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Oct 25 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions
Grace Gilchrist Knie, Circuit Court Judge

Indictment No. 3885/2018

The People of the State of New York, Respondent,

v.

Timothy Braico and Terrence Edwards, Defendants.

In Re:

The Matter John Thomas Burger, Material Witness

John Thomas Burger..... Appellant.

EMERGENCY MOTION TO DISMISS APPEAL DUE TO MOOTNESS

The Respondent, the People of the State of New York, moves this Court to dismiss the civil appeal of the Appellant due to mootness. Judge Knie's underlying General Sessions order commanded the Appellant to appear as a material witness in a criminal trial in New York City on October 10, 2023 pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. S.C. Code Ann. §§ 19-9-10-130. On October 6, 2023 the Appellant filed his notice of intent to appeal with this Court, and, relying on the automatic stay found in SCACR 241(a), Appellant declined to appear in New York as ordered.

Regardless of whether Judge Knie properly exercised her discretion, the appearance date of October 10, 2023 has now passed so that there is no matter that can be resolved by this Court.

As a matter of black letter law, an appellate court “will not pass on moot and academic questions.” See *Curtis v. State*, 549 S.E.2d 591, 594 (2001). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Id.*, citing to *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E. 2d 713, 715 (1973).

Since there is no way for an appellate court to compel Burger to appear for testimony in the New York criminal trial on October 10, 2023, Judge Knie’s previous order is now moot.

Additionally, a rapid dismissal of this appeal will assist the Circuit Court in complying with the Uniform Act. As a result of the Appellant declining to show up on October 10, 2023 as ordered, the People of New York secured a final continuance of trial until November 13, 2023. The People of New York then filed a new petition and affidavit to secure Appellant’s trial testimony. On October 20, 2023, the New York trial judge filed a new certification of materiality for Burger. Undersigned counsel has submitted the new documents in Cherokee County so that a new hearing may be held on the new material witness application. Judge Knie’s chambers has indicated by email that Judge Knie believes that she is deprived of jurisdiction to hear the new material witness application due to the appeal filed on the now moot prior Order. A dismissal of the appeal on mootness grounds will make clear to the Circuit Court that the new matter is ripe for adjudication.

For these reasons, the People of New York are requesting an expedited dismissal of the appeal based on mootness so that the Circuit Court will be aware of its authority to entertain the new material witness request in time for the appearance of Burger at trial in New York on November 13, 2023.

RESPECTFULLY SUBMITTED.

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Of Which

John Thomas Burger, is the Appellant.

PROOF OF SERVICE

I, undersigned counsel for Respondent, hereby certify that on October 25, 2023 I have served all counsel in this action a copy of the Emergency Motion to Dismiss Due to Mootness by emailing a copy to each attorney listed below using their primary email address.

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