

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4961

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDALL G. SCOTT,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Terry L. Wooten, Senior District Judge. (3:19-cr-00426-TLW-1)

Submitted: March 11, 2022

Decided: April 21, 2022

Before NIEMEYER and HARRIS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Dismissed and remanded with instructions by unpublished per curiam opinion.

Randall G. Scott, Appellant Pro Se. William Kenneth Witherspoon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randall G. Scott pleaded guilty to a superseding information charging him with possession of firearms and ammunition as a person who is an unlawful user of or addicted to a controlled substance, in violation of 18 U.S.C. §§ 922(g)(3), 924(a)(2). The district court sentenced Scott to 30 months' imprisonment and two years of supervised release. The court also ordered Scott to pay a special assessment of \$100.

Scott appealed, and while the appeal was pending before this court, Scott died. For the reasons explained below, we dismiss Scott's appeal as moot and remand to the district court with instructions to vacate Scott's conviction and sentence, including the special assessment; to refund any portion of the special assessment that has already been paid; and to dismiss the indictment and the superseding information.

We have recognized that an appellant's "[d]eath pending appeal of a criminal conviction abates not only the appeal but all proceedings in the prosecution from its inception. In such a case, the appeal is dismissed and the cause remanded to the district court with instructions to vacate the judgment and to dismiss the indictment." *United States v. Dudley*, 739 F.2d 175, 176 (4th Cir. 1984) (citations and internal quotation marks omitted), *abrogated on other grounds by Nelson v. Colorado*, 137 S. Ct. 1249 (2017). An appellant's death during the pendency of a criminal appeal also requires an abatement of a special assessment and a refund of any already paid portion of a special assessment. *See United States v. Robertson*, 980 F.3d 672, 674 (9th Cir. 2020); *United States v. Brooks*, 872 F.3d 78, 82 (2d Cir. 2017); *United States v. Libous*, 858 F.3d 64, 69 (2d Cir. 2017).

Accordingly, we dismiss this appeal as moot and remand to the district court with instructions to vacate Scott's conviction and sentence, including the special assessment; to refund any portion of the special assessment that has already been paid; and to dismiss the indictment and the superseding information. We also deny as moot Scott's motion to appoint counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED AND REMANDED WITH INSTRUCTIONS