

James Merket was convicted of Impersonation of a Public Servant, as a Class D felony.¹ He appealed, claiming that there was insufficient evidence to support his conviction and that he was entitled to a mistrial after a witness for the State alluded to Merket's past conviction for the same offense.

On October 1, 2010, Merket died. Indiana Appellate Rule 17(B), effective January 1, 2001, provides in relevant part: "The death of the appellant abates a criminal appeal." Prior to the enactment of the foregoing provision, our Indiana Supreme Court had set forth the reasons supporting its policy of dismissal of a criminal appeal upon the death of the appellant:

[a]s a result of the death of appellant herein this cause has become moot for the following reasons: (1) In event the judgment of the trial court were sustained the judgment would be impossible of execution, and (2) in event of reversal of said judgment the within named party would not be available for trial.

Raymond v. State, 246 Ind. 422, 423, 206 N.E.2d 139, 139 (1965). Accordingly, "[i]t follows that no state interest can be served by proceeding." Whitehouse v. State, 266 Ind. 527, 529, 364 N.E.2d 1015, 1016 (1977). Likewise, "a reversal cannot benefit the defendant," inasmuch as the presumption of innocence has "fall[en] with a guilty verdict."

Id.

The appeal is ordered dismissed.

ROBB, J., and BROWN, J., concur.

¹ Ind. Code § 35-44-2-3.