



FEBRUARY 21, 2017

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## In Re: J. H.

***Under the New Juvenile Code, in Cases in Which O.C.G.A. § 15-11-564 Applies, a Party Seeking Appellate Review of an Order Transferring a Delinquency Case From Juvenile Court to Superior Court Must Follow the Interlocutory Appeal Procedures Found in O.C.G.A. § 5-6-34(b)***

In *In Re: J. H.*, A16A2209, A16A2210, A16A2211, A16A2212, A16A2213 (2/21/17), the State filed delinquency petitions in the juvenile court alleging that five juvenile defendants had committed acts in July 2015 which, if committed by an adult, would have constituted 32 counts of entering an automobile with the intent to commit a theft, one count of criminal gang activity, and one count of theft by taking. Thereafter, the State filed motions to transfer the delinquency cases to the superior court. After conducting hearings on the State’s motions, the juvenile court entered orders transferring the delinquency cases to superior court. The juvenile defendants then filed direct appeals from the juvenile court’s transfer orders.

The State contended that the appeals must be dismissed because they were required to proceed by interlocutory application rather than by direct appeal in light of O.C.G.A. § 15-11-564, which was enacted as part of Georgia’s new Juvenile Code. Subsection (a) of the statute provides: “The decision of the court regarding transfer of the case shall *only be an interlocutory judgment* which either a child or the prosecuting attorney, or both, have the right to have reviewed by the Court of Appeals.” (Emphasis supplied). Similarly, subsection (b) provides, in part that “[t]he pendency of *an interlocutory appeal* shall stay criminal proceedings in superior court.” (Emphasis supplied). A divided whole Court agreed.

The Court stated that our courts have routinely held that a party seeking appellate review of an order viewed as interlocutory must follow the interlocutory appeal procedures in O.C.G.A. § 5-6-34(b). Also, when the enactment of O.C.G.A. § 15-11-564 is viewed in the specific context of our longstanding jurisprudence addressing the appellate review of transfer orders, it becomes even more clear that the General Assembly intended for appeals in this context to proceed now by interlocutory application. The general rule has long been that a trial court order transferring a case from one court to another court is interlocutory in nature and thus, is not directly appealable as a final judgment under O.C.G.A. § 5-6-34(a) But, for many years, Georgia courts have applied an exception to this general rule in cases where a juvenile court transfers a delinquency case to superior court for criminal prosecution. In that specific context, in cases predating the new Juvenile Code, Georgia courts held that an order transferring a delinquency case from juvenile court to superior court should be treated as a final order directly appealable under O.C.G.A. § 5-6-34(a)(1). Consequently, when viewed in the context of our case law regarding transfer orders, the General Assembly’s adoption of the specific language found in O.C.G.A. § 15-11-564 reflects that in cases where the new Juvenile Code applies, orders transferring delinquency cases from juvenile court to superior

State Prosecution Support Division



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court should now be treated like other types of transfer cases — i.e., as interlocutory orders subject to review by application under O.C.G.A. § 5-6-34(b) — and no longer as an exception to the general rule.

In reaching this conclusion, the Court noted that O.C.G.A. § 15-11-564(a) provides that an interlocutory transfer order entered by the juvenile court is one which “either a child or the prosecuting attorney, or both, have the right to have reviewed by the Court of Appeals.” It is well-established law that appeals by the State in criminal cases are construed strictly against the State, and that the State may not appeal an issue in a criminal case or juvenile delinquency matter, whether by direct or discretionary appeal, unless expressly authorized by statute. Given this well-established law relating to appeals by the State, the General Assembly clearly included the above-quoted language in O.C.G.A. § 15-11-564(a) to enable the prosecution, like the child, to challenge a juvenile court’s transfer ruling through this Court’s interlocutory appeal procedures. Finally, the Court added, to construe the quoted statutory language more broadly as creating a right of the parties to direct appeal would conflict with the other references in the statute to a juvenile court transfer order as “only . . . an interlocutory judgment” and as resulting in an “interlocutory appeal.”

Accordingly, the Court concluded, in cases like this in which O.C.G.A. § 15-11-564 of the new Juvenile Code applies, a party seeking appellate review of an order transferring a delinquency case from juvenile court to superior court must follow the Court’s interlocutory appeal procedures found in O.C.G.A. § 5-6-34(b), including obtaining a certificate of immediate review from the juvenile court and then filing an application with the Court seeking permission to appeal from the transfer order. Since the juvenile defendants in these related cases failed to follow those procedures, their appeals were dismissed.