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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2014-2015

1131171

Ex parte David Eugene Davis

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS**

(In re: David Eugene Davis

v.

State of Alabama)

**(St. Clair Circuit Court, CC-96-91.60;
Court of Criminal Appeals, CR-10-0224)**

PER CURIAM.

David Eugene Davis petitioned this Court for a writ of certiorari to review the decision of the Court of Criminal

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Appeals affirming the trial court's denial of Davis's Rule 32, Ala. R. Crim. P., petition. Davis v. State, [Ms. CR-10-0224, May 2, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014). This Court granted the petition as to the first ground asserted in Davis's petition for certiorari review, relating to alleged ex parte communication between the trial judge and the jury, and the second ground, relating to the procedural preclusion of a claim alleging that the trial judge had given supplemental instructions to the jury outside the presence of Davis and his counsel.

On March 15, 2015, Davis's counsel filed a notice of Davis's death and a motion to vacate the rulings of the lower courts with regard to the issues on which this Court had granted certiorari review. This motion advised this Court that Davis died on March 14, 2015, and requested this Court to vacate the portions of the lower court rulings as to which this Court had granted certiorari review. The State filed a response agreeing that the certiorari petition is moot and taking no position on the motion to vacate.

The motion to vacate is denied, and the writ of certiorari is quashed as moot. In quashing the writ, this

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Court does not wish to be understood as approving all the language, reasons, or statements of law in the Court of Criminal Appeals' opinion. Horsley v. Horsley, 291 Ala. 782, 280 So. 2d 155 (1973).

WRIT QUASHED AS MOOT; MOTION TO VACATE DENIED.

Moore, C.J., and Stuart, Bolin, Parker, Shaw, Main, and Bryan, JJ., concur.

Murdock, J., concurs specially.

Wise, J., recuses herself.*

*Justice Wise was the presiding judge of the Court of Criminal Appeals when that court initially considered this case.

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MURDOCK, Justice (concurring specially).

I concur in quashing the writ based on the death of the petitioner, David Eugene Davis. I write specially to express my view that there is a probability of merit as to the position taken by Davis with respect to both issues upon which this Court granted certiorari review: (1) whether the Court of Criminal Appeals incorrectly affirmed the trial court's decision on a ground not raised in the trial court, namely, that the claim was not sufficiently pleaded, and (2) whether Davis's claim alleging that the trial court gave supplemental instructions to the jury outside the presence of the defendant and his counsel was precluded.