.[36]

The court stated that the true bill in *Mathis* was returned on December 18, 1972, and that therefore the case was correct under applicable law in

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tion of the 1973 Georgia General Assembly. Liberally interpreted, the *Mathis* case could be nothing short of disastrous for the juvenile justice system. McGough and McGough, *Annual Survey of Georgia Law: Juvenile Law and the Juvenile Court System*, 26 MERCER L. REV. 129, 133 (1974).

30. 133 Ga. App. at 103-104, 210 S.E.2d at 25.

31. *See* the concurring opinion of Judge Deen and Judge Evans, 133 Ga. App. at 104-05; 210 S.E.2d at 25-26.

32. 233 Ga. 683, 212 S.E.2d 849 (1975).

33. *Id.* at 684, 212 S.E.2d at 850.

34. *Id.*

35. 233 Ga. at 685, 212 S.E.2d at 851.

36. *Id.*

existence at that time.[37] Herein lies the possible cause of the court of appeals' confusion. At the time the indictment, or true bill, was handed down by the grand jury, neither the constitutional amendment nor the juvenile code amendment had become effective. However, before the case was heard and a decision rendered, the juvenile code had been effectively amended pursuant to the authority granted in the constitutional amendment.[38] Therefore, although the court was required to take judicial notice of all statutory law,[39] the law changing the juvenile code was not retroactive and as such could not be applied to the *Mathis* case at the time it was decided.

In reversing the court of appeals, the court completed at last the task of establishing two separate[40] court systems — one for juveniles and one for adults. Although the 1972 Constitutional Amendment required statutory implementation, once that implementation was accomplished through the 1973 amendment to the juvenile code, *exclusive original* jurisdiction of non-capital cases was vested in the juvenile courts with the concurrent jurisdiction of the superior courts becoming effective only when activated by a valid transfer from the juvenile courts.[41]

J.W.A. v. State provided the court with the opportunity to settle a jurisdictional problem with which "[o]ur court system has suffered too long . . . ."[42] Although the decision entailed little more than reading the 1972 Constitutional Amendment in conjunction with the statutory amendment passed in 1973, it was necessary in view of the misconceptions the lower courts had acquired as a result of *Mathis*. As the court went to great length to point out in *J.W.A.*, *Mathis* was correct under the law as it existed at that time. It is regrettable that the opinion in *Mathis* was such as to leave the lower courts in doubt as to the reasons for the holding in that case. *J.W.A. v. State* has clarified the *Mathis* ruling and the long dispute over this type of shared jurisdiction should now be at an end.

JAMES O. WILSON, JR.

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37. *Id.*

38. *See* note 28, *supra*.

39. GA. CODE ANN. §38-112 (Rev. 1973) requires the courts to take judicial notice of "the laws of the United States and of the several States. . . ."

40. The two systems are not entirely separate in view of the exception concerning capital felonies where the two systems still share concurrent jurisdiction. *See* GA. CODE ANN. §24A-301(a) (Supp. 1974).

41. 233 Ga. at 686, 212 S.E.2d 851-52.

42. *Id.* at 687, 212 S.E.2d at 852.