

YOUNG LEE, AS VICTIM'S  
REPRESENTATIVE,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2022

No. 1291

Circuit Court Case

No. 199103042-46

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**APPELLANT'S RESPONSE TO THIS COURT'S ORDER TO  
SHOW CAUSE WHY YOUNG LEE'S APPEAL SHOULD  
NOT BE DISMISSED AS MOOT**

Appellant Young Lee, the victim representative for the family of Hae Min Lee, the crime victim in the above-captioned case, by and through counsel, responds to this Court's Order to Show Cause of October 12, 2022.

**INTRODUCTION**

This appeal is not moot. Young Lee, as the victim representative of his murdered sister, has suffered an ongoing constitutional and statutory injury for which he seeks a remedy prescribed by Maryland law.

At a press conference on October 11, the Baltimore City State's Attorney boasted that she had mooted the Lee family's rights: "I've utilized my power and discretion to dismiss the case. There is no more appeal, it's moot." But constitutional and statutory rights cannot be mooted by a prosecutor's maneuver to violate those rights and then proclaim that the deed is done and

the harm cannot be remedied.

The Maryland Constitution and victims' rights statutes require that crime victims and their families be treated with dignity, respect, and sensitivity during all phases of the criminal justice process. Families must be provided with an opportunity to appear and comment on the evidence. These rights must be afforded to victims when prosecutors seek to vacate a perpetrator's conviction.

Here, the voices of the Lee family were silenced. Prosecutors went out of their way to evade the Constitution's absolute requirements. They provided the Lee family with barely any notice and no meaningful opportunity to appear and comment on the evidence. When Mr. Lee's counsel later brought this to the Circuit Court's attention, the court astonishingly ruled that the Vacatur Statute requires "notice," but not "*reasonable notice.*" The prosecutor also prevented the family from meaningfully participating because she introduced virtually no evidence on why she sought to vacate the charges against Adnan Syed. While the Vacatur Statute places the burden of proof on the State and requires the prosecutor to present particularized reasons for seeking vacatur, the State in this case submitted a vague proffer based upon an incomplete investigation. It introduced only a single exhibit—an affidavit from one of the prosecutors, not a witness with knowledge—without any supporting materials or documentation.

And though the circuit court was required to conduct a public evidentiary hearing and perform a complete legal analysis, the circuit court based its ruling entirely on the state's sparse proffer and a handwritten note that the court viewed in-camera. Hence, neither the court nor the prosecutor satisfied the legal requirements of the vacatur statute. Further, the Lee family was deprived of the opportunity to review and examine the evidence that formed the basis for vacatur and to raise its own questions and challenges. In sum, prosecutors set up a secretive Star Chamber proceeding that shut the Lee family out from any meaningful involvement or engagement with the record.

In fact, procedural irregularities in the vacatur hearing were so pervasive that the original trial judge, the Honorable Wanda K. Heard, has executed a sworn affidavit supporting Mr. Lee's position and urging this Court to take a close look at what occurred here. *See* Affidavit of Judge Wanda K. Heard in Support of Mr. Lee's Response to Order to Show Cause ("Heard Affidavit") (attached as **Exhibit A**).

In sum, the State's Attorney and circuit court committed serious breaches of the Lee family's rights that are not mooted by the State's decision to abandon the charges against Mr. Syed following the vacatur proceeding. In particular, Mr. Lee seeks an evidentiary hearing that fully complies with the Maryland Vacatur Statute and the constitutional and statutory victims' rights that should have been afforded to him as the victim representative. Before

vacatur is deemed effective, Mr. Lee is constitutionally entitled to the legally mandated hearing that the prosecutor denied him. This is a critical form of relief that is not mooted by the posture of this matter.

For the Lee family to meaningfully exercise their rights of participation, in accordance with the Maryland Constitution and supporting statutes, there must be a transparent process in which to participate. A proper evidentiary hearing is required to afford the Lee family an opportunity to exercise their rights under Maryland law.

Even if this Court were to find the appeal moot, it should exercise its broad discretion to consider this appeal under a mootness exception because it is precisely the type of extraordinary circumstance in which appellate courts reach otherwise moot matters. Here, as detailed above, the prosecutor boasted about mooting this matter. Courts should not countenance this type of deliberate mooting, especially where it could not have occurred without the predicate constitutional and statutory violations: the tainted vacatur proceeding was a necessary precursor to dismissal.

Moreover, prosecutors were able to treat the Lee family in this callous and unconstitutional manner in large part because of confusion about whether Maryland's new Vacatur Statute somehow abrogates well-established protections for crime victims. The circuit court read the statute in isolation and held that victims are entitled to nothing more than nominal notice of a vacatur

hearing (mere hours would suffice)—even if such notice is unreasonable and does not allow them to be heard and present their perspectives. This narrow reading threatens to erode long-held legal rights for significant numbers of vulnerable Marylanders. The issue is likely to recur based on the number of anticipated vacatur proceedings, and the issue will evade appellate review based on the short timeline for dismissal of cases.

For all these reasons, discussed more fully below, Appellant respectfully requests that this Court permit the appeal to proceed.

#### **STATEMENT OF FACTS<sup>1</sup>**

##### ***Syed's Conviction in February 2000***

In the Circuit Court for Baltimore City on February 25, 2000, Adnan Syed was convicted of murdering his ex-girlfriend, Hae Min Lee. Years later, after Mr. Syed's petition for post-conviction relief was denied and Mr. Syed appealed, the circuit court conducted further fact-finding on remand and granted Mr. Syed a new trial. *See Syed v. State*, 236 Md. App. 183, 205–09 (2018). In 2019, the Court of Appeals reversed the grant of a new trial and affirmed Mr. Syed's original conviction. *State v. Syed*, 463 Md. 60, 105 (2019).

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<sup>1</sup> Appellant adopts and incorporates the Statement of Facts and Procedural History set forth in the State's Response to Mr. Syed's Motion to Disqualify Attorney General's Office as Counsel for the State or Strike the State as Party to the Appeal ("State's Response"), including the exhibits attached thereto.

In affirming Mr. Syed’s conviction, the Court held that there was “substantial” corroborating evidence pointing to Mr. Syed’s guilt; moreover, a purported alibi-theory that defense counsel failed to investigate was not substantially likely to have changed that outcome. *Syed*, 463 Md. at 97. The Court went on to highlight the most persuasive evidence, *id.* at 93, and further stressed “the evidentiary value of circumstantial evidence.” *Id.* at 95. Not only has the Court of Appeals expressed its confidence in the original trial, but the Honorable Wanda K. Heard, the presiding judge in the original trial, now affirms that Mr. Syed’s defense counsel was at the absolute top of her game. Mr. Syed was convicted not because of any deficiency in his lawyer’s representation but because the corroborating evidence in favor of Mr. Syed’s guilt was overwhelming. *See* “Heard Affidavit”, Exhibit A.

### ***The Recently Enacted Vacatur Statute***

The Maryland General Assembly recently passed a law, fully enacted in January 2020, which creates a new mechanism to vacate past convictions based on new evidence. Md. Ann. Code, Criminal Procedure (“CP”) § 8-301.1 (the “Vacatur Statute”); *see also* Md. Rule 4-333. Importantly, unlike tools previously available that require a defendant to move for relief, the Vacatur Statute permits a state prosecutor to initiate the process. *See* Md. House Bill 874, Bill File (“H.B. 874 Bill File”) at 1–5 (2019) (attached as **Exhibit C**).

This creates the unique condition that in almost any case in which a state’s attorney moves under the Vacatur Statute, the State and defendant’s interests will be initially aligned, and there will be no party to challenge a vacatur grant—that is, other than the victim or victim’s representative. Accordingly, the Vacatur Statute includes a key provision that provides victims the guarantee of notification of any vacatur hearing and the right to attend those hearings. CP § 8-301.1(d).

***The State’s Motion to Vacate Mr. Syed’s Conviction***

On September 14, 2022, the State moved to vacate Mr. Syed’s conviction under the Vacatur Statute, claiming the existence of newly discovered exculpatory evidence, a purported *Brady* violation,<sup>2</sup> and potentially “two alternative suspects.” (Motion to Vacate Judgment at 1.) According to the State’s motion, the Baltimore City State’s Attorney’s Office and Syed’s defense counsel had conducted “nearly a year-long investigation” into Syed’s conviction. (*Id.*) Despite this long investigation, the State never notified the Lee family of its intent to move to vacate the judgment until two days before doing so. Even then, the State did not disclose to the Lee family any details of its investigation, the purported exculpatory evidence, or the identity of the new

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<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

suspects.

***Secretive, Ex Parte Proceedings with No Notice to Mr. Lee***

On Friday, September 16, 2022, a closed in-Chambers proceeding was conducted before the Honorable Melissa Phinn. The circuit court, State’s Attorney’s Office, and Mr. Syed’s counsel were the only participants. Mr. Lee was not notified of the hearing nor given an opportunity to be present or heard at that proceeding. The record is unclear as to whether the State presented the circuit court with a copy of the note giving rise to the purported *Brady* violation at that time or at some other time.<sup>3</sup> (See Sept. 19, 2022, Hearing Transcript (“Tr.”) at 31:7–9.) The parties agreed to a hearing on the State’s motion on Monday, September 19.

***The State’s Deficient Notification of Vacatur Hearing***

Late that same afternoon, Assistant State’s Attorney Becky K. Feldman emailed Mr. Lee, telling him that an “in-person hearing” on the motion to vacate had been scheduled for the next business day—Monday, September 19. (Email from Becky Feldman to Young Lee (“Feldman Email”) at 1 (Sept. 16, 2022).) Ms. Feldman told Mr. Lee that if his family wished to “watch” the

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<sup>3</sup> At the subsequent hearing on September 19, Assistant State’s Attorney Becky K. Feldman noted “for the record” that she “show[ed] the Court the two documents containing the *Brady* information in camera last week,” but did not move to admit those documents into the record. (Tr. at 31:7–9.)



proceedings, they could do so via Zoom, but she did not tell him that he had a right to participate in the hearing or comment on the evidence. (*Id.*) Mr. Lee wanted to attend in person but could not travel from California on such short notice. He retained counsel and moved to postpone the hearing by seven days. (See Young Lee’s Motion for Postponement & Demand for Rights, *State v. Syed*, Case Nos. 199103042–46 (Md. Cir. Ct. for Balt. City, Sept. 19, 2022).)

***The Procedurally Erred Vacatur Hearing on September 19***

At the hearing on the vacatur motion on September 19, Judge Phinn heard argument from undersigned counsel. Mr. Lee’s Counsel argued that the State’s late-Friday afternoon notice for “a family of Korean national immigrants” informing them of “a motion that has been contemplated for one year” was “patently unreasonable” and prevented any “opportunity there to be present.” (Tr. 7:12–17.) Counsel also corrected the circuit court’s belief that Mr. Lee had agreed to the hearing date and to participate solely by Zoom. (Tr. at 11:14–12:14.) Counsel further argued that the State had stated its position that Mr. Lee did not have a right to participate in this hearing. (Tr. at 7:12–17.) Counsel added that any average person reading Ms. Feldman’s email would not have understood that he could make a request to attend the hearing in person and be heard on the record. (Tr. at 8:15–16, 17:21–18:9.)

The circuit court responded that it was Mr. Lee’s obligation to understand his rights and inform the prosecutor that he wished to attend the

hearing in person. (Tr. at 12:15–24.) The circuit court also ruled that there was no requirement that the notice to the victim’s representative be “reasonable.” (Tr. at 13:12–14.) Mr. Lee’s counsel argued that the State was violating other victims’ rights provisions beyond the Vacatur Statute—ones that required the court to permit Mr. Lee to be heard. (Tr. at 8:8–9:22, 15:19–16:6 (mentioning the Maryland Declaration of Rights article 47 and CP §§ 11-102 and 11-403).) Still, the court was unmoved: “Well, I think he had plenty of time to seek an attorney when he was first told about the motion, you know, regardless of how we’re going to proceed.” (Tr. at 18:20–22.) The court also stated about “11-403[,] [t]hat has to do with sentencing or disposition hearings. That’s not what this is. And you’re addressing that as the victim’s rights. This is a motion to vacate. So—well, this is what I’m going to say to you, counsel.” (Tr. at 16:21–17:1.)

The circuit court denied Mr. Lee’s motion to postpone the hearing and instead told counsel that if Mr. Lee wanted an opportunity to address the court, he needed to do so via Zoom—immediately. (Tr. at 18:23–19:2.) Mr. Lee raced home from work and, with no opportunity to confer with counsel, proceeded to make a short, flustered statement remotely. He reaffirmed his strong desire to be there in person; expressed that he was “not an expert in legal matters,” and so could not opine adequately, but that the experience of watching Mr. Syed’s conviction vacated without his family’s involvement felt “unfair”; and that “what we’re going through, our family, it’s killing us.” (Tran. at 21:23–23:13.)

The circuit court ruled that by allowing this short statement, it and the State had complied with all statutory and constitutional obligations to Mr. Lee as the victim representative. (Tr. at 24:6–9.) Mr. Lee’s counsel asked to be heard on behalf of Mr. Lee, but the court outright refused this request. (Tr. at 23:23–24:5.) The court then granted the State’s motion to vacate and ordered that Mr. Syed be immediately released. (Tr. at 44:12–45:3.)

***Mr. Lee’s Appeal to this Court***

On September 28, 2022, Mr. Lee filed a notice of appeal to the Court of Special Appeals pursuant to CP § 11-103, which provides victims the right to appeal a final order that “denies or fails to consider a right secured to the victim” by Maryland law. Under the Maryland Vacatur Statute and Rule 4-333, the state’s attorney must enter a *nolle prosequi* of the vacated charges or take other action within 30 days after of circuit court’s order. Because this pressing deadline potentially gave the state’s attorney the power to moot Mr. Lee’s appeal at any moment, on September 29, Mr. Lee moved for a stay pending the appeal in the Circuit Court for Baltimore City. Given the State’s persistent failures to communicate with Mr. Lee as required by Maryland law, Mr. Lee asked the court to rule on the motion by close of business September 29. As of October 7, the court had yet to rule. Accordingly, Mr. Lee moved in this Court to stay further proceedings in the matter pursuant to Maryland Rules 8-422 and 8-425.

### *The Nolle Prosequi and this Court’s Order to Show Cause*

At 9:04 a.m. on October 11, 2022, the Baltimore City State’s Attorney emailed the undersigned: “Please give me a call on my desk phone at [REDACTED]. I have an update for your clients regarding the Adnan Syed case.” See email from Baltimore City State’s Attorney Marilyn Mosby to Steve Kelly “Mosby Email” (attached as **Exhibit B**). This was mere minutes before the dismissal became widespread news.<sup>4</sup> The State’s Attorney had decided to drop the charges even earlier—on Friday, October 7—but waited until the dismissal had already been entered to notify Mr. Lee. This was an obvious maneuver to keep Mr. Lee from exercising his right to object. On October 12, this Court

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<sup>4</sup> See Dylan Segelbaum & Tim Prudente, *Baltimore State’s Attorney’s Office Abruptly Drops Case Against Adnan Syed of ‘Serial,’ Citing DNA of Others on Victim’s Shoes*, Balt. Sun (Oct. 11, 2022, 9:29 am), <https://www.thebaltimorebanner.com/community/criminal-justice/baltimore-states-attorneys-office-drops-case-against-adnan-syed-J57I7FJYUNBUHNE7Q5DSROXOUI>; see also @alex\_mann10, Twitter (Oct. 11, 2022, 9:23 am), [https://twitter.com/alex\\_mann10/status/1579825072378109953](https://twitter.com/alex_mann10/status/1579825072378109953) (stating “Baltimore prosecutors drop charges against Adnan Syed”).

ordered Mr. Lee to show cause why this appeal should not be dismissed as moot because of the *nolle prosequi*.

### STANDARD OF REVIEW

“A question is moot ‘if, at the time it is before the court, there is no longer any existing controversy between the parties, so that there is no longer an effective remedy which the court can provide.’” *Bd. of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 200 (1999) (citation omitted). But even if a case is moot, the decision to dismiss a case for mootness is discretionary. Md. Rule 8-602(c) (“The court *may* dismiss an appeal if: . . . the case has become moot.” (emphasis added)). Courts may apply mootness exceptions in certain cases.

In particular, this Court may “address the merits of a moot case if [it is] convinced that the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.” *Coburn v. Coburn*, 342 Md. 244, 250 (1996). The Court of Appeals has ruled that it will exercise its authority to address the merits of case when “the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision[.]” *In re S.F.*, 477 Md. 296, 318–19 (2022) (citation omitted).

## ARGUMENT

Mr. Lee's appeal is not moot. The Vacatur Statute and other statutory and constitutional provisions specify precise considerations and procedures with which prosecutors and circuit courts must comply in vacatur proceedings. *See* Md. Const. Decl. of Rts. art. 47(a); CP §§ 8-301.1, 11-102, 11-403. Here, the Baltimore City State's Attorney's Office and circuit court neglected these duties. And the appeal is not moot because Mr. Lee has an ongoing injury—the deprivation of his constitutional and statutory rights as a victim's representative—that can be remedied by an order requiring a new vacatur hearing that complies with law.

Moreover, even if this Court were to find the appeal moot, it should hear Mr. Lee's appeal because it “presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.” *Coburn*, 342 Md. at 250.

### **I. This Court Should Hear Mr. Lee's Appeal Because the State and Circuit Court Committed Grave Procedural Errors in Vacating Mr. Syed's Sentence, which this Court Has the Capacity to Redress**

All that Hae Min Lee's family seeks here is an evidentiary hearing that complies with the Vacatur Statute and Maryland's victims' rights laws. Because this Court has the capacity to provide relief by remanding this case to the circuit court with an order to conduct a new hearing, the appeal is not moot.

*See Antoine v. State*, 245 Md. App. 521, 547–48 (2020). Mr. Lee has no interest in litigating Mr. Syed’s ultimate guilt or innocence as part of this appeal. But Mr. Lee is entitled to an open evidentiary hearing at which the State’s Attorney explains to the family and the public the precise legal and evidentiary basis for the vacatur and provides Mr. Lee a meaningful opportunity to be heard and to object. Anything short of that violates Mr. Lee’s rights as a crime victim representative.

**a. The State and Circuit Court Blatantly Disregarded the Vacatur Statute’s Mandatory Procedures**

The Baltimore City State’s Attorney and circuit court failed to comply with the procedures that the Vacatur Statute demands. The State’s motion and the hearing itself were rife with procedural deficiencies. Among other errors, the State’s motion to vacate did not meet the Vacatur Statute’s requirements that the motion must “state in detail the grounds on which the motion is based” and, “where applicable, describe the newly discovered evidence.” CP § 8-301.1(b); (*see* Motion to Vacate Judgment). At the hearing on the motion to vacate, the State offered no evidence supporting the allegations in the motion or its belief that vacatur was in the interest of justice. The State introduced a single exhibit at the hearing: an affidavit signed by Assistant State’s Attorney Becky Feldman, which detailed how she came upon the notes that are the basis of the *Brady* claim. (Tr. at 30:24–31:3.) Those notes were never introduced into

evidence at the hearing nor shown to the court at the hearing. Instead, Ms. Feldman stated “for the record” that she “show[ed] the Court the two documents containing the Brady information in camera last week, meaning off the record,” through an *ex parte* contact for which Mr. Lee was neither notified nor present. (Tr. at 31:7–17.) In granting the motion, the court relied upon the “in camera review of evidence” without explaining why the evidence could not be placed in the record, why the in-camera review was warranted, or even describing the evidence’s contents. (Tr. at 44:7–11); *see* CP § 8-301.1(f)(2) (“The court shall state the reasons for a ruling under this section on the record.”).

The significance of the deficiencies here was so apparent that the original trial judge took the extraordinary step of signing an affidavit urging this Court to review the vacatur. Hon. Wanda K. Heard (Ret.) strongly reiterated that the overall evidence remained strong enough to support a conviction. *See* Heard Affidavit, Exhibit A. The State’s Attorney’s motion presents no evidentiary or legal basis to call any of that original evidence into question.

**b. The State and Circuit Court Violated Appellant’s  
Other Constitutional and Statutory Victims’ Rights**

The procedures adopted at the vacatur hearing violated Mr. Lee’s constitutional and statutory rights as the family representative of a victim of a crime. The Maryland Constitution requires State agents to treat crime victims with “dignity, respect and sensitivity during all phases of the criminal



justice process.” Md. Const. Decl. of Rts. art. 47(a). The Constitution further provides victims with the “right to be notified of, to attend and to be heard” at criminal justice proceedings. *Id.* art. 47(b). Since the Victims’ Rights amendment to the Maryland Constitution was passed in 1997, the General Assembly has expanded and clarified these rights by statute. For example, CP § 11-102 states that a victim or victim’s representative “has the right to attend any proceeding in which the right to appear has been granted to a defendant.” CP § 11-102(a). In addition, CP § 11-403 requires a court, if practicable, to allow a victim or victim’s representative to address the court in any hearing where an “alteration of a sentence” is considered. CP § 11-403(a). If a victim or victim’s representative does not appear at such a hearing, the prosecutor must put on the record why proceeding is justified. CP § 11-403(e)(1). If the court is not satisfied with the prosecutor’s statement, the hearing may be postponed. CP § 11-403(e)(2).

Here, the circuit court erroneously found that these protections did not apply to vacatur proceedings. The circuit court based its reading on the language of the Vacatur Statute, which states that the State’s Attorney is required to notify the victim of the hearing. Ignoring other applicable, post-conviction victims’ rights that apply in vacatur proceedings, the court ruled that such notice need not be “reasonable.” (*See* Tr. at 13:12–14 (stating that the language “says notice. It doesn’t have anything about *reasonable notice*”))

(emphasis added).) The court also held that the Vacatur Statute does not grant victims the right to speak and any such right is within the court’s discretion. (Tr. at 16:21–17:1 (deciding that CP §11-403, which grants victims the right to be heard, does not apply at vacatur hearings).) Finally, after the court “allowed” Mr. Lee to give his statement via Zoom, the court barred Mr. Lee’s lawyer from speaking on Mr. Lee’s behalf. (See Tr. at 23:23–24:5.) And as is evident from Mr. Lee’s statement, he was not able to formulate any substantive points about the vacatur—because neither he nor anyone else understood the substantive basis for the motion. Both the State’s Attorney and the circuit court ran afoul of Mr. Lee’s rights in critical ways. *See Lopez v. State*, 458 Md. 164, 176 (2018) (noting that Article 47 communicated the “strong public policy that victims should have more rights and should be informed of the proceedings, that they should be treated fairly, and in certain cases, that they should be heard”) (quotation omitted); *Antoine*, 245 Md. App. at 546–47 (discussing the importance of appropriately considering the impact of crime upon the victims).

**c. This Court Has the Capacity to Redress the Harm Done to Appellant, So the Matter Is Not Moot**

Mr. Lee’s appeal seeks redress for the State’s failure to comply with the law, and this Court has the means to grant redress. In *Antoine v. State*, this Court ruled that the circuit court had violated the victim’s rights by imposing

a sentence as agreed through a plea deal without first considering the appellant's victim impact statement. *See* 245 Md. App. at 547. Then-Chief Judge Fader ruled that the proper remedy was vacatur of the defendant's sentence and remand for reconsideration of whether to accept the plea agreement. *Id.* at 556–57. Judge Fader recognized that there can be no meaningful right without a remedy. *See id.* Similarly, here, if this Court were to rule that the circuit court violated Mr. Lee's rights, it could overturn the court's decision to vacate Mr. Syed's sentence and remand the case for an evidentiary hearing that complies with the Vacatur Statute and the constitutional and statutory victims' rights procedures.

Accordingly, this appeal is not moot, and this Court may provide Mr. Lee redress by remanding the case for a proper evidentiary hearing.

## **II. Even if this Court Decides the Appeal Is Moot, It Should Hear It as a Well-Recognized Exception to Mootness**

Even if Mr. Lee's appeal is moot, this Court should exercise its broad discretion to hear it under well-recognized exceptions to the mootness doctrine. This case meets all the essential elements of an established exception: (1) it involves an important matter of significant public interest; (2) the issues

involved are like to recur; and (3) the Vacatur Statute's strict time provisions mean this issue will always evade review.<sup>5</sup>

**a. Mr. Lee's Appeal Involves Important Matters of Significant Public Interest**

Post-conviction rights for crime victims are often a matter of life and death. Countless Maryland victims depend upon release notifications, for instance, to know whether an offender who poses a threat to them has been set free. Confusion over the intersection between the new Vacatur Statute and existing crime victim protections involves a significant issue of public concern. Appellate guidance is therefore necessary and appropriate.<sup>6</sup>

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<sup>5</sup> This Court should also consider that when such disputes recur, they are likely to involve many of the same parties as here. Although a state's attorney may file for vacatur under the statute, the Attorney General's Office always represents the State on appeal. *See* Md. Const. art. V, § 3. This means both State representatives will again appear before this Court in future appeals. And, as here, the entities might be at odds. (*See* Syed's Response to Attorney General's Motion to Strike at 1.) Such matters are often best brought to an appellate court's attention by the victim. So, although Mr. Lee might not appear before this Court again, other victims will, and Mr. Lee's concerns represent the same tensions that all victims will face with the Vacatur Statute. *See Powell v. Md. Dep't of Health*, 455 Md. 520, 541 (2017) ("Even if it is unlikely that the same party will be subject to the same action, the exception may also apply if the issue is of public importance and affects an identifiable group for whom the complaining party is an appropriate surrogate[.]").

<sup>6</sup> This Court also should not let the absence of case law involving mootness as it relates to victims' rights dissuade its review. Before the Vacatur Statute, the previous methods of challenging convictions were lengthy processes: for example, seeking a writ of *error coram nobis* or review under the Uniform

A moot case may be heard on appellate review “in instances where[ ] the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest.” *In re S.F.*, 477 Md. 296, 318 (2022) (quoting *J.L. Matthews, Inc. v. Maryland-Nat’l Cap. Park & Plan. Comm’n*, 368 Md. 71, 96 (2002)). Appellate courts have ruled matters to be of important public interest when the rights of vulnerable groups are threatened—including students facing discipline along with criminal enforcement, *In re S.F.*, 477 Md. at 321, child abuse victims seeking shelter outside the family home, *In re O.P.*, 470 Md. 225, 249–50 (2020), and past abuse victims seeking to have evidence of prior abusive conduct heard when courts decide whether to grant protective orders, *Coburn*, 342 Md at 249–50.

The Vacatur Statute’s provisions, as interpreted by the circuit court, inherently conflict with the victim’s rights provisions of statutory and constitutional law. This appeal is important because absent guidance from this Court, Article 47’s protections are likely to be eroded in any application of the Vacatur Statute. *See, e.g., State v. Peterson*, 315 Md. 73, 84–85 (1989) (deciding

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Postconviction Procedure Act. Such methods took months or years, during which, victims’ concerns could be raised and heard on appeal. But the Vacatur Statute creates a strict 30-day timeline for a state’s attorney to decide whether to drop charges. Md. Rule 433(i). So, although mootness was never an issue before in victims’ appeals of vacatur proceedings, now it is inevitable.

to hear an appeal despite mootness where it involved important matters of judicial administration, required statutory interpretation, and the problem was frequently recurring requiring prompt guidance); *Potomac Abatement, Inc. v. Sanchez*, 424 Md. 701, 710 (2012) (holding that “provid[ing] guidance to avoid future inconsistent rulings,” overcomes the doctrine of mootness).

Here, based on its misinterpretation of the law, the circuit court granted the State’s motion despite grave procedural deficiencies in the motion and at the hearing, and the court failed to make the required findings on the record. Moreover, Mr. Lee received no notice of the *ex parte* in-chambers proceeding held on Friday, October 16; and a one-half-business-day’s notice concerning the vacatur hearing was patently unreasonable. The circuit court let Mr. Lee briefly speak via Zoom but offered him only 30 minutes to race home from work to participate. (Tr. at 20:8–20.) Mr. Lee had no time to confer with counsel; he was forced to provide his “statement” before hearing any of the arguments presented by the parties, let alone review the evidence and purported basis for vacatur; and his counsel was barred from speaking further on his behalf. (See Tr. at 23:23–24:5.) This is a clear violation of victims’ interests. See *Lopez*, 458 Md. at 176; *Antoine*, 245 Md. App. at 547–48.<sup>7</sup>

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<sup>7</sup> See generally *E.H. v. Slayton in & for Cnty. of Coconino*, 249 Ariz. 248, 252 (2020) (agreeing to the extraordinary remedy of overruling precedent in the

This appeal is even more important because Mr. Lee intends to challenge the Vacatur Law as unconstitutional and void for vagueness as applied. Though the vagueness doctrine usually arises in criminal penalty contexts, Courts have considered it in other matters. *See, e.g., Finucan v. Maryland Bd. of Physician Quality Assur.*, 380 Md. 577 (2004) (civil statute); *CodePleasure Zone, Inc. v. Bd. of Appeals for Prince George's Cnty.*, No. 1427 Sept. term 2017, 2019 WL 460474 (Md. App. Feb. 6, 2019) (administrative). Mr. Lee will argue that the Vacatur Statute is unconstitutionally vague because it requires notifying a victim in advance of a hearing on a vacatur motion but does not specify who may call a hearing. *See* CP § 8-301.1(d)(1). So future victims may find that no one calls a hearing at all. *See Finucan*, 380 Md. at 591–92 (the vagueness doctrine requires “fair notice” such that “persons of ordinary intelligence and experience be afforded a reasonable opportunity to know what is prohibited” (internal quotations omitted)). Also, the Vacatur Statute permits a victim to attend the hearing but leaves unclear whether and to what extent the victim must be heard. CP § 8-301.1(d)(2); *see Finucan*, 380 Md. at 592 (a

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face of strong stare decisis to protect victims’ interests); *E.H. v. Slayton in & for Cnty. of Coconino*, 251 Ariz. 289, 291 (Ct. App. 2021) (agreeing to hear Victims’ Rights appeal on special action jurisdiction because “petition raises legal questions of first impression and statewide importance” (quoting *Hiskett v. Lambert in & for Cnty. of Mohave*, 247 Ariz. 432, 435 (Ct. App. 2019))).

law must have “legally fixed standards . . . to avoid resolving matters in an arbitrary or discriminatory manner” (quotations omitted). The inherent conflicts between the Vacatur Statute and other victims’ rights provisions mean circuit courts will be left to improvise solutions with no statutory guidance. Such circumstances clearly require this Court’s intervention. *See, e.g., In re Leroy T.*, 285 Md. 508, 512 (1979).

When this Court closely examines the Vacatur Statute’s legislative history, it will find clear evidence of the General Assembly’s intent to grant victims broad protections. During debate in the Assembly, the bill elicited support but also strong pushback from community leaders over whether victims’ rights were protected. Among its critics was the State’s Attorney of Caroline County who, notably, was a member of the State Board of Victim Services. *See* H.B. 874 Bill File at 11, Exhibit C; Caroline Cnty. State’s Att’y Biography, Maryland Manual Online (last viewed Oct. 24, 2022), <https://msa.maryland.gov/msa/mdmanual/36loc/caro/statorneys/html/msa17677.html>. Perhaps of most significance, the Maryland Judiciary and then-Chief Judge of the Court of Appeals, Ellen Barbera, opposed the bill, in large part because of the statutory concerns that Mr. Lee now asks this Court to review—vagueness as to who may request a hearing on a vacatur motion and whether



a judge must grant a victim the right to be heard.<sup>8</sup> See H.B. 874 Bill File at 13, Exhibit C.

Finally, this is undeniably a matter of significant popular interest. The case has been the subject of a massively popular podcast and HBO series. See Michael Levenson, *Judge Vacates Murder Conviction of Adnan Syed of ‘Serial’*, N.Y. Times (updated Oct. 11, 2022), <https://www.nytimes.com/2022/09/19/us/adnan-syed-murder-conviction-overtured.html?smid=url-share>. A Google news search for Mr. Syed’s sentencing vacatur turns up over 22,000 results (on the date this response was filed). This was also not the first application of the Vacatur Statute to draw attention. See Darcy Costello, *Baltimore Man’s Conviction in 1991 Murder Overtured After 30 Years in Prison*, *Balt. Sun* (Dec. 21, 2021), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-paul-madison-conviction-overtured-20211221-perf3vgjefhb5hml7ptzsh3soq-story.html> (discussing vacatur of Paul Madison’s conviction).

The popular interest in this matter has led to many individuals questioning the facts and legal rulings in Mr. Syed’s case, often without

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<sup>8</sup>An early markup of the bill between the House and Senate sponsors also included proposed changes by then Baltimore County State’s Attorney Scott Shellenberger that would have given the victim or victim’s representative “the right to be heard at the hearing,” H.B. 874 Bill File at 32, Exhibit C, the file contains no explanation for why that language was eliminated.

knowledge as to what occurred. Some have even questioned the soundness of the Maryland judicial system. See Deirdre Enright, *Adnan Syed's Case Gives Maryland a Black Eye and a Teachable Moment*, Wash. Post (Oct. 13, 2022, 12:19 pm), <https://www.washingtonpost.com/opinions/2022/10/13/adnan-syed-maryland-baltimore-prosecutors-reform>. But as the judge who presided over Mr. Syed's jury trial said, "[a] reading of the trial transcript will show that the jury verdict was supported by substantial direct and circumstantial evidence." See Heard Affidavit ¶ 11, Exhibit A. This appeal will provide this Court the final word about whether the State followed proper procedures in Mr. Syed's conviction vacatur.

The State and circuit court violated Mr. Lee's rights, in no small part, based on the Vacatur Statute's vaguely constructed provisions, which conflict with countless other victims' rights afforded under Maryland law. Because this Court can clarify a matter that has already attracted so much media interest, it should be considered an exception to the mootness doctrine.

**b. Victims' Rights Violations Are Likely to Recur in Future Vacatur Proceedings**

It is not just an abstract possibility nor will it be a rare phenomenon that future motions under the Vacatur Statute will rob victims of their rights. Failure to consider Mr. Lee's appeal will leave courts without needed guidance.

Vacatur motions will be frequent. Although Mr. Lee is not privy to the exact number of motions already filed—let alone, in the works—there are likely thousands. The Vacatur Statute’s bill files discuss the number of potentially reviewable criminal convictions. The Senate Judicial Proceedings Committee Floor Report mentions misconduct by Baltimore’s Gun Trace Task Force as a basis for passing the law and notes that there were an estimated 1,300 cases affected by those activities. *See* H.B. 874 Bill File at 6, Exhibit C. The House Judicial Committee’s hearing summary explained that changing standards for marijuana convictions was another rationale and says that already, using alternative, slower methods to vacate convictions, the Baltimore City State’s Attorney had already filed to vacate 5,000 convictions. (*Id.* at 8.)

With each vacatur motion, the potential for victims’ rights violations is compounded. As discussed above, the Vacatur Statute’s Victims’ Rights provisions are hopelessly vague and, in many ways, they conflict with other statutory and constitutional requirements. The record demonstrates that Judge Phinn wrestled with these issues herself in determining a proper resolution. As to the provision permitting a victim to appear, *see* CP § 8-301.1(d)(2), she asked “[w]hat is attendance, what is presence?” (Tr. at 10:1.) She expressed uncertainty about how to apply the requirements, noting that “nothing . . . indicates that the victim’s family would have a right to be heard,” and yet stating, “of course, if Mr. Lee was present today . . . I would allow him

to speak.” (Tr. at 10:18–22.) Later, she added that the statute “says notice. It doesn’t have anything about *reasonable* notice.” (Tr. at 13:12–14 (emphasis added).) The circuit court decided to allow Mr. Lee to speak via Zoom—having rushed home from work and without conferring with counsel—but there is no telling how future courts might rule. Some courts might leave victims completely out of the loop, especially if the State’s Attorney’s office does not request a hearing.

With the inevitable wave of future cases and clear confusion about the statute, “the need for clarity . . . is a matter of great public concern and is something which can frequently recur.” *Robinson v. Lee*, 317 Md. 371, 376 (1989) (holding that such matters “requires [the Court’s] attention”); see *State v. Ficker*, 266 Md. 500, 507 (1972) (“[A]n appeal, even though moot, will not be dismissed where the urgency of establishing a rule of future conduct in matters of important public concern is both imperative and manifest.”)

### **c. These Issues Are Likely to Evade Court Review**

It is not just possible that victims’ appeals of future vacatur motions would again become moot; it is a virtual certainty. The Vacatur Statute requires state’s attorneys to decide whether to *nolle prosequi* in only 30 days, Rule 4-333(i), which means that—if this appeal is deemed moot—the State has carte blanche to moot the victim’s complaints after the circuit court rules. This unmitigated power is antithetical to the interests of justice and this Court’s

appellate powers and, on its own, should deter this Court dismissing the appeal as moot. *See, e.g., In re O.P.*, 470 Md. 225, 250 (2020) (holding that because certain administrative proceedings “are inevitably on a fast track, an appeal from a denial of shelter care will almost always be moot by the time the appellate court would render its decision on a disputed question of law”).

The vacatur of criminal sentences could also open another avenue to evade appellate review in future cases: double jeopardy protections. Double jeopardy will attach if a state’s attorney enters a *nolle prosequi* without the defendant’s consent or when the dismissal or other equivalent order is based on the evidence used to convict. *See State v. Simms*, 456 Md. 551, 560 (2017) (discussing *nolle prosequi* without consent); *In re Kevin E.*, 402 Md. 624, 633 (2008) (discussing other dismissal orders that cause double jeopardy to attach). In such instances, even if there is strong evidence of a defendant’s underlying guilt, there could never be a new criminal trial on the original offense. So, the victim’s grievances may never be heard and there would be no redress through the criminal justice system. The Vacatur Statute may forever escape appellate review if this Court decides there is no exception to the mootness doctrine.

The issues involved in Mr. Lee’s appeal affect not just his family. The Vacatur Statute’s vagaries leave it dangerously prone to abuse, with the potential to harm many Marylanders’ rights. For all the reasons discussed above, hearing this appeal will resolve the ambiguous portions of the Vacatur

Statute and address its underlying constitutionality. *See Arrington v. Dep't of Human Resources*, 402 Md. 79, 91–92 (2007); *Albert S. v. Dep't of Health and Mental Hygiene*, 166 Md. App. 726, 748 (2006); *Coburn*, 342 Md. at 250; *Peterson*, 315 Md. at 84–85.<sup>9</sup>

## CONCLUSION

Mr. Lee's appeal is not moot because the State and the circuit court committed significant procedural errors in applying the Vacatur Statute that can only be remedied through an evidentiary hearing that complies with that statute and Maryland victims' rights laws. This appeal also presents significant unresolved issues surrounding how Maryland's constitutional and statutory protections for victims relate to Maryland's new Vacatur Statute.

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<sup>9</sup> No other procedural issues should preclude hearing this appeal. There are no disputes of fact between the parties as it relates to the vacatur hearing (only the legal meaning of those facts), the record is clearly articulated, and Mr. Lee made his complaints known to the circuit court. *See* Md. Rule 8-131; *see also Wilkerson v. State*, 420 Md. 573, 597 (2011) (as an example of a factual record that was not prepared for appellate review). Mr. Lee's counsel appeared at the vacatur hearing and made the need to stay the proceeding clear to the circuit court. (Tr. at 5:8–20:20.) Mr. Lee expressed his concerns about not being able to appear in person when he spoke to the circuit court by Zoom. (Tr. at 22:11–23:9.) Such testimony and the judge's response to it is clear in the trial transcript. (Tr. at 21:11–24:8.) The parties agree on these facts, so this Court need only resolve the underlying questions of law. With no procedural issues in the way, this Court should not wait for the same Vacatur Statute challenge to arise in another dispute. *See, e.g., Ray-Simmons v. State*, 446 Md. 429, 442 (2016) (ruling petitioners preserved appellate review).

Even if this Court finds that the underlying case is moot, this Court should exercise its discretion to consider this appeal because these issues are likely to recur and will continue to evade appellate review. For all these reasons, Appellant Young Lee respectfully requests that this Court permit this appeal to proceed.

**CERTIFICATION OF WORD COUNT AND COMPLIANCE  
WITH MD. RULES 8-112**

This brief complies with the font, line spacing, and margin requirements of Md. Rules 8-112 and contains 7,350 words, excluding the parts exempted from the word count by Md. Rules 8-503.



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## CERTIFICATE OF SERVICE

I certify that on this day, October 27, 2022, a copy of the foregoing Motion to Stay the Circuit Court Proceedings Pending Resolution of the Appeal was served on counsel of record via the Court's electronic filing system.



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