

ADNAN SYED,	IN THE
Petitioner	SUPREME COURT
v.	OF MARYLAND
YOUNG LEE, AS VICTIM'S REPRESENTATIVE, ET AL.,	September Term,
Respondents	No.

**UNOPPOSED MOTION TO STAY ISSUANCE OF
APPELLATE COURT'S MANDATE**

Petitioner, Adnan Syed, by counsel, Erica J. Suter, Director of the UB Innocence Project Clinic, and Brian L. Zavin, Chief Attorney of the Office of the Public Defender's Appellate Division, moves pursuant to MD. RULE 8-303(e) that this Court stay the issuance of the mandate of the Appellate Court of Maryland. In support of his motion, Mr. Syed states as follows:

1. On September 14, 2022, the State, following a year-long investigation and pursuant to Criminal Procedure § 8-301.1 and Maryland Rule 4-333, filed a motion to vacate Mr. Syed's convictions in Circuit Court for Baltimore City Case Nos. 199103042 (first degree murder), 199103043 (kidnapping), 199103045 (robbery), and 199103046 (false imprisonment).

2. On September 19, 2022, the circuit court held a hearing on the State's motion to vacate at which Respondent Young Lee, in his capacity as victim's representative, appeared and addressed the court via Zoom and his attorney appeared and addressed the court in-person. After hearing from the parties and Mr.

Lee, the court granted the State's motion and directed the State to schedule a date for a new trial or enter a nolle prosequi of the vacated counts within 30 days. Pending a decision by the State on whether to retry Mr. Syed or dismiss the charges, the court ordered Mr. Syed released on home detention.

3. On September 28, 2022, Mr. Lee filed a notice of appeal from the vacatur order.

4. On October 11, 2022, following the return of DNA test results of the victim's shoes which indisputably excluded Mr. Syed, but produced a mixed profile of other, unknown individuals, the State entered a nolle prosequi to the charges.

5. The following day, October 12, the Appellate Court issued an order directing Mr. Lee to show cause why his appeal should not be dismissed as moot in light of the nolle prosequi. Following responses by the parties, the Appellate Court issued an order allowing the appeal to proceed and instructing the parties to brief whether the appeal was moot, whether the Appellate Court should address the merits despite mootness, and whether the notice provided to Mr. Lee of the vacatur hearing complied with the applicable constitutional provisions, statutes, and rules.

6. In his merits brief in the Appellate Court, Mr. Lee argued that he did not receive adequate notice of the vacatur hearing and that he had the right to participate as a party at the hearing by presenting evidence, calling witnesses, and challenging the State's evidence and witnesses. In addition, he argued that the appeal was not moot because these violations of his rights rendered the vacatur hearing "deficient" and thus deprived the State of its authority to enter a nolle

prosequi.

7. In a 2-1 reported opinion issued on March 28, 2023, the Appellate Court reversed the judgment of the circuit court for reasons different than those advanced by Mr. Lee. Citing case law addressing when the starting date for trial is calculated for purposes of Rule 4-271 and *State v. Hicks*, 285 Md. 310 (1979), the Court first held that the appeal was not moot because the nolle prosequi was “entered with the purpose or ‘necessary effect’ of preventing Mr. Lee from obtaining a ruling on appeal regarding whether his rights as a victim’s representative were violated.” Slip op. at 41.

8. The Appellate Court next held that Mr. Lee had a right to appear in-person at the vacatur hearing, and that the notice provided to him was inadequate as it did not allow him to appear in-person. Slip op. at 43-58. In so holding, the court rejected Mr. Lee’s claim that he was allowed to participate at the hearing as a party or otherwise. Slip op. at 58-65.

9. Based upon the violation of Mr. Lee’s rights to notice and to appear in-person but not participate at the vacatur hearing, the Appellate Court reversed the order vacating Mr. Syed’s convictions and remanded for the circuit court to hold a new hearing. Slip op. at 65-68.

10. The Appellate Court concluded its opinion by stating that it was staying the effective date of the mandate for 60 days (*i.e.* until May 30, 2023) to “give[] the parties time to assess how to proceed in response to this Court’s decision.”

11. In a dissenting opinion, Judge Berger disagreed with each of the majority's holdings. Judge Berger first expressed his opinion that the State acted within its authority to nol pros the charges against Mr. Syed, leaving "no underlying case in which to enter a remand, rendering this appeal moot." Slip op. at 6 (Berger, J., dissenting). Turning to the merits, Judge Berger agreed with the majority that Mr. Lee only had the right to attend but not participate at the vacatur hearing but took issue with the majority's holding that Mr. Lee had the right to attend in-person. According to Judge Berger, the majority failed to account for the "distinct differences between remote participation and in-person participation that are not implicated when an individual has the right to attend but not participate." Slip op. at 10 (Berger, J., dissenting).

12. Mr. Syed, through undersigned counsel, has filed a petition for writ of certiorari at the same time as this motion and respectfully requests that this Court grant the motion and stay the issuance of the Appellate Court's mandate.

13. As set forth in his petition for writ of certiorari, this case involves several issues of first impression, and there are strong grounds for the Court to reverse the Appellate Court.

14. At the same time, the necessary effect of the Appellate Court's opinion, if the mandate is not stayed, will be the reinstatement of Mr. Syed's convictions and sentence pending the results of a new hearing on the State's motion to vacate. Barring an order by the circuit court, Mr. Syed will be subject to reincarceration while this Court decides whether to grant certiorari and, if it grants

certiorari, through briefing and argument and until the Court has issued an opinion.

15. Reinstatement of Mr. Syed's convictions and possible reincarceration would be devastating for him and his family. Mr. Syed has been gainfully employed since December of 2022, working as a Program Associate at Georgetown University's Prisons and Justice Initiative ("PJI"). Through his job, Mr. Syed draws on his experiences to give back to the community. Mr. Syed was arrested and incarcerated in the last semester of his senior year of high school and completed his high school diploma while awaiting trial. He received two college acceptance letters while awaiting trial. Through the Georgetown Scholars Program, which offers a small group of individuals the opportunity to earn a Georgetown degree while incarcerated, Mr. Syed completed two semesters of credits toward his bachelor's degree before he was released. Through his work for PJI, Mr. Syed reaches back to support other incarcerated individuals who can benefit, as he did, from education. Mr. Syed has had the benefit of returning to a family who loves and supports him, but he knows that not everyone is so fortunate and that reentry to society poses many challenges. His work also supports job training and reentry support to returning citizens, many of whom were similarly incarcerated as children and served lengthy sentences. He also supports a Georgetown undergraduate class that investigates and advocates for individuals who have been wrongfully convicted.

16. Mr. Syed has also been caring for his elderly parents. His father suffers from dementia; until Mr. Syed was released, his father's care fell primarily on Mr. Syed's mother. Mr. Syed's mother has been diagnosed with stage 4

leukemia, and she suffers from the attendant health problems of the disease and its treatment. Mr. Syed's return has meant a better quality of life for his loved ones as he is able to assist with the day-to-day management of his parents' health, transport them to doctor's appointments, and generally be of service to them.

17. Reinstating Mr. Syed's convictions and reincarcerating him would also be grossly unjust. Mr. Syed's sentence and convictions were reversed by the Appellate Court because the victim's representative attended and participated in the proceeding virtually as opposed to attending silently, but in-person. The State, defense, and circuit court agreed that Mr. Syed was entitled to the vacatur of his convictions because his convictions lacked integrity in several respects. The State admitted that it had committed a material *Brady* violation when the lead prosecutor failed to turn over information regarding a threat to the victim's life made by an alternate suspect. The State also located additional information that was corroborative of this alternative suspect and a second alternative suspect having motive, means, and opportunity to harm the victim. The State also verified, through consultation with multiple experts, that the only forensic evidence that tied Mr. Syed to the crime, cell phone location evidence, was unreliable and therefore should not have been used to corroborate the narrative of Mr. Syed's cooperating, incentivized, co-defendant. In the State's closing argument at trial, the State posited that this forensic evidence was the lynchpin of its case and that the only other evidence of Mr. Syed's guilt, his co-defendant's testimony, could not stand on its own without it. The State noted that one alternative suspect was improperly cleared through the

misuse of two polygraph examinations. Finally, the State identified significant problems with the testimony of another important State's witness. If Mr. Syed is returned to prison, he will be incarcerated based on convictions that the circuit court found were in the interest of justice to vacate because the State admitted that the convictions lacked integrity.

18. The circuit court's core finding that vacatur of Mr. Syed's convictions was in the interest of justice is not at issue in this appeal. Therefore, it would be unjust to reinstate his convictions while the appeal remains pending.

19. **Mr. Lee and the Office of the Attorney General consent to a stay of the issuing of the mandate while this Petition is pending; and, if the Petition is granted, during the pendency of the appeal.**

WHEREFORE, Petitioner respectfully requests that this Court issue the attached order granting the foregoing motion.

Respectfully submitted,

/s/ *Erica J. Suter*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2023, a copy of the foregoing in the captioned case was delivered via the MDEC system to:

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ORDER

Upon consideration of the Unopposed Motion to Stay Issuance of Appellate Court's Mandate, it is this _____ day of May, 2023, by the Supreme Court of Maryland,

ORDERED that the Motion is granted; and it is further,

ORDERED that the mandate of the Appellate Court of Maryland in the case of *Young Lee, As Victim's Representative v. State of Maryland, et al.*, No. 1291, September Term, 2022, is hereby stayed pending resolution of Petitioner's Petition for Writ of Certiorari and, if this Court grants the writ of certiorari, pending a decision on the merits or further order of this Court.

Justice