

SIXTH DISTRICT APPELLATE PROGRAM
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Attorney for Christopher Paul Kennedy

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)	No. H028373
Plaintiff and Respondent,)	(Santa Clara Superior
)	Court No. CC460453)
v.)	
)	MOTION TO ABATE
CHRISTOPHER PAUL KENNEDY,)	PROCEEDINGS
<u>Defendant and Appellant.</u>)	
—)		

Appellant, through appointed counsel, applies to have all proceedings in this case abated on the ground that appellant is deceased.

This motion is based on the attached points and authorities, declaration of Jonathan Grossman, and exhibit.

Dated: March 23, 2005.

Respectfully submitted,

JONATHAN GROSSMAN
Attorney for Appellant,
Christopher Paul Kennedy

POINTS AND AUTHORITIES

A CASE SHALL BE DISMISSED WHEN THE DEFENDANT DIES WHILE THE CONVICTION IS ON APPEAL.

When a party dies while an appeal is pending from a conviction, the cause shall be permanently abated and dismissed. The superior court should be directed to enter its order to that effect. (See *In re Jackson* (1985) 39 Cal.3d 464, 480, citing *People v. Dail* (1943) 22 Cal.2d 642, 659; *People v. de St. Maurice* (1913) 166 Cal. 201, 202.)

Therefore, because appellant has died during the pendency of this appeal, all proceedings in this case should be adjudged permanently abated, the appeal should be dismissed, the remittitur should issue forthwith, and the superior court should be directed to enter its order to that effect.

Dated: March 23, 2005.

Respectfully submitted,

JONATHAN GROSSMAN
Attorney for Appellant,
Christopher Paul Kennedy

DECLARATION OF JONATHAN GROSSMAN

1. I am a Staff Attorney with the Sixth District Appellate Program, which has been appointed to represent appellant Christopher Paul Kennedy. I am handling the appeal as a staff case.

2. On March 15, 2005, I learned from trial counsel that appellant killed himself at the California Medical Facility

3. Because I have communicated with appellant, I knew he was at the California Medical Facility, and that the prison is located at 1600 California Drive in Vacaville, Solano County.

4. On March 17, 2005, I contacted the Department of Vital Records in Solano County and requested a copy of the death certificate which is attached as an exhibit.

5. The original certificate is enclosed in the original motion. Photocopies of the certificate automatically display the words void on it to prevent identity theft. (Health & Saf. Code, § 103526.5.)

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Santa Clara, California, on March 23, 2005.

Jonathan Grossman