

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALLACE LEVAN GRIFFEY, <i>Petitioner-Appellant,</i> v. GARY LINDSEY, Warden, <i>Respondent-Appellee.</i>
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No. 99-17643
D.C. No.
CV-97-20703-JF
Northern District of
California, San Jose
ORDER

Filed November 18, 2003

Before: Robert R. Beezer, Sidney R. Thomas, and
Richard R. Clifton, Circuit Judges.

ORDER

Wallace Levan Griffey appealed the United States District Court for the Northern District of California's denial of his petition for a writ of habeas corpus. The appeal was argued before us and submitted on February 10, 2003. We affirmed the district court's denial in a published opinion, *Griffey v. Lindsey*, ___ F.3d ___, 2003 U.S. App. LEXIS 19805 (9th Cir. Sept. 26, 2003), No. 99-17643.

The court has been advised that Griffey died on August 22, 2003 in the custody of the Salinas Valley State Prison. Lindsey's petition for rehearing was filed on October 10, 2003. On October 16, 2003, Lindsey moved to vacate the filed opinion and dismiss the appeal.

It is ordered as follows:

(1) The above referenced opinion is vacated and the petition for rehearing is denied as moot. (2) The petition for a

writ of habeas corpus should be dismissed as moot. *See Gornto v. MacDougall*, 482 F.2d 361, 361 (5th Cir. 1973) (per curiam) (vacating as moot published opinion where habeas appeal was argued and submitted prior to petitioner's death but where opinion was filed after petitioner's death); *see also McMann v. Ross*, 396 U.S. 118, 118 (1969) (per curiam); *Hillman v. McCaughtry*, 14 F.3d 350, 350-51 (7th Cir. 1994) (per curiam); *Knapp v. Baker*, 509 F.2d 922, 922-23 (5th Cir. 1975) (per curiam); *Hann v. Hawk*, 205 F.2d 839, 839-40 (8th Cir. 1953) (per curiam), *reh'g denied*, 207 F.2d 82 (8th Cir. 1953). (3) This appeal is remanded to the district court for dismissal of the petition for a writ of habeas corpus as moot and for further proceedings as are appropriate.

VACATED AND REMANDED WITH INSTRUCTIONS.

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