

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lancaster County

Honorable J. C. Buddy Nicholson, Jr., Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

JUN 27 2014

**S.C. Supreme Court**

THE STATE,

PETITIONER,

V.

PHILLIP MILLER,

RESPONDENT.

Appellate Case No. 2012-212847  
\_\_\_\_\_

MOTION TO DISMISS AS MOOT  
\_\_\_\_\_

The undersigned respectfully shows the Court:

1. Phillip Miller appealed his conviction for possession with intent to distribute crack cocaine (PWID) following a trial where he received a twenty year sentence.
2. Miller argued to the Court of Appeals that the trial court erred in denying his motion for a new trial because Juror Jillian Hinson failed to disclose that her mother was the victim of a violent crime, and because Juror Hinson also testified for the state in another trial only ten

months earlier. Counsel argued this was an intentional concealment and that information would have been material to his use of his peremptory strikes.

3. Following oral argument, the Court of Appeals issued a published opinion on May 23, 2012 affirming in part, reversing in part, and remanding to the trial court. State v. Miller, 398 S.C. 47, 727 S.E.2d 32 (Ct. App. 2012). The Court reversed the trial court's ruling that the information the juror concealed would not have been a material factor in Miller's use of his peremptory challenges. The Court remanded to the trial court for a determination as to whether the juror intentionally concealed the information.

4. The state filed a petition for rehearing which the Court of Appeals denied on July 26, 2012.

5. The state then filed a petition for a writ of certiorari to the Court of Appeals on October 26, 2012, and also filed an amended petition on October 29, 2012. Appellate counsel filed a return on November 29, 2012.

6. This Court granted the petition for a writ of certiorari to review the Court of Appeals' decision on June 11, 2014. The appendix and briefs are due on July 11, 2014.

7. In an effort to notify Mr. Miller of the grant of the petition for certiorari, appellate counsel learned that Mr. Miller is now deceased. The records from the Department of Corrections indicate that Mr. Miller died on February 1, 2014. (That document is Exhibit A.) The procedure to obtain the official death certificate is in process.

7. Appellate counsel therefore respectfully requests this Court to dismiss this appeal and the grant of the petition for a writ of certiorari as being moot. The case was remanded for further fact finding by the trial court which will serve no legitimate purpose and will not be a remedy of significance regarding Mr. Miller.

8. In the case of State v. Joseph Wilson West, a 1988 death penalty case, Mr. West suffered a heart attack and died after oral arguments but prior to the opinion being issued. Appellate counsel argued that the opinion should still go forward because of the impact the decision would have on other death penalty cases especially related to proportionality. This Court denied that request and issued an order dismissing the appeal. (See Exhibit B.)

WHEREFORE, counsel respectfully requests this Court to issue an order dismissing Phillip Miller's appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant  
Appellate Defender

Attorney for Petitioner

This 27th day of June, 2014

~~06/25/14~~

SCDC OFFENDER MANAGEMENT SYSTEM  
INMATE TRANSFER AND COUNT  
TRANSFER HISTORY

06/25/14  
~~06/25/14~~

SCDC # 294022  
MILLER, PHILLIP GLENN  
OFFENDER TYPE: ADULT-STRAIGHT TOBACCO: N SPEC ED: N VIC/WIT:  
OFF TYPE ENTRY DATE: CURR DORM: 0000 CURR CUST/SEC: MR1B  
ASSNMT: 0001 GENERAL DETAIL UNEMP  
PREA DECISION:

CURR LOC: UNK

STATUS	LOCATION	CHG DATE	CHANGE REASON
RELEASE	UNK	02/01/14	DEATH
- AUTH ABSENCE (AWL)	TUOMEY REGIONAL	01/22/14	MEDICAL
- AUTH ABSENCE (AWL)	MARLBORO COUNTY	01/22/14	MEDICAL
- INCARCERATED	EVANS	01/22/14	ADMINISTRATIVE
- AUTH ABSENCE (AWL)	TUOMEY REGIONAL	01/10/14	MEDICAL
- INCARCERATED	EVANS	10/10/13	ADMINISTRATIVE
- INCARCERATED	KIRKLAND	10/09/13	MEDICAL
- INCARCERATED	EVANS	10/01/13	ADMINISTRATIVE
- INCARCERATED	KERSHAW	09/09/13	ADMINISTRATIVE
- AUTH ABSENCE (AWL)	PALMETTO RCHLAN	09/09/13	MEDICAL
- INCARCERATED	KERSHAW	08/16/13	RETURN FROM COURT
- AUTH ABSENCE (AWL)	LANCASTER CO	08/16/13	TO COURT

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SELECT A RECORD AND PRESS <ENTER>...

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

4-0

1 Sess-1

~~06/25/14~~

~~06/25/14~~

3/9

INMATE RECORDS OFFICE  
S.C. DEPT. OF CORRECTIONS  
P.O. BOX 1787  
COLUMBIA, S.C. 29221-1787

The Supreme Court of South Carolina

The State,

Respondent,

v.

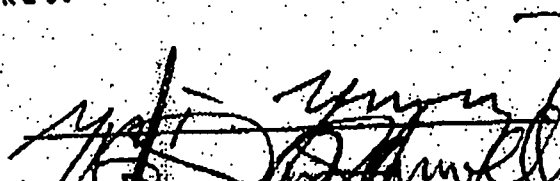
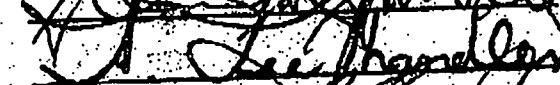

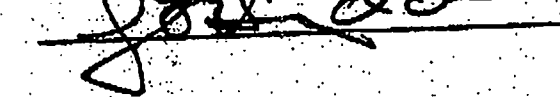
Floyd W. West,

Appellant.

ORDER

The issues raised on appeal in the case of The State v. Floyd W. West, previously heard by this court, having been rendered moot by the death of the appellant;

IT IS ORDERED that the appeal is dismissed and that the case be stricken from the docket.

 C.J.  
 A.J.  
 A.J.  
 A.J.

Columbia, South Carolina

September 13, 1988

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lancaster County

Honorable J. C. Buddy Nicholson, Jr., Circuit Court Judge

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THE STATE,

PETITIONER,

V.

PHILLIP MILLER,

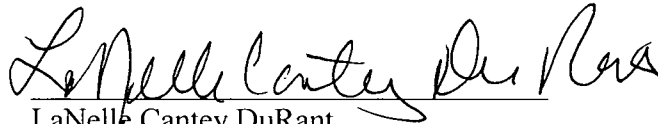
RESPONDENT.

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CERTIFICATE OF SERVICE

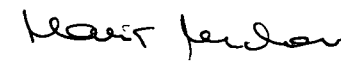
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The undersigned attorney hereby certifies that a true copy of the Motion To Dismiss as Moot in the above referenced case has been served upon opposing counsel, William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of June, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 27th day of June, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.