

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2018 KW 1123

VERSUS

TERRY A. JONES

NOV 09 2018

In Re: Terry A. Jones, applying for supervisory writs, 22nd
Judicial District Court, Parish of St. Tammany, No.
455,616.

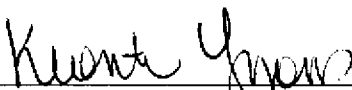
BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WRIT GRANTED. There is a constitutional right in Louisiana to an appeal. The right to an appeal can only be waived by the defendant himself, and any waiver of the right must be an informed waiver. La. Code Crim. P. art. 912.1(A)(2); **State v. Simmons**, 390 So.2d 504, 506 (La. 1980). See also **State v. Arceneaux**, 2007-692 (La. App. 5th Cir. 3/25/08), 983 So.2d 148, writ denied, 2008-0892 (La. 11/10/08), 996 So.2d 1067. A trial court is required to grant an out-of-time appeal if the defendant establishes he was not advised of the right to appeal or if the defense attorney was at fault in failing to file or perfect a timely appeal. **State v. Counterman**, 475 So.2d 336, 339 (La. 1985). Neither the sentencing transcript nor the criminal court minutes show that the waiver of the right to appeal was made after relator was fully informed of his appellate rights in this case. Accordingly, the ruling denying the request for an out-of-time appeal is vacated, the matter is remanded, and the court is ordered to hold an evidentiary hearing to determine if relator is entitled to an out-of-time appeal under Counterman, and appoint counsel for the hearing if relator is indigent. See La. Code Crim. P. art. 930.7. See e.g., **State v. Lagman**, 2013-2946 (La. 11/7/14), 152 So.3d 164.

JTP
JEW

Chutz, J., dissents and would deny the writ.

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FOR THE COURT