

Court of Appeals of the State of Georgia

ATLANTA, October 06, 2026

The Court of Appeals hereby passes the following order:

A27A0514. WILLIE HENRY NEAL v. THE STATE.

Willie Neal was convicted of rape and sentenced as a recidivist to life in prison without the possibility of parole for acts committed in September 2003. We affirmed his convictions on direct appeal. *Neal v. State*, 308 Ga. App. 551 (707 SE2d 503) (2011). In June 2026, Neal filed a pro se motion to set aside his conviction and sentence as void. The trial court denied the motion on August 3, 2026, and Neal, still proceeding pro se, filed a notice of appeal on September 23, 2026. We lack jurisdiction for multiple reasons.

First, a notice of appeal must be filed within 30 days of entry of the judgment or trial court order sought to be appealed. OCGA § 5-6-38(a). The proper and timely filing of a notice of appeal is an absolute requirement to confer appellate jurisdiction on this Court. See *Kelly v. State*, 311 Ga. 827, 828 (860 SE2d 740) (2021). Neal's notice of appeal was untimely filed 51 days after entry of the order he seeks to appeal, thereby depriving us of jurisdiction over this appeal. See *id.*

Second, “a petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case.” *Harper v. State*, 286 Ga. 216, 218(1) (686 SE2d 786) (2009). Any appeal from an order denying or dismissing such a petition or motion must be dismissed. See *Roberts v. State*, 286 Ga. 532, 532 (690 SE2d 150) (2010); *Harper*, 286 Ga. at 218(2).

Third, 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. *Frazier v. State*, 302 Ga. App. 346, 348 (691 SE2d 247) (2010).

Once, as here, this statutory period expires, a trial court may modify only a void sentence. *Id.* “A sentence is void if the court imposes punishment that the law does not allow.” *Jones v. State*, 278 Ga. 669, 670 (604 SE2d 483) (2004) (quotation marks omitted). When a sentence falls within the statutory range of punishment, it is neither void nor subject to modification beyond the time provided in OCGA § 17-10-1(f). See *id.* A direct appeal does not lie from the denial of a motion to modify a sentence filed outside the statutory time period unless the motion raises a colorable claim that the sentence is, in fact, void. *Frazier*, 302 Ga. App. at 348.

In his June 2026 motion, Neal argued that the sentence of life without parole imposed for his rape conviction is void because the State did not seek the death penalty for that offense. See *State v. Ingram*, 266 Ga. 324, 326 (467 SE2d 523) (1996) (the State is barred from seeking a sentence of life without parole without first filing a notice of intent to seek the death penalty), disapproved in part, *Kimbrough v. State*, 300 Ga. 516, 520(3) n.6 (796 SE2d 694) (2017). But the statute criminalizing rape in effect in September 2003 authorized a sentence of life in prison for that offense. See OCGA § 16-6-1(b) (1999); *Reed v. State*, 352 Ga. App. 30, 31 n.1 (833 SE2d 712) (2019) (a criminal defendant must be sentenced according to the sentencing law in effect at the time the crime was committed). And because Neal was sentenced as a recidivist under OCGA § 17-10-7(a) and (c) (1994) — a proposition he did not dispute in his June 2026 motion — he was ineligible for parole. The Supreme Court’s decision in *Ingram* does not prohibit a recidivist sentence of life without parole under OCGA § 17-10-7, and such a sentence therefore is not void. See *Kimbrough*, 300 Ga. at 518–20(3); *Redden v. State*, 294 Ga. App. 879, 881(2) (670 SE2d 552) (2008). As a result, Neal’s sentence falls within the statutory range of punishment, and his failure to raise a colorable void-sentence claim deprives us of jurisdiction over his appeal from the ruling on his sentencing challenge.

For the above reasons, we lack jurisdiction over this appeal, which is hereby
DISMISSED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 10/06/2026

*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.*

Christina Bailey Smith

, Clerk.