

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

STATE OF LOUISIANA

NO. 2021 KW 1069

VERSUS

HENRY J. MCMILLAN

**DECEMBER 20, 2021**

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In Re: Henry J. McMillan, applying for supervisory writs,  
22nd Judicial District Court, Parish of Washington,  
No. 15-CR7-129462.

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**BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.**

**WRIT NOT CONSIDERED.** The ruling at issue was rendered on May 24, 2021. The Notice of Intent is not dated or time-stamped. Therefore, it is not clear if notice to seek supervisory review was filed within thirty days of the ruling at issue. See Uniform Rules of Louisiana Courts of Appeal, Rules 4-2 and 4-5(C)(11). Moreover, although it is not a violation of the Uniform Rules, we note that PCR counsel did not include any documents from the district court record to support the contention that relator was convicted by a non-unanimous jury verdict. Instead, counsel included a copy of relator's appellate brief. An appellate court must render its judgment upon the record on appeal, i.e., that which is sent by the lower court to the appellate court and includes the pleadings, court minutes, transcripts, jury instructions (if applicable), judgments, and other rulings, unless otherwise designated. See La. Code Civ. P. arts. 2164 & 2127-2128; **O'Bannon v. Moriah Techs., Inc.**, 2017-0728 (La. App. 1st Cir. 3/29/18), 248 So.3d 392, 397. The appellate briefs of the parties are not part of the record on appeal. Thus, this court has no authority to consider facts referred to in appellate briefs or in exhibits attached thereto, if those facts are not in the record on appeal. See **In re J.E.T.**, 2016-0384 (La. App. 1st Cir. 10/31/16), 211 So.3d 575, 580.

Supplementation of this writ application and/or an application for rehearing will not be considered. See Uniform Rules of Louisiana Courts of Appeal, Rules 2-18.7 & 4-9. In the event counsel elects to file a new application in compliance with the Uniform Rules of Louisiana Courts of Appeal, Rules 4-2 & 4-3, the application shall be filed on or before January 31, 2022. The application should include proof that a timely return date and/or timely extension of the return date were obtained and include the missing items noted above and a copy of this ruling.

PMC  
JEW  
MRT

COURT OF APPEAL, FIRST CIRCUIT



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DEPUTY CLERK OF COURT  
FOR THE COURT