



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

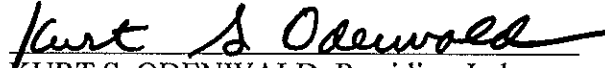
STATE OF MISSOURI,	)	No. ED106042
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Warren County
vs.	)	
	)	Honorable Wesley C. Dalton
DANIEL MOTT,	)	
	)	
Appellant.	)	FILED: February 26, 2019

Appellant was convicted of the Class C felony of possession of a controlled substance in violation of section 195.202 RSMo (Cum. Supp. 2011). Appellant was sentenced on October 18, 2017 to serve a term of twelve years in the Missouri Department of Corrections. Appellant's conviction was affirmed by this Court on December 11, 2018, but before the mandate issued, Counsel for Appellant filed a copy of Appellant's death certificate showing Appellant died on October 27, 2018.

Missouri courts have long recognized the doctrine of abatement ab initio, which maintains that in criminal cases, "the death of the defendant pending an appeal from a judgment of conviction abates the prosecution or cause of action entirely." State ex rel. Scott v. Cox, 243 S.W. 144, 145 (Mo. 1922). See also State v. West, 630 S.W.2d 271 (Mo. App. S.D. 1982). When an appellant dies prior to his appeal becoming final, we are required to remand the case to

the circuit court to dismiss the underlying action. State v. Raulerson, 534 S.W.3d 921, 921 (Mo. App. W.D. 2017); State v. Benitez, 412 S.W.3d 451, 452 (Mo. App. S.D. 2013).

Accordingly, we withdraw our order and memorandum, filed December 11, 2018, and remand this matter to the circuit court to dismiss the underlying criminal case.


KURT S. ODENWALD, Presiding Judge

Gary M. Gaertner, Jr., J., concurs.
Colleen Dolan, J., concurs.