Court of Appeals
of the State of Georgia

ATLANTA, November 15, 2016

The Court of Appeals hereby passes the following order:

A17D0145. ROBERT JAY DAVIS v. THE STATE.

In January 2014, a jury found Robert Jay Davis guilty of one count of aggravated stalking, and the superior court sentenced him to serve ten years in prison as a recidivist. We affirmed his judgment of conviction in an unpublished opinion on direct appeal. *Davis v. State*, No. A15A0305 (July 10, 2015). The Supreme Court of Georgia thereafter denied Davis's request for certiorari review, remitted the case to this Court, and our remittitur issued to the superior court on November 6, 2015.

In the interim, Davis filed a motion to reduce sentence in the superior court in October 2015. The superior court initially denied the motion on November 3, 2015. Davis appealed, and, in another unpublished opinion, we vacated and remanded on the ground that the superior court lacked jurisdiction to rule on Davis's motion before our remittitur issued in his direct appeal. *Davis v. State*, No. A16A0838 (Aug. 18, 2016). On remand, the superior court again denied Davis's motion, and he filed this timely application for discretionary appeal.

Under OCGA § 17-10-1 (f), a court may modify a sentence during the year after its imposition or within 120 days after remittitur following a direct appeal, whichever is later. See *Frazier v. State*, 302 Ga. App. 346, 348 (691 SE2d 247) (2010). The denial of a timely motion to modify under § 17-10-1 (f) is subject to direct appeal. See *Bowen v. State*, 307 Ga. App. 204 (704 SE2d 436) (2010); *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008); *Maldonado v. State*, 260 Ga. App. 580 (580 SE2d 330) (2003). Davis's motion was timely under § 17-10-1 (f), as it was filed within 120 days of our remittitur following his direct appeal.

Under OCGA § 5-6-35 (j), this Court will grant a timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, this application is hereby GRANTED. Davis shall have ten days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. The clerk of the superior court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 11/15/2016
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. Castlen *, Clerk.*