



Missouri Court of Appeals  
Southern District

Division One

|                       |   |                                |
|-----------------------|---|--------------------------------|
| STATE OF MISSOURI,    | ) |                                |
|                       | ) |                                |
| Plaintiff-Respondent, | ) |                                |
|                       | ) |                                |
| vs.                   | ) | No. SD32063                    |
|                       | ) |                                |
| JOSE T. BENITEZ,      | ) | <b>Filed: October 17, 2013</b> |
|                       | ) |                                |
| Defendant-Appellant.  | ) |                                |

APPEAL FROM THE CIRCUIT COURT OF JASPER COUNTY

Honorable David C. Dally, Circuit Judge

*Before Lynch, P.J., Rahmeyer, J., and Francis, J.*

**REMANDED WITH DIRECTIONS**

PER CURIAM. Jose T. Benitez (“Appellant”) was convicted and sentenced to a violation of section 566.062, RSMO Cum. Supp. 2006. The conviction was affirmed by this Court on June 10, 2013; subsequently, an Application for Transfer was filed in the Supreme Court of Missouri. While the application for transfer was pending, Appellant died. The Supreme Court granted the application for transfer but then retransferred the cause to this Court for:

reconsideration in light of *City of Clayton v. Sigoloff*, 452 S.W.2d 315, 316 (Mo. App. 1970) (remanding the cause to the circuit court to dismiss

the underlying action where defendant passed away while appeal was pending). *Cf. State v. Macklin*, 560 S.W.2d 69, 70 (Mo. App. 1977) (noting that “[d]uring his lifetime, defendant was never finally convicted of the crimes charged and his death served to abate the prosecutions against him.”); *State v. Lee*, 580 S.W.2d 563, 564 (Mo. App. 1979); *State v. King*, 603 S.W.2d 71, 72 (Mo. App. 1980); *State v. West*, 630 S.W.2d 271, 271 (Mo. App. 1982).

Thus, in light of the aforementioned cases, we remand to the circuit court to dismiss the underlying action.