

Rev. Louis J. FRANZ, Individually and as Next Friend of  
Ronald Gene Simmons v. STATE of Arkansas

CR 88-76

751 S.W.2d 355

Supreme Court of Arkansas  
Opinion delivered June 20, 1988

Petition for Temporary Relief from Franklin Circuit Court;  
*John Patterson*, Judge; temporary stay of execution granted.

*Mark S. Cambiano*, for petitioner.

*Steve Clark*, Att'y Gen., by: *Jack Gillean*, Asst. Att'y Gen.,  
for respondent.

PER CURIAM. The execution of the sentence of Ronald Gene  
Simmons, Sr. to death is temporarily stayed.

The parties and the petitioner are directed to file contempo-  
raneous briefs by June 27, 1988.

The questions to be briefed are: the standing of the peti-  
tioner, whether this court should have mandatory review of death  
cases, or, if there is no mandatory review, whether a decision to  
waive appeal in a death case should be reviewed by us, and, if so,  
whether the defendant in this case understood the choice of life or  
death, and knowingly and intelligently made that choice.

Any of the parties and the petitioner may appear before this  
court on Tuesday at 9:00 a.m., June 28, 1988, for oral argument.  
Each party and the petitioner will be allotted 20 minutes.

A writ of certiorari is granted to bring up the records in the  
hearings held to determine the competency of the defendant to

waive appeal. The parties and the petitioner need not abstract those records.

Temporary stay of execution granted, the parties and petitioner to proceed in accordance with this opinion.

PURTLE, J., dissents.

JOHN I. PURTLE, Justice, dissenting. I am compelled to dissent because there is no requirement or procedure for mandatory review of all death sentences. Although the appellant has an absolute right to appeal his conviction, he has the corresponding right to waive that appeal, provided he does so knowingly and intelligently. The trial court has made the determination that the appellant knowingly and intelligently waived his right to appeal. Unless we decide to change our rules, we are bound to apply the existing rules in all cases including this one.

The petition to amend our rules has been pending since June 6, 1988. We have so far not deemed it appropriate to amend our rules to provide for such review. Since such a decision would not require any factual determination, there is no reason or justification to stay this proceeding.