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Aug 07 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
Court of General Sessions

The Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

Respondent,

v.

GREGORIO M. LEON,

Appellant.

Appellate Case No. 2023-001101

**MOTION TO DISMISS APPEAL
BASED ON DEATH OF THE APPELLANT**

Respondent respectfully moves to dismiss the above captioned direct appeal due to the death of the appellant. In support of its motion, Respondent would respectfully show the court:

1. On July 6, 2023, the Honorable Walton J. McLeod, IV, imposed a thirty (30) year sentence following Appellant's conviction for murder. On July 10, 2023, Appellant served and filed a notice of intent to appeal. The timely service of the notice of appeal transferred jurisdiction over the matter to the appellate court. *See* Rule 205, SCACR ("Upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal"); Rule 203 (b)(2), SCACR (setting the time to appeal as 10 days from imposition of sentence). Hence, the appeal is currently pending. (*See* Appellate Case No. 2023-001101).

2. According to information provided by the South Carolina Department of Corrections, Appellant died on July 15, 2023. (Attachment 1).

3. An appellant's death during the pendency of his appeal from a criminal conviction "abates that appeal and constitutes grounds for its dismissal." *State v. Anderson*, 281 S.C. 198, 199, 314 S.E.2d 597, 597 (1984). The abatement addresses only the appeal; thus, the conviction remains in place. *State v. Bixby*, 397 S.C. 154, 723 S.E.2d 841 (2011).

4. Respondent has consulted with counsel for Appellant, Jack B. Swerling, Esq., via email communication, and is informed by response email from his office that Mr. Swerling consents to this motion.

THEREFORE, for all the foregoing reasons, Respondent respectfully requests that the appeal be dismissed due to Appellant's death.


Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No: 14244

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By: 
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

August 7, 2023.

13:50:51 Monday, July 17, 2023

MOVI220D

SCDC OFFENDER MANAGEMENT SYSTEM
INMATE TRANSFER AND COUNT

07/17/23
C057846

SCDC # 391435

TRANSFER HISTORY

LEON, GREGORIO M

CURR LOC: UNK

LEGAL NAME:

VIC/WIT: Y

OFFENDER TYPE: ADULT-STRAIGHT

SPEC ED: N TABLET ELIG: Y

OFF TYPE ENTRY DATE: 07/07/23

CURR DORM:

0000

SCRD CUST: POP: SP

ASSNMT: 6085 R & E CENTER

STG:

SERIOUS MENTAL ILLNESS: N

STATUS	LOCATION	CHG DATE	CHANGE REASON
RELEASE	UNK	07/15/23	DEATH
AUTH ABSENCE (AWL)	PRISMA HEALTH R	07/14/23	MEDICAL
INCARCERATED	KIRKLAND	07/07/23	NEW ADMISSION

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PF3=> TRANSFER INMATE PF4/PF5/PF6=> MODIFY (HQ ONLY) PF7/PF8>BACK/FORWARD

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THE STATE,

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vs.

GREGORIO M. LEON,

Appellant.

CERTIFICATE OF SERVICE

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Motion to Dismiss Appeal Based on Death of the Appellant, and Certificate of Service has been forwarded to Appellant's counsel, Jack B. Swerling, Esquire via email today, August 7, 2023 to jackswerling@gmail.com.

I further certify that all parties required by Rule to be served have been served.

This 7th day of August, 2023.

s/ Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General