

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

CRAIG MOORE,

Petitioner

v.

MARY T. CRANFORD, Judge of the Coweta County Probate Court,

Respondent

Case No. S07C1532

RESPONSE TO PETITION FOR CERTIORARI

Appeal From the Superior Court of Coweta County, Georgia,
Civil Action File No. 06-V-589

Submitted by:

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issuing a license. The Attorney General of the State of Georgia has issued an opinion that probate judges are not required to issue licenses until they receive the report from the FBI. Petitioner maintains that applicants are entitled to licenses prior to probate judges obtaining the report from the FBI, despite the clear language of the statute requiring the judges to receive and analyze the FBI report before issuing a license.

II. STATEMENT OF FACTS

Judge Cranford began working for the Coweta County Probate Court in January of 1974. She became Judge of the Coweta County Probate Court on January 1, 1985 and has held that position continuously to the present date. (R-62.) One of Judge Cranford's duties as Judge of the Probate Court is to handle the issuance of licenses to carry pistols or revolvers. (R-63.) Pursuant to O.C.G.A. § 16-11-129(b), there are certain individuals to whom Georgia law prohibits Judge Cranford from issuing a license, to include:

- (1) any person against whom proceedings are pending for any felony, forcible misdemeanor or violation of O.C.G.A. §§ 16-11-126 (carrying a concealed weapon), 16-11-127 (carrying deadly weapons at public gatherings), or 16-11-128 (carrying pistol without license);

- (2) any person who has been convicted of a felony by a court of the State of Georgia or any other state or by a court of the United States, including its territories, possessions, and dominions;
- (3) any person who has been convicted of a forcible misdemeanor and has not been free of all restraint or supervision in connection therewith for at least five (5) years immediately preceding the date of the application for the license;
- (4) any person who has been convicted of violating O.C.G.A. §§ 16-11-126, 16-11-127 or 16-11-128 and has not been free of all restraint or supervision in connection therewith for at least three (3) years immediately preceding the date of the application; or
- (5) any person who has been convicted of an offense arising out of the unlawful manufacture, distribution, possession or use of a controlled substance or other dangerous drug.

(Id.)

At the time Petitioner applied for his firearms license, if it was the first time the applicant applied for a license, Judge Cranford was required by Georgia law to cause a set of the applicant's fingerprints to be forwarded to the Georgia Crime Information Center ("GCIC") for a criminal history search of the FBI's records on that individual and to obtain a report on that search of the records from the FBI.

(R-64.) In working to insure that an applicant for a license does not have any of the prohibited criminal history as set forth above, (at the time of Petitioner's application) Judge Cranford's practice was to perform a search of the applicant's criminal history through the GCIC and she is able to do so through a GCIC terminal located in her office. (Id.) Under the law as amended, Judge Cranford is required to cause a fingerprint based criminal history records search to be performed by the GCIC and FBI for first time applications and requests for license renewals, as opposed to just first time applicants.

In order to cause the search of an applicant's criminal history to be performed effectively, upon completion of the application for the license by the applicant, Judge Cranford has the applicant obtain a set of finger prints from the either the City of Newnan Police Department or the Coweta County Sheriff's Office. (Id.) The applicants are to return those fingerprints to Judge Cranford's office and her office makes sure that the fingerprints are properly sent to the GCIC for a search of the FBI records as required by statute. (Id.) It is important to note that the GCIC forwards the information to the FBI for the FBI to perform a search of its records. (Id.) The report from the FBI and the report from the GCIC are very similar, however, the report from the FBI typically contains a more comprehensive criminal history from other states. (R-64-65.) The FBI then prepares a report which it sends directly to Judge Cranford. (Id.) Judge Cranford

does not perform a search of the GCIC until such time as she has received the report from the FBI. (Id.) This is done in an effort to obtain the most up-to-date information from the search of the GCIC prior to issuing a license. (Id.)

Although a literal reading of O.C.G.A. § 16-11-129 would suggest that the appropriate “law enforcement agency in the county” oversee the issuance of a the fingerprints to the GCIC and the search of the GCIC records¹, it has always been the practice of the Coweta County Probate Court since Judge Cranford’s involvement with it since 1974 to handle that responsibility, as the process is accomplished more efficiently in that manner. (R-65.)

It is very common for Judge Cranford not to receive the required report from the FBI for a period of two (2) months or longer after the fingerprints are forwarded to the GCIC (to be forwarded to the FBI). (Id.) Judge Cranford is unaware of any authority which would allow her to order the FBI to return the required report in a shorter time period. (Id.) Because Judge Cranford, pursuant to O.C.G.A. § 16-11-129, cannot issue an applicant a license until she has determined that all of the qualifications of O.C.G.A. § 16-11-129 have been met (i.e., that the

¹ Judge Cranford interprets the phrase “records to which it has access” to mean the records of GCIC. Since Judge Cranford has a GCIC terminal in her office, she conducts the search of the GCIC there in an effort to issue the licenses as soon as possible.

applicant does not have any of the prohibited criminal history), and because she almost always never receives the report from the FBI until over 60 days after the date of the application with her office, Judge Cranford is not able to issue licenses within the 60 day time period demanded by Petitioner. (Id.)

On December 13, 2005, Judge Cranford's office initially received Plaintiff's application for a license. (R-53.) As with all of the applicants, Petitioner was required to be fingerprinted and to return those fingerprints to Judge Cranford's office. (Id.) On December 14, 2005, Judge Cranford mailed Petitioner's application and fingerprints to the GCIC, so that the FBI background check could be performed and the report on that check generated. (Id.) On March 21, 2006 Judge Cranford received final notice from the FBI that her office may proceed with comparing its background check with information with the state background check information. (Id.) On April 17, 2006, Judge Cranford's office performed a local background check on her GCIC terminal. (Id.) On April 18, 2006, Judge Cranford's office mailed Petitioner his license. (Id.)

Judge Cranford acknowledges that her office was unable to perform its check of the GCIC for over two (2) weeks after receiving the final notice to proceed from the FBI, however, Judge Cranford respectfully submits that issuing firearms licenses is but one of a multitude of duties and tasks which she and her

office perform. Regardless, Judge Cranford did not receive the final report from the FBI until ninety-eight (98) days after Petitioner submitted his application.

As referenced above, Judge Cranford acknowledges that a literal reading of O.C.G.A. § 16-11-129 suggests that the local law enforcement agency is to oversee the issuance of the fingerprints to the GCIC and FBI, however, it has always been the practice of the Coweta County Probate Court since Judge Cranford's involvement with it since 1974 to handle that responsibility, as the process is accomplished more efficiently in that manner. Though it may very well make the process of obtaining the required report from the FBI take longer than it currently does if her office does not oversee the issuance of the fingerprints to the GCIC and FBI, at this time the Coweta County Sheriff's Office has assumed the responsibility of sending applicants' fingerprints to the GCIC and FBI.

III. ARGUMENT AND CITATION OF AUTHORITY

A. **STANDARD OF REVIEW**

“A review on certiorari is not a right.” (Supreme Court Rule 40.) “A petition for the writ will be granted only in cases of great concern, gravity, or importance to the public.” (*Id.*); *State v. Tyson*, 273 Ga. 690, 692 (2001).

B. UNDER THE STATUTE PRIOR TO ITS AMENDMENT, AND THEREAFTER, JUDGE CRANFORD IS PROHIBITED FROM ISSUING LICENSES UNTIL SHE HAS DETERMINED THAT THE APPLICANT

DOES NOT HAVE THE PROHIBITED CRIMINAL HISTORY PURSUANT TO O.C.G.A. § 16-11-129

During the course of this litigation, O.C.G.A. § 16-11-129 was amended. This brief will demonstrate why the statute, both previously and as amended, prohibits the issuance of license prior to obtaining the report from the FBI. The language at issue is as follows:

Not later than 60 days after the date of the application the judge of the Probate Court shall issue the applicant a license or renewal license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines that the applicant has met all the qualifications, is of good moral character and has complied with all the requirements contained in this Code Section.

O.C.G.A. § 16-11-129(b). The only difference in this paragraph after the amendment was that the Legislature added the words “or renewal license.” The adding of this phrase to the statutory language does not make any difference in the analysis by the Court because Judge Cranford must still obtain and analyze a report from FBI prior to issuing a license, as will be set forth more fully below.

Pursuant to O.C.G.A. § 16-11-129(b), no license shall be granted to: (1) any person who is a fugitive from justice or against whom proceedings are pending for any felony, forcible misdemeanor, or violation of code section 16-11-126 [carrying

a concealed weapon], 16-11-127 [carrying deadly weapons at public gatherings], or 16-11-128 [carrying pistol without license]; until such time as the proceedings are adjudicated; (2) any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the Constitution or the laws of such state or nation or any person who has been convicted of a forcible misdemeanor and had not been free of all restraint or supervision in connection therewith for at least five (5) years or any person who has been convicted of a violation of Code Section 16-11-126, 16-11-127, or 16-11-128 and has not been free of all restraint or supervision in connection therewith for at least three (3) years, immediately preceding the date of the application; or (3) Any person ... who has been convicted of an offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance or other dangerous drug. See O.C.G.A. § 16-11-129(b) (both prior to and after the 2006 amendment).

(i) O.C.G.A. § 16-11-129 at the Time of Petitioner's Application.

At the time Petitioner applied for the license, first time applicants for a license, such as Petitioner, were required to fill out an application, the form of

which is provided by the Department of Public Safety. O.C.G.A. § 16-11-129(a). The application seeks certain information about the applicant, to include the applicant's criminal history. Pursuant to O.C.G.A. § 16-11-129(c), "following the completion of the application the judge of the probate court shall require the applicant to proceed to an appropriate law enforcement agency in the county with the completed application" and that law enforcement agency "shall make two sets of classifiable finger prints of the applicant." O.C.G.A. § 16-11-129(c)(1). "In the case of each applicant who is applying for a license under this Code Section for the first time [such as Petitioner], the judge of the probate court shall direct the law enforcement agency to transmit one set of applicant's fingerprints to the Georgia Crime Information Center for a search of the Federal Bureau of Investigation records and an appropriate report." O.C.G.A. § 16-11-129(c)(2) "In such cases the applicant shall submit an additional fee in an amount established by the Georgia Bureau of Investigation but not to exceed \$30.00 for a search of records of the Federal Bureau of Investigation and an appropriate report, payable in such form as the judge may direct to cover the costs of the record search." Id.

"Each law enforcement agency, upon receiving such applications and obtaining such fingerprints, shall promptly conduct a thorough search of its records and records to which it has access, and shall notify the judge of the probate court within 50 days, by telephone and in writing, of any findings relating to the

applicant which may bear on his eligibility for a license under the terms of this Code Section.” O.C.G.A. § 16-11-129(d). “Not later than 60 days after the date of the application the judge of the probate court shall issue the applicant a license to carry any pistol or revolver if no facts establishing eligibility have been reported and if the Judge determines that the applicant has met all of the qualifications, is of good moral character, and has complied with the requirements contained in this Code Section.” *Id.* (Emphasis supplied.)

(ii) O.C.G.A. § 16-11-129 After the 2006 Amendment.

Under O.C.G.A. § 16-11-129 as amended, “for both license applications and requests for license renewals, the Judge of the Probate Court shall direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the Judge of the Probate Court.” O.C.G.A. § 16-11-129(d)(1). “Not later than 60 days after the date of the application the judge of the probate court shall issue the applicant a license to carry any pistol or revolver if no facts establishing eligibility have been reported and if the Judge determines that the applicant has met all of the qualifications, is of good moral character, and has complied with the requirements contained in this Code Section.” O.C.G.A. § 16-11-129(d)(4)(Emphasis supplied.)

Therefore, Judge Cranford is still required to obtain a report **from the FBI** on the applicant's criminal history in order to determine whether the applicant meets the requirements of O.C.G.A. § 16-11-129 and she is prohibited from issuing a license to applicants that do not meet the requirements of that Code Section, i.e., applicants with certain criminal histories.

(iii) Application of O.C.G.A. § 16-11-129 Both Prior to and After Amendment.

It is abundantly clear that O.C.G.A. § 16-11-129, both prior to and after its amendment, is designed to prohibit and prevent persons convicted of certain crimes or with charges pending against them for those crimes from obtaining a license to carry a pistol or revolver. It is further clear that Judge Cranford is prohibited by law from issuing a license to carry a pistol or revolver to persons convicted of such crimes or with such criminal histories. Finally, it is clear that Judge Cranford is to cause a search of the FBI records on the applicant and obtain a report of that search in order to analyze an applicant's criminal history in order to insure that a license is not issued to a person with a criminal history prohibited by O.C.G.A. § 16-11-129.

Judge Cranford acknowledges that a literal reading of O.C.G.A. § 16-11-129 suggests that she is to require an appropriate local law enforcement agency to obtain the report from the FBI. That Judge Cranford once undertook the burden of

obtaining the FBI report and performing the GCIC research in an effort to make the process move more smoothly and quickly evidences her efforts to see that applicants, such as Petitioner, obtain a license, if they are so entitled to one, as quickly as possible. Judge Cranford submits that she and her office have always strived to comply with the ultimate and true intent of the statute, which is to prevent certain individuals from obtaining a license to carry a pistol or revolver.

By the plain language of O.C.G.A. § 16-11-129, Judge Cranford is **only** authorized to issue a license not later than 60 days after the date of the application **if** “no facts establishing ineligibility have been reported **and** if [Judge Cranford] determines the applicant has met all the qualifications, is of good moral character and has complied with all the requirements [of O.C.G.A. § 16-11-129].” As set forth above, the FBI report often contains criminal histories from other states which the GCIC report often does not contain.

Thus, in order to prevent certain applicants with certain criminal histories from obtaining a license, Judge Cranford cannot issue a license until she has received and analyzed the FBI report, provided **by the FBI**. Otherwise, Judge Cranford runs the risk of issuing a license to a person with a dangerous criminal history and who is prohibited by O.C.G.A. § 16-11-129 from obtaining a license. For example, if Judge Cranford were to issue a license prior to receiving the FBI report and the applicant to whom she issued the license has been convicted of

murder, aggravated assault or any other dangerous crime, then that applicant subsequently commits a crime with the firearm being carried pursuant to the license she issued, a tragedy would have occurred which might have otherwise been avoided. Moreover, this scenario could subject Judge Cranford, her office, or Coweta County to potential liability. Though Petitioner has previously downplayed this example as something that would only occur in a “fantasy world,” Judge Cranford submits that this and countless other examples are real world possibilities. Moreover, if the Legislature did not intend for the probates judges to obtain fingerprint based searches from the FBI, the Legislature would not have included that language in the statute both prior to **and** after the amendment.

Judge Cranford is unaware of any authority she has to order the FBI to return its report timely enough to enable her to issue the license no later than 60 days after the date of the application and the Court of Appeals has confirmed she has no such authority. (Opinion, pp. 8-9.) This leaves her with two choices: (1) issuing a license to an applicant without having analyzed the applicant’s full criminal history; or (2) not issuing the license until such time as she has received and analyzed the applicant’s criminal history, even if that means issuing the license more than 60 days after the date of the application. Judge Cranford submits that it simply cannot be found that the intent of O.C.G.A. § 16-11-129 is to issue a license not later than 60 days after the date of the application regardless of whether she has

been able to fully analyze the applicant's criminal history as set forth in the statute. The Court of Appeals agrees with Judge Cranford and even opined that it "would be a gross dereliction of the probate court's statutory duty and would put the public at risk" for her to issue licenses without first obtaining the FBI report. (Opinion, p. 10.)

Accordingly, this is not a case of great concern, gravity or of public importance so as to warrant a writ of certiorari. If this Court disagrees, then Judge Cranford respectfully submits that the FBI (and likely the GCIC and the Georgia Bureau of Investigation ("GBI")) should be made parties to this action.

(iv) The Fingerprint Based Check by the FBI is Mandatory Prior to Issuing a License

It is important for this Court to understand the meaning of "fingerprint based criminal history records check" and the capabilities of local law enforcement agencies to perform such searches. Even if local law enforcement agencies have access to the National Instant Criminal Background Check System ("NICS") records, such does not mean that those agencies have the capability to perform a "fingerprint based criminal history records check" as is required by O.C.G.A. § 16-11-129. Though the local law enforcement may have access to the NICS system, having such access means only that the local law enforcement agencies may perform a search on the applicant using that applicant's name. Those agencies do

not have the capability of actually performing a search based upon the applicant's fingerprints. (R-167.) Only the GBI and the FBI have the capability to perform a fingerprint based criminal history records search. (R-167.)

Petitioner has previously incorrectly argued to the courts below that Judge Cranford "refuses to request" the NICS check from the local law enforcement agency. This is blatantly untrue. The requirement that probate judge's order such NICS checks is part of the statute as amended and was not contained in the statute at time of Petitioner's application for a license. There is absolutely no evidence whatsoever that Judge Cranford "refuses" to order NICS checks.

Again, even as amended, it is clear that the purpose of O.C.G.A. § 16-11-129 is to prevent the issuance of licenses to persons with certain prohibited criminal histories. It is clear from the language of O.C.G.A. § 16-11-129, prior to its amendment and thereafter, that the Legislature requires that a fingerprint based criminal history records check be performed by the FBI and that the FBI "return an appropriate report to the Judge of the Probate Court." Unfortunately, it is not difficult for persons to obtain false identification, which means that an applicant could apply for a license using false identification containing a false name. Thus, a computer terminal search by a local law enforcement agency of the GCIC or NICS could return a report that is inaccurate. It is only until a fingerprint based criminal history search has been performed that the full intent of O.C.G.A. § 16-11-129 may

be carried out, which is to fully examine applicants' criminal histories so as to prevent the issuance of licenses to applicants with the prohibited criminal history. That the statute was amended (or as may be further amended by House Bill 850 cited by Petitioner) does not change the fact that the report from the FBI often contains more information from the GCIC. (R-64-65.)

Any argument that Judge Cranford should issue a license prior to receiving the report from the FBI because she can revoke the license would also fail. If a license is acquired by an applicant using false identification information (which will not be known until such time as the fingerprint based check is returned), then the applicant will have a license and Judge Cranford would be left with no way to track this individual down so as to revoke the license. Moreover, by the time Judge Cranford receives the report on the fingerprint based search, the applicant could have easily acquired a firearm and used it to commit a crime (or crimes).

The potential consequences of issuing a license to an applicant prior to fully examining that applicant's criminal history as the statute requires via a fingerprint based criminal history search are simply too dangerous to the public when compared with the alternative of waiting until such time as the FBI report has been returned to Judge Cranford and analyzed. To the extent this Court should find to the contrary, Judge Cranford again respectfully submits that the GCIC and FBI are necessary parties to this action, as she is not aware of any authority which would

allow her to order the GCIC and FBI to return the appropriate report to her in enough time for her to issue an applicant a license within sixty (60) days of the application.

As such, certiorari should be denied.

**C. PETITIONER MISINTERPRETS O.C.G.A. § 16-11-129 BY
MAINTAINING THAT THE 60 DAY REQUIREMENT IS
MANDATORY**

Rather than getting bogged down in the distinction between “report” and “notify,” this Court need only read one sentence in its entirety. Specifically, the sentence at issue which states “not later than 60 days after the date of the application, the judge of the Probate Court shall issue the applicant a license or renewal license to carry any pistol or revolver **if no facts establishing ineligibility have been reported and if the judge determines that the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained in this Code Section.**” Petitioner maintains that the use of the words “shall issue” in O.C.G.A. § 16-11-129(d)(4) requires Judge Cranford to issue a firearms license not later than 60 days after the date of the application. This argument fails to take the entire sentence into consideration.

Therefore, as discussed above, by the plain language of O.C.G.A. § 16-11-129(d)(4), Judge Cranford is **only** authorized to issue a license not later than 60

days after the date of the application if no facts establishing ineligibility have been reported and if Judge Cranford determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements of O.C.G.A. § 16-11-129. As discussed above, the FBI report often contains criminal histories from other states which the GCIC report does not contain. Thus, in order to prevent certain applicants with certain criminal histories from obtaining a license, under the plain language of O.C.G.A. § 16-11-129(d)(4), Judge Cranford cannot issue a license until she has received and analyzed the FBI report. Therefore, this Court should deny the Petition for Certiorari.

D. WAITING FOR THE FBI REPORT IS NECESSARY IN ORDER TO COMPLY WITH O.C.G.A. § 16-11-129

Any discussion by Petitioner of any bill that has been introduced by the Georgia House of Representatives is irrelevant to this Court's analysis. As discussed above, Judge Cranford is required to cause a fingerprint based criminal history records check to be performed from the records of the GCIC and the FBI. As set forth above, the FBI report often contains criminal histories not contained in the GCIC. Under the plain language of O.C.G.A. § 16-11-129, Judge Cranford is prohibited from issuing a firearms license to individuals with certain criminal histories. Thus, since the FBI report often contains criminal histories the GCIC report does not, it would be improper for Judge Cranford to issue a firearms license

until such time as she has received and analyzed the reports from the GCIC and the FBI.

Judge Cranford respectfully submits that this Court simply cannot find that the Legislature has found that it is in the best interests of public safety that applicants for firearms license receive those licenses within 60 days regardless of whether a full analysis of their criminal histories required under O.C.G.A. § 16-11-129 has been performed by the probate judges of this state. Such an argument simply does not make sense. Again, if the Legislature did not intend for the probates judges to obtain fingerprint based searches from the FBI, the Legislature would not have included that language in the statute both prior to and after the amendment.

E. THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA OPINES THAT THE BACKGROUND CHECK BY A LAW ENFORCEMENT AGENCY IS AN ESSENTIAL CONDITION PRECEDENT TO THE PROBATE JUDGE'S ISSUING A LICENSE

The Office of the Attorney General of the State of Georgia has issued an unofficial opinion directly on point to the case at bar. In opinion U78-451, the Attorney General wrote, in response to the request of the Probate Judge of McIntosh County, "this is in response to your recent letter concerning whether a probate judge must issue a pistol permit on the 60th day of an application for such a

license even though the required law enforcement agency criminal history check has not been returned to the court.” Op. Atty. Gen., U78-451. It is [the Attorney General’s] unofficial opinion that the background check by a law enforcement agency is an essential condition precedent to [the Probate Judge’s] issuing a license to an applicant.” Id. It is my unofficial opinion that the General Assembly never intended for a probate judge to issue a license until he had received a report from the respective law enforcement agency conducting the background check.” Id. According to the Attorney General,

[t]he background examination not only protects the public, but it is also a means of protecting [the probate judge] in the issuance of a license. For example, what if the applicant in fact had a criminal history for assaultive behavior, but that fact had not been reported to [the probate judge] by the 60th day and [the probate judge] proceeded to issue a license, with the licensee subsequently using that pistol to inflict grievous bodily harm upon some citizen. In that instance the issuance of that license before the return of the background check, but after the 60 day period, could put [the probate judge] in a rather uncomfortable position, and could result in possible civil action on behalf of the victim. Consequently, to avoid a situation such as this, I believe [the probate judge] would be fully protected in not issuing a

permit until [the probate judge] received the results of the background check, even though that check may exceed 60 days in length.

Id.

This opinion by the Attorney General is consistent with Judge Cranford's argument set forth above and the findings of the trial court and Court of Appeals – that the true intent of O.C.G.A. § 16-11-129 is to prevent a license from being issued to persons with certain criminal histories. Judge Cranford submits that the Attorney General's reasoning, as with her reasoning and that of the trial court and Court of Appeals, is that the interest in protecting the public far outweighs Petitioner's, or any other applicant's, desire to have a license to carry a pistol or revolver issued to them within 60 days from the date in which they apply for the license. The potential consequences of supplying applicants with a license within 60 days without first analyzing their criminal histories are far more dangerous than any risk associated with not issuing a license to an applicant within 60 days. As such, this Court should not grant certiorari.

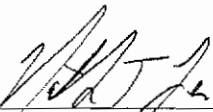
IV. CONCLUSION

For the foregoing reasons, Judge Cranford respectfully requests this Honorable Court deny the Petition for Certiorari.

Respectfully submitted this _____ day of _____, 2007.

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