

STATE OF MARYLAND,

v.

ADNAN SYED.

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term 2022

No. 1291

Circuit Court Case Nos.

199103042-46

**MOTION TO STRIKE ADNAN SYED’S NOTICE OF
INTENTION TO RESPOND AND MOTION FOR
TEMPORARY STAY OF PROCEEDINGS PENDING
RESOLUTION OF MOTION TO STRIKE AND MOTION TO
STAY PROCEEDINGS.**

The State of Maryland, Appellee,¹ by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Carrie J. Williams, Assistant Attorney General, pursuant to Maryland Rules 8-431 and 8-425, hereby moves to strike Adnan Syed’s notice of intention to respond to Appellant’s motion to stay proceedings and for a

¹ Although this case is captioned *State of Maryland v. Adnan Syed*, as explained in this motion, Young Lee, as the victim’s representative, is Appellant in this case and the State of Maryland is Appellee. Syed is not a party to this appeal.

temporary stay of proceedings pending the resolution of the State's motion to strike and Mr. Lee's motion to stay proceedings. In support thereof, the State offers the following:

On September 12, 2022, the Baltimore City State's Attorney's Office notified Young Lee, the victim's representative, of its intention to move to vacate Mr. Syed's conviction. On September 14, 2022, alleging newly discovered exculpatory evidence and the discovery of "two alternative suspects," the State's Attorney's Office filed the motion to vacate under Criminal Procedure § 8-301.1.

Two days after the motion was filed, Assistant State's Attorney Becky K. Feldman sent an email to Mr. Lee telling him that an "in-person hearing" on the motion to vacate had been scheduled for the following business day—Monday, September 19, 2022. Ms. Feldman told Mr. Lee that he and his family could "watch" the hearing via Zoom. She did not tell him that he had the right to speak or otherwise participate in the hearing.

Mr. Lee, a resident of California, retained counsel and moved to postpone the hearing by seven days. In his motion Mr. Lee indicated that he wished to attend the hearing in person but could not travel from California on such short notice. At the hearing on Monday, September 19th, the Honorable Melissa M. Phinn denied Mr. Lee's motion to postpone, granted the motion to vacate Mr. Syed's conviction, and ordered Mr. Syed immediately released.

On September 28, 2022, Mr. Lee filed a notice of appeal to this Court pursuant to Criminal Procedure § 11-103, which provides victims the right to appeal a final order that "denies or fails to consider a right secured to the victim" by Maryland law. On September 29, 2022, Mr. Lee filed a motion in the Circuit Court for Baltimore City asking the court to stay all proceedings pending appeal. As of this filing, that motion has not been ruled upon.

On October 5, 2022, Mr. Lee filed a motion in this Court seeking to stay proceedings pending the outcome of the appeal. On October 6, 2022, Erica Suter, counsel for Mr. Syed, filed a "Notice of Intention to Respond," stating that "Adnan Syed, Appellee,"

“[p]ursuant to Maryland Rule 8-431(b) intends to timely file a response to Appellant’s motion.”

Because Mr. Syed is not a party to this appeal, the State moves to strike the “Notice of Intention to Respond” filed by Mr. Syed. To preserve this Court’s appellate jurisdiction, the State also moves for a temporary stay of all circuit court proceedings pending resolution of the State’s motion to strike and Mr. Lee’s motion to stay.

A. Mr. Lee is the appellant in this case and the State is the appellee. Mr. Syed is not a party to this appeal.

Although not parties in criminal proceedings, *see, e.g. Hoile v. State*, 404 Md. 591, 606 (2008), the General Assembly has granted victims and victim representatives specific rights related to those proceedings. Among them is the right to be notified of all postconviction proceedings, Md. Code Ann., Crim. Pro. (“CP”) § 11-503 (West 2022), the right to attend any proceeding in which the defendant has the right to appear, CP § 11-102(a), and the right to be heard, CP § 11-403. In 2013, the right to appeal a final order

that “denies or fails to consider a right secured to the victim” was added to the rights afforded victims and their representatives. CP § 11-103(b) (West 2022); see *Antoine v. State*, 245 Md. App. 521, 541-42 (2020). The right to appeal is available only to vindicate the victim’s or victim’s representative’s statutory guarantees; it cannot challenge the merits of the underlying criminal proceeding. *Antoine*, 245 Md. App. at 542.

Maryland Rule 8-111(a) designates “the party first appealing the decision of the trial court” as the appellant. Md. Rule 8-111 (2022). “[T]he adverse party shall be designated the appellee.” *Id.* Rule 8-111(c) allows a victim or victim’s representative the right to “participate in the same manner as a party regarding the right of the victim or victim’s representative.” *Id.*

Mr. Lee is the Appellant. He “first appeal[ed] the decision of the trial court.” The sole “adverse party” is the State of Maryland.²

² Although in the form of the Baltimore City State’s Attorney’s Office in the circuit court, the State is represented in this Court by the Maryland Office of the Attorney General. Md. Const. Art. 5, § 3 (“The Attorney General shall . . . [p]rosecute and defend on the part

It was the State's Motion to Vacate Judgment that reopened Mr. Syed's case and brought it before the circuit court. CP § 8-301.1. At the hearing on the State's motion to vacate, Assistant State's Attorney Becky Feldman opposed Mr. Lee's motion to postpone and argued that the State's notice to Mr. Lee was compliant with the law.

Mr. Syed is not an adverse party to this appeal. In *State v. Rice, et al.*, 447 Md. 594 (2016), the Court of Appeals considered whether the State could compel a witness's testimony in the trials of five officers charged in the murder of Freddie Gray. In two of the trials, the circuit court granted the motion to compel and the witness appealed. *Id.* at 610. In the other three trials, the circuit court denied the motion and the State appealed. *Id.* at 611-15. The Court of Appeals granted certiorari in all five cases. *Id.* at 614.

The defendants in the three trials where the circuit court denied the motion to compel filed briefs in the Court of Appeals as appellees. Before reaching the merits of the case, the Court noted

of the State all cases pending in the appellate courts of the State[.]”).

that it “must first determine the proper parties” to those appeals. *Id.* Finding it “not dispositive” that the officers’ names appeared in the captions of the case, the Court said that even a “named party” is not a proper appellee if that named party would not be “directly affected by the decision.” *Id.* at 615. To be “directly affected,” the Court said, “[t]he party’s interest must be so closely and directly connected with the subject matter that the party will either gain or lose by the direct legal operation and effect of the decree.” *Id.* (cleaned up).

The State’s appeals “only concern[ed] whether [the witness] can refuse to testify” in the face of immunity. *Id.* The defendants would not gain or lose as a direct result of the outcome and were thus not proper appellees, the Court held. While acknowledging that the defendants had an interest in a speedy trial and the right to exclude irrelevant evidence, the Court said that a challenge to the motion to compel was “not the proper vehicle for protecting those interests.” *Id.* “Therefore,” the Court concluded, “the State’s appeal is a contest between the State and [the witness] alone, not Defendants.” *Id.* at 616.

The same is true here. The question in this case is whether the State's notice to Mr. Lee complied with the law. Regardless of the outcome of the appeal, Mr. Syed will neither "gain [n]or lose by the direct legal operation and effect of the decree." *Id.* at 615. While Mr. Syed surely has an interest in the outcome of the State's motion to vacate, he has a statutory right to a direct appeal from that outcome. *See* CP § 8-301.1(h) ("An appeal may be taken by either party from an order entered under this section."). This appeal concerns only the propriety of the State's notice to Mr. Lee. It "is a contest between the State and [Mr. Lee] alone," not Mr. Syed. *Rice*, 447 Md. at 616.

Because Mr. Syed is not a party to Mr. Lee's appeal, he has no right to respond to Mr. Lee's motion to stay circuit court proceedings pending the resolution of the appeal. This Court should strike Mr. Syed's Notice of Intention to Respond.

B. A temporary stay is necessary pending resolution of the motion to strike and the motion to stay.

A circuit court's right to exercise its fundamental jurisdiction over a criminal case may be interrupted by "a stay granted by an

appellate court, or the trial court itself, in those cases where a permitted appeal is taken from an interlocutory or final judgment[.]” *Pulley v. State*, 287 Md. 406, 417 (1980). Because the circuit court in this case has not entered a stay of the proceedings, this Court should order a stay to “preserve . . . [its] appellate jurisdiction.” *Id.* at 406 n. 3.

Mr. Lee has the right to appeal the State’s Attorney’s Office’s conduct relating to his rights as the victim’s representative. If a temporary stay is not entered pending the resolution of the State’s motion to strike and Mr. Lee’s motion to stay, actions could be taken in the circuit court that would arguably moot the appeal. To preserve this Court’s appellate jurisdiction, and to avoid irreparable prejudice to Mr. Lee, the State respectfully requests this Court order a temporary stay of all circuit court proceedings in the above-captioned case pending the resolution of the outstanding motions.

CONCLUSION

The State accordingly asks that this Court strike Mr. Syed’s Notice of Intent to Respond and enter a temporary stay of all

proceedings in Case Numbers 199103042-46 pending the resolution of the State's Motion to Strike and Mr. Lee's Motion to Stay.

Dated: October 7, 2022

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Carrie J. Williams

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CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH MD. RULE 8-112.

This brief complies with the font, line spacing, and margin requirements of Md. Rule 8-112 and contains 1677 words, excluding the parts exempted from the word count by Md. Rule 8-503.

/s/ Carrie J. Williams

CARRIE J. WILLIAMS

Assistant Attorney General

Attorney No. 0312170241

Counsel for Appellee

CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, October 7, 2022, I electronically filed the foregoing “Motion to Strike Adnan Syed’s Notice of Intention to Respond and Motion For Temporary Stay of Proceedings Pending Resolution of Motion to Strike and Motion to Stay Proceedings” using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Erica Suter, counsel for Adnan Syed, and Steve Kelly, counsel for Young Lee.

/s/ Carrie J. Williams
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Counsel for Appellee

