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Attorney for Appellant Todd Russell Miller

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. H037246
Plaintiff and Respondent,	)	
	)	(Santa Clara County
v.	)	No. C1081125)
	)	
TODD RUSSELL MILLER,	)	
Defendant and Appellant.	)	
_____	)	

**MOTION TO ABATE PROCEEDINGS FOLLOWING GRANT AND  
TRANSFER ORDER FROM SUPREME COURT**

Appellant, through appointed counsel, applies to have all proceedings in this case abated on the ground that appellant is deceased. As explained below, the California Supreme Court on March 26, 2014 granted review and transferred the matter back to this Court for purposes of presenting this motion, with directions to grant the motion for abatement upon proof that appellant, Todd Russell Miller, had died.

This motion is based on the attached points and authorities, declaration of William M. Robinson, and Exhibit A, the Certificate of Death, attached to this motion, and the records and files in the present case.

Dated: March 27, 2014

Respectfully submitted,

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William M. Robinson, Assistant Director  
Sixth District Appellate Program  
Attorney for Appellant Todd Russell Miller

## MEMORANDUM OF POINTS AND AUTHORITIES

### Procedural Background

On December 20, 2013, this Court issued its unpublished opinion in the present appeal, affirming the judgment. Appellant thereafter filed a petition for review in the California Supreme Court.

On February 28, 2014, appellant filed a motion asking the Supreme Court to grant review and transfer the case back to this Court for purposes of a motion for abatement of the appeal, with counsel for appellant representing in the motion that he had learned that on January 20, 2014, appellant Todd Russell Miller had died while in prison custody. On March 26, 2014, the Supreme Court granted this request, issuing the following order:

The court having been advised that defendant Todd Russell Miller died on January 20, 2014, the petition for review is granted and the cause is transferred to the Court of Appeal, Sixth Appellate District, with directions to enter an order in Case No. H037246 permanently abating all proceedings with respect to defendant upon verification of the death and to require the Superior Court for Santa Clara County to enter an order to that effect in Case No. C1081125. (Cal. Rules of Court, rule 8.528(d); *People v. Dail* (1943) 22 Cal.2d 642, 659; *People v. Bandy* (1963) 216 Cal.App.2d 458, 466.)

Supreme Court Electronic Docket, S216445.<sup>1</sup>

### ARGUMENT

#### **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.*

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<sup>1</sup>[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc\\_id=2068796&doc\\_no=S216445](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2068796&doc_no=S216445), last checked 3-26-14.

*Maurice* (1913)166 Cal. 201, 202.)

The Supreme Court's order of March 26, 2014 granting review and transferring the case back to this Court expressly vests this court with jurisdiction to consider and grant such a motion upon a showing that Mr. Miller has died. A certified copy of the Certificate of Death is attached to this motion, and authenticated by the attached declaration of counsel.

Wherefore, because appellant has died during the pendency of this appeal, counsel for appellant respectfully asks this Court to order that all proceedings in this case should be adjudged permanently abated, that the appeal should be dismissed, with the remittitur issuing forthwith, and with directions to the Superior Court for Santa Clara County to enter an order to that effect in Case No. C1081125.

Dated: March \_\_, 2014

Respectfully submitted,

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William M. Robinson, Assistant Director  
Sixth District Appellate Program  
Attorney for Appellant Todd Russell Miller

**Declaration of Appellate Counsel William M. Robinson**

I, William M. Robinson, declare under penalty of perjury as follows:

1. I am the Assistant Director of the Sixth District Appellate Program (SDAP) and was appointed by this Court to represent Appellant Russell Todd Miller in his direct appeal in the present case. As such, I prepared and filed a petition for review in the California Supreme Court.

2. On February 20, 2014, while this petition was pending, I learned from prison authorities that appellant Todd Russell Miller died on January 20, 2014. I thereafter promptly made efforts to obtain a copy of a death certificate, and ultimately received a certified copy of a "Certificate of Death"

from San Joaquin County Public Health Services. The original certified copy is attached hereto as Exhibit A. 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.)

3. After learning this information, I brought a motion in the California Supreme Court asking the court to grant review and transfer the case back to this Court for purposes of an abatement motion. As explained above, that motion was granted on March 26, 2014, with the directions spelled out above in the memorandum.

4. I have prepared the present motion for filing at my first opportunity after receiving electronic notification of the Supreme Court's grant and transfer order.

I declare under penalty of perjury under the laws of the state of California that this declaration is true and correct. Executed at Santa Clara, California, on March 27, 2014.

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William M. Robinson, Assistant Director

**Exhibit A**

**Exhibit A**

## PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 100 N. Winchester Blvd., Suite 310, Santa Clara, California 95050. On the date shown below, I served the within MOTION TO ABATE PROCEEDINGS FOLLOWING GRANT AND TRANSFER ORDER FROM SUPREME COURT to the following parties hereinafter named by:

X      **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail to the following party(s) using the e-mail addresses indicated:

Attorney General's Office  
Suite 11000  
455 Golden Gate Avenue  
San Francisco, CA 94102-3664  
[DOCKETING6DCASFAWT@DOJ.CA.GOV](mailto:DOCKETING6DCASFAWT@DOJ.CA.GOV)

Dated at Santa Clara, California on March 27, 2014.

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Priscilla O'Harra