

SUPREME COURT OF LOUISIANA

No. 07-K-2381

STATE OF LOUISIANA

v.

HORACE McCLAIN

On Writ of Certiorari to the
First Circuit Court of Appeal

PER CURIAM:

Granted in part. This case is remanded to the trial court for purposes of conducting further evidentiary proceedings with regard to when defendant filed his motion to quash on September 18, 2006. If the court finds that defendant filed the motion before jury selection began, it shall grant the motion to quash and set aside defendant's conviction and sentence for unauthorized entry of an inhabited dwelling, in violation of La.R.S. 14:62.3, on grounds that the prosecution had prescribed, as set forth by the court of appeal in its opinion, State v. McClain, 07-0431 (La. App. 1st Cir. 11/7/07) (unpub'd). If the court finds that defendant did not file the motion before the beginning of trial, it shall reinstate its ruling denying the motion, on grounds that it was procedurally defaulted. See La.C.Cr.P. art. 581 (the right of dismissal on grounds that the time limitations on trial had expired "is waived unless the motion to quash is made prior to trial."). In the event that the court finds that defendant defaulted his otherwise meritorious claim by failing to file his motion to quash in a timely manner, defendant may appeal the adverse ruling to the court of appeal.

