

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2013

Lyle W. Cayce
Clerk

No. 11-20787

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

BURT ALAN HUGHES,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
4:10-CR-581-1

Before HIGGINBOTHAM, CLEMENT, and HAYNES, Circuit Judges.

PER CURIAM:*

On April 21, 2011, Burt Hughes was convicted of possession and distribution of child pornography. Hughes filed a timely notice of appeal, but on December 12, 2012, during the pendency of his appeal, Hughes suffered a cardiac arrest during surgery and died. “[T]he death of a criminal defendant pending an appeal of his or her case abates, *ab initio*, the entire criminal proceeding.” *United States v. Estate of Parsons*, 367 F.3d 409, 413 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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2004) (en banc) (quoting *United States v. Asset*, 990 F.2d 208, 210 (5th Cir. 1993)). The case is extinguished, and the defendant is left “as if he had never been indicted or convicted.” *Id.* (quoting *United States v. Estate of Parsons*, 314 F.3d 745, 749 (5th Cir. 2002)).

We DISMISS the appeal and REMAND with direction to VACATE the judgment of conviction and sentence, and to dismiss the indictment.