

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2013 KW 1516

VERSUS

JACOB R. LAGMAN

NOV 21 2013

In Re: Jacob R. Lagman, applying for supervisory writs, 22nd
Judicial District Court, Parish of St. Tammany, No.
491711.

BEFORE: PETTIGREW, McDONALD AND McCLENDON, JJ.

WRIT DENIED.

JTP

JMM

McClendon, J., dissents in part, and would grant the writ relative to relator's claim for an out-of-time appeal. 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. **State v. Simmons**, 390 So.2d 504, 506 (La. 1980). 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). Moreover, an attorney who disregards a defendant's specific instructions to file a notice of appeal acts in a professionally unreasonable manner. **Roe v. Flores-Ortega**, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). Relator has alleged a claim in the application for postconviction relief which, if established, would entitle him to relief. See La. Code Crim. P. art. 927. Therefore, I would vacate the ruling denying the request for an out-of-time appeal, and remand the matter to the trial court for an evidentiary hearing to determine if relator is entitled to an out-of-time appeal under the provisions of **Roe v. Flores-Ortega** and **Counterman**.

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