

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

12-1352

STATE OF LOUISIANA

VERSUS

JAMES BOWDEN

**APPEAL FROM THE
SIXTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERIA, NO. 09-1627
HONORABLE KEITH RAYNE JULES COMEAUX, DISTRICT JUDGE**

**JAMES T. GENOVESE
JUDGE**

Court composed of Marc T. Amy, James T. Genovese, and Shannon J. Gremillion,
Judges.

**CONVICTIONS AND SENTENCE
VACATED; PROSECUTION ABATED
FROM INCEPTION.**

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GENOVESE, Judge.

On September 6, 2011, Defendant entered an *Alford* plea to the charges of aggravated burglary and aggravated assault on a police officer. Subsequently, on November 3, 2011, the sentencing court imposed a sentence of fifteen years at hard labor without designating to which offense the penalty applied.

On June 12, 2012, Defendant filed a motion for appeal, and the trial court granted the out-of-time appeal on the same date. Thereafter, on July 22, 2012, Defendant died of natural causes at the Bogalusa Medical Center. The appeal record was lodged with this court on November 26, 2012.

On December 10, 2012, defense counsel filed a “Motion to Vacate the Judgments of Conviction and Abate Prosecution *Ab Initio*” with this court. Defense counsel asserts that, under the cited jurisprudence, a defendant’s convictions and sentences should be vacated and the prosecution voided *ab initio* when that defendant dies during the pendency of his appeal. *State v. Harvey*, 94-343, p. 1 (La. 10/20/94), 644 So.2d 371, 371 (citing *State v. McClow*, 364 So.2d 566, 566 (La.1978); *State v. Morris*, 328 So.2d 65, 67 (La.1976)); *State v. Burton*, 46,552, p. 1 (La.App. 2 Cir. 9/21/11), 74 So.3d 253, 253-54.

Examination of the law and cited jurisprudence confirms that relief is due based on the facts in this case. Accordingly, Defendant’s convictions and sentence are vacated and all proceedings in this prosecution are abated from their inception.

CONVICTIONS AND SENTENCE VACATED; PROSECUTION ABATED FROM INCEPTION.