

ADNAN SYED,

Petitioner and Cross-Respondent

v.

YOUNG LEE, AS VICTIM'S  
REPRESENTATIVE, AND STATE OF  
MARYLAND,

Respondent and Cross-Petitioner

IN THE

SUPREME COURT

OF MARYLAND

September Term, 2023

Petition No. 81

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**ANSWER TO CROSS-PETITION FOR WRIT OF CERTIORARI**

This Court should deny the Cross-Petition for Writ of Certiorari as Cross-Petitioner's issue is neither novel nor in the public interest. While Mr. Lee's question presented refers to a "victim's right to speak," he does not seek the right to present victim impact testimony, a right belonging to victims and their representatives at discretionary proceedings impacting sentence. Nor does he seek specifically the opportunity to address a court at a vacatur hearing, as the circuit court allowed him to do that. Rather, he asks this Court to declare that a victim's representative may act as a party at any proceeding where, as here, "the prosecutor's and defendant's interests were aligned." (Cross-Petition at 2).<sup>1</sup> As he did in the

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<sup>1</sup> Mr. Lee argues that his issue is of particular public importance because the circuit court's ruling "overturned 20-plus years of settled appellate rulings, including by this very Court." (Cross-Petition at 2). Mr. Lee's characterization of the procedural posture of the case below is simply wrong. More importantly, the merits of the vacatur were not before the Appellate Court, and any comments by that Court on matters beyond the issues of mootness and Mr. Lee's rights as a victim's representative are dicta. Similarly, his disagreement with the circuit court's decision to vacate Mr. Syed's convictions is not relevant to the issues properly before this Court, nor is the fact that Mr. Syed has litigated different claims of

Appellate Court, Mr. Lee seeks party status including, amongst other things, the right to challenge evidence and cross examine witnesses. This right is radically different than the “right to speak,” or present victim impact, and it is not one that the Legislature has provided to victims’ representatives in any type of criminal proceeding.

Conferring party status on victims and their representatives would create a sea change in Maryland courts. As this Court explained in *Surland*:

The direction in Art. 47 of the Maryland Declaration of Rights that crime victims be treated with dignity, respect, and sensitivity during all phases of the criminal justice process, though important, does not suffice to give victims party status in criminal cases or, except to the extent expressly provided by statutes enacted by the General Assembly or Rules adopted by this Court, the right to act as though they were parties.

*Surland v. State*, 392 Md. 17 n. 1 (2006). In fact, Mr. Lee’s goal to act “in *loco* prosecutor” is not recognized in any state, the District of Columbia, or the federal system.<sup>2</sup> To the extent Mr. Lee seeks to so fundamentally change our legal system, his request should be directed to the General Assembly.

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ineffective assistance of counsel that this Court previously concluded did not warrant granting him a new trial.

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See Office for Victims of Crime Archive, [https://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin7/2.html](https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin7/2.html) (“In no state is the right to confer interpreted as the right to direct the prosecution of the case or to veto decisions of the prosecutor. As the applicable law in Wisconsin specifically states, ‘The duty to confer . . . does not limit the obligation of the district attorney to exercise his or her discretion concerning the handling of any criminal charge against the defendant.’”) (last visited 6.19.23); See also

That Mr. Lee only seeks the right to intervene when the State and defense are in alignment does not make his argument any more reasonable. The Legislature enacted the vacatur statute, Criminal Procedure Article § 8-301.1, to correct the injustice and harm to a defendant caused by the State's past wrongdoing. Allowing a victim or their representative to challenge the State's motion to vacate would result in victim intervention in virtually all vacatur proceedings because the parties are ordinarily in agreement in these cases.

More broadly, resolving matters through agreement is a feature of our legal system that is and should be encouraged. Mr. Lee's characterization of the proceedings below as "one-sided" is inaccurate. (Cross-Petition at 2, 12). There were two parties below, the State and Mr. Syed, with the circuit court acting as the ultimate decisionmaker. Yet, Mr. Lee posits that there is something untoward about the State and the defense agreeing that a defendant's convictions should be vacated where, based on new information, the State no longer had faith in the integrity of the convictions. There is nothing inherently suspicious or nefarious about an agreed upon resolution to a case, nor does the fact that the parties agree suggest a need for third party intervention.

Implementing Mr. Lee's requested relief would also be wildly impractical, if not disastrous. Any gains in efficiency of resources and time where agreements are

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<https://law.lclark.edu/live/news/23544-victims-rights-law-by-state> (last visited 6.19.23).

reached would be undone by the introduction of a third adversary into the two-party adversarial system. In criminal cases alone, agreements between the prosecution and defense – from plea agreements to evidentiary stipulations and even unopposed motions to continue a hearing date – would trigger party status for victims and their representatives.

However, even if Mr. Lee’s request was limited to affording a victim’s representative the right to give impact at a vacatur proceeding, there is no need for this Court to weigh in as the applicable law is unambiguous. Md. Code, Crim. Proc. Art. § 8-301.1(d)(2) provides victims and their representatives “the right to attend a hearing on a motion filed under this section[.]” This stands in contrast to sentencings, at which the General Assembly has expressly provided for a right “to address the court under oath[.]” Md. Code, Crim. Proc. Art. § 11-403(b). By its plain language, § 11-403 is limited to “a hearing at which the imposition of a sentence, disposition in a juvenile court proceeding, or alteration of a sentence or disposition in a juvenile court proceeding is considered.” Md. Code, Crim. Proc. Art. § 11-403(a). Unlike these matters, a hearing pursuant to § 8-301.1 to vacate a conviction entails the court engaging in legal analysis that does not involve the discretionary exercise of a court’s sentencing authority.<sup>3</sup> The Appellate Court of Maryland thus

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<sup>3</sup> Contrary to Mr. Lee’s contention, Cross-Petition at 11, the fact that the rule implementing § 8-301.1, Rule 4-333, includes a cross-reference to § 11-403 is irrelevant. *See* Md. Rule 1-201(e) (“Headings, subheadings, cross references, committee notes, source references, and annotations are not part of these rules.”).

correctly decided that the right to present victim impact does not apply to vacatur proceedings.

Mr. Lee urges this Court to grant him a right not afforded to victims and their representatives in any criminal proceeding. He overreaches by seeking relief in this Court. Even if his argument was limited to victim impact at vacatur proceedings, it is the law enacted by the General Assembly that stands in his way, and so his request must be made to that body. For these reasons, the Court should grant Mr. Syed's Petition for Writ of Certiorari to decide the important issues raised by the Appellate Court's opinion, but it should deny the Cross-Petition.

Respectfully submitted,

*/s/ Erica J. Suter*

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**CERTIFICATION OF WORD COUNT  
AND COMPLIANCE WITH RULE 8-112**

1. This petition contains 1,189 words.
2. This petition complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ *Erica J. Suter*

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Erica J. Suter

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 21st day of June, 2023, copies of the foregoing were delivered via the MDEC system and sent via U.S. mail and/or courier service to:

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