**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 CW 2029**

**TROY ANTHONY JONES**

**VERSUS**

**LOUISIANA BOARD OF PAROLE**

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**On Appeal from the 19th Judicial District Court**
**Parish of East Baton Rouge, Louisiana**
**Docket No. 528,405, Division "E"**
**Honorable William A. Morvant, Judge Presiding**

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| **Troy Anthony Jones**<br>**Pineville, LA** | **Plaintiff-Appellant**<br>**In Proper Person** |
| **Wendell C. Woods**<br>**Louisiana Department of Justice**<br>**Baton Rouge, LA** | **Attorney for**<br>**Defendant-Appellee**<br>**Louisiana Board of Parole** |

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**JUDGE MAX N. TOBIAS, JR., AD HOC**

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**BEFORE: JONES, MURRAY, AND TOBIAS, JJ.[1]**

**WRIT GRANTED AND REVERSED.**

**Judgment rendered** JUN - 8 2007

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[1] The Honorable Charles R. Jones, Judge, the Honorable Patricia Rivet Murray, Judge, and the Honorable Max N. Tobias, Jr., Judge, all members of the Fourth Circuit Court of Appeal, are serving as judges *ad hoc* by special appointment of the Louisiana Supreme Court.

The appellant, Troy Anthony Jones, files a writ of review from a judgment of the Nineteenth Judicial District Court for the Parish of East Baton Rouge, which affirmed the decision of the Louisiana Parole Board to revoke the appellant's parole.[2] After reviewing the record and applicable law, we reverse the judgment.

On 29 October 2002, the appellant was placed on parole.[3] As a part of his parole, he agreed that he would refrain from engaging in any type of criminal conduct and that he would not possess a firearm or other dangerous weapon. He understood that if he violated any of the conditions of his parole, his parole could be revoked.

On 7 October 2003, the appellant was arrested by the Ascension Parish Sheriff's Department and charged with one count of simple battery, a violation of La. R. S. 14:35, stemming from an altercation with his ex-wife, Tracy Jones. On 8 October 2003, the appellant was arrested on one count of firearm possession by a felon, a violation of La. R. S. 14:95.1. Although a search was conducted, no weapon was found in appellant's home on the day of his initial arrest, 7 October 2003.

On 18 February 2004, the charge of simple battery was withdrawn at the victim's request and dismissed. The arrest on this charge was expunged on 16 September 2005. On 26 April 2004, the appellant offered into evidence an affidavit by his ex-wife stating that he had not owned a gun since being released on parole. Upon motion of the state, a nolle prosequi was entered to the firearm possession by a felon. On 10 January 2006, the arrest on the firearm charge was also expunged.

On 14 July 2005, the Louisiana Parole Board (the "Board"), revoked the appellant's parole upon finding that he violated two conditions of his parole by engaging in criminal conduct and possessing a firearm. The appellant filed a complaint with a Commissioner of the 19th Judicial District Court for the Parish of East Baton Rouge, which is heard as a request for judicial review of the revocation decision. The Commissioner reviewed the evidence submitted to the Board and recommended that

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[2] Ordinarily, there is no right of appeal from a probation revocation. La. C.Cr.P. art. 912. However, courts generally treat such appeals as applications for supervisory writs. *State v. Manuel*, 349 So. 2d 882 (La. 1977); *State v. Russell*, 570 So. 2d 91, 92 (La. App. 4th Cir.1990). We do so in this case.

[3] The record does not reflect the crime for which the appellant was convicted and for which he received a diminution

the final agency decision be affirmed and the request for judicial review be dismissed with prejudice. On 12 June 2006, the trial court rendered judgment affirming the Board's decision and dismissed the appellant's suit. This writ of review followed.

The appellant argues that no evidence exists to support the decision to revoke his parole because both charges were dismissed and the arrests expunged. He relies on *State v. Rexford,* 95-152 (La. App. 5 Cir. 6/8/95), 658 So. 2d 27. We agree.

La. C. Cr. P. art. 901 states in pertinent part:

> A. In addition to the grounds for revocation of probation enumerated in Louisiana Code of Criminal Procedure Article 900, when a defendant who is on probation for a felony **commits or is convicted of a felony** under the laws of this state, or under the laws of another state, the United States, or the District of Columbia, or is **convicted of a misdemeanor** under the provisions of Title 14 of the Louisiana Revised Statutes of 1950, or is convicted of a misdemeanor under the provisions of the Uniform Controlled Dangerous Substances Law contained in Title 40 of the Louisiana Revised Statutes of 1950, his probation may be revoked as of the date of the commission of the felony or final conviction of the felony or misdemeanor. [Emphasis supplied.]

In the instant matter, the appellant was originally charged with a violation of La. R. S. 14:35, simple battery, which is a misdemeanor. In light of the fact that the charge for simple battery was dismissed and the appellant was not convicted of the crime, the Board erred in relying on this charge to support a revocation of parole imposed for a felony conviction. *Rexford, supra,* at p. 3, 658 So. 2d at 29. *See also State v. Dorest,* 99-2902, p. 17 (La. App. 4 Cir. 1/31/01), 778 So.2d 1239, 1248, *writ denied,* 01-0581 (La. 1/10/02), 805 So. 2d 802 ("Clearly La. C.Cr.P. art. 901(a) [sic] authorizes revocation of probation when a defendant who is on probation for a felony is convicted of a misdemeanor under the provisions of Title 14 of the Louisiana Revised Statutes. *See, State v. Clark,* 600 So. 2d 785 (La. App. 5 Cir.1992). However, as noted in *State v. Rexford*, 95-152 (La. App. 5 Cir. 6/28/95), 658 So. 2d 27, the evidence must show a conviction; mere evidence of a commission of a misdemeanor is not

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of sentence.

enough.") Thus, we find that the trial court erred by revoking the appellant's probation on the basis that he committed a misdemeanor of simple battery.

We now turn to the felony charge of possession of a firearm by a felon. Because this is a felony charge, La. C.Cr.P. art. 901A requires only proof that a felony was committed; a conviction is not necessary to revoke parole. However, we agree with the appellant that no evidence exists in the record to support the commission of this crime. First, the police searched the appellant's home on 7 October 2003 and did not find a firearm. For some unknown reason, the police returned to the house the next day, conducted a second search, and discovered a handgun. Later, the appellant's ex-wife stated to the Board that she had placed the gun where it was later found in an attempt to "get even" with the appellant.

Finally, the district attorney dismissed the charge of possession of a handgun by a convicted felon and the arrest for the charge was expunged. Thus, we do not find that a felony was committed or that the appellant committed a felony. Therefore, we find that the trial court erred in revoking the appellant's parole on the basis that a felony was committed or that the appellant committed a felony.

For the foregoing reasons, we grant the appellant's writ and reserve his parole revocation.

**WRIT GRANTED AND REVERSED.**