SUPREME COURT
STATE OF LOUISIANA

NO. 2021-K-01788

STATE OF LOUISIANA

VS.

KENNETH JAMES GLEASON

ON WRIT OF REVIEW TO THE COURT OF APPEAL,
FIRST CIRCUIT NO. 2021-KA-1286
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA
CRIMINAL DOCKET NO. 11-17-0715, SECTION VII
HONORABLE BEAU HIGGINBOTHAM, JUDGE PRESIDING

ORIGINAL BRIEF FILED ON BEHALF OF THE STATE OF LOUISIANA

HILLAR C. MOORE, III
DISTRICT ATTORNEY

BY: DYLAN C. ALGE, #27938
ASSISTANT DISTRICT ATTORNEY
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
222 ST. LOUIS STREET, 5TH FLOOR
BATON ROUGE, LOUISIANA 70802
TELEPHONE: (225) 389-3453
EMAIL: DYLAN.ALGE@EBRDA.ORG

TABLE OF CONTENTS

INDEX OF AUTHORITIES

SUPREME COURT
STATE OF LOUISIANA

NO. 2021-K-01788

STATE OF LOUISIANA

VS.

KENNETH JAMES GLEASON

ON WRIT OF REVIEW TO THE COURT OF APPEAL,
FIRST CIRCUIT NO. 2021-KA-1286
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA
CRIMINAL DOCKET NO. 11-17-0715, SECTION VII
HONORABLE BEAU HIGGINBOTHAM, JUDGE PRESIDING

ORIGINAL BRIEF FILED ON BEHALF OF THE STATE OF LOUISIANA

STATEMENT OF JURISDICTION

This Court has jurisdiction over the present matter by virtue of article V, sections 2 and 10 of the Louisiana Constitution, which grant supervisory jurisdiction to this court over the courts of appeal.

STATEMENT OF THE CASE

On November 30, 2017 defendant Kenneth Gleason was charged with having committed the first-degree murder of Donald Smart. A two-week jury trial began on April 12, 2021, and defendant was unanimously found guilty as charged on April 26, 2021. Defendant was sentenced on August 23, 2021 to the mandatory term of life imprisonment without benefit of parole, probation, or suspension of sentence. At sentencing defendant provided written notice of intent to appeal.

Shortly after giving notice of appeal, defendant died in prison from an apparent suicide.[1] On November 5, 2021 appellate counsel filed a combined motion to suspend briefing delays and petition to abate prosecution *ab initio*. Five days later (November 10th) the First Circuit Court of

[1] It was with the expectation that defendant's death would be ruled a suicide that the state alternatively prayed for relief in the form of a suicide-exception to the abatement *ab initio* procedure in its writ application. Defendant's September 22, 2021 initial report stated defendant died from "Cardiopulmonary Arrest-Found Hanging." As of this filing a formal declaration of suicide has not been made.

Appeal dismissed defendant's appeal, vacated his conviction, and instructed that defendant's prosecution be abated from its inception.[2] The First Circuit relied on controlling precedent from this Court to justify its actions.

Aggrieved, the state submitted a writ application with this Court. This Court granted writs and ordered briefing. The state submits the instant brief, requesting this court abandon the antiquated abatement *ab initio* doctrine and implement the more fair-minded "Alabama Rule" adopted by multiple jurisdictions.

STATEMENT OF FACTS[3]

On September 14, 2017 Donald Smart, a forty-nine-year-old black male, was walking to his work as a dishwasher at Louie's Cafe when he was gunned down. An eyewitness to the shooting indicated that he saw a white male subject dressed in dark clothing and driving a small red vehicle shoot Smart. He further indicated that the subject first shot Smart from the vehicle and then exited the vehicle and stood over him, firing additional shots into him after he was down. Smart was shot a total of eight times and was pronounced dead on the scene.

Baton Rouge City Police Officers dispatched to the scene immediately noticed the similarity of the facts and circumstances of Smart's murder with the murder of Bruce Cofield, which occurred in Baton Rouge only two days earlier. Cofield was a fifty-nine year old black man. His shooter was described as a white male wearing black clothing and driving a red car. Witnesses further indicated that the killer first shot Cofield from the vehicle and then got out, stood over him, and fired more shots into his body.

After the investigation of the murders implicated defendant Kenneth Gleason as the shooter in these cases, detectives learned that just one day prior to the murder of Cofield there was an attempted murder committed only two houses down from the house where defendant resided. The investigation revealed that the gunman walked up to the front door of the house and fired three shots into the residence but luckily did not strike anyone. The house was owned by Tonya Stephens. Her two adult sons were home at the time of the shooting. The Stephens' were the only black family that lived in the neighborhood.

---

[2] *State v. Kenneth Gleason*, 21-KA-1286, (La. App. 1 Cir. 11/10/21). The first circuit also mooted the motion to suspend briefing delays.

[3] The following facts were established at defendant's trial. Because his appeal was abandoned no transcripts exist to reference.

DNA on two of the scenes coupled with other evidence ultimately tied all three cases together and led to the conviction of defendant for the first-degree murder of Donald Smart based upon the aggravating circumstance that he previously acted with specific intent to kill or inflict great bodily harm that resulted in the killing of Cofield.

ISSUE

Whether the doctrine of abatement *ab initio* should be abandoned or otherwise modified.

ASSIGNMENT OF ERROR

The First Circuit, Court of Appeal did not err insofar as it applied this Court's precedent. The state is seeking a departure from existing precedent.

ARGUMENT SUMMARY

This Court adopted the doctrine of abatement *ab initio* in *State v. Morris*.[4] It is now time to abandon the procedure, as it serves no truly functional purpose and, among other things, undermines victim's rights. Louisiana should completely abandon its abatement procedure and adopt the "Alabama Rule" announced in the factually identical case of *Commonwealth v. Hernandez*.[5]

ARGUMENT

Under the common-law doctrine known as abatement *ab initio*, the death of a convicted defendant while on appeal abates not only the appeal, but likewise all proceedings had in the prosecution from its inception. In 1976, this Court confronted the *res nova* issue of what to do when a defendant died after conviction but his case was still on appeal. In *State v. Morris*, a defendant was convicted of second-offense marijuana, a victimless crime. He died while his appeal was pending. Recognizing that at the time "most courts" which had considered the matter had utilized the abatement procedure, *Morris* adopted the doctrine of abatement *ab initio*.[6] *Morris* dismissed the appeal, vacated the judgment of conviction, and remanded to the district court with instructions to dismiss the bill of information. Post-*Morris*, the abatement *ab initio* procedure has

[4] 328 So. 2d 65, 67 (La. 1976).
[5] 481 Mass. 582, 118 N.E.3d 107 (2019). In its original writ application the state alternatively opted for the creation of a suicide exception to the abatement procedure with the expectation defendant's death would officially be ruled a suicide. In brief, the state has placed more focus on straightforward adoption of the "Alabama Rule."
[6] *Morris*, 328 So.2d at 67.

been uniformly applied throughout Louisiana to defendants who have died during the pendency of their appeal.[7]

In the instant case, the First Circuit relied on this Court's precedent to vacate defendant's murder conviction and abate all proceedings in the case from its inception. While some Louisiana courts have noted the apparent unfairness of the rule,[8] the abatement *ab initio* procedure still currently controls in Louisiana. Given the questionable basis for adopting the doctrine and the seismic shift in how society treats victims of crime,[9] this Court must now abandon the abatement procedure and adopt a more reasonable, just procedure. The state submits the most just procedure is the "Alabama Rule," which was recently espoused and adopted in the *Hernandez* case.

The facts of *Hernandez* parallel the instant case. In *Hernandez* the defendant was convicted of first-degree murder and sentenced to life imprisonment. While on appeal the defendant committed suicide. Massachusetts, which adopted the doctrine of abatement *ab initio* around the same time as Louisiana, invoked the doctrine and vacated the defendant's conviction and dismissed the indictment. The Commonwealth appealed to its highest court, asking the court to either altogether abandon the doctrine or to not apply the doctrine where a person commits suicide during the appeal process.

Agreeing with the Commonwealth, the Massachusetts high court completely abandoned abatement *ab initio* and abrogated fifty years of jurisprudence:

> We conclude that the doctrine of abatement *ab initio* is outdated and no longer consonant with the circumstances of contemporary life, if, in fact, it ever was. Rather, when a defendant dies irrespective of cause, while a direct appeal as of right challenging his conviction is pending, the proper course is to dismiss the appeal as moot and note

---

[7] A long line of cases following the same reasoning within this state forms *jurisprudence constante.* Under the civilian tradition, while a single decision is not binding on our courts, when a series of decisions form a "constant stream of uniform and homogenous rulings having the same reasoning," *jurisprudence constante* applies and operates with "considerable persuasive authority." *Bergeron v. Richardson*, 20-01409 (La. 6/30/21), 320 So. 3d 1109, 1115. *See e.g. State v. Harvey*, 94-0343 (La. 10/20/94), 644So.2d. 371; *State v. Reado*, 14-341 (La. App. 3 Cir. 5/7/14) 139 So.3d 637; *State v. Burton*, 46,552 (La. App. 2 Cir. 9/21/11) 74 So.3d 253; *State v. Granger*, 463 So.2d 19 (La. App 5 Cir 1985).

[8] *State v. Recile*, 08-1010 (La. App. 1 Cir. 2/13/09) 2009 WL 390812 (Whipple, J., and Carter, C.J. concurring): It seems unfair to vacate the judgment of conviction and to abate all proceedings in the prosecution when such action may prejudice the State in a pending and related civil proceeding. However, as an intermediate appellate court we are constrained to follow the directives of the Louisiana Supreme Court; therefore, I respectfully concur."

State v. Beasley, 438 So. 2d 1229, 1230 (La. Ct. App. 1983) (Domengeaux, J., concurring): "I agree herein because we have no choice but to follow the mandate of the Louisiana Supreme Court set out in the three cases cited in the majority opinion, and particularly the *Morris* case which elucidates on the status of a convicted defendant's appeal when that defendant has died in the interim between the appeal and its hearing. I respectfully suggest, however, that the *Morris* case, which does recognize two jurisprudential lines of thought on the subject, runs afoul of the United States Supreme Court case of *Dove v. United States,* 423 U.S. 325, 96 S.Ct. 579, 46 L.Ed.2d 531, 18 Cr.L.R. 4138 (1976), which overruled its previous *Durham v. United States,* 401 U.S. 481, 91 S.Ct. 858, 28 L.Ed.2d 200 (1971) case (cited in *Morris*). I feel that under *Dove* we would have to dismiss the appeal herein as being moot, but not order the sentence vacated and the indictment dismissed."

[9] La. Const. Art. I, § 25, effective Nov. 5, 1998; La. R.S. 46:1801 *et seq.*

> in the trial court record that the conviction removed the defendant's presumption of innocence, but that the conviction was appealed from and neither affirmed nor reversed because the defendant died.[10]

Hernandez began by explaining that the origin of the doctrine of abatement *ab initio* was "unclear" and that despite the belief that abatement *ab initio* was well-established, "few courts plainly articulated the rationale behind the doctrine."[11] After analyzing the history of the abatement procedure in Massachusetts and the federal system, *Hernandez* analyzed the remaining states to conclude that while abatement *ab initio* was once the majority approach, the more recent trend offered state courts options in deciding how an appeal should be handled upon the death of the appellant. After noting the various state approaches,[12] *Hernandez* concluded that abatement *ab initio* was no longer the preferred or majority approach and that most states had "chosen to go in another direction."[13] Abatement *ab initio* was now "far from the 'general practice.' "[14]

Hernandez next considered the two reasons advanced for preserving abatement *ab initio*, the "finality principle"[15] and the "punishment principle."[16] It found neither justification for the doctrine compelling, particularly in light of a societal shift towards providing victims greater rights.

Rather than create a suicide exception to the abatement *ab initio* doctrine, *Hernandez* abandoned it. *Hernandez* ultimately concluded that the "Alabama Rule" was the best option. That rule, espoused in the Alabama case of *Wheat v. State*,[17] provided that when an appellate court abates an appeal upon the death of a defendant it shall instruct the trial court to place in the record a notation stating that the fact of the defendant's conviction removed the presumption of the defendant's innocence, but that the conviction was appealed and it was neither affirmed nor reversed on appeal because the defendant died while the appeal of the conviction was pending and the appeal was dismissed. In adopting the rule, *Hernandez* logically reasoned:

> Under our approach, a convicted defendant is not denied any appellate rights, and especially is not deprived of such rights in a discriminatory manner. A convicted defendant's appeal and the

[10] *Hernandez*, 481 Mass. at 583.
[11] *Hernandez,* 481 Mass. at 585.
[12] *Hernandez*, 481 Mass. at 589-91, Fns. 12-15.
[13] *Hernandez*, 481 Mass. at 592.
[14] *Hernandez*, 481 Mass. at 588.
[15] *Hernandez*, 481 Mass. at 593-94. The finality principle rests upon the premise that a trial and appeal are essential parts of our system of justice and that a conviction should not stand until a defendant has had the opportunity to pursue both.
[16] *Hernandez*, 481 Mass. at 596. The punishment principle, which is often framed in terms of mootness or loss of jurisdiction, "focuses on the precept that the criminal justice system exists primarily to punish and cannot effectively punish one who has died."
[17] 907 So.2d 461, 464 (Ala. 2005).

> criminal prosecution of which it is a part come to an end for the simple reason that, by whatever cause, the defendant died. The record will accurately reflect the case as it was at the time of death; it will reflect the status quo.[18]

Hernandez artfully articulated why abatement *ab initio* was suspect from its inception. Post-*Morris* changes to Louisiana law regarding victim's rights supply the impetus for abandoning the doctrine of abatement *ab initio*.

When *Morris* was decided advocacy about how victims were impacted by crime went largely unnoticed.[19] That view has changed. Six years after *Morris*, the legislature enacted Chapter 21-A of Title 46 of the Revised Statutes—the Crime Victims Reparations Act. Nine years after *Morris*, the legislature enacted Chapter 21–B of Title 46 of the Revised Statutes—the Crime Victims Bill of Rights.[20] And in 1998, Louisiana voters approved an amendment to the state's constitution which granted crime victims new rights and elevated those rights to be on par with those afforded criminal defendants; that amendment became Louisiana Constitution Article 1, § 25. The first clause of that article mandates "fairness, dignity, and respect" for any victim of a crime. Among other rights, § 25 elevates a victim's right to restitution to a constitutional entitlement, requires that all "procedural laws of this state shall be interpreted in a manner consistent" with crime victim's rights, and authorizes the legislature to enact laws implementing those rights.

In *State v. Al Mutroy*[21] the Tennessee Supreme Court recently relied on victim's rights substantially paralleling those of Louisiana as the primary reason for abandoning their state's abatement *ab initio* procedure. In *Al Mutroy*, a defendant was convicted of reckless homicide and sentenced to three years imprisonment. The defendant died during appeal and the appellate court employed the abatement *ab initio* procedure consistent with Tennessee's jurisprudence since 1966. The state opposed the abatement, arguing that changes in the law, specifically an amendment to the Tennessee Constitution regarding victim's rights, warranted abandonment of abatement *ab initio*. Reversing the appellate court, the Tennessee Supreme Court ruled that, "due to changes in Tennessee's public policy in the arena of victims' rights, the doctrine of abatement *ab initio* must

---

[18] *Hernandez*, 481 Mass. at 602.
[19] *Morris*, 328 So. 2d at 67: "Nevertheless, the surviving family has an interest in preserving, unstained, the memory of the deceased defendant or his reputation. This interest is of sufficient legal significance to require that a judgment of conviction not be permitted to become a final and definitive judgment of record when its validity or correctness has not been finally determined because the defendant's death has caused a pending appeal to be dismissed."
[20] La. R.S. 46:1841.
[21] *State v. Al Mutory*, 581 S.W.3d 741 (Tenn. 2019).

be abandoned."[22] More specifically, *Al Mutroy* focused on two changes to the legal landscape in many states as justification for the change: Victim's rights and restitution.[23]

Al Mutroy noted that the changes in the arena of victims' rights were incongruent with the doctrine of abatement *ab initio* because abating a defendant's conviction can have a detrimental impact on victims both emotionally and financially.[24] Overruling 55 years of precedent, *Al Mutroy* did not mince words:

> We conclude that the doctrine of abatement *ab initio* must be abandoned because it is obsolete, its continued application would do more harm than good, and it is inconsistent with the current public policy of this State, as reflected in the constitution, in statutes, and in recent judicial decisions. […] Furthermore, abatement ab initio prioritizes the reputation of a deceased criminal and the financial interests of the criminal's estate over society's interest in the just condemnation of a criminal act and a victim's right to restitution.[25]

In the instant case defendant committed unprovoked criminal activity that put an entire city on edge. In the course of four days defendant committed multiple murders and an attempted murder, targeting a particular minority group in the process. Defendant's actions warranted a first–degree murder charge. With that charge came years of preparation and an extensive jury trial, one that drained the time and resources of the District Attorney and the Louisiana court system. All the while the victims in the case endured, and they ultimately received a judgment of conviction against the person who committed the crime. To now act as though nothing ever happened is plain wrong. Whether this Court wholeheartedly abandons the doctrine of abatement *ab initio* or instead modifies it, a change is in order.

While the doctrine of abatement of *ab initio* continues to be disfavored, states have varied in what approach to adopt. *Hernandez* made note of the various approaches,[26] but *Surland v.*

---

[22] *Al Mutory*, 581 S.W.3d at 743.
[23] *Al Mutroy*, 581 S.W.3d at 748.
[24] *Al Mutory*, 581 S.W.3d at 749.
[25] *Al Mutory*, 581 S.W.3d at 750.
[26] *Hernandez*, 481 Mass. 582, 589–91, 118 N.E.3d at 114–16: " By our count, eighteen States and the District of Columbia apply the doctrine of abatement ab initio, with some, like the above-mentioned Federal circuits, carving out an exception for restitution orders imposed for compensatory purposes. A majority of others follow one of several different approaches. Some have opted to allow the appeal to proceed, although most limit the issues that can be considered. Others have opted not to allow the appeal to proceed and, although not all have stated so or stated so with clarity, the underlying conviction and any related fines and restitution orders remain fully or partially intact. Still others follow an approach whereby, usually pursuant to an appellate rule, the appeal can continue if a motion to substitute a new party is made either by a representative of the defendant's estate, the defendant's attorney of record, the State, or another party and, in the absence of such a motion, either the appeal is dismissed and the conviction stands or the appeal, conviction, and indictment are abated. […] [T]he so-called "Alabama rule" provides that when an appellate court abates an appeal upon the death of the defendant, as it may under an existing appellate rule, it "shall instruct the trial court to place in the record a notation stating that the fact of the defendant's conviction removed the presumption of the defendant's innocence, but that the conviction was appealed and it was neither affirmed nor reversed on appeal because the defendant died while the appeal of the conviction was pending and the appeal was dismissed."

State[27] more succinctly explained the various options state courts have employed upon the death of a defendant during appeal:

> "From the case law around the country, there seem to be several basic choices on the menu of options:
> (1) Dismiss the appeal as moot and direct as well that the entire criminal proceeding, from the charging document through the trial court's judgment, be abated (voided).
> (2) Dismiss the appeal as moot and either expressly leave the trial court's judgment intact or say nothing about the continuing vitality of that judgment (which presumably will either leave the judgment intact or reserve the issue for future litigation).
> (3) Dismiss the appeal as moot, abate the conviction and any purely punitive part of the judgment but allow one or more adjunctive aspects of the judgment, such as an order of restitution and possibly court costs and fines that have already been paid, to remain intact.
> (4) Resolve the pending appeal, notwithstanding the death of the appellant, and let the fate of the trial court's judgment be determined by the result of the appeal. A variant of this approach, and perhaps that of (3), is to allow the appeal to continue only if, by reason of an order of restitution or a fine, the appellant's estate has a financial interest in resolving the validity of the judgment and wishes the appeal to continue. A variant of that is to allow the appeal to continue in any case in which a substituted party is appointed and elects to continue the appeal, or counsel of record elects to continue it.
> (5) Dismiss the appeal as moot and direct that a note be placed in the record that the judgment of conviction removed the presumption of the defendant's innocence, that an appeal was noted, and that, because of the death of the defendant, the appeal was dismissed and the judgment was neither affirmed nor reversed."

A dwindling number of states still follow abatement *ab initio*. Some state simply dismiss the appeal and allow the conviction and restitution (if any) to remain intact. Some allow the appeal to continue with a substitute party. *Hernandez* and the "Alabama Rule" qualify the conviction by placing a notation in the record to reflect the status at the time of death. *Al Mutroy* dismissed the appeal based on the specific facts of the case, taking a case-by-case approach with the future hope that legislative input would clarify.[28]

---

[27] 392 Md. 17, 19–20, 895 A.2d 1034, 1035 (2006).

[28] *Al Mutory*, 581 S.W.3d at 755–56: "Neither party before this Court has advanced any interest—be it an interest of the defendant's family, the victim's family, or society—that would benefit from allowing this appeal to continue. As was previously noted, the defendant was not fined or ordered to pay restitution. Nor have we received any notice of a pending wrongful death action against the defendant or any probate matter related to this case. Neither the defendant's attorney nor the State has raised post-judgment "facts, capable of ready demonstration, affecting the positions of the parties or the subject matter of the action." On the record before us, we conclude the proper resolution of this appeal is dismissal.
We do not by this decision foreclose the possibility that a future appeal may present circumstances that would warrant its continuation after a defendant's death. We simply leave those matters to another case in which such circumstances are presented and raised. We ask the Advisory Commission on the Rules of Practice and Procedure to review this opinion and to recommend any changes to the Rules of Appellate Procedure it deems advisable regarding the procedure the Court of Criminal Appeals should utilize when a criminal defendant dies during an appeal as of right from a conviction. We prefer to allow the Rules Commission to consider this issue anew, with input from the various stakeholders, and not constrain its consideration by our adoption of an interim procedure. In the meantime, when faced with this issue, the Court of Criminal Appeals should decide on a case-by-case basis, in light of the record on appeal,

The state is cognizant that a Louisiana defendant possesses a constitutional right to appeal.[29] But *Morris* is correct when it reasoned a criminal defendant's right to continue an appeal extinguishes upon death. Unlike civil law, there is no "survival action."[30] Moreover, it appears both impractical and illogical to allow anyone to step into the shoes of a convicted defendant to continue an appeal. The convicted defendant cannot be afforded any practical relief, and it is only he who can attain true relief by pursuing the criminal appeal. Unlike a civil case where a substituted party might have meaningful standing, should a person stand in the place of defendant they do not go to prison if the appeal is affirmed. And who should be allowed to continue the appeal? Who pays for it? What happens if an appeal claim gets relegated to state post-conviction?[31] Is that process allowed to continue? For these reasons, and given the very logical reasoning that encompasses the "Alabama Rule," the state advocates for adoption of the "Alabama Rule." Complete abandonment of the appellate procedure is the best option irrespective of how a defendant dies. As *Hernandez* poignantly says, placing a notation in the record simply "preserves the status quo."

Courts should dismiss an appeal upon the death of a person. But to act as though nothing ever happened goes a step too far. The outdated doctrine of abatement *ab initio* is illogical and hurtful to the victims of a case and the citizens of Louisiana. The trend across the Country has been to abandon the procedure, and the instant case presents a prime example of why. Accordingly, the state requests that this Court abandon the doctrine of abatement *ab initio*, adopt the "Alabama rule," and enter a notation in the record that the fact of defendant's conviction removed the presumption of the defendant's innocence, but that the conviction was to be appealed and it was neither affirmed nor reversed on appeal because the defendant died while the appeal of the conviction was pending and the appeal was dismissed.

---

and after consideration of the wealth of authorities from other jurisdictions, whether a particular appeal as of right should continue after a defendant's death. A party dissatisfied with the intermediate appellate court's decision remains free, of course, to seek review in this Court."

[29] La. Const. art. I, § 19.

[30] La. C.C. art. 2315.1.

[31] As a general rule, a claim of ineffective assistance of counsel is more properly raised in an application for post-conviction relief in the district court rather than on appeal. This is because post-conviction relief provides the opportunity for a full evidentiary hearing under La. C.Cr.P. art. 930. Only when the record is sufficient may a court resolve this issue on direct appeal. *State v. Thompson*, 2020-0023 (La. App. 1 Cir. 4/16/21), 324 So. 3d 113, 118, *writ denied,* 2021-00730 (La. 11/3/21), 326 So. 3d 893.

CONCLUSION

Wherefore, the state prays that this Court reverse the portion of the appellate court ruling vacating defendant's conviction and sentence and dismissing the prosecution from its inception and note in the trial court record that the conviction removed defendant's presumption of innocence, but that the conviction was neither affirmed nor reversed on appeal because the defendant died.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III
DISTRICT ATTORNEY

Dylan C. Alge, Bar No. 27938

Digitally signed by: Dylan C. Alge, Bar No. 27938
DN: CN = Dylan C. Alge, Bar No. 27938 email = dylan.alge@ebrda.org C = US OU = Assistant District Attorney
Date: 2022.03.07 10:58:13 -06'00'

BY: DYLAN C. ALGE, #27938
ASSISTANT DISTRICT ATTORNEY
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
222 ST. LOUIS STREET, 5TH FLOOR
BATON ROUGE, LOUISIANA 70802
TELEPHONE: (225) 389-3453
EMAIL: DYLAN.ALGE@EBRDA.ORG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been hand-delivered, mailed, and/or emailed this date to Beau M. Higginbotham, Judge, Nineteenth Judicial District Court, 300 North Boulevard, Suite 6401, Baton Rouge, Louisiana 70802, (225) 389-4706, to Katherine M. Franks, Counsel for Defendant, P.O. Box 220, Madisonville, Louisiana 70447, kayfranks@bellsouth.net, (225) 485-0076, and to the Court of Appeal, First Circuit, P.O. Box 4408, Baton Rouge, Louisiana 70821, (225) 382-3000.

This done in Baton Rouge, Louisiana, this ~7th ~ day of March, 2022.

/s/ Dylan C. Alge
Assistant District Attorney