

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT JEFFREY FARMER, <i>Petitioner-Appellant,</i> v. E.K. MCDANIEL, Warden, <i>Respondent-Appellee.</i>

No. 10-99017
D.C. No.
3:09-cv-00379-
RCJ-RAM
ORDER

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief District Judge, Presiding

Argued and Submitted
December 5, 2011—San Francisco, California

Filed September 5, 2012

Before: Stephen S. Trott and Carlos T. Bea, Circuit Judges,
and Rebecca R. Pallmeyer, District Judge.*

COUNSEL

Franny Forsman, Michael Pescetta, Federal Public Defender's
Office, Las Vegas, Nevada, for the petitioner-appellant.

Robert E. Wieland, Office of the Nevada Attorney General,
Reno, Nevada, for the respondent-appellee.

*The Honorable Rebecca R. Pallmeyer, District Judge for the U.S. District Court for Northern Illinois, sitting by designation.

ORDER

Robert Farmer appealed the district court's denial of his petition for a writ of habeas corpus. In a published opinion, we affirmed the district court's denial of the writ. *Farmer v. McDaniel*, 666 F.3d 1228 (9th Cir. 2012).

Counsel for Farmer has advised us that Farmer died in prison on April 24, 2012, while a PFREB he filed remained pending before this court. Because Farmer did not have the opportunity to exhaust the entire appellate process, including the possible pursuance of a petition for writ of certiorari in the Supreme Court, we order as follows:

1) Our opinion published at 666 F.3d 1228 is hereby vacated; 2) the petition for rehearing and rehearing en banc is denied as moot; and 3) this appeal is dismissed as moot. We also remand this case to the district court for dismissal of the petition for a writ of habeas corpus as moot and for further proceedings as may be required, including the vacatur of any prior orders. *See generally Griffey v. Lindsey*, 349 F.3d 1157 (9th Cir. 2003) (order) (taking identical steps where court received a suggestion of death while a petition for hearing was pending).

VACATED AND REMANDED WITH INSTRUCTIONS.