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The Georgia case involving Genarlow Wilson has garnered much state and national attention over the last few weeks. The news accounts have predominantly carried one side of the story.

While the state is limited in what it can discuss about pending litigation, I want to share the following perspective on issues raised in the case. It is my hope that future discussions will have the benefit of starting from the same set of facts and an understanding of the law that controls the eventual outcome.

The legal issues in the case are straightforward: (1) Is Genarlow Wilson's sentence of ten years to serve with one year on probation for aggravated child molestation, lawfully imposed when the law of Georgia required a minimum mandatory sentence of ten years, cruel and unusual punishment under the United States and Georgia Constitutions, and (2) can a habeas corpus judge legally resentence Wilson when Georgia law does not give him the authority to do so and requires instead returning to the trial court?

In 2006 the Georgia General Assembly amended the law under which Wilson was appropriately sentenced by the trial court and made conduct similar to Wilson's a misdemeanor if it occurs between teenagers of a certain age. The amendment was not made retroactive, that is, the change in the law is applied to future, not past, crimes. During the 2007 session, the General Assembly considered and rejected making the amendment retroactive so as to apply specifically to Wilson. So the simple facts are these: Wilson was properly tried, convicted, and sentenced under the law in effect at the time; misdemeanor punishment was not an option available to the trial court; a minimum mandatory sentence of ten years was required; and the General Assembly considered and rejected making the later change in the law retroactive so as to apply to him. The law permitted a sentence of between ten and 30 years; the judge sentenced to the lowest period of confinement available to him under the applicable law. Statutes and case law currently provide that the law in effect at the time a crime is committed controls what sentence may be imposed.

Our office's involvement in this case began when Mr. Wilson filed a habeas corpus petition in Monroe County, where he is incarcerated by the Department of Corrections, challenging his Douglas County conviction and sentence for aggravated child molestation. He named his custodian, the Corrections warden, as the party respondent as he is required to do under habeas corpus law. By law, we represent the warden, who has

the duty under state law to defend the habeas corpus case. We are not the "prosecutors," as the media has reported. The criminal case in which Wilson was convicted is over. Habeas corpus is a civil proceeding that starts with the presumption that the conviction and sentence are valid until and unless the petitioner, in this case Genarlow Wilson, proves by a preponderance of the evidence that his constitutional rights have been violated.

In August 2004 Mr. Wilson was indicted in Douglas County with three other young men for the rape of a 17-year old girl and aggravated child molestation upon a 15-year old girl at a New Years Eve party at a motel. One of the young men had a video camera which was found by police in the motel room when they responded to the 17-year old girl's report of being raped. The 15-year girl did not testify at Mr. Wilson's jury trial in February 2005, but her mother did and identified her daughter on the videotape as being engaged in sexual activity with Mr. Wilson. Mr. Wilson was convicted of aggravated child molestation upon the 15-year old girl involving an act of oral sodomy and was acquitted of rape of the 17-year old girl who appeared on the videotape to be "semiconscious" while Wilson was having sex with her. Wilson v. State, 279 Ga. App. 459 (2006).

Prior to the trial of Mr. Wilson, his three co-defendants pled guilty to the reduced charge of child molestation upon the 15-year old and received similar sentences: five years in prison followed by ten years on probation. They also pled guilty to the reduced charge of sexual battery upon the 17-year old and received misdemeanor sentences on that charge. One of the three received a different sentence as he was also charged with an unrelated sex crime involving a 12-year old girl. Two other young men who participated in events at the same New Years Eve party pled guilty to the same reduced charges even before the indictment was returned. Mr. Wilson was offered, but turned down, the same plea bargain agreement. Four of these five other individuals are still incarcerated. Only one has been paroled.

Shortly after the habeas petition was filed, one of Mr. Wilson's lawyers publicly asked our office not to fulfill our constitutional obligation to defend the habeas case. This is, of course, a request with which we cannot comply. I have taken an oath under the Georgia Constitution to uphold the laws of the state. As long as I serve as Attorney General I will fulfill that oath. Maintaining the rule of law demands no less. Should the Attorney General, or any other law enforcement officer, start picking and choosing which laws to enforce or when to enforce them, we will be headed down a very dangerous path that threatens to undermine the very foundation of our system of government. The state legislature could still retroactively reduce the mandatory ten-year sentencing requirement, or the Georgia Supreme Court could rule the sentence unconstitutionally harsh as applied to Mr. Wilson. The Attorney General can do neither.

At the habeas hearing, we represented our client, the warden. The judge disagreed with our legal arguments, but then he went even further. The habeas judge exceeded the authority granted him under state law and resentenced Mr. Wilson to misdemeanor punishment. An unbroken line of cases from both the Georgia Supreme Court and the

Georgia Court of Appeals states that a habeas court cannot reduce or modify the sentence imposed by the trial judge. The habeas court can only set aside the sentence if it determines there was a constitutional infirmity with the sentence, but it must send the case back to the original trial court for re-sentencing.

There are over 1,300 inmates in the Georgia prison system currently serving time for aggravated child molestation, and this ruling, if it stands, has the potential to reduce or set aside the sentences of a significant number of those convicted felons. The ruling also has the potential to allow convicted child molesters already released from prison to avoid having to register on the state's sex offender registry. Efforts to use this erroneous ruling have already begun. Less than two days after the ruling, my office received a habeas filing in another case that cited Judge Wilson's order as legal authority for a convicted murderer's release. This is why I have an obligation under the law, as well as a significant concern for the decision's broader impact on public safety, to appeal the ruling.

In light of the changes made by the legislature in 2006, I, like the Douglas County District Attorney, believe that the mandatory 10-year sentence for Genarlow Wilson is harsh. The District Attorney has stated that it is because he believes the sentence is a harsh penalty that he has left a plea deal on the table for Genarlow Wilson to allow Genarlow to plead to a lesser charge. The District Attorney has left the plea offer open to for Mr. Wilson to accept for far longer than would ordinarily have been the case. It is Mr. Wilson and his attorneys who have rejected the plea; now the Georgia Supreme Court must decide whether Wilson's original sentence is unconstitutional. While this matter is on appeal, I personally would not oppose bond for Mr. Wilson; that is a matter, however, solely within the purview of Wilson's attorneys, the Douglas County District Attorney and the trial judge.

I am still hopeful that Wilson's lawyers and the D.A. will be able to resolve this case prior to the Georgia Supreme Court having to decide the issues. Our office has worked diligently in trying to mediate some resolution that will serve justice and remain faithful to the law. As Attorney General, however, I do not have authority or jurisdiction to settle this case.

Wilson's attorneys have alternately expressed outrage at the length of the prison sentence, the existence of a criminal record for Genarlow Wilson, and the requirement that Genarlow Wilson would have to register as a sex offender. The Douglas County District Attorney has offered Wilson's attorneys a plea deal that would result in a substantially shorter prison term as well as the possibility of First Offender treatment. First Offender treatment means that once Genarlow Wilson has completed his probation, he will have no criminal record and nor will he be required to register as a sex offender. Unfortunately for all concerned, this offer has been rejected by Wilson's attorneys. Nevertheless, this office will continue to lend its support, where appropriate, in reaching some finality to this case.

At the end of the day, my job is to follow the law, and to see that it is applied fairly and consistently to all.

Sincerely,

THURBERT E. BAKER
Attorney General of Georgia