

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Frank R. Addy, Jr., Circuit Court Judge

RECEIVED

FEB 07 2018

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

BENNIE RAY BROWN, JR.,

Appellant

Appellate Case No. 2016-001597.

MOTION TO DISMISS APPEAL AS MOOT

Respondent moves to dismiss the appeal upon the death of the Appellant. In support of its motion, Appellant would respectfully show unto this Court:

I.

Following a jury trial which concluded on July 1, 2016, Appellant was convicted for the murders of Nichole Kingsborough and Laurens County Deputy Sheriff Roger Rice, Jr. and for the possession of a weapon during the commission of a violent crime. Appellant received two consecutive life sentences. Following post-trial motions, Appellant timely served notice of appeal on July 29, 2016, in this Court pursuant to Rule 203(d)(1)(A)(ii), SCACR. The notice was timely filed on August 2, 2016. Appellant filed his initial brief on September 22, 2017. Respondent's initial brief in response is presently due today, February 7, 2018.

II.

On January 13, 2018, Appellant passed away while in the custody of the South Carolina Department of Corrections. Respondent has been in contact with the South Carolina Department of Corrections who has confirmed Appellant's passing. The Department of Corrections, however, is as of yet unable to provide a copy of Appellant's death certificate. Once one becomes available, Respondent intends to supplement this motion with a copy by way of exhibit.

III.

Respondent moves before this Court for dismissal of the pending appeal. The maintenance of any legal action requires the existence of a justiciable controversy, which "encompasses the doctrines of ripeness, mootness, and standing." *Sloan v. Greenville Cty.*, 356 S.C. 531, 546-47, 590 S.E.2d 338, 347 (Ct. App. 2003). "[M]oot appeals result when intervening events render a case nonjusticiable." *Id.* at 552, 590 S.E.2d at 349. "A case becomes moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy, thus making it impossible for the reviewing court to grant effectual relief." *State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005). "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001). "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *Sloan*, *supra* at 552, 590 S.E.2d at 349. "Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review." *Id.*

Appellant's death renders the appeal moot. *United States v. Volpendesto*, 755 F.3d 448, 452 (7th Cir. 2014) ("We and our sister circuits have recognized that death of

a criminal defendant before appeal causes the case to become moot.”). In an appeal flowing from a criminal conviction, only the convicted defendant may receive relief from appeal’s outcome. With the passing of the defendant, the actual controversy before this Court has ceased. A disposition on any issue raised within Appellant’s pending appeal would be prospective or advisory in nature and therefore disfavored. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 478 (2006). Accordingly, dismissal is the appropriate remedy. *Dove v. United States*, 423 U.S. 325, 325, 96 S.Ct. 579, 579 (1976) (per curiam) (dismissing petition for writ of certiorari upon death of petitioner) (overruling in part *Durham v. United States*, 401 U.S. 481, 483, 91 S.Ct. 858, 860 (1971) (discussing abatement of criminal proceedings as a result of appellant’s death)); *Krantz v. United States*, 224 F.3d 125, 127 (2nd Cir. 2000) (dismissing certificate of appealability in 28 U.S.C. § 2255 action as moot because due to death of appellant, it was “no longer feasible to release petitioner from prison or to order a new trial”).

IV.

WHEREFORE, Respondent submits the motion to dismiss the appeal as moot must be granted for the foregoing reasons and requests this Court hold the time for filing the Initial Brief of Respondent in abeyance pending a ruling on the motion to dismiss in accord with Rule 240(b), SCACR, and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

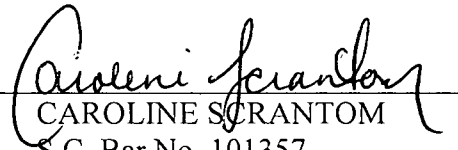
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 
CAROLINE SCRANTOM
S.C. Bar No. 101357
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

February 7, 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

FEB 07 2018

APPEAL FROM LAURENS COUNTY
Frank R. Addy, Jr., Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

BENNIE RAY BROWN, JR.,

Appellant


Appellate Case No. 2016-001597.

PROOF OF SERVICE

I, Caroline Scramtom, certify that I have served Respondent's *Motion to Dismiss Appeal as Moot* on counsel for Appellant by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Susan B. Hackett, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

This 7th day of February, 2018.


CAROLINE SCRANTOM
S.C. Bar No. 101357
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT