

REL:04/25/2008 Wilson v. State

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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

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CR-06-0887

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Darryl Eugene Wilson

v.

State of Alabama

Appeal from Lauderdale Circuit Court  
(CC-06-123)

On Application for Rehearing

SHAW, Judge.

UNPUBLISHED MEMORANDUM OF FEBRUARY 1, 2008, WITHDRAWN;  
MEMORANDUM SUBSTITUTED; APPLICATION OVERRULED; AFFIRMED BY  
UNPUBLISHED MEMORANDUM.

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

CR-06-0887

BASCHAB, PRESIDING JUDGE, dissenting.

The record in this case does not affirmatively establish that the appellant "had notice of the time and place of the proceeding and was informed of his right to be present" and that he made "an understanding and voluntary waiver of the right to be present," as is required by Rule 9.1(b)(ii), Ala. R. Crim. P. Therefore, the trial court improperly tried him in absentia, and I respectfully dissent.