

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM WOOTEN,	§	
	§	No. 104, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in S87-10-
	§	1207I, PS87-10-0207.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 87S01528DI

Submitted: October 3, 2003
Decided: November 24, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, **BERGER**, **STEELE** and **JACOBS**, Justices, constituting the Court *en Banc*.

ORDER

This 24th day of November 2003, it appears to the Court that:

(1) The appellant, William Wooten, entered a plea of guilty but mentally ill to the charges of Murder in the Second Degree and Kidnaping in the Second Degree. The Superior Court sentenced Wooten to life imprisonment plus three years.

(2) Wooten filed a motion for postconviction relief in which he requested forensic DNA testing pursuant to title 11, section 4504 of the

Delaware Code.¹ By order dated February 12, 2003, the Superior Court denied Wooten's postconviction motion on the basis that Wooten had not met the statutory requirements of section 4504.

(3) The issue on appeal, *i.e.*, whether a defendant who pleaded guilty can satisfy the statutory requirements of section 4504, was fully briefed and was scheduled for decision before the Court *en Banc*. Wooten died, however, before the Court issued a decision.

(4) The State has filed a motion to dismiss, arguing that Wooten's death has mooted the appeal, and that the appeal should be dismissed. The Public Defender has requested that the Court issue a decision under the public interest exception to the mootness doctrine.

(5) The death of an appellant during the pendency of an appeal divests this Court of jurisdiction to proceed with the appeal.² A moot case may still be justiciable, however, if the underlying dispute involves a question of public importance that is "capable of repetition, yet evading review."³

¹ See Del. Code Ann. tit. 11, § 4504 (2001) (authorizing postconviction DNA testing under certain circumstances).

² *Perry v. State*, 575 A.2d 1154, (Del. 1990).

³ *Radulski v. Delaware State Hospital*, 541 A.2d 562, 566 (Del. 1988) (quoting *Southern Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515 (1911)).

(6) After carefully considering the parties' positions, the Court has concluded that it should decline to consider the merit of Wooten's moot appeal under the public interest exception. Given the frequency of guilty pleas in the Superior Court, the issue on appeal clearly is capable of repetition and, therefore, opportunities will exist to review that issue at some future time.

NOW, THEREFORE, IT IS HEREBY ORDERED that the State's motion to dismiss is granted, and the appeal is DISMISSED.

BY THE COURT:

/s/ JACK B. JACOBS
Justice