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SC Court of Appeals

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May 6, 2021

V. Claire Allen, Deputy Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State v. Cedrick Hopkins
Appellate Case No. 2018-002060
Scheduled for oral argument on June 16, 2021 at 11:20 a.m.

Dear Ms. Allen:

Please accept this letter in lieu of a formal return to the Court's April 29, 2021 request that I advise the Court within ten days whether this appeal is moot due to Appellant's completion of his sentence. Undersigned counsel respectfully asserts that this appeal is not moot since the case has actual and potential collateral consequences for Appellant. Additionally, the error here is one which is capable of repetition but evading review.

"A case becomes moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy, thus making it impossible for the reviewing court to grant effectual relief." *State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005). However, this does not mean that petty crimes never receive appellate review. In *Sibron v. New York*, 392 U.S. 40, 50 (1968), the United States Supreme Court considered whether it should reach Sibron's Fourth Amendment claim since Sibron had completed the six-month sentence that was imposed upon his conviction. The United States Supreme Court found the case was not moot and explained that, "[A] criminal case is only moot if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction." *Id.* at 57-58. "The possibility of consequences collateral to the imposition of sentence is sufficiently substantial to justify our dealing with the merits." *Pollard v. United States*, 352 U.S. 354, 358 (1957).

See also Street v. New York, 394 U.S. 576, 579 n. 3 (1969) (criminal case not moot due to collateral penalties including, *inter alia*, that record of Street's conviction would be made

available to judge prior to imposition of any future criminal sentence); *State v. Passmore*, 363 S.C. at 583, 611 S.E.2d at 281 (case not moot where sentence was too brief to be fully litigated through appeal prior to its expiration and additionally “case is not moot because the unconstitutional sentence could continue to affect Passmore through collateral consequences”); *In re Willie H.*, 284 S.C. 436, 437, 327 S.E.2d 76 (1985) (“We hold that where adverse collateral consequences may arise from the adjudication, a juvenile may not be foreclosed from appeal simply because he is no longer in custody”).

In *State v. Passmore*, 363 S.C. at 583, 611 S.E.2d at 281, one potential collateral consequence to Passmore that was identified by this Court was that Passmore’s conviction might “hinder[] her chances of securing credit.” Here, the revocation judge ordered that Appellant Hopkins’ fines were converted to a civil judgment as part of this revocation. *See* R. 13. Accordingly, a judgment lien attached pursuant to S.C. Code Ann. § 17-25-323. This has real-life consequences, such as perhaps foreclosing Appellant’s ability to rent a home or purchase a car. The civil judgment against Appellant here was an actual collateral consequence, rather than merely a possible collateral consequence (although even possible collateral consequences were enough to “surmount the mootness doctrine” in *Passmore, supra*).

Additionally, the Supreme Court in *Willie H.*, 284 S.C. at 437, 327 S.E.2d 76, noted that one potential adverse consequence to Willie H. was that if he committed a crime in the future, “a sentencing judge [is authorized] to consider an adult defendant’s juvenile record in imposing a sentence.” Although Appellant here has completed his sentence, this probation revocation will remain on his criminal record. If Appellant were to be sentenced for future criminal offenses, this revocation would reflect poorly on him. A future judge could decide that since Appellant’s probation was revoked in this case, he would not be a good candidate for a probationary sentence and incarcerate Appellant in lieu of probation. Appellant’s case is not moot given both the actual and possible collateral consequences here. *Sibron*, 392 U.S. at 57; *In re Willie H.*, 284 S.C. at 427, 327 S.E.2d at 76; *Passmore*, 363 S.C. at 583, 611 S.E.2d 281.

Moreover, Appellant’s case presents an issue that is capable of repetition, but which evades review. In *Interest of Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136 (1983), the South Carolina Supreme Court addressed the issue of whether the family court could sentence a juvenile runaway (a status offense rather than a criminal offense) as a delinquent (as if she had committed a criminal offense). First, however, the Supreme Court noted that the juvenile had been released from custody to probation. The Supreme Court explained, “Normally, this would render the case moot, but we find the issue raised is ‘capable of repetition but evading review’ and, therefore, take jurisdiction.” *Id.* (quoting *Roe v. Wade*, 410 U.S. 113 (1973)). *See also In Interest of Catrice S.*, 322 S.C. 204, 470 S.E.2d 856 (Ct. App. 1996) (recognizing that in the case of *In Interest of Darlene C.*, our Supreme Court held “that when an issue is ‘capable of repetition but evading review’ the court will not refuse to consider the issue based on mootness”); *South Carolina Dept. of Mental Health v. State*, 301 S.C. 75, 390 S.E.2d 185 (1990) (“Although the specific case involving Darren J. is now moot, this appeal was allowed because it raises a question that is capable of repetition, but which usually becomes moot before it can be reviewed).

In *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996), the South Carolina Supreme Court observed that the appellate courts of this state had not been “entirely consistent” in defining the mootness exception of repetition evading review, and clarified the matter.

Some cases have 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 action again . . . Other cases have taken a less restrictive approach in defining the exception, holding that a court can take jurisdiction, despite mootness, if the issue raised is ‘capable of repetition but evading review.’

Id. (alterations and citations omitted). “In effect, this latter approach differs from the former in that it does not require a reasonable expectation that the same complaining party be subjected to the action again.” *Id.* “We now clarify that this less restrictive approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine.” *Id.* at 432, 468 S.E.2d at 864. Therefore, under the evading review exception, the appellate courts of this state have jurisdiction if the issue raised is simply one capable of repetition but evading review.

Appellant is entitled to a direct appeal to correct errors of law in his case. The error of law here (that the court was without authority to revoke probation since a probation violation citation was not issued until after Appellant’s term of probation had expired) is one that is capable of repetition but evading review. The mistake of the Probation, Parole and Pardon Services agent in bringing a revocation against a person who had already completed probation is an error that is certainly capable of repetition, since the error was timely brought to the experienced trial judge’s attention and yet he ruled incorrectly. This Court should correct the error of law in Appellant’s case since the issue is one that is capable of repetition, yet evading review. *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. Additionally, as discussed above, this case is not moot due to actual collateral consequences to Appellant, since the revocation judge converted Appellant’s fines to a civil judgement. *Sibron*, 392 U.S. at 57.

Please don’t hesitate to contact me if I may be of any further assistance with this matter.

Sincerely,

s/ Joanna K. Delany
Joanna K. Delany
Appellate Defender

cc: Matthew Buchanan, Esq.