

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

KA21-203

STATE OF LOUISIANA

VERSUS

RONALD GENE MCLAIN

APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 15257-18
HONORABLE RONALD F. WARE, DISTRICT JUDGE

**BILLY H. EZELL
JUDGE**

Court composed of Billy H. Ezell, Candyce G. Perret and Sharon Darville Wilson, Judges.

**CONVICTION AND SENTENCE
VACATED; PROSECUTION ABATED
FROM INCEPTION.**

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Ronald Gene McLain**

EZELL, Judge.

Defendant, Ronald Gene McLain, was charged by bill of information with second degree murder, a violation of La.R.S. 14:30.1, armed robbery with a firearm, a violation of La.R.S. 14:64, second degree kidnapping, a violation of La.R.S. 14:44.1, and theft of a motor vehicle valued at more than \$5,000 but less than \$25,000, in violation of La.R.S. 14:67.26. The bill was amended to substitute first degree murder, a violation of La.R.S. 14:30, for the second degree murder charge and to add two counts of simple burglary of an inhabited dwelling, in violation of La.R.S. 14:62.1, and possession of a firearm by a convicted felon, a violation of La.R.S. 14:95.1.¹ Defendant was convicted of first degree murder, and all other charges were nolle prossed. On July 27, 2020, Defendant was sentenced to life in prison without benefits.

On August 7, 2020, Defendant filed a motion for appeal, which was granted by the trial court on August 11, 2020. The record was lodged with this court on March 26, 2021.

On February 3, 2021, Defendant died. As a result of the death of Defendant, his counsel filed a “Notice of Death of Client, Motion to Vacate the Judgment or Conviction and Abate Prosecution *Ab Initio*” on April 16, 2021. Subsequently, Defendant’s counsel provided this Court with a “Fact of Death Letter,” which pursuant to La.R.S. 44:19 (EXI), shall “constitute proof of death for all purposes.”

Defense counsel’s motion cites *State v. Harvey*, 94-343 (La. 10/20/94), 644 So.2d 371; *State v. McClow*, 364 So.2d 566 (La.1978); *State v. Morris*, 328 So.2d 65 (La.1976); and *State v. Burton*, 46,552 (La.App. 2 Cir. 9/21/11), 74 So.3d 253, in support of her assertion that the conviction and sentence should be vacated, and the

¹The amended bill presumably did not include the offense of armed robbery as said offense was subsumed in the first degree murder charge.

proceedings abated from their inception. Examination of the law and cited jurisprudence confirms that relief is due based on the facts in this case.

Accordingly, Defendant's conviction and sentence are vacated and all proceedings in this prosecution are abated from their inception.

CONVICTION AND SENTENCE VACATED; PROSECUTION ABATED FROM INCEPTION.