

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 6 2002

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE LEWIS SLOAN,

Defendant - Appellant.

No. 01-7140
DC. No. 99-CR-89-S
(Eastern District of Oklahoma)

ORDER AND JUDGMENT*

Before **BRISCOE, PORFILIO**, and **MURPHY**, Circuit Judges.

On appeal, George Lewis Sloan contended that the district court erred in re-calculating his sentence after remand from this court. While the appeal was pending, however, Mr. Sloan 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

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court general disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

(10th Cir. 1992) (*quoting Durham v. United States*, 402 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

Per Curiam