

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals
Respondent,

THE STATE OF SOUTH CAROLINA,

V.

QUENTIN RAYMAR PRICE,

Appellant.

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001779

PETITION FOR REHEARING

On January 13, 2016, this Court filed granted Respondent's motion to dismiss. Pursuant to Rule 221, SCACR, Appellant respectfully requests this Court rehear this matter based on the following points that were overlooked and/or misapprehended by the Court in granting the motion.

In granting Respondent's motion, this Court cited to Rule 201(b), SCACR, which states that "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal," and followed with citations to case law defining "aggrieved party." Specifically, this Court cited to *State v. Cox*, 328 S.C. 371, 372, 492 S.E.2d 399, 400 (Ct. App. 1997) for the proposition that "an aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property," and to *State v. Looper*, 412 S.C. 363 366, 772 S.E.2d 516, 517 (Ct. App. 2015) for a definition of "aggrieved": "the word aggrieved

refer[s] to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” (quoting *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)). Although the Order does not provide any specific analysis as to the application of Rule 201(b) and the cited case law to the facts of this case, the implication of the quoted language in the Order is that Appellant is not an aggrieved party because his conviction was reversed by the Circuit Court. This appears to be the only basis upon which Appellant’s appeal was dismissed. In granting Respondent’s motion on this basis alone, this Court failed to consider or misapprehended the following points in this case, which are outlined below:

(I) Appellant is an aggrieved party despite the reversal of his conviction.

(II) Even if Appellant were not an aggrieved party, the issue on appeal before this Court is one that falls within the recognized exceptions to mootness and is an issue that (a) is Capable of repetition but evading review and therefore warrants consideration on the merits, (b) presents a question of imperative and manifest urgency that should be answered by the appellate courts in order to establish a rule for future conduct in matters of important public interest, and (c) may affect future events and result in collateral consequences for Appellant.

I. Appellant is an aggrieved party within the meaning of Rule 201(b) of the South Carolina Appellate Court Rules.

In granting Respondent’s motion to dismiss on the basis that Appellant is not an aggrieved part, the Court overlooked or misapprehended important facts that demonstrate that Appellant fits within the definition of “aggrieved.” As noted by this Court in the Order, the South Carolina Supreme Court has set forth the definition of aggrieved party:

...an aggrieved party within statute relating to appeals is a

person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, *a denial of some personal or property right or the imposition on a party of a burden or obligation.*

Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (emphasis added) (citing *Bowles v. Dannin*, 2 A.2d 892 (1938)).

By this definition, a person is aggrieved when the decision of the court denies the person of some right or imposes on the party a burden or obligation. *Id.* Therefore, whether a party is aggrieved is not solely reliant on the status of a criminal conviction. *See State v. Gregorie*, 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) (“The test is not whether the appeal involves a double jeopardy claim . . . but whether the party bringing the appeal is aggrieved.”). Instead, any decision of a court that subjects a person to unlawful prosecution is an inherent violation of a personal right – the right to due process of law, as guaranteed by the United States Constitution and the South Carolina Constitution – and imposes upon that person an undue burden. *See* U.S. CONST. amend. V (“No person shall . . . be deprived of life, liberty, or property, without due process of law . . .”); U.S. CONST. amend. XIV, § 1 (“...nor shall any State deprive any person of life, liberty, or property, without due process of law ...”); S.C. CONST. art. I, § 3 (“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law ...”).

This Court’s Order suggests that the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. However, the test set forth in *Gregorie* makes no mention of the need for an upheld conviction, but instead focuses on whether a

party has been aggrieved, which, under the definition set forth in *Bivens*, requires only that the court's "judgment or decree . . . operate[] on his rights of property or bear directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152. In determining whether an appeal is proper, appellate courts are concerned with "correcting errors that have practically wronged the appealing party." *Cisson v. McWhorter*, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970).

Additionally, this Court overlooked or misapprehended the fact that even if some relief was granted by the court below in the form of overturning the conviction and vacating of the sentence on one issue, this would be merely alternative relief in this case. The primary relief requested by Appellant was a decision that the magistrate did not have subject matter jurisdiction to punish the alleged bond violation via contempt, rendering the conviction a nullity and prohibiting further unlawful prosecution. *See Sickora v. Metropolitan Life Ins. Co.*, 278 S.C. 99, 101, 292 S.E.2d 593, 595 (1982) ("The motion for a new trial *nisi* was merely alternative relief. The alternative relief did not prevent a review by this Court on the basic contention. If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary."); *see also State v. Guthrie*, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002) ("The acts of a court with respect to a matter as to which it has no jurisdiction are void.").

In this case, although Appellant's conviction was overturned he is still an aggrieved party. When the Circuit Court held that magistrates have subject matter jurisdiction to punish alleged bond violations via contempt powers, the court essentially

sanctioned Appellant's unlawful prosecution in violation of Appellant's due process rights under the United States and South Carolina Constitutions. Additionally, the relief granted by the court was merely alternative relief similar to the Courts granting a new trial in *Sickora*. See *Sikora*, 278 S.C. at 101, 292 S.E.2d at 595. The primary relief requested by Appellant was a determination by the court that magistrates lack subject matter jurisdiction to punish for contempt where the alleged contemptuous conduct is a violation of conditions of a defendant's bond and an order prohibiting the State from subjecting defendants to further unlawful prosecution for contempt.

II. Dismissal of this appeal is not proper because the issue presented falls within the recognized exceptions to the mootness doctrine as it is an issue that is capable of repetition but evading review, presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest, and may affect future events bearing upon Appellant's rights or resulting in collateral consequences for Appellant.

The South Carolina Supreme Court has found an appeal to be proper where the issue on appeal could have a "practical effect upon an existing case or controversy." *State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (1999). In *Green*, the Court quoted the United States Supreme Court for the proposition that "[a] criminal case is moot only if there is no possibility that any legal consequences will be imposed." *Green*, 337 S.C. at 71, 522 S.E.2d at 604 (quoting *Sibron v. New York*, 392 U.S. 40, 57, (1968)). The Court went on to find that although a defendant had already pled guilty on some charges, the State's appeal relating to a subject matter jurisdiction issue was not moot as it pertained to the remaining charges. *Green*, 337 S.C. at 71, 522 S.E.2d at 604.

In granting Respondent's motion to dismiss, this Court may have accepted Respondent's arguments that essentially amount to an assertion that the issue before this

Court is moot because Appellant's conviction was vacated on other grounds. However, this Court overlooked the fact that similar to *Green*, Appellant still had a pending magistrate charge, unlawful use of telephone, that was brought by the same prosecutor and that included a bond condition of no contact with the alleged victim as of October 21, 2015. Exhibit E (Arrest Warrant 2014A3210200709).¹ Thus, Appellant faced collateral consequences despite the reversal of his conviction at the time he filed his notice of appeal. In the Return to Respondent's motion to dismiss, Appellant indicated that on October 29, 2015, Appellant received a notice from the Irmo Magistrate Court, indicating that the unlawful use of telephone charge had been *nolle proessed* and was being expunged pursuant to Section 17-22-950 of the South Carolina Code of Laws. Exhibit F (Order for Destruction of Arrest Records). The notice was dated October 22, 2015. *Id.*

This Court overlooked or misapprehended the fact that by the terms of an October 28, 2014, plea agreement that resolved the underlying CDV, as well as two other charges, this unlawful use of telephone charge was to be *nolle proessed* upon Appellant's successful completion of counseling through the Domestic Abuse Center, followed by three months of good behavior. Appellant's bond condition of no contact with the alleged victim was to remain in effect until the charge was resolved. Appellant did not complete his counseling at the Domestic Abuse Center because he was terminated from the program at the request of Prosecutor Howland on July 3, 2015, after Appellant's arrest on drug charges. Appellant Return to Motion to Dismiss, Exhibit G (Email from Danielle Young); Exhibit H (Notice of Dismissal from Domestic Abuse Center). As a

¹ All references to Exhibits and supporting documentation are to those that were included in Appellant's Return to Respondent's Motion to Dismiss.

result, because Appellant did not complete the first condition of his plea agreement, as required for dismissal of the unlawful use of telephone charge, the period of three months of good behavior never even began. No reason has been provided to Appellant as to why the unlawful use of telephone charge was suddenly *nolle prossed* and expunged on October 22, 2015, one day prior to the State's filing of the motion to dismiss. This Court overlooked or misapprehended the fact that this appears to have been a calculated move by the State to avoid review by this Court of the issue on appeal.

This Court may also have overlooked or misapprehended that even if Appellant's case were otherwise moot, our Supreme Court has recognized the existence of "exceptions to the mootness doctrine." *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). In *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), our Supreme Court identified "three general exceptions to the mootness doctrine." The first exception permits appellate courts to assume jurisdiction, "despite mootness, if the issue raised is capable of repetition but evading review." *Id.* (citing *Byrd, supra*; *Citizens Awareness Regarding Educ. v. Calhoun County Publ'g, Inc.*, 185 W.Va. 168, 406 S.E.2d 65 (1991)).

The second exception provides that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* "[Q]uestions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest." *Id.* (citing *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951)).

The final exception recognizes that an appeal is not moot “if a decision by the trial court may affect future events, or have collateral consequences for the parties . . . even though the appellate court cannot give effective relief in the present case.” *Id.* Although *Curtis* recognized these exceptions to the mootness doctrine in the civil context, this Court has found these exceptions applicable in the context of a criminal contempt appeal. *See State v. Passmore*, 363 S.C. 568, 611 S.E.2d 273 (2005).

A. The issue presented is one that is capable of repetition but evading review.

In granting Respondent’s motion to dismiss, this Court overlooked or misapprehended the evolution of the common law exceptions to the mootness doctrine from stricter requirements to more lenient requirements that favor appellate review in cases such as the one at hand. One example of this evolution towards more lenient requirements is exhibited in *Byrd* with the Supreme Court’s clarification of the first exception to the mootness doctrine, “capable of repetition but evading review.” *See Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. The *Byrd* Court documented the original, stricter prerequisites for qualifying under the exception, noting that both the Supreme Court and this Court had previously held that,

under the exception, a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.

Id. (citing *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995); *In re John*

Doe, 318 S.C. 527, 458 S.E.2d 556 (Ct. App. 1995); *In re Kaundra C.*, 318 S.C. 484, 458 S.E.2d 443 (Ct. App. 1995); *Howard v. Bibbs*, 287 S.C. 636, 340 S.E.2d 566 (Ct. App. 1986); *In re Angela Suzanne C.*, 286 S.C. 186, 332 S.E.2d 542 (Ct. App. 1985)). However, the Court also noted that the “less restrictive” approach taken by other cases required only that an appeal present an issue that is “capable of repetition but evading review,” eliminating the requirement that “the same complaining party be subjected to the action again.” *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864 (quoting *In re Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)). The Court went on to “clarify that this less restrictive approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine.” *Id.*

Cases that are capable of repetition but evading review are frequently characterized by the brevity of the underlying proceedings or sentence. *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281; *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. In applying this standard in *Byrd*, the Court found that “even if it is assumed that the issue in the present case is moot, it is an issue that is capable of repetition, but which will evade review. Short term student suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate.” *Byrd*, 321 S.C. at 583, 468 S.E.2d at 864.

This Court overlooked or misapprehended the similarity of the issue on appeal in this case to that of *Passmore*, where our Supreme Court found appellate review proper. In *Passmore*, the Court found that a one year sentence for criminal contempt of court was too brief to survive appellate litigation, noting that even “the State concedes in its brief: ‘the sentence was in fact too brief to be fully litigated through appeal prior to its

expiration.”” *Passmore*, 363 S.C. at 583, 611 S.E.2d at 281. The Court then suggested that in cases such as this, the test is “whether the unconstitutional violation suffered by Appellant could be inflicted on a contemnor in the future.” *Id.* Finding that the unconstitutional sentence imposed was “evidence enough a judge could make the same error in the future[,]” the Court “[found] it necessary to remind the bench of the constitutional limitation on a judge’s power of contempt.” *Id.* Thus, where a court’s decision demonstrates the potential to evade review due to the nature and brevity of the case and a likelihood that future harm may occur to either the appealing party or other parties in the future, the appeal is not moot, and appellate courts should address the issue raised, regardless of whether the underlying litigation and sentence is complete.

In applying the “capable of evading review” prong of the test for the first exception to mootness, this Court should have considered the nature and brevity of magistrate cases in general and particularly in the context of contempt cases. Similar to the types of cases presented in *Byrd* and *Passmore*, magistrate cases, and especially magistrate contempt cases, are too brief to be fully litigated in the appellate courts prior to the resolution of the underlying case. With limited exceptions,² magistrate criminal jurisdiction is limited to cases in which the punishment does not exceed a fine of five hundred dollars or imprisonment for thirty days or both. S.C. Code Ann. § 22-3-550(A) (Supp. 2014). Where magistrates have the power to punish for contempt, the punishment is limited to the confines of the magistrate’s sentencing authority under Section 22-3-550.

² For example, Section 22-3-545 also provides for magistrate jurisdiction where a case is being transferred to magistrate court from the court of general sessions and “the penalty for which the crime in the does not exceed five thousand five hundred dollars or one year imprisonment or both . . .”

S.C. Code Ann. § 22-3-950 (2003). Therefore, because of these strict limitations on cases arising in the magistrates' exclusive jurisdiction, magistrate-level criminal cases tend to be much more brief than their general sessions counterparts.

Additionally, as dictated by statute, the sentence for an individual offense rarely exceeds thirty days. *See, e.g.*, S.C. Code Ann. § 22-3-550(B) (Supp. 2014). The brevity of these cases for appellate purposes is compounded by the fact that magistrate appeals are made first to the circuit courts. S.C. Code Ann. § 18-3-10 (2003). This process frequently results in the lapse of a significant amount of time between the conviction that forms the basis of the appeal and the issuance of an appealable decision by the circuit court. As a result, this Court should take into account that, for purposes of appellate litigation, the timeline for magistrate cases, from arrest to completion of sentence, is almost always "too brief to be litigated through appeal prior to [their] expiration." *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

In considering Respondent's motion to dismiss, Court should have considered the application of these principles to this case. In this case, Appellant was convicted of contempt of court on April 9, 2014. Exhibit A (Order on Appeal, p. 3). The Notice of Appeal was filed with the Lexington County Clerk of Court's Office on April 15, 2014, and the magistrate's return was filed on July 10, 2014. Oral arguments were heard before the circuit court on September 4, 2014, and the court's Order on Appeal was filed on October 6, 2014, nearly six months after Appellant's conviction for contempt. Exhibit A (Order on Appeal, p. 1). The underlying charge, for which Appellant was arrested on November 19, 2013, was resolved on October 28, 2014, pursuant to the aforementioned plea agreement. Magistrate cases are often resolved even more quickly than this,

demonstrating that, similar to the student suspension at issue in *Byrd* and the one year criminal contempt sentence in *Passmore*, they are “by their very nature, completed long before an appellate court can review the issues they implicate . . . and clearly fit[] into the evading exception of the mootness doctrine.” *See Byrd*, 321 S.C. at 432, 468 S.E.2d at 864.

In applying the “capable of repetition” prong of the test, this Court should have considered several factors that are applicable to this case. First, it is important to note that the unlawful pursuance of criminal contempt convictions against criminal defendants for allegedly violating the no-contact provision of a defendant’s bond is used in a majority of magistrate level criminal cases prosecuted by the Criminal Domestic Violence Prosecutor for the Lexington County Sheriff’s Department.³ As a result, the likelihood that the “constitutional violation suffered by Appellant could be inflicted on [another party] in the future” is not only high, but happens in a majority of domestic violence and related magistrate cases in Lexington County. *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

Additionally, this Court should have considered the great likelihood that defendants in other parts of the state might be subjected to the same unlawful and unconstitutional prosecution. Despite the Attorney General’s Office’s previous conflicting opinions on the issue, a March 1, 2013 Opinion suggested that magistrates and municipal judges may use bench warrants and contempt proceedings to punish

³ It should be noted that although this practice is most common in CDV cases, it is not limited solely to that type of case, but also includes, for example, cases involving charges of assault and battery in the third degree, unlawful use of telephone, and violations of orders of protection.

alleged bond violations. Opinion of the Attorney General to The Honorable Ernest O'Brien, 2013 WL 1695519 (S.C.A.G.) (March 1, 2013). In a memorandum dated April 9, 2013, Court Administration notified magistrates and municipal courts of the March 1, 2013 Attorney General Opinion's approval of the use of bench warrants and contempt proceedings to address alleged bond violations.⁴

When considering this exception to mootness, this Court should also have looked to the effect of the circuit court's order in this case. Because the court's order overturning Appellant's conviction was based solely on the holding that "the use of a bench warrant *in this instance* was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant," the order has been, and will continue to be, construed as not binding on future cases. *See* Exhibit A (Order on Appeal, p. 1) (emphasis added). This Court overlooked or misapprehended that this creates a scenario where the State could continue to use bench warrants for the purpose of bringing defendants before the court in criminal contempt proceedings, and upon appeal of a conviction to the Court of Common Pleas, the circuit court judge could continue to overturn convictions on the basis that the use of the bench warrant was improper in that instance, and either decide not to reach the issue of subject matter jurisdiction, or continue to hold that magistrates have subject matter jurisdiction. The result is that the issue would continue to be repeated while always evading review.

⁴ The April 9, 2013 Memorandum is directed to Magistrate and Municipal Judges and states, "The [Attorney General's] opinion concludes that, pursuant to S.C. Code Ann. §§ 17-15-30(D) and 17-15-100, magistrate and municipal courts are authorized to use their contempt powers to enforce conditions of release on bond."

For each of these reasons, this Court should have found that the issue of whether magistrates have subject matter jurisdiction to punish alleged bond violations using contempt powers is the epitome of an issue that is capable of repetition but evading review, and therefore falls within an exception to the mootness doctrine.

B. Matters of Important Public Interest

This Court also overlooked or misapprehended the second exception to the mootness doctrine, which permits courts to hear an appeal that would otherwise be moot where a question would be decided that is “of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. This exception is rooted in the long standing principle that “questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest.” *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 96-97, 44 S.E.2d 88, 96 (1947). In *Berry v. Zahler*, Supreme Court quoted the language from *Ashmore*, again recognizing this principle as an exception to the rule against deciding what would otherwise be considered purely academic questions, even though it was inapplicable in that case. *Berry*, 220 S.C. at 89, 66 S.E.2d at 461.

Our Supreme Court recently applied the same logic in *State v. Langford*, where it considered on appeal arguments that were not preserved for appellate review and were raised for the first time on appeal by way of an amicus brief. 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012). The Court found that the issue of “who decides when criminal defendants in this State should be tried is a matter of *significant public interest*” that warranted review. *Id.* at 433, 735 S.E.2d at 477 (emphasis added) (analyzing the

constitutionality of Section 1-7-330 of the South Carolina Code of Laws, which vested solicitors with exclusive power to control general sessions dockets, the Court applied the “matter of significant public interest” exception to the otherwise strict issue preservation requirements as stated in *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)).

Our Supreme Court’s continued willingness to apply this type of exception in a variety of contexts indicates the significant importance placed on issues that bear upon the public and could have consequences for parties that are not involved in the case at hand. This is also evidenced by the Court’s willingness to take on such an issue in *Langford*, despite the Court’s affirmation of Langford’s conviction. *Id.* at 446, 735 S.E.2d at 484 (finding that although Section 1-7-330 was unconstitutional, Langford was not prejudiced by the solicitor’s control of the docket).

Here, the issue of whether magistrates have subject matter jurisdiction to punish for contempt of court where the basis for the contempt is an alleged violation of the conditions of a criminal defendant’s bond is a matter of “important public interest” involving a “question of imperative and manifest urgency that should be decided by this Court to establish a rule for future conduct.” *See Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. This Court’s decision in granting Respondent’s motion to dismiss failed to take into account that issues of subject matter jurisdiction are important matters of public interest because whether subject matter jurisdiction exists determines the validity of a court’s actions with respect to the matter at hand. *See Guthrie*, 352 S.C. at 107, 572 S.E.2d at 311. Indeed, subject matter jurisdiction is a question of such fundamental importance that it may be raised for the first time on appeal or *sua sponte* by the court. *Id.* (“Whether

the trial court lacks subject matter jurisdiction to hear a case is a fundamental issue that may be raised at any time, including for the first time on appeal, and it may be raised *sua sponte* by the court.”); *see also Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001).

Additionally, this Court overlooked or misapprehended the other important aspects of the issue on appeal in this case. Specifically, whether a magistrate has subject matter jurisdiction to use contempt powers to punish alleged bond violations is a question of public importance because of the procedure’s widespread use in magistrate cases that involve an alleged victim. As previously noted, the process of seeking criminal contempt convictions against defendants based on allegations that a defendant violated the no contact condition of his bond is being used throughout Lexington County in the prosecution of magistrate cases involving, for example, charges of criminal domestic violence, unlawful use of telephone, assault and battery, and violation of an order of protection. This amounts to a large number of magistrate cases, just in Lexington County, that result in, or could potentially result in, criminal contempt prosecution based on allegations that a defendant had contact with an alleged victim in violation of the conditions of his or her bond. As a result of the aforementioned Court Administration Memorandum and Attorney General Opinion, it is possible that this unlawful practice is or will be used in other counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations.

Furthermore, this Court overlooked or misapprehended the great importance of deciding this issue on appeal in order to give guidance for future actions because of the effects that this practice has on the lives of defendants and their families. Two methods are typically used in Lexington County to initiate contempt proceedings in this context:

(1) the issuance of a bench warrant, as described by the circuit court in the Order on Appeal, and (2) oral notice upon arrival for a court appearance. *See* Exhibit A (Order on Appeal, p. 2). When a bench warrant is used, the defendant is arrested on the bench warrant and held without bond until the contempt proceeding, which is determined by the court and/or the State; the amount of notice given to defense counsel, if any, varies. In other cases, a defendant may arrive for a court appearance and be notified for the first time upon arrival that contempt proceedings will be held that day on the basis of allegations for which no prior notice was given.

In a majority of cases, defendants are given two options by the State: contest the contempt charge or enter a plea of guilty to the contempt and to the underlying criminal charge, such as CDV, and receive separate sentences of periods of incarceration, to run consecutive, that are suspended to domestic abuse counseling and, at times, other conditions, such as a continued prohibition on contact with the alleged victim.⁵ Should a defendant fail to complete or violate some portion of the suspended sentence, the suspended periods of incarceration, typically – prior to the recent change in the domestic violence laws – thirty days each,⁶ are activated, and while the CDV charge is eligible for

⁵ In some cases other offers are made, such as to plead guilty to the contempt and receive a sentence that is suspended upon the completion of a Pre-Trial Intervention program, if the defendant is eligible and the prosecutor chooses to offer the defendant the opportunity to enter the program.

⁶ Prior to the legislative enactment of the new domestic violence laws, both contempt and criminal domestic violence, first offense, were each punishable by incarceration not to exceed thirty days. S.C. Code Ann. § 22-3-950 (2003) (Authorizing magistrates to punish for contempt “by imposition of sentences up to the limits imposed on magistrates’ courts in Section 22-3-550.”); S.C. Code Ann. § 22-3-550 (Supp. 2014) (Limiting magistrates’ general jurisdiction to offenses punishable by “a fine or forfeiture not

“good time credit” under Section 24-13-210, the contempt is treated as ineligible for any “good time credit,” and that period of incarceration is served day-for-day. *See* S.C. Code Ann. § 24-13-210(C) (Supp. 2010) (Providing for a reduction in sentence at the rate of one day for every two days served for any “inmate convicted of an offense against this State and sentenced to a local detention facility [and] whose record of conduct shows that he has faithfully observed all the rules . . . and has not been subjected to punishment for misbehavior.”).

This Court should also have taken into account the fact that in many cases the defendant and defense counsel, if the defendant is represented, have little knowledge of the allegations and minimal, if any, time to prepare a defense prior to the hearing. As a result, defendants often forfeit their constitutional rights with regards to contesting the underlying criminal charge and accept the offer in order to prevent an almost certain conviction on contempt that is likely to result in a thirty day sentence that is served day for day, with no recommendation of a suspended sentence. This frequently puts defendants in the position of having to decide between two options. On the one hand, a defendant could contest the contempt in a hearing where he or she may be sentenced to serve thirty days in jail, day for day, and face the risk of a variety of collateral

exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both.”); S.C. Code Ann. § 16-25-20(B)(1) (Supp. 2014) (providing for punishment of Criminal Domestic Violence, First Offense, by incarceration not to exceed thirty days or a fine not less than one thousand dollars nor more than two thousand five hundred dollars). With the recent statutory changes, the magistrate-level domestic violence charge, Domestic Violence, Third Degree, is now punishable by a fine of not less than one thousand five hundred dollars nor more than two thousand five hundred dollars, or incarceration not to exceed ninety days, or both. S.C. Code Ann. § 16-25-20(D)(1) (amended 2015).

consequences, such as losing a job or custody of children, in order to exercise their constitutional rights on the underlying criminal charge. On the other hand, a defendant could give up his or her constitutional rights by accepting the offer to plead guilty to the contempt and the underlying criminal charge in order to avoid the risks associated with going forward in a contempt hearing where many constitutional protections are not afforded or not observed.⁷

The fact that this practice is so pervasive in Lexington County alone would be enough to qualify as a matter of important public interest, but the likelihood that the practice is being used or may be used in other counties heightens the importance. Respondent even essentially admits in the Motion to Dismiss that the issue presented on appeal is likely to affect future litigants and necessitate appellate review. *See* Respondent Motion to Dismiss, p. 7 (“The ground Appellant advances for consideration on appeal, at most, is a matter for another litigant on another day”). As a result, this Court should have found that the issue on appeal in this case is ripe for review by the appellate courts, and this Court should decide the issue in order to establish a rule for future conduct.

C. Collateral or Future Consequences Affecting Appellant

This Court overlooked or misapprehended the third exception articulated in *Curtis*, which recognizes the need for appellate review where the lower court’s decision creates the potential for collateral or future consequences for the parties. *Curtis*, 345 S.C.

⁷ For example, no right to a jury trial exists in contempt cases where the contemnor is not facing a sentence of more than six months incarceration. *See Bloom v. Illinois*, 391 U.S. 194 (1968); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). Additionally, because a defendant is frequently presented with the allegations upon arrival at a court appearance with no prior summons for a contempt hearing, the defendant may not yet have the advice of counsel and is not afforded the opportunity to call witnesses on his or her behalf.

at 568, 549 S.E.2d at 596. Collateral or future consequences are not limited to any particular set of circumstances and need not be legal certainties in order to qualify the issue for review. In *Passmore*, the Supreme Court listed several examples of potential collateral consequences that were “enough to surmount the mootness doctrine”:

Although Appellant’s time has been served, she may yet experience the repercussions of having been sentenced to a year in prison for contempt of court. For example, she might be obliged to indicate jail time served on an employment application. Thus, the sentence could affect her ability to obtain future employment. Likewise, she could be required to disclose the conviction on a credit application, thereby hindering her chances of securing credit. Further, drivers’ license applications, voter registration applications, and other documents may mandate the divulgence of prior convictions. Hence, Appellant’s unconstitutional conviction will continue to stigmatize and prejudice her. These significant collateral consequences are enough to surmount the mootness doctrine.

Passmore, 363 S.C. at 583, 611 S.E.2d at 281. It should be noted that the consequences discussed by the Court were separate and apart from the possibility of any future incarceration and trumped the fact that the *Passmore* had already served her sentence on the underlying criminal contempt. *Id.* The examples provided also indicate that the potential future harm need not be a strictly legal harm, but may bear upon any aspect of life. *See id.* The only requirement is that the “decision by the trial court may affect future events.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596.


In granting Respondent’s motion to dismiss, this Court failed to take into consideration the effects on future events and the collateral consequences for Appellant implicated by the circuit court’s decision in this case. In addition to the potential that Appellant may be confronted with similar contempt charges again in the future, as

previously discussed, other collateral consequences could result, rendering the case ripe for review. Furthermore, the contempt conviction, though overturned, could be used during sentencing or during any future hearings⁸ with Appellant and could have to be disclosed to, among others, potential employers if asked about prior arrests on criminal charges.

As a result, this Court should have found that Appellant's case is not moot, but ripe for review, because of the collateral consequences and likelihood that the circuit court's decision may affect future events.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant the petition for rehearing, reinstate the appeal, and hear the merits of the issue on appeal.



Jael D. Gilreath
Assistant Public Defender
407 W. Main Street
Lexington, SC 29072
ATTORNEY FOR APPELLANT

Date: 01/26/2016

⁸For example, in each of the proceedings below, the Prosecutor noted to the courts that the alleged bond violation in question was Appellant's second time being charged with contempt for having contact with the alleged victim. See, e.g. Exhibit A (Order on Appeal, p.2).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

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JAN 27 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

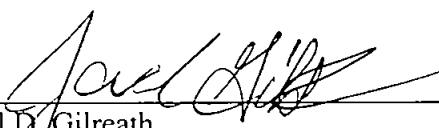
QUENTIN RAYMAR PRICE,

APPELLANT

APPELLATE CASE NO. 2015-001779

CERTIFICATE OF SERVICE

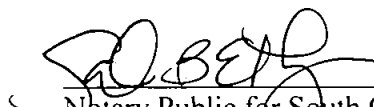
The undersigned attorney hereby certifies that a true copy of Appellant's Petition for Rehearing in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via U.S. Mail this 27th day of January, 2016.



Jael D. Gilreath
Assistant Public Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2016.



Notary Public for South Carolina
My Commission Expires: 3-25-2024