

IN THE SUPREME COURT OF FLORIDA

TERRY G. TRUSSELL,  
*Appellant/Petitioner,*

v.

Case No.: SC18-2084

STATE OF FLORIDA,  
*Appellee/Respondent.*

\_\_\_\_\_ /

RESPONSE TO MOTION TO DISMISS AS MOOT

The undersigned, as counsel for the deceased Appellant/Petitioner, Terry G. Trussell, files this response to the State's motion to dismiss the request for discretionary review as moot and states the following:

1. This cause is before the Court on a request for discretionary review from the decision of the First District Court of Appeal in *Terry G. Trussell v. State of Florida*, 256 So. 3d 935 (Fla. 1st DCA 2018). Both parties have submitted their respective briefs on jurisdiction and are awaiting this Court's decision on jurisdiction.

2. In the interim, on April 26, 2019, Mr. Trussell passed away in the Florida Department of Corrections.

3. The State has filed a motion to dismiss the request for discretionary review as moot due to Mr. Trussell's passing. Citing *State v. Clements*, 668 So. 2d 980 (Fla. 1996), the State asserts that, since it will not be seeking costs or fees against Mr. Trussell's estate, the appeal should be dismissed.

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4. Undersigned counsel objects to the State's request for dismissal and asks that this Court permit the appeal to proceed. The First District's decision below affirms a conviction for a charge not made in the information, implicating the Due Process Clause.

5. Moreover, the conflict created by the First District with this Court's decision in *Price v. State*, 995 So. 2d 401 (Fla. 2008), as well as other district courts of appeal in *Richards v. State*, 43 Fla. L. Weekly D239, D241 (Fla. 2d DCA Jan. 26, 2018); *Zwick v. State*, 730 So. 2d 759 (Fla. 5th DCA 1999); *Leonetti v. State*, 418 So. 2d 1192 (Fla. 5th DCA 1982), should be resolved for the benefit of the public, the bench and the bar. *See Dorsey v. State*, 868 So. 2d 1192, 1194 n.2 (Fla. 2003) ("Because the conflict created by the Third District's decision is on an important issue that is likely to recur and therefore should be resolved for benefit of bench and bar, we decline to dismiss this case as moot on the grounds that Mr. Dorsey is now deceased."); *Holly v. Auld*, 450 So. 2d 217, 218 n.1 (Fla. 1984) ("It is well settled that mootness does not destroy an appellate court's jurisdiction... when the questions raised are of great public importance or are likely to recur").

WHEREFORE, undersigned counsel respectfully asks that this Court permit the appeal to proceed in order to resolve the conflicts and the legal issues this case presents for the benefit of Florida jurisprudence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was electronically filed with the Florida Court's e-filing portal and that a copy was served upon the Office of the Attorney General at crimappth@myfloridalegal.com, on this 1st day of May, 2019.

/s/ Robert David Malove  
Robert David Malove, Esq.