

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS O'NEAL COLLIER,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 208936
Chippewa Circuit Court
LC No. 97-006489 FH

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Defendant died after filing an appeal as of right from his criminal conviction for solicitation to commit murder, MCL 750.157b; MSA 28.354(2) and MCL 750.317; MSA 28.549. This Court originally dismissed the appeal as moot but, after defense counsel moved for reconsideration, granted leave to appeal limited to the question whether any collateral consequences of allowing the conviction to stand were sufficient to justify deciding the criminal appeal pursuant to *People v Peters*, 449 Mich 515, 517; 537 NW2d 160 (1995). We hold that there are no collateral consequences and that the underlying criminal appeal is moot.¹

On January 6, 1998, the trial court sentenced defendant to fifteen to thirty years' imprisonment consecutive to defendant's outstanding sentence of two to twenty years. Defendant died on February 26, 1999 while in the Michigan Department of Corrections. Appellant contends that this Court should hear defendant's appeal because the case presents the type of "collateral consequence" referred to in *Peters*, *supra* at 517, which would permit a deceased criminal defendant's appeal to progress to the merits:

[W]here a convicted defendant dies pending appeal, the appeal should be dismissed, absent collateral consequences not presented here, and the underlying conviction and accompanying compensatory sentencing sanctions should stand. Purely penal sanctions, however, should be abated ab initio because they no longer continue to serve a purpose.

Specifically, appellant contends that the sentence imposed as the result of defendant's conviction in the present case would affect defendant's future earnings recoverable in a medical malpractice action, because defendant would have been employed rather than spending time in prison. We reject appellant's contention.

Appellant has failed to establish sufficient collateral consequences to justify allowing defendant's appeal to continue posthumously. While the text of *Peters, supra* at 517, does not explain the type of collateral consequences that would justify allowing an appeal to continue, our Supreme Court suggests that when an appellant asks an appellate court to decide a criminal defendant's appeal after death, the interested party must identify how the criminal conviction is relevant to a separate event or legal action. Because neither the record nor the briefs establish that a malpractice action has been filed and that the plaintiff in the action has been adversely affected by defendant's conviction in the present case, we conclude that it is inappropriate to decide the issues in the underlying criminal appeal at this time.

Appeal dismissed.

/s/ Richard Allen Griffin
/s/ David H. Sawyer
/s/ Michael R. Smolenski

¹ We find no reference in defendant's brief as to the person or persons who bring this appeal on behalf of the deceased. The failure to identify those responsible for this appeal underscores the speculative nature of the claims advanced. For purposes of this opinion, we will refer to "appellant" as the unnamed person or persons responsible for this appeal.