YOUNG LEE, AS VICTIM'S					*	IN THE
REPRESENTATIVE,					*	COURT OF SPECIAL APPEALS
Appellant,					*	OF MARYLAND
v.					*	September Term 2022
STATE OF MARYLAND					*	No. 1291
					*	Circuit Court Case Nos. 199103042-46
*	*	*	*	*	*	* * * * *
REPLY TO APPELLANT'S NOVEMBER 2ND RESPONSE						

It is both legally and morally correct that our system honors the rights of victims. It is also true that the closure that victims sometimes seek may not be found in the solutions that our legal system offers.¹ The pain that Ms. Lee's family has endured over the past twenty-three years is unfathomable.

The Honorable Wanda Keys Heard was the first African American woman to serve on the Baltimore City Circuit Court and dedicated her career to public service. Appellee appreciates and acknowledges her service.

It is not unusual that a prosecutor who has been found to have committed wrongdoing disputes the assessment of that conduct. That issue is not before this Court. As the Office of the Attorney noted in its response to this Court, "whether a *Brady* violation

¹ As the Office of the Attorney General notes, "[Whether the State's Attorney's Office complied with their statutory and constitutional obligations to crime victims and victim representatives] is the only issue that Mr. Lee has standing to appeal." State's Response at 41.

occurred, and, if so, who is responsible are irrelevant to the issue on appeal." State's Response at 41.

There is no pending criminal case against Mr. Syed. The question before this Court is whether that fact renders Appellant's appeal on the issue of victim notification moot. It does.

In his Opposition to Adnan Syed's (1) Response to Appellant and (2) Motion to Strike Judge Heard's Affidavit ("Appellant's Opposition"), Appellant contends that the appeal is not moot because this Court can reverse the vacatur order and remand for a new hearing without violating the prohibition against double jeopardy. Appellant's Opposition, at 13. Appellant makes this argument for the first time. He did not take this position in his Response to this Court's order to show cause why the appeal should not be dismissed as moot.² Nor did the Attorney General take this position in its response (and in which it conceded that the appeal is "likely" moot).

Appellant's argument fails. The remedy Appellant now seeks is for this Court to not only reverse the vacatur order of September 19 but also the nolle prosequi entered by the State's Attorney on October 11. Appellant now argues, "there is no procedural bar preventing this Court from striking the nolle prosequi." Appellant's Opposition, at 15. If double jeopardy was the only "procedural bar," Appellant might be correct. But there is a

 $^{^2}$ *C.f. State v. Jones*, 138 Md. App. 178, 230 (2001) ("The cases are legion, in Maryland and elsewhere, that an appellate court generally will not address an argument that an appellant raises for the first time in a reply brief.").

more immediate procedural bar Appellant does not account for: the nolle prosequi is not before this Court.

If the appeal were not moot, and if Appellant prevailed on the notice issue, the remedy available to him is a reversal of the vacatur order and a remand for a new hearing on the State's vacatur petition. In order for that to be an effective remedy, presumably Mr. Syed's convictions would need to be reinstated. But a court cannot reinstate convictions when there is no pending criminal matter in the circuit court, and the criminal case against Mr. Syed ceased to exist when the State entered the nolle prosequi. Unlike in *State v. Simms*, 456 Md. 551 (2017), cited by Appellant, the nolle prosequi was not ineffective. The State entered the nolle prosequi was not ineffective. The State entered the nolle prosequi prior to final judgment and pursuant to its obligations under Rule 4-333. No appeal was filed from the entry of the nolle prosequi. Moreover, Appellant does not have standing to challenge it. Should this Court order a remand, the new hearing would take place in a void, there being no case in which to reinstate his convictions for the purpose of determining whether they should be vacated again.

This appeal is moot because Appellant does not continue to suffer injury (assuming his rights were violated at all) and because there is no remedy this Court can provide now that the State has dismissed the charges against Mr. Syed. The Court should dismiss the appeal.

Respectfully submitted,

/s/ Erica J. Suter, CPF 0712110231 Director, Innocence Project Clinic University of Baltimore School of Law & the Office of the Public Defender 1401 N. Charles Street Baltimore, MD 21201 410-837-5388 (phone) 410-837-47766 (fax) esuter@ubalt.edu Counsel for Appellee

Certification of Word Count and Compliance with MD Rule 8-112

This pleading complies with the font, line spacing, and margin requirements of Maryland Rule 8-112 and contains 683 words, excluding the parts exempted from the word count by Rule 8-503.

/s/_____ Erica J. Suter

Certificate of Service

I hereby certify that on November 3, 2022, I electronically filed the foregoing "Reply to Appellant's November 2nd Response" using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Steven J. Kelly and Assistant Attorney General Carrie Williams.

/s/_____ Erica J. Suter