

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2020-001623

RECEIVED

May 13 2021

SC Court of Appeals

THE STATE,

Respondent,

vs.

EUGENE AUSTIN GARDNER, III,

Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent, State of South Carolina, would respectfully move to dismiss the above captioned murder direct appeal due to the death of Appellant. In support of the motion, Respondent would respectfully show the Court:

1. Appellant, Eugene Austin Gardner, III, was convicted by a jury of murder on December 4, 2020. The Honorable Roger E. Henderson sentenced him to life without the possibility of parole. Appellant appealed. The appeal is currently pending. To date, the briefs have not been filed.

2. The undersigned has been advised by the South Carolina Department of Corrections that Appellant died April 15, 2021. A death certificate is not currently available. However, the Department has provided the attached record which reflects the death. (Attachment 1).

3. Respondent moves to dismiss the appeal as moot. See *State v. Anderson*, 281 S.C. 198, 314 S.E.2d 597 (1984) (“We hold that the death of a criminal appellant, prior to the disposition of his appeal, abates the appeal and constitutes the ground of its dismissal.”)

4. Undersigned counsel for the State has consulted with opposing counsel, David Alexander, Esquire. Mr. Alexander has advised that he does not oppose this motion.

THEREFORE, in light of the foregoing, Respondent moves to dismiss the appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
No. 07979

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

s/Melody J. Brown

By: _____

MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

May 13, 2021

RECEIVED

May 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2020-001623

THE STATE,

Respondent,

vs.

EUGENE AUSTIN GARDNER, III,

Appellant.

PROOF 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 Respondent's Motion to Dismiss, and Certificate of Service has been forwarded to Appellant's counsel, David Alexander, Esquire, via email today, May 13, 2021 to dalexander@sccid.sc.gov and to his assistant Lindsey Matthews at lmattthews@sccid.sc.gov,

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

This 13th day of May, 2021.

s/Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown,
Senior Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTACHMENT

1

Internal Inmate Search
CHRISTINA J BIGELOW
 May 13, 2021

- [Home](#)
- [Search](#)
- [?](#)

Secured ApplicationsLogout

AUSTIN EUGENE GARDNER III (00357996)

Search Results [+/-]

Identification	Personal	Case History	Movement	Escapes	Credits	Programs
Transfer Requests						

Movement

Movement Date	To Location	Reason	Status
04/15/2021	UNK	DEATH BY NATURAL CAUSE	RELEASE
03/25/2021	EVANS	ADMINISTRATIVE	INCARCERATED
03/18/2021	LIEBER	MEDICAL	INCARCERATED
12/09/2020	KIRKLAND	RESENTENCED OTHER	INCARCERATED
05/30/2019	UNK	SENT REMANDED/OVERTURNED	RELEASE
12/20/2018	MCCORMICK	ADMINISTRATIVE	INCARCERATED
12/20/2018	KIRKLAND	MEDICAL	INCARCERATED
10/09/2017	MCCORMICK	ADMINISTRATIVE	INCARCERATED
01/10/2017	LEE	RETURN FROM COURT	INCARCERATED
01/10/2017	MARLBORO CO	TO COURT	AUTH ABSENCE (AWL)
01/09/2017	LEE	RETURN FROM COURT	INCARCERATED
01/09/2017	DARLINGTON CO	TO COURT	AUTH ABSENCE (AWL)
02/18/2016	LEE	ADMINISTRATIVE	INCARCERATED
08/25/2015	PERRY	ADMINISTRATIVE	INCARCERATED
08/25/2015	KIRKLAND	MEDICAL	INCARCERATED
07/22/2015	PERRY	RETURN FROM COURT	INCARCERATED
07/22/2015	DARLINGTON CO	TO COURT	AUTH ABSENCE (AWL)
02/04/2015	PERRY	RETURN FROM COURT	INCARCERATED
02/04/2015	DARLINGTON CO	TO COURT	AUTH ABSENCE (AWL)
07/07/2014	PERRY	RETURN FROM COURT	INCARCERATED
07/07/2014	DARLINGTON CO	TO COURT	AUTH ABSENCE (AWL)
03/27/2014	PERRY	ADMINISTRATIVE	INCARCERATED
03/27/2014	KIRKLAND	MEDICAL	INCARCERATED
01/27/2014	PERRY	ADMINISTRATIVE	INCARCERATED
01/15/2014	KIRKLAND	RETURN FROM COURT	INCARCERATED
01/15/2014	DARLINGTON CO	TO COURT	AUTH ABSENCE (AWL)
12/04/2013	KIRKLAND	NEW ADMISSION	INCARCERATED

Copyright © 2002-2021 SCDC | South Carolina Department of Corrections. All rights reserved.
 [Version: 3.2.19 Built: 02/16/2021 01:18:55 PM Time: 09:57:13 AM]

Internal Inmate Search
CHRISTINA J BIGELOW
May 13, 2021

- [Home](#)
- [Search](#)
- [?](#)

Secured ApplicationsLogout

AUSTIN EUGENE GARDNER III (00357996)

Search Results [+/-]

Identification	Personal	Case History	Movement	Escapes	Credits	Programs
Transfer Requests						

Sentence

Offender Type: ADULT-STRAIGHT SENTENCE
 Sex Offender Registry: NO
 Projected Release Date:
 Projected Parole Date: NOT ELIGIBLE
 Supervised Furlough Eligibility: NOT ELIGIBLE
 Supervised Re-Entry Date: NOT ELIGIBLE

Offense: MURDER
 Offense County: DARLINGTON
 Sentence Start Date: 03/29/2012
 Sentence Length: LIFE SENTENCE
 Admission Date: 12/04/2013

Accomplices

None.

Detainers

None.

Copyright © 2002-2021 SCDC | South Carolina Department of Corrections. All rights reserved.
 [Version: 3.2.19 Built: 02/16/2021 01:18:55 PM Time: 09:57:13 AM]