## IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

	AT JACKSON
FEBI	RUARY 1997 SESSICN FILED Feb. 18, 1997
DERRICK JOHNSON, APPELLANT,  v.  STATE OF TENNESSEE, APPELLEE.	Cecil Crowson, Jr. Appellate Court Clerk  No. 02-C-01-9603-CR-00086  Shelby County  Bernie Weinman, Judge  (Post-Conviction Relief)
FOR THE APPELLANT:	FOR THE APPELLEE:
Daniel L. Flatt Assistant Public Defender 201 Poplar Avenue, Suite 2-01 Memphis, TN 38103 (Appeal Only)	Charles W. Burson Attorney General & Reporter 500 Charlotte Avenue Nashville, TN 37243-0497
Donna J. Armstard Assistant Public Defender 201 Poplar Avenue, Suite 2-01 Memphis, TN 38103 (Trial Only)  OF COUNSEL:  A C Wharton, Jr. Shelby County Public Defender 201 Poplar Avenue, Suite 2-01 Memphis, TN 38103	Ellen H. Pollack Assistant Attorney General 450 James Robertson Parkway Nashville, TN 37243-0493
	John W. Pierotti District Attorney General 201 Poplar Avenue, Suite 3-01 Memphis, TN 38103
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OPINION FILED:\_\_\_\_\_

JUDGMENT VACATED AND REINSTATED

Joe B. Jones, Presiding Judge

## OPINION

The sole issue presented for review is whether the appellant is entitled to have the judgment of this Court vacated and reinstated to permit the filing of an application for permission to appeal in the supreme court. The trial court found counsel did not file an application for permission to appeal, and counsel failed to advise the appellant he was not going to file an application for permission to appeal on his behalf. The State of Tennessee confesses error. The state agrees this Court should vacate its judgment and reinstate it so the appellant can file an application for permission to appeal.

The judgment entered on September 15, 1993, in <u>State v. Derrick Johnson</u>, Shelby County No. 02-C-01-9302-CR-00016 (Tenn. Crim. App., Jackson, September 15, 1993), is hereby vacated and reinstated. The appellant will have sixty (60) days from the date this opinion is filed to prepare and file an application for permission to appeal in the supreme court.

_	JOE B. JONES, PRESIDING JUDGE
CONCUR:	
JOHN H. PEAY, JUDGE	
JOE G. RILEY JUDGE	