

IN THE SUPREME COURT OF FLORIDA

TERRY TRUSSELL

Appellant/Petitioner,

v.

STATE OF FLORIDA,

Appellee/Respondent.

CASE NO. SC18-2084,

MOTION TO DISMISS AS MOOT.

The respondent, the State of Florida (hereinafter State), files this motion to dismiss the request for discretionary review as moot, and states the following:

Terry Trussell, petitioner in this Court, appellant in the First District Court of Appeal, was seeking review of the First District Court of Appeal's decision affirming his conviction and sentence. Petitioner's counsel has informed the State that the petitioner had passed away during the pendency of this appeal.

In State v. Clements, 668 So. 2d 980, 982 (Fla. 1996), the this Court held that "a judgment of conviction is retained when the defendant dies pending resolution of his or her appeal." Because the cost and fines are a part of the sentence, which remains effective, "monetary fines or penalties continue to be enforceable against assets which comprise a defendant's estate." Id. Therefore, the Court concluded that "if fines or penalties are to be enforced against the defendant's estate, the estate maintains the same right to appeal that the defendant would have had if living. Likewise, the State may have an interest in seeing the appeal completed. Accordingly, we find that

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when a defendant dies after judgment but during an appeal, the appellate court may, upon a showing of good cause by the State or a representative of the defendant, determine that the appeal should proceed. If good cause to proceed is not demonstrated, then the appeal should be dismissed." Id.

In this case, the undersigned has verified with both the State Attorney's Office in the Second Judicial Circuit, which had been assigned this case by the Governor's Office, and the State Attorney's Office in the Third Judicial Circuit, and both offices have agreed that the State will not seek any court cost or fees that might have been imposed against his estate. Renwick v. State, 933 So. 2d 730, 731 (Fla. 4<sup>th</sup> DCA 2006) ("We dismiss the appeal under the authority of State v. Clements, 668 So.2d 980 (Fla.1996), because Renwick's representative has not shown good cause for the appeal to proceed. In the present case, the court did not impose a fine as part of the sentence, and the state has represented that it will not file a claim for court costs against the indigent defendant's estate.").

WHEREFORE, because appellant has passed away during the pendency of this appeal and because the State is not seeking the cost or fees against his estate, this appeal should be dismissed.

Respectfully submitted,

ASHLEY MOODY  
ATTORNEY GENERAL

/s/ Trisha Meggs Pate  
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[AGO# L17-1-0014]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing response has been furnished to by email to Robert David Malove, Esq., [rdm@robertmalovelaw.com](mailto:rdm@robertmalovelaw.com), and Inger M. Garcia, Esq. at [Attorney@ingergarcia.com](mailto:Attorney@ingergarcia.com) on May 1, 2019.

/s/ Trisha Meggs Pate  
Trisha Meggs Pate  
Attorney for the State of Florida

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