

# EXHIBIT 'A'



## SUPREME COURT OF GEORGIA Case No. S19H0628

August 19, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**THERIAN WIMBUSH v. SUE MICKENS, WARDEN.**

Petitioner was found guilty of three counts of cruelty to children in January 2017, and she appealed her convictions to the Court of Appeals, which affirmed her convictions in an opinion dated March 8, 2018. See *Wimbush v. State*, 345 Ga. App. 54 (812 SE2d 489) (2019). While her appeal was pending, Petitioner filed a petition for writ of habeas corpus in June 2017. The trial court stayed the matter pending the outcome of Petitioner's direct appeal and ultimately denied relief on the merits in an order entered on December 3, 2018. Petitioner has filed an application for a certificate of probable cause to appeal pursuant to OCGA § 9-14-52 (b). But Petitioner's June 2017 habeas petition was premature.

A habeas petition directed to one's conviction and sentence may not be instituted until that conviction is final, see *Horton v. Wilkes*, 250 Ga. 902, 904 (302 SE2d 94) (1983), and a conviction that has been appealed is not final until that direct appeal is complete. Because Petitioner filed her habeas petition while her direct appeal was still pending before the Court of Appeals, her convictions were not final at the time she filed her petition. Her habeas petition was therefore premature and the habeas court erred in considering the merits of the petition. Accordingly, this Court hereby grants the application for a certificate of probable cause to appeal, vacates the

habeas court's December 3, 2018 order denying relief, and remands this matter with direction that the habeas court dismiss the petition without prejudice as premature.

*All the Justices concur.*

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 *Thure S. Bane*, Clerk