

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0552

DENNIS WASHINGTON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONS

DATE OF JUDGMENT: NOV 01 2017

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 643785, SECTION 27, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TODD W. HERNANDEZ, JUDGE

Dennis Washington
Homer, Louisiana

Plaintiff-Appellant
Dennis Washington, Pro Se

Susan Wall Griffin
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Department of Public Safety
& Corrections

BEFORE: WHIPPLE, C.J., McDONALD AND CHUTZ, JJ.

Disposition: APPEAL DISMISSED.

g
HW
mm

Chutz, J.

The petitioner-appellant, Dennis Washington, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), filed a petition for judicial review in the Nineteenth Judicial District in September 2015 challenging DPSC's decision that he was not eligible for parole after serving forty years of his life sentence for second degree murder. The district court rendered a judgment affirming DPSC's decision and dismissing appellant's petition, with prejudice, and appellant appealed. During the pendency of the appeal, this court was advised by DPSC that appellant died on August 5, 2017, while in the physical custody of DPSC.

Louisiana Code of Civil Procedure article 428 provides:

An action does not abate on the death of a party. **The only exception to this rule is an action to enforce a right or obligation which is strictly personal.** [Emphasis added].

A "strictly personal" obligation is defined in La. C.C. art. 1766, in pertinent part, as follows:

An obligation is strictly personal when its performance can be enforced only by the obligee, or only against the obligor.

When the performance is intended for the benefit of the obligee exclusively, the obligation is strictly personal on the part of that obligee.

Thus, even though an action generally does not abate upon a party's death, when an appellant dies during the pendency of an appeal and the relief sought is strictly personal to him, the action abates and the appeal should be dismissed. See *Brisset v. Department of Health & Human Resources, Office of Charity Hospital of Louisiana at New Orleans*, 458 So.2d 504, 507 (La. App. 1st Cir. 1984) (action by a civil service employee challenging a requirement that he provide a doctor's certificate for all future sick leave was strictly personal to him and abated upon his

death). See also *State ex rel. Cousin v. Louisiana State Board of Health*, 243 La. 774, 147 So.2d 211, 211-12 (1962) (action seeking a writ of mandamus ordering the Louisiana State Board of Health to issue a delayed birth certificate to plaintiff was not heritable, was strictly personal to him, and abated upon his death); *Boucher v. Division of Employment Security, Department of Labor*, 169 So.2d 674, 681-82 (La. App. 1st Cir. 1964), writ denied, 247 La. 356, 171 So.2d 476 (1965) (action by civil service employee to reinstate his employment was strictly personal and abated upon his death).

In the instant action, Mr. Washington sought to be declared parole eligible by DPSC. No other person had a right to assert a claim for such relief, and its performance would have benefitted Mr. Washington exclusively. Thus, the instant action was not heritable, as it was strictly personal to Mr. Washington, and abated upon his death, rendering this appeal moot. See La. C.C. art. 1765; La. C.C.P. art. 428; *State ex rel. Cousin*, 147 So.2d at 212.

DECREE

For the reasons assigned, it is hereby ordered that the instant appeal be dismissed.

APPEAL DISMISSED.