

STATE OF LOUISIANA

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NO. 2001-K-0934

VERSUS

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COURT OF APPEAL

DELTON ADOLPH PRICE

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 409-460, SECTION "E"
Honorable Calvin Johnson, Judge

Judge Patricia Rivet Murray

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer, and
Judge Patricia Rivet Murray)

Delton A. Price, #094605
C. Paul Phelps Correctional Center
Dorm H-6
P. O. Box 1056
DeQuincy, LA 70633-1056
RELATOR

**WRIT APPLICATION GRANTED IN PART;
TRIAL COURT COMPLIANCE ORDERED**

Relator, Delton A. Price, seeks this court's assistance in obtaining documentation he considers necessary in order to file an application for post-conviction relief. For the reasons that follow, we grant his writ application in part and order the trial court to furnish the requested material.

On October 13, 1999, Mr. Price pled guilty to possession of crack cocaine, and was sentenced on December 1, 1999 to serve forty months at hard labor. In writ application 2000-K-2314, he sought a copy of his trial transcript. On December 5, 2000, this court granted his writ application in an unpublished disposition, stating in pertinent part:

Relator pled guilty; therefore, there is no trial transcript. However, he is entitled to a copy of his *Boykin* transcript. Accordingly, the district court is ordered to provide relator with a copy of his October 13, 1999 *Boykin* transcript within sixty days of this order.

On January 9, 2001, however, the trial court denied Mr. Price's request for the *Boykin* transcript based upon this court's published opinion in *State v. Smith*, 97-2461 (La. App. 4th Cir. 11/26/97), 703 So.2d 191. As the district judge noted, the *Smith* decision stated that if the criminal record contained a signed waiver of rights form evidencing a plea of guilty, then "[o]rdering the production of a *Boykin* transcript ... would be an exercise in futility."

Neither party sought Supreme Court review of this court's *Smith* opinion.

Subsequently, however, this court cited *Smith* in rejecting another defendant's request for his *Boykin* transcript. *State v. Franklin*, 98-K-0412 (La. App. 4th Cir. 3/31/98), unpublished. The Supreme Court granted Mr. Franklin's writ application and reversed, ordering that he be provided with a copy of the guilty plea colloquy as required by that court's precedents. *State ex rel. Franklin v. State*, 98-1021 (La. 5/15/98), 719 So.2d 60, citing *State ex rel. Simmons v. State*, 93-0275 (La. 12/16/94), 647 So.2d 1094.

Because the Supreme Court has thus rejected the rationale behind the denial of the *Boykin* transcript seen in *State v. Smith*, the district court is hereby **ordered** to supply Mr. Price with a copy of his October 13, 1999 guilty plea colloquy transcript within sixty days and to show compliance by forwarding to this court a copy of the cover letter that accompanies the transcript.

Mr. Price's additional request for a suspension of the two-year limitation for filing an application for post-conviction relief is denied as unnecessary. Under Criminal Procedure article 930.8 A(1), a late-filed application must be considered if the petitioner establishes that the facts supporting his claim were not previously known to him. Thus, if Mr. Price cannot establish his claim for relief unless and until he receives the *Boykin*

transcript, his petition may be considered timely under this exception.

**WRIT APPLICATION GRANTED IN PART;
TRIAL COURT COMPLIANCE ORDERED**