

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**March 20, 2014**

**Elisabeth A. Shumaker  
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN P. SPOONER,

Defendant - Appellant.

No. 13-3330  
(D.C. No. 6:13-CR-10035-EFM-1)

**ORDER**

Before **GORSUCH, MATHESON, and BACHARACH**, Circuit Judges.

On appeal, Brian P. Spooner contended that his conviction and sentence must be vacated because his prior Kansas state convictions were not qualifying predicate offenses for a federal conviction of possession of a firearm by a felon. While the appeal was pending, however, Mr. Spooner died. “[D]eath pending direct review of a criminal conviction abates not only the appeal but also all proceedings had in the prosecution from its inception.” *United States v. Davis*, 953 F.2d 1482, 1486 (10th Cir. 1992) (quoting *Durham v. United States*, 401 U.S. 481, 483 (1971) (per curiam), *overruled on other grounds*, *Dove v. United States*, 423 U.S. 325 (1976) (per curiam)). Accordingly, the case is remanded to the district court with directions to vacate the judgment of conviction and dismiss the underlying indictment. *See id.*

The mandate shall issue forthwith.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink that reads "Lara Smith". The signature is written in a cursive, flowing style.

by: Lara Smith  
Counsel to the Clerk