

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
 For the Seventh Circuit
 Chicago, Illinois 60604

December 5, 2007

Before

Hon. FRANK H. EASTERBROOK, Chief Judge**Hon.** KENNETH F. RIPPLE, Circuit Judge**Hon.** DANIEL A. MANION, Circuit Judge**No.** 07-1086NORMAN TIMBERLAKE,
*Petitioner-Appellant,***v.**EDWIN G. BUSS, Superintendent,
Respondent-Appellee.

Appeal from the United
 States District Court for the
 Southern District of
 Indiana, Indianapolis
 Division.

No. 06 C 1841
 Richard L. Young, *Judge.*

No. 07-3228NORMAN TIMBERLAKE,
*Plaintiff-Appellant,***v.**EDWIN G. BUSS, Superintendent, and J.
DAVID DONAHUE, Commissioner Indiana
Department of Correction,
Defendants-Appellees.

Appeal from the United
 States District Court for the
 Southern District of
 Indiana, Indianapolis
 Division.

No. 06 C 1859
 Richard L. Young, *Judge.*

Order

Norman Timberlake, who was not only the petitioner in a federal collateral attack on his state sentence but also the plaintiff in an action under 42 U.S.C. §1983 contesting the manner in which the state proposed to carry out the capital sentence, died on November 10, 2007, while appeals in both proceedings were pending in this court. Appeal No. 07-1086, which concerns the proceeding under 28 U.S.C. §2254, has abated and is dismissed. See *Johnson v. Tennessee*, 214 U.S. 485 (1909). The §1983 action has become moot, and the district court's judgment is vacated and the case remanded with instructions to dismiss for lack of a case or controversy. See *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).