

**RECEIVED**  
**Apr 06 2021**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County  
The Honorable Roger M. Young, Circuit Court Judge

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Appellate Case No. 2018-001128

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THE STATE,

Respondent,

v.

DESHAUN LIVAUGHN SIMMONS,

Appellant.

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**MOTION TO DISMISS APPEAL  
DUE TO DEATH OF DESHAUN LIVAUGHN SIMMONS**

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The State through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In January 2014, the Charleston County Grand Jury indicted Deshaun Livaughn Simmons for one count of murder (2014-GS-10-758), one count of attempted murder (2014-GS-10-759), one count of armed robbery (2014-GS-10-760), and one count of possession of a firearm during the commission of a violent crime (2014-GS-10-761). On November 10-15, 2014, Simmons proceeded along with his co-defendant, Denzel Heyward, to a jury trial in the Charleston County Court of General Sessions with the Honorable Roger M. Young, presiding. At the conclusion of trial, the jury convicted Simmons of attempted murder, armed robbery, and possession of a firearm during the commission of a violent crime. The jury was hung on the murder charge for

Simmons and his co-defendant and a mistrial was declared for those charges. Following the verdict, the trial judge sentenced Simmons to thirty years' imprisonment for attempted murder, thirty years' imprisonment for armed robbery and five years' imprisonment for possession of a firearm during the commission of a violent crime. Each sentence ran consecutively to the others resulting in an aggregate sentence of sixty-five years' imprisonment. Simmons filed a motion for reconsideration of his sentence on November 26, 2014. Simmons' motion was denied on June 12, 2018. Thereafter, Simmons timely initiated an appeal of his convictions.

## II.

At present, Simmons' appeal is currently pending before this Court, all briefing has been completed, and the Record on Appeal has been filed. Furthermore, the matter is currently scheduled for oral argument on May 3, 2021 at 11:20 AM in Virtual Courtroom I.

## III.

During the pendency of the appeal, undersigned counsel for the State received notice Simmons died while incarcerated in the South Carolina Department of Corrections on November 3, 2020. The South Carolina Department of Corrections provided confirmation of Simmons' death on April 6, 2021<sup>1</sup>. Accordingly, Simmons' appeal is now moot. Therefore, the State requests this Court dismiss Simmons' appeal. See State v. Miller, 409 S.C. 312, 312, 762 S.E.2d 394, 394-395 (2014) (dismissing an appeal as moot subsequent to the death of Miller during the pendency of the appeal); see also State v. Anderson, 281 S.C. 198, 199, 314 S.E.2d 597, 597 (1984) (holding a criminal defendant's death prior to the conclusion of an appeal constitutes grounds for dismissal).

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<sup>1</sup> Although Simmons' formal death certificate is currently not available, a copy of the correspondence confirming Appellant's death is attached to the State's motion as "Attachment A."

**WHEREFORE**, Respondent prays that this Court will dismiss Simmons' appeal; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

SCOTT MATTHEWS  
Assistant Attorney General

By: Scott Matthews  
Scott Matthews

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-5253

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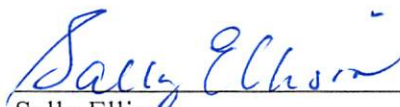
**PROOF OF SERVICE**

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I, Sally Ellison, certify that I have served the within Motion to Dismiss Appeal Due to the Death of Deshaun Livaughn Simmons on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esq.  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This sixth day of April, 2021.



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Sally Ellison  
Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

**Attachment "A"**



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

April 6, 2021

J. Scott Matthews, Esquire  
S.C. Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

**RE: Deshawn L. Simmons, Former SCDC # 362125  
Indictment Nos. 2014-GS-10-759; -760; -761**

Dear Mr. Matthews:

South Carolina Department of Corrections' records indicate that Deshawn L. Simmons passed away on November 3, 2020. I will forward a copy of the death certificate upon receipt.

Sincerely,

Christina C. Bigelow  
Deputy General Counsel  
South Carolina Department of Corrections

## **Sally Ellison**

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**From:** Sally Ellison  
**Sent:** Tuesday, April 6, 2021 2:46 PM  
**To:** 'rdudek@sccid.sc.gov'; Kellner, Haley  
**Cc:** Scott Matthews; William Blich; Victim Services; Sally Ellison  
**Subject:** Emailing: STATE-SIMMONS DASHAUN Motion to Dismiss Appeal Due to Death of Appellant (02534558xD2C78).PDF  
**Attachments:** STATE-SIMMONS DASHAUN Motion to Dismiss Appeal Due to Death of Appellant (02534558xD2C78).pdf

Good Afternoon:

Attached for service this date is a Motion to Dismiss Appeal Due to Death of Deshaun Livaugh Simmons. This Motion will be filed today with the Court of Appeals through AIS One Drive. A copy will also be served as set forth on the Proof of Service. Please confirm receipt of this email and attachment.

*Sally Ellison*  
*Legal Assistant*  
SC Attorney General's Office  
1000 Assembly Street  
Columbia, South Carolina 29201