

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  
Appellate Case No. 2023-001576

**RECEIVED**  
**Nov 07 2023**  
**SC Court of Appeals**

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

Of Which

John Thomas Burger, is the ..... Appellant.

**APPELLANT'S  
PETITION FOR REHEARING**

Pursuant to Rule 221, SCACR, Appellant, John Thomas Burger, by and through undersigned counsel petitions the Court for a rehearing of this Court's November 6, 2023 Order (the "Dismissal Order") granting Respondent's Emergency Motion to Dismiss Appellant's appeal of the October 3, 2023 order (the "Petition Order") requiring Appellant to testify in New York pursuant to the Uniform Act to Secure Witnesses from Without a State in Criminal Proceedings, S.C. Code Ann. § 19-9-10, *et seq.* (1976) (hereinafter "the Act"). The Dismissal Order states that the appeal is moot, but cites no authority and does not address the arguments raised in the Appellant's counsel regarding the exceptions to the mootness doctrine. Reconsideration is appropriate because the dismissal is erroneous as a matter of law for the following reasons.

## ARGUMENT

The Court’s Dismissal Order finding the present appeal is moot and should be dismissed is incorrect because the issues in the appeal fall within two of three recognized exceptions to the mootness doctrine. In South Carolina, an appellate court may exercise “jurisdiction over an appeal, despite mootness, if the issue raised is capable of repetition but evading review.” *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001); *see Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Additionally, “if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” *Id.*

This Court should decline to grant the Motion because the issues raised on appeal - whether Appellant is a necessary and material witness and whether compelling his attendance will cause him undue hardship given his ongoing health issues – will inevitably be raised again during the lower court’s rehearing of the subsequent petition by Respondent, and will likely evade review if this appeal is dismissed. *See Appellant’s Resp. in Opp. Mot. to Dismiss at 3-4,7*, filed November 1, 2023. The lower court’s analysis and determination of the issues ruled on in the Petition Order will also impact future events and/or have collateral consequences for the parties – namely determination of the subsequent petition. *Id.* at 4-7.

## CONCLUSION

Based on the foregoing, the Court should grant Appellant’s motion for reconsideration of the Dismissal Order because the issues contained therein are capable of repetition and likely to evade review, and the issues raised in the Petition Order will have collateral consequences for the parties.

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Columbia, South Carolina  
November 7, 2023