In The

Appellate Court of Maryland

No. 1291
September Term, 2022
MDEC No. CSA-REG-1291-2022

YOUNG LEE, AS VICTIM'S REPRESENTATIVE,
Appellant,

v.

STATE OF MARYLAND,
Appellee.

Appeal from the Circuit Court for Baltimore City
in Case No. 199103042 (Hon. Melissa Phinn, Judge)

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

An Improper Clandestine Proceeding 1

A Vacatur "Hearing" Without Evidence and Without Proper Notice 1

A Two-Page Summary-Order Vacating a Murder Conviction Without Findings of Fact or Conclusions of Law 2

This Matter Is Not Moot and This Court Should Grant Relief 3

ARGUMENT 4

I. The Circuit Court and State's Attorney Violated Mr. Lee's Rights as Victim's Representative and Skirted the Public's Right of Open Access to Court Proceedings 4

A. The Circuit Court Violated the Strong First Amendment and Maryland Law Presumption of Open Courts 4

B. In Sweeping Aside the Circuit Court's Victims' Rights Abuses, Mr. Syed Misrepresents the Facts and Hides the Secretive, Predetermined Nature of the Court's Ruling 6

II. Entry of *Noelle Prosequi* Does Not Moot the Appeal Because the Court May Remand the Matter for a Legally Compliant Vacatur Hearing, Rendering the *Noelle Pros* Void 10

III. The Proper Remedy for the Violations in this Case Requires Appointing an Adverse Party to Ensure a Legally Compliant Vacatur Proceeding 13

A. The Court Should Appoint Mr. Lee as a Limited-Purpose Party-in-Interest or Allow Him to Intervene in the Trial Court 13

B. This Court May Appoint a Friend of the Court 15

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases:

Antoine v. State,
245 Md. App. 521 (2020) 4, 10, 11, 13

Balt. Sun Co. v. Mayor & City Council of Balt.,
359 Md. 653 (2000) 5, 15

Bhagwat v. State,
338 Md. 263 (1995) 15

Bob Jones Univ. v. United States,
461 U.S. 574 (1983) 16

Bond v. Slavin,
157 Md. App. 340 (2004) 15

Buzbee v. J. Newspapers, Inc.,
297 Md. 68 (1983) 5

Clay v. United States,
537 U.S. 522 (2003) 16

Cnty. Corp. v. Semmes,
169 Md. 501 (1936) 16

Cottman v. State,
395 Md. 729 (2006) 12

Dickerson v. United States,
530 U.S. 428 (2000) 16

F.L. v. Ct. of Appeals,
2022 UT 32 (Aug. 3, 2022) 14

Fox v. Wills,
390 Md. 620 (2006) 16

Globe Newspaper v. Super. Ct.,
457 U.S. 596 (1982) 5

Hartford Ins. Co. v. Birdsong,
69 Md. App. 615 (1987) 15

Jordan v. State,
246 Md. App. 561 (2020) 9

Lamb v. Kontgias,
169 Md. App. 466 (2006) 15

Patuxent Publ'g Corp. v. State,
48 Md. App. 689 (1981) 5

Press Enter. v. Super. Ct.,
478 U.S. 1 (1986) 5

Richmond Newspapers, Inc. v. Virginia,
448 U.S. 555 (1980) 5

State v. Cottman Transmission Sys., Inc.,
75 Md. App. 647 (1988) 5

State v. Grafton,
255 Md. App. 128 (2022) 7

State v. Simms,
456 Md. 551 (2017) 11, 12

State v. Syed,
463 Md. 60 (2019) 7

State v. Thomas,
465 Md. 288 (2019) 12

United States v. Windsor,
133 S. Ct. 2675 (2013) 16

Ward v. State,
290 Md. 76 (1981) 11

Watters v. State,
328 Md. 38 (1992) 5

Statutes & Other Authorities:

U.S. Const., Amend. I 4, 5

Fed. R. Civ. P. 43 8

Katherine Shaw, *Friends of the Court: Evaluating the Supreme Court's Amicus Invitations*, 101 Cornell L. Rev. 1533 (2016) 16

Maryland Constitution Article 40 5

Md. Code Ann., Crim. Proc. § 5-201 15

Md. Code Ann., Crim. Proc. § 8-106 15

Md. Code Ann., Crim. Proc. § 8-301.1(a)(1)(i) 7

Md. Code Ann., Crim. Proc. § 8-301.1(b) 13
Md. Code Ann., Crim. Proc. § 8-301.1(d) 13, 15
Md. Code Ann., Crim. Proc. § 8-301.1(d)(1) 8
Md. Code Ann., Crim. Proc. § 8-301.1(e) 13
Md. Code Ann., Crim. Proc. § 8-301.1(f) 13
Md. Code Ann., Crim. Proc. § 8-301.1(g) 13
Md. Code Ann., Crim. Proc. § 11-102 14
Md. Code Ann., Crim. Proc. § 11-102(a) 6, 13
Md. Code Ann., Crim. Proc. § 11-103 ..... 4, 13
Md. Code Ann., Crim. Proc. § 11-103(b) 13, 14
Md. Code Ann., Crim. Proc. § 11-103(e)(2) 10, 14
Md. Code Ann., Crim. Proc. § 11-103(e)(3) 10
Md. Code Ann., Crim. Proc. § 11-104(f)(1) 8
Md. Code Ann., Crim. Proc. § 11-403 8
Md. Code Ann., Crim. Proc. § 11-403(a) 8, 15
Md. Code Ann., Crim. Proc. § 11-403(b) 13
Md. Code Ann., Crim. Proc. § 11-403(f) 13
Md. Code Ann., Crim. Proc. § 11-505 15
Md. Code Ann., Cts. & Jud. Proc. § 3-830 16
Md. Decl. of Rts. Art. 47(a) 14
Md. Rule 2-214(c) 14
Md. Rule 4-331(c) 3
Md. Rule 4-333 8
Md. Rule 4-333(d)(7) 6
Md. Rule 4-333(h)(3) 6
Md. Rule 4-345 15
Quattrone Center, *Report of the Baltimore Event Review Team on* State of Maryland v. Malcolm J. Bryant (Nov. 2018) 7

INTRODUCTION

An Improper Clandestine Proceeding

Fundamental to the American justice system is the presumption of open courts, including transparent proceedings where the evidence is publicly aired and the basis for any dispositive ruling is sufficiently clear. The Baltimore City State's Attorney and circuit court ran roughshod over these principles by secretly collaborating to choreograph a vacatur of Mr. Syed's conviction. The court held an improper, clandestine, *in camera* prehearing at which only the judge, prosecutor, and defendant were present. (E 150:7–9) They offered Mr. Lee no opportunity to participate. In fact, neither Mr. Lee nor the public even knew that it had occurred.

Nor, as required by law, was there a session in open court with record findings to establish a need for closed proceedings. The only time that the State presented evidence for vacatur was at this prehearing, but no court reporter attended, and no substantive record exists. What happened there is lost to history.

A Vacatur "Hearing" Without Evidence and Without Proper Notice

The prosecutor and court then staged an official vacatur "hearing" less than one business day after the prehearing, but this session was farce. No witnesses or evidence appeared, and the hearing became mere spectacle to announce the vacatur and set Mr. Syed free.

It is impossible to discern whether the prosecutor met its burden under the Vacatur Statute. For example, the State asserted that the original trial was plagued by a *Brady* violation, but there is no evidentiary record establishing that a violation occurred. The

evidence that the court relied on to grant vacatur and its basis for doing so remain hidden and untested. The prosecutor and court subverted the law.

In so doing, the court and prosecutor also steamrolled Mr. Lee's rights as victim's representative by denying him meaningful input in the process. The State advised Mr. Lee of the hearing with insufficient time to attend and misinformed him that he had a right only to dial in and watch. At the hearing, the court denied Mr. Lee's motion to postpone so that he could travel to Baltimore. It offered the concession of speaking by Zoom without time to prepare. And it vacated Mr. Syed's conviction based on sweeping speculations contained in a legally deficient Motion—making no independent explanatory findings of fact or conclusions of law. Rather, the court ordered Mr. Syed's release in a brief ruling suggesting that it had reviewed the evidence "*in camera*." (E 116) These deficiencies in the record not only prevented Mr. Lee from meaningfully participating in the hearing but impede his ability to appeal the ruling.

This misconduct compels the conclusion that the hearing was a charade with a predetermined outcome decided in the closed-chambers prehearing.

A Two-Page Summary-Order Vacating a Murder Conviction Without Findings of Fact or Conclusions of Law

In a summary-order, the circuit court ruled: "Upon consideration of the papers, in camera **review of evidence,** proceedings, and oral arguments of counsel . . . the Court finds that the State has proven grounds for vacating the judgment of conviction in the matter of Adnan Syed. Specifically, the State has proven that there was a *Brady* violation. . . . Additionally, the State has discovered new evidence that could not have been discovered

by due diligence in time for a new trial under Md. Rule 4-331(c) and creates a substantial or significant probability that the result would have been different." (E 116 emphasis added)

The court erred by relying on evidence presented only for *in camera* review.

The court erred in finding a *Brady* violation because it did not issue findings of fact and conclusions of law saying what the violation was, why it was material, and why there was a reasonable possibility that disclosure of withheld evidence would have led to an acquittal. If the relevant *Brady* violation is the document referenced in the State's Motion to Vacate, (E 79) it must be noted that the trial prosecutor, the author of the note, contests the interpretation the State offered to justify vacatur. The legally sufficient way to resolve the note's meaning would be for the prosecutor to testify as to what he intended, and the court to make credibility findings.

The court also erred in summarily concluding that newly discovered evidence would have likely changed the outcome at trial. No one—not Mr. Lee, not the press, not the public, and not even Mr. Syed himself—could know from this ruling what new evidence the court was crediting and how it may tend to exonerate Mr. Syed. For example, the State's Attorney claimed that there were alternative suspects under investigation who have been convicted of other crimes but cited no evidence linking them to the murder of Hae Min Lee. Without more, it is impossible to discern the basis for granting vacatur.

This Matter Is Not Moot and This Court Should Grant Relief

Now, Mr. Syed argues that the prosecutor's and court's end-run around the First Amendment and Maryland's victim's rights laws is shielded from review because the

matter is moot. He claims that the prosecutor insulated its own violations by entering a *noelle prosequi* following vacatur. Mr. Syed is wrong. His argument contravenes the 2013 amendments to Criminal Procedure ("CP") § 11-103 and this Court's binding precedent in *Antoine v. State*, 245 Md. App. 521 (2020), which reinforce the time-honored tenet that every right must have a remedy. Critically, the other party to this case, the State, agrees with Mr. Lee in this regard.

Based on these violations, this Court has the power to fashion relief. This Court should remand for a legally compliant hearing. Where, as here, the State's Attorney, defendant, and circuit court are aligned, this Court should ensure that a party with an adversarial interest is heard and allowed to challenge the evidence supporting vacatur. As victim's representative with rights under Maryland law, Mr. Lee is willing to serve in that role. Alternatively, this Court may appoint a friend of the court, such as the State Attorney General. This ruling would restore this matter to how it stood before the defective hearing and ensure that the matter proceeds in accordance with the law.

ARGUMENT

I. The Circuit Court and State's Attorney Violated Mr. Lee's Rights as Victim's Representative and Skirted the Public's Right of Open Access to Court Proceedings

A. The Circuit Court Violated the Strong First Amendment and Maryland Law Presumption of Open Courts

It is a basic tenet of U.S. constitutional and Maryland law that court hearings be open to the public. Here, the only time that the circuit court reviewed evidence was in a secret closed-chambers proceeding. It was then that the court determined how to resolve

the State's vacatur motion, making the subsequent public vacatur "hearing" an empty ritual. Without an open review of the evidence, everything in the State's motion amounted to unsubstantiated speculation and Mr. Lee's right to meaningfully participate disappeared.

The public and the press have a First Amendment right to attend and report on all aspects of criminal proceedings. *State v. Cottman Transmission Sys., Inc.*, 75 Md. App. 647, 657 (1988). Before a court can curtail that right, it must hold a hearing to establish strict requisites to justify closure, including that closure would be effective and that no other remedy works. *See Press Enter. v. Super. Ct.*, 478 U.S. 1 (1986); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). To close a proceeding, the court must articulate a recognized statutory or constitutional exception to the presumption of openness. *Balt. Sun Co. v. Mayor & City Council of Balt.*, 359 Md. 653, 662 (2000). Closed proceedings are permitted only if supported by a compelling interest and backed by a clear factual record. *Watters v. State*, 328 Md. 38, 50 (1992). As the Supreme Court explained, "in the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper v. Super. Ct.*, 457 U.S. 596, 606 (1982).

Maryland courts enforce this essential precept under the First Amendment and Article 40 of the Maryland Constitution. *See Cottman*, 75 Md. App. at 656; *Buzbee v. J. Newspapers, Inc*., 297 Md. 68, 76 (1983). The presumption of openness applies strongly in criminal matters. *Patuxent Publ'g Corp. v. State*, 48 Md. App. 689, 692 (1981). Even pretrial hearings must be open. *Buzbee*, 297 Md. at 76. Further, crime victims have the right to attend any proceeding where the defendant has such rights, including post-conviction

hearings. CP § 11-102(a).[1] Despite limited protections for confidentiality, no record may be absolutely sealed, as Mr. Syed and the circuit court attempt here.[2] In sum, a court may not adjudicate a criminal matter and render a dispositive ruling beyond the public eye.

At this appeal's heart is the issue of whether the circuit court was entitled to grant vacatur through a secret prehearing and, thus, whether the evidence supporting vacatur may remain obscured—the result Mr. Syed urges upon this Court. The public, Mr. Lee included, had no access to the prehearing, and what took place there is lost for the ages.

B. In Sweeping Aside the Circuit Court's Victims' Rights Abuses, Mr. Syed Misrepresents the Facts and Hides the Secretive, Predetermined Nature of the Court's Ruling

Maryland victims' rights laws provide Mr. Lee with rights of access and participation beyond the general public. The prosecutor and circuit court violated these rights as well. The entire process was spectacularly flawed, providing Mr. Lee insufficient notice, no knowledge of the evidence supporting vacatur, and no meaningful opportunity to be heard. Most significantly, the vacatur determination took place in a closed-chamber prehearing held behind Mr. Lee's back. To abide by the Vacatur Statute, the State had to set forth newly discovered evidence that warranted vacatur, and the court had to provide its reasons for granting the motion. Md. Rule 4-333(d)(7), (h)(3). Whatever evidence the State had, it presented only in secret, while at the actual "hearing," the court made no findings

[1] Mr. Syed, it seems, appeared through counsel at the secret prehearing. (*See* Appellee's Br. at 1)

[2] If there are concerns about safeguarding the integrity of an ongoing investigation, there are steps the parties and court can take, including redacting identifying information and partially sealing certain records.

of fact to establish that the State fulfilled its obligations.[3] Accordingly, the hearing amounted to a mere formality—including a prearranged press conference at which Mr. Syed emerged wearing civilian clothing. The court left no substantive record for appeal.

These violations of the Vacatur Statute and Maryland victims' rights laws are well-briefed; importantly, the State agrees. (Appellant's Br. at 16–24; Appellant's Resp. to OSC at 16–18; Appellant's Opp. to Syed's Motion to Strike at 11–14; State's Br. at 8)

Over this case's 20-year lifespan, there are multiple rulings affirming Mr. Syed's conviction. *State v. Syed*, 463 Md. 60, 105 (2019). In contrast, the State's motion was troublingly spare on details and failed to connect the dots on why its new evidence created a "significant probability" that the result would have been different. *See* CP § 8-301.1(a)(1)(i). The motion said nothing about how certain evidence—for example, unrelated misconduct by an investigating officer in a different case (E 90–91)—would even have been material, let alone admissible, as the accusations had been dismissed by a review board.[4] The State conceded that the investigation—including DNA sampling—was incomplete and made no assertion of Mr. Syed's innocence (E 73–74), yet it failed to explain why it was so urgent to vacate Mr. Syed's sentence even while the inquiry continued.

[3] As to the purported *Brady* violation, the court did not even identify facts related to the three elements that the State must prove. (E 163:1–6) *See State v. Grafton*, 255 Md. App. 128, 144 (2022).

[4] Quattrone Center, *Report of the Baltimore Event Review Team on* State of Maryland v. Malcolm J. Bryant (Nov. 2018), https://www.law.upenn.edu/live/files/8862-malcolm-bryant-exoneration.

Mr. Syed argues that the State notified Mr. Lee of its pursuit of vacatur as early as six months beforehand. (Appellant's Br. at 8–10) But this is beside the point; **the State must give timely notice of the vacatur hearing itself**. CP § 8-301.1(d)(1). Even though the State planned to seek vacatur for nearly a year, it first told Mr. Lee that there would be a hearing less than one business-day in advance. (E 179) This was unreasonable. Rule 11-104(f)(1) requires "prior notice of each court proceeding" and the opportunity to submit a victim impact statement. Inherent in that right is that notice is sufficient to provide a meaningful chance to respond. At no point did the State indicate that Mr. Lee could physically attend. **Worse, the State never told Mr. Lee about the *in camera* prehearing—the one time that it presumably presented evidence supporting vacatur.** Useless notice amounts to no notice at all.

Beyond the notice requirement, the circuit court did not provide Mr. Lee adequate opportunity to appear and be heard. Rule 4-333 and CP § 11-403 contemplate the victim's right to address the court.[5] Appearance by Zoom, however common during the COVID-19 pandemic, is ineffective when other parties are present in person. *See* Fed. R. Civ. P. 43, advisory committee's note on 1996 amendments. Despite this, after counsel conveyed Mr. Lee's strong desire to attend, the court provided just 45 minutes for him to race home from work and prepare to speak remotely. (E 139:25) Furthermore, because no actual evidence was presented at the hearing and Mr. Lee was made to speak before the State did, Lee could

[5] The circuit erroneously stated that Mr. Lee did not have a right to speak because CP § 11-403 did not apply to vacatur hearings. (E 135:21–24) But the provision granting the right to be heard expressly governs the "alteration of a sentence," which is precisely what vacatur is. CP § 11-403(a).

contribute little more than his concerns about being omitted from the process. He could not comment on the purported basis for vacatur. **And the circumstances show that the court had no intention of ever considering Mr. Lee's input—it had already decided to vacate during the *in camera* session.** The law provides victims greater rights than merely emoting into the ether before a predetermined vacatur ruling is entered.

Finally, Mr. Syed argues that Mr. Lee waived his right to appeal based on a statement by counsel about not challenging the merits of the vacatur motion. (Appellee's Br. at 12, 23; *see* E 128:5–7) This assertion is baseless. First, counsel made this statement while arguing for a short postponement of the hearing. (E 103–11) Counsel was not yet addressing other defects. Second, once the court implied that it would deny Mr. Lee's motion, Counsel argued exhaustively that Lee had not had an opportunity to review the evidence and was unprepared to speak on it, in violation of his rights. (E 135:12–20, 136:21–37:19) An objection is preserved when a party makes its concerns known to the court. *See Jordan v. State*, 246 Md. App. 561, 587 (2020). Here, the circuit court knew that Mr. Lee opposed the perfunctory nature of the hearing and ruled against him. He conceded nothing.

The State and circuit court violated Mr. Lee's rights, resulting in cognizable harm to his interests and justifying this Court's intervention. On this essential point, Mr. Lee and the State agree. Nothing in Mr. Syed's argument warrants a contrary conclusion.

II. Entry of *Noelle Prosequi* Does Not Moot the Appeal Because the Court May Remand the Matter for a Legally Compliant Vacatur Hearing, Rendering the *Noelle Pros* Void

Appellee Syed acknowledges the rights afforded to victims' representatives and simultaneously accepts the importance of those rights. (Appellee's Br. at 11–12) But Syed then asserts that this Court lacks the power to enforce them. (*Id.* at 13–15) In so doing, he all but ignores *Antoine* and CP § 11-103.

This Court in *Antoine* reviewed the recent amendments to CP § 11-103, to conclude that a victim may appeal a violation and that the appellate court may fashion relief. (*See* Appellant's Br. at 24–26) The objective is to place the victim "in the position he occupied before the violations occurred." *Antoine*, 245 Md. App at 550. The victim in *Antoine* claimed that the sentencing court had violated his rights by refusing to consider his victim impact statement and forbidding him from effectively addressing the court. *See id.* at 546. The lower court—echoing the erroneous assertion Mr. Syed makes here—held that, even if the statute had been violated, it lacked "'the legal ability to change the sentence' because it had already bound itself to a plea agreement." *Id.* at 548. This Court disagreed. Instead, it said, it could rely on the powers afforded by CP § 11-103(e)(2)–(e)(3) because "those provisions authorize a court, upon finding that a victim's rights have been violated, to grant relief necessary to rectify the violation." *Id.* at 549. Mr. Syed concedes that the only restrictions on the ability to fashion relief (timeliness and double jeopardy) are not applicable here. (Appellee's Br. at 13)

Antoine lays out the proper roadmap. The State and circuit court violated Mr. Lee's rights (*see* Appellant's Br. at 16–24), and this Court may fashion relief. The only question

here should be *what* relief is in order. Critically, the State agrees with Mr. Lee on these points. (State's Br. at 3–7)

Mr. Syed dismisses *Antoine* on the grounds that its rule applies only to sentencing hearings. But *Antoine* expressly recognized that future courts might have to grant different remedies to address violations occurring "earlier in the life of a case." 245 Md. App. at 556 n.13. Moreover, this Court made clear that it chose to vacate the defendant's sentence—and not the entire plea negotiations (as the victim sought)—only because doing more "would go farther than necessary to provide relief, and also might implicate double jeopardy concerns." *Id.* at 555. The opposite is true here. Anything short of a new, legally compliant vacatur trial would repeat the same violations. Double jeopardy is not implicated. (*See* Appellee's Br. at 26–29)

Instead of challenging the applicable law, Mr. Syed raises the separate point of whether this Court may reverse a prosecutor's entry of *noelle prosequi*. But this is not at issue. Rather, reversing the vacatur and remanding for a new hearing nullifies the *noelle pros*, as if it had never occurred.[6] It is self-evident that when a trial court's actions are reversed on appeal, any subsequent acts predicated on the reversed ruling are a legal nullity. As in *State v. Simms* 456 Md. 551 (2017), once this Court took jurisdiction of this appeal, any actions that would interfere with appellate adjudication were invalid. *Id.* at 576. In *Simms*, "the nol pros entered in the trial court as to the charge underlying the conviction

[6] Notably, as stated in *Ward v. State*, entry of *noelle prosequi* does not constitute a *per se* barrier to appellate intervention or even to a prosecutor bringing the dismissed claims again under the original charging document. 290 Md. 76, 84 n.7 (1981). (*See* Appellant's Br. at 27–28 & n.9)

and sentence [would be] simply a nullity, 'improper' and therefore 'ineffective'" because it would amount to "an end run around the appellate process." *Id.*; *see also State v. Thomas*, 465 Md. 288, 299–300 (2019) (ruling that a circuit court's exercise of jurisdiction that "frustrates the appellate process" is subject to reversal, and an action that putatively mooted the appeal was "no longer in effect"). The same applies here.

Mr. Syed dismisses the rule in *Simms* and asserts the opposite, citing *Cottman v. State*, 395 Md. 729 (2006). (Appellee's Br. at 18) *Cottman* is entirely distinguishable. There, the trial court granted a defendant a new trial after he appealed his conviction but before this Court ruled. *Id.* at 734. The *Cottman* court deemed the appeal moot because the petitioner received exactly what he had sought; hence, there was no longer any case or controversy at the appellate level. *Id.* at 741, 743, 749–50. Here, the State may not cement and shelter remediable victims' rights violations through a *noelle prosequi* that could not have been entered but for the occurrence of those violations: no vacatur, no *noelle pros*. As *Cottman* recognizes, when an action taken pending appeal does not moot the appeal, this Court retains the power to reverse it. *Id.* at 742.

This Court is empowered to grant Mr. Lee relief reinstating him to the position he held before the violations. Accordingly, the appeal is not moot.[7]

[7] This appeal should be heard even if the dispute is deemed moot. (Appellant's Br. at 29–34)

III. The Proper Remedy for the Violations in this Case Requires Appointing an Adverse Party to Ensure a Legally Compliant Vacatur Proceeding

The relief Mr. Lee seeks is a remand for a legally compliant vacatur hearing. Among other requirements, this means that some person or entity is provided enough notice and access to evidence to examine and challenge the State's Attorney's one-sided argument. Without an adverse party positioned to challenge the legal and evidentiary basis for vacatur, a repeat of the first vacatur hearing is virtually certain—another empty ritual with a foregone conclusion. Whatever else is true, neither *Antoine* nor CP § 11-103 countenances that outcome.

The Vacatur Statute is unique in that it aligns the prosecutor's and defendant's interests. Accordingly, the drafters built in checks by: (1) requiring the prosecutor to detail the grounds for vacatur, describe any newly-discovered evidence, and bear the burden of proof, CP § 8-301.1(b), (g); (2) requiring the court to hold a hearing and state the reasons for ruling on the record, CP § 8-301.1(e), (f); and (3) envisioning active participation of the victim, including the right of appeal, CP §§ 8-301.1(d), 11-102(a), 11-403(b), (f), 11-103(b). Here, Mr. Syed, the State, and the court undermined these checks by colluding to prearrange the result and conduct, instead, an "empty ritual." This Court must correct the violations and ensure that a proper proceeding occur. There are multiple paths to reach that goal.

A. The Court Should Appoint Mr. Lee as a Limited-Purpose Party-in-Interest or Allow Him to Intervene in the Trial Court

The Vacatur Statute recognizes that crime victims have strong interests in criminal proceedings. Here, Mr. Lee's rights as victim's representative are fully protected only if he

is permitted to mount a credible challenge to the evidence supporting vacatur. This Court may follow other decisions in comparable circumstances and appoint him as a limited-purpose party-in-interest. Alternatively, upon remand, Mr. Lee may intervene in the court below because, in this instance, there is no other party willing and able to advance his rights as victim's representative and ensure that the vacatur has a proper evidentiary basis. *See* Md. Rule 2-214(c).

This Court will find support from law in other states. For example, the Utah Supreme Court held in *F.L. v. Ct. of Appeals* that as a "general rule[,] if the law gives crime victims the ability to proactively assert a right or seek a remedy, then they may enforce those specific rights as limited-purpose parties in criminal proceedings." 2022 UT 32 ¶ 37 (Aug. 3, 2022). There, a victim challenged defendant's motion to unseal her medical records. *Id*. ¶¶ 1–5. In reaching its decision, the court analyzed whether the victim could participate by looking to the statute that established her rights. *Id.* ¶ 35. Because the text said that the privilege to seal records "may be *claimed* by the patient," it was "proactive and indicative" of an assertable right. *Id.* ¶¶ 35, 38. Thus, granting limited-party status was necessary to effectuate the right. *Id.* ¶ 39.

Mr. Lee's interest in an unbiased vacatur proceeding is similar. Maryland law states that a victim "may . . . appeal" from an order that denies or disregards a victim's right, and "the court may grant the victim relief." CP § 11-103(b), (e)(2). Just like the provision at issue in *F.L.*, 2022 UT ¶ 38, the law describes the victim's ability to *claim redress* for a violated right. Victims in Maryland have the rights to be notified of a hearing so that they may personally attend, Md. Decl. of Rts. Art 47(a); CP § 11-102; to address a court

regarding the "alteration of a sentence," CP §§ 8-301.1(d), 11-403(a); *Lamb v. Kontgias*, 169 Md. App. 466, 480 (2006); and a suite of other rights to protect their interests when a convicted defendant is released, *see, e.g.*, CP § 11-505 (rights at parole hearings); CP § 5-201, 8-106 (right to seek modification of post-release conditions of supervision); Md. Rule 4-345 (rights when courts modify sentences).

Where, as here, the defendant is freed based on untested assertions that no one else is willing to challenge, this Court may enforce Mr. Lee's rights by appointing him to participate in a new hearing as a limited-purpose party. This would reaffirm the rule in *Antoine* that the Court should fashion relief tailored to the violation. Further, it would join this Court with tribunals in comparable cases, in Maryland and elsewhere, appointing parties-in-interest.[8]

B. This Court May Appoint a Friend of the Court

Alternatively, this Court may turn to a friend of the court who is prepared to assert Mr. Lee's rights and interests in a legally compliant proceeding. Such appointments are common when existing parties have no stake in a matter. The Supreme Court regularly solicits outside individuals to defend underlying judgments and otherwise advocate orphaned positions so that it can "decide the case satisfied that the relevant issues have

[8] Maryland courts have long conferred limited-party status when a non-party's interest is "essential to protect" and "is not otherwise protected." *Hartford Ins. Co. v. Birdsong*, 69 Md. App. 615, 626 (1987); *see, e.g.*, *Balt. Sun Co.*, 359 Md. at 665 (authorizing media outlets to intervene to challenge restrictions on public access); *Bond v. Slavin*, 157 Md. App. 340, 361(2004) (non-parties have standing to challenge disclosure of records where they have a privacy interest); *Bhagwat v. State*, 338 Md. 263, 273 (1995) (counsel for non-party witnesses may object to questions and assert a witness' privilege against self-incrimination).

been fully aired." *Clay v. United States*, 537 U.S. 522, 526 n.2 (2003). The Court made 58 amicus appointments between 1954 and 2016, a rate of almost one per year. Katherine Shaw, *Friends of the Court: Evaluating the Supreme Court's Amicus Invitations*, 101 CORNELL L. REV. 1533, 1594 (2016). Many of these cases involved issues of national import. *See, e.g.*, *Dickerson v. United States*, 530 U.S. 428, 441–42 (2000); *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983); *United States v. Windsor*, 133 S. Ct. 2675, 2685 (2013).

Maryland courts have broad discretion to appoint attorneys to advocate for undefended interests. *See, e.g.*, Md Code Ann., Cts. & Jud. Proc. § 3-830 (special advocates for children in certain proceedings); *Fox v. Wills*, 390 Md. 620, 635–36 (2006) (appointing guardian *ad litem* and special advocates for non-party children); *Cnty. Corp. v. Semmes,* 169 Md. 501, 517 (1936) (appointing a receiver to protect rights of non-party creditors and shareholders).

This Court would be exercising well-acknowledged powers by selecting a capable outside entity to represent Mr. Lee's interests in a renewed vacatur proceeding. The most logical choice might be the State Attorney General's Office, as it is both fully briefed on the facts and takes a different view than the Baltimore City State's Attorney.

***

This Court is empowered to fashion needed relief. Appointing a party-in-interest to advocate for Mr. Lee in a legally compliant vacatur hearing—whether Mr. Lee, the Attorney General's Office, or other suitable entity—would return Mr. Lee to his original position and help prevent a repeat of prior errors. Mr. Lee's injuries show why the Vacatur

Statute envisions a proper opponent to vacatur motions and why, when absent, this Court is empowered to appoint one.

CONCLUSION

The appropriate remedy here is clear: a redo of the vacatur proceedings in which Maryland's victims' rights laws are enforced and the evidence supporting vacatur is revealed. Such a hearing must be more than an empty ritual. Mr. Lee has no opinion on what the ultimate result should be, and certainly no interest in seeing an innocent man imprisoned, but Mr. Lee and the public are entitled to an unbiased, legally compliant proceeding. Under the Vacatur Statute, Mr. Lee (and the public) cannot be kept in the dark. This Court should intercede to protect the rule of law and the societal interest in open courts. If backroom proceedings continue, the rights of both crime victims and criminal defendants are likely to suffer.

Appellant Young Lee respectfully requests this Court to: (1) remand the matter for a legally compliant vacatur hearing at which the relevant evidence is presented on the record; (2) empower Mr. Lee to review and challenge the evidence during the new hearing or appoint another individual or entity, unaligned with Mr. Syed or the Baltimore City State's Attorney, to do so; and (3) order the court below to issue findings of fact and conclusions of law that are based on a transparent evidentiary record with full respect to the rights of the victim's representative.

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CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112

1. This brief contains, 4880 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements state in Rule 8-112. This brief was printed using a 13 point Times New Roman font.

/s/ DAVID W. SANFORD
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Court of Special Appeals of Maryland
MDEC No. CSA-REG-1291-2022

YOUNG LEE, AS VICTIM'S REPRESENTATIVE,
Appellant,
v.
STATE OF MARYLAND,
Appellee.

CERTIFICATE OF SERVICE

I, Elissa Diaz, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by LAW OFFICES OF SANFORD HEISLER SHARP, LLC, counsel for Appellant to print this document. I am an employee of Counsel Press.

On the 23rd Day of January 2023, the within Reply Brief for Appellant have been filed and served electronically to registered users via the Court's MDEC System on this date. I will serve paper copies upon:

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Unless otherwise noted, 8 copies of both the Brief and Record Extract have been sent to the Court on this day via overnight delivery.

January 23, 2023

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