

REL: 11/02/2007

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

---

CR-06-0575

---

State of Alabama

v.

Tommy King

Appeal from Lawrence Circuit Court  
(CC-06-465)

WISE, Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

McMillan, Shaw, and Welch, JJ., concur. Baschab, P.J.,  
dissents, with opinion.

CR-06-0575

BASCHAB, Presiding Judge, dissenting.

I respectfully dissent for the reasons set forth in my dissent in State v. Clemons, [Ms. CR-05-1950, November 2, 2007] \_\_\_ So. 2d \_\_\_ (Ala. Crim. App. 2007). I also note that the trial court did not have the authority to both dismiss the indictment and then transfer the case to the lower court.