

**IN THE
SUPREME COURT OF MISSOURI
No. SC97595**

IN THE INTEREST OF D.C.M.,

Appellant,

vs.

JUVENILE OFFICE,

Respondent.

Appeal from the Circuit Court of Pemiscot County, Missouri
Thirty-Fourth Judicial Circuit, Pemiscot County No. 18PE-JU00022
The Honorable W. Keith Currie, Judge

**SUPPLEMENTAL BRIEF OF APPELLANT, D.C.M., SHOWING
CAUSE WHY THE APPEAL IS NOT MOOT**

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ARGUMENT AS TO WHY THIS CASE IS NOT MOOT

“[W]e find Appellant’s adjudication could have significant collateral consequences for Appellant into his adult life, and therefore, the third exception to the mootness doctrine applies. To hold otherwise would possibly imply that the merits of a juvenile adjudication could not be reviewed on appeal simply because, over time, a juvenile has successfully completed all aspects of supervision ordered by the court or the individual has simply reached an age where the court no longer has jurisdiction over him. It is this Court’s view that such a result would be unacceptable and minimize the value of an individual’s pursuit of justice and/or vindication in a court proceeding finding he, as a juvenile, committed an act that would have constituted the violation of a criminal statute if it was committed by an adult.

– *In Interest of S.B.A.*, 530 S.W.3d 615, 622 (Mo. App. E.D. 2017)
(citation and footnote omitted)

I. Introduction:

Chris filed his notice of appeal when he was 16 years old. But because of the circuitous path this case has taken, through the Southern District Court of Appeals and then to this Court, Chris turned 18 years old a little over a month ago. Because Chris is now 18, this Court issued an order, after this appeal was argued and submitted, directing the parties to file briefs as to whether the appeal is moot, and if the appeal is not moot on the basis of collateral consequences, to identify the possible collateral consequences of this juvenile adjudication.

This Court should not dismiss the appeal as moot. It is already fully briefed, argued, and under submission; the issue of whether a juvenile can raise a direct-appeal claim of ineffective assistance of counsel is one of general public interest and importance that is capable of recurring and likely to evade appellate review; and Chris’s juvenile

adjudication for the class E felony of Making a Terrorist Threat in the Second Degree, § 574.120, could have significant collateral consequences for Chris.

How this Court rules on this mootness issue could affect most juvenile appeals. This Court's ruling on mootness would affect not only cases where the juvenile turns 18 while an appeal is pending, but also cases where the juvenile is released from the custody of the Division of Youth Services (DYS), and also where the juvenile court relinquishes jurisdiction of the juvenile because the juvenile no longer is in need of services, as often happens while on appeal. In each of these situations, the juvenile is no longer within the jurisdiction of the juvenile court, yet the delinquency adjudication can forever affect the juvenile's life. Thus, this Court's decision on mootness is not just case-specific, it could have a detrimental effect on all juvenile appeals.

To date, Missouri appellate courts have consistently held that juvenile appeals are not moot even when the juvenile is no longer under juvenile court jurisdiction. Those courts have done so either because they involved issues of general public interest and importance, or because the juvenile adjudication could have significant collateral consequences for the juvenile. This Court should similarly hold that this appeal falls within exceptions to the mootness doctrine, and rule on the merits of the important claims raised on this appeal.

II. The mootness doctrine and its exceptions:

An appeal is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any existing controversy.

State ex rel. Peters-Baker v. Round, 561 S.W.3d 380, 384–85 (Mo. banc

2018); *State ex rel. Gardner v. Boyer*, 561 S.W.3d 389, 394-95 (Mo. banc 2018). But even if a case is moot, an appellate court may exercise its discretion to decide the issues if: (1) the action becomes moot after the case has been argued and submitted;¹ (2) the issue is one of general public interest and importance and is capable of recurring and likely to evade appellate review; or (3) the decision being appealed could have significant collateral consequences for one or more of the parties. *In re A.G.R.*, 359 S.W.3d 103, 108 (Mo. App. W.D. 2011).

Missouri appellate courts have repeatedly held that delinquency appeals fall within exceptions to the mootness doctrine because either they involve the public interest exception, e.g., *T.S.G. v. Juvenile Officer*, 322 S.W.3d 145 (Mo. App. W.D. 2010) and *A.G.R.*, *supra*, or the juvenile's adjudication could have significant collateral consequences for the juvenile, e.g., *In Interest of S.B.A.*, 530 S.W.3d 615 (Mo. App. E.D. 2017) and *In Interest of N.R.W.*, 482 S.W.3d 473 (Mo. App. E.D. 2016). Chris's appeal falls within both exceptions.

(a) Public interest exception:

The public interest exception to mootness applies whenever a case presents an issue that (1) is of general public interest and importance, (2) will recur and (3) will evade appellate review in future live controversies. *State ex rel. Missouri Pub. Def. Comm'n v. Waters*, 370 S.W.3d 592, 603 (Mo. 2012). As this Court explained, this exception permits a court to decide an issue even though it may appear to be moot if there is some legal principle at stake not previously ruled

¹ This case has already been argued and submitted; Chris's 18th birthday occurred the month before the case was submitted.

as to which a judicial declaration can and should be made for future guidance. *Id.* This is such a case.

First, Chris's appeal involves related questions of general public interest and importance: whether a claim of ineffective counsel can be raised on a direct appeal of a delinquency case; if so, what standard should be used to review the claim; and if the record is insufficient, what action should the appellate court take, if any, to remedy that deficiency.

Where and how juveniles can raise claims of ineffective counsel is of significant public interest and importance, which has not been previously ruled in Missouri, and which a judicial declaration can and should be made for future guidance because it will reoccur. That this Court granted Chris's application for transfer to resolve these questions of general interest or importance further establishes that this appeal involves issues that are of general public interest and importance and of first impression that should be resolved by this Court.

Second, this situation – a juvenile after a delinquency hearing claiming his or her counsel was ineffective – is certain to happen again.

Third, this issue is capable of evading review because of the inherent lengthy nature of appeals, combined with the fact that the durations of most juveniles' detentions or juvenile court supervisions often conclude before the appeals are finished.² If during the appeal, the juvenile court discharges the juvenile from juvenile court's

² The juvenile delinquency appeals handled by Chris's appellate counsel since 2014 have averaged 347 days from the date notice of appeal was filed in the circuit court until an opinion or memorandum decision was decided by the court of appeals. The lowest amount of time was 245 days (a little more than 8 months).

jurisdiction, or DYS discharges the juvenile from its custody, as often happens, this issue is capable of evading review. This would result in, as a practical matter, a juvenile having the right to effective counsel, but having no remedy when counsel performs deficiently, which is probably why there are no reported cases in Missouri – either on direct appeal or habeas corpus, which requires the juvenile to be in custody – addressing the issue.

The appellate court in *A.G.R.* observed that given the nature of juvenile proceedings, prevalent, important issues of general interest and of first impression are likely to evade appellate review if not addressed by an appellate court. *A.G.R.*, 359 S.W.3d at 108. In that case, the juvenile court released the juvenile from juvenile court’s jurisdiction while the case was pending on appeal, finding that the juvenile was no longer in need of service. *Id.* at 107-08. But based on the public interest exception to the mootness doctrine, the appellate court addressed the issues raised on appeal. This Court should too.

(b) Collateral consequences exception:

This Court should also hold that the decision being appealed – an adjudication for making a terrorist threat, a felony if committed by an adult – could have significant collateral consequences for Chris, and thus address the issues raised on this appeal even though Chris is now 18 years old.

N.R.W. involved a similar situation as Chris. Because *N.R.W.* turned 18, he completed his commitment to DYS for drug-related charges before the appeal was filed. *N.R.W.*, 482 S.W.3d at 475. Yet the Eastern District Court of Appeals addressed the issues raised by

the parties. The appellate court held that the appeal was not moot because, while juvenile court records are normally confidential, § 211.321, since N.R.W. was adjudicated delinquent for an offense that would be considered a felony if committed by an adult, the records of N.R.W.'s dispositional hearing might be open to the public "which represents a significant collateral consequence for Juvenile into his adult life." *Id.*, citing *State v. Sapien*, 337 S.W.3d 72, 77-78 (Mo. App. W.D. 2011) (finding that it was proper to allow juvenile court records into evidence during the sentencing phase of a defendant's trial as an adult because of § 211.321.2(2)).

The appellate court in *T.S.G.* also addressed the issues raised by the parties on appeal even though the juvenile was released and discharged from the jurisdiction of the juvenile court because T.S.G. was no longer in need of services. *T.S.G.*, 322 S.W.3d at 148. The Western District Court of Appeals reached this result because it recognized that T.S.G. might face significant collateral consequences in the future, in part because of the rapidly changing movement to make more juvenile records public in Missouri. *Id.*

The appellate court in *S.B.A.* also rejected a mootness argument after the juvenile court terminated its jurisdiction over the juvenile while the appeal was pending. *S.B.A.*, 530 S.W.3d at 619-22. The appellate court noted that because there is a movement to make more juvenile records public, a juvenile adjudication "could have significant collateral consequences for [the juvenile] into his adult life," and therefore the collateral consequences exception to the mootness doctrine applies. *Id.* at 621-22. "To hold otherwise would possibly imply that the merits of a juvenile adjudication could not be reviewed

on appeal simply because, over time, a juvenile has successfully completed all aspects of supervision ordered by the court or the individual has simply reached an age where the court no longer has jurisdiction over him.” *Id.* at 622 (Footnote omitted). Such a result is unacceptable and minimizes the value of the juvenile’s pursuit of justice and/or vindication in a court proceeding finding he or she, as a juvenile, committed an act that would have constituted the violation of a criminal statute if it was committed by an adult. *Id.*

As these cases demonstrate, Chris is subject to several significant collateral consequences as the result of his juvenile adjudication for what would be, in he was an adult, the felony of making a terrorist threat in the second degree, including:

- § 211.321.2(2) provides that after a child has been adjudicated delinquent for an offense which would be a felony if committed by an adult, the records of the dispositional hearing and proceedings related thereto *shall be open to the public to the same extent that records of criminal proceedings are open to the public*. Chris was adjudicated delinquent for what would be a class E felony, § 574.120. Thus, the records of the dispositional hearing and proceedings related to his juvenile adjudication would be open to inspection without court order. See, *N.R.W.*, 482 S.W.3d at 475;
- Based on § 211.321.2(2), if Chris is later charged with a crime, a jury could consider his juvenile court record, *Sapien*, 337 S.W.3d at 77-78; *N.R.W.*, 482 S.W.3d at 475;
- Trial courts in Missouri can consider some juvenile court records when sentencing a defendant in adult criminal cases. Section 211.321.1 provides that whenever a report is required under

§ 557.026, there shall also be included a complete list of certain violations of the juvenile code for which the defendant had been adjudicated as delinquent while a juvenile. This list shall be made available to the probation officer and shall be included in the presentence report. The violations to be included in the report include any act involving the threat of serious bodily harm. Here, Chris was charged with knowingly communicating “an express or implied threat to cause an incident or condition involving danger to life. To wit: The defendant made a threat to blow up the school.” (D2). Thus, if Chris is ever sentenced as an adult in a criminal case, his making a terrorist threat adjudication can be considered by the sentencing court;

- Juvenile records can be considered by the military when determining an applicant’s fitness to enter into the armed services or suitability for participation in special programs. 32 C.F.R. § 96.1 et. seq., 32 C.F.R. § 66.3, 66.6, *In re Interest of Justin V.*, 18 Neb.App. 960, 972-73, 797 N.W.2d 755, 765-66 (2011);
- Chris may have to divulge a juvenile disposition when applying to college. See, *Collateral consequences of juvenile adjudications—Education consequences*, *Colgate Love, Roberts and Klingele*, *Collateral Consequences* § 2:69, noting that “if an individual wishes to pursue education beyond high school, a juvenile delinquency record may again become a barrier to success;”
- Chris may have to divulge his juvenile disposition on various admissions and applications, such as in a character & fitness

report in applying for a bar examination. *Justin V.*, 18 Neb.App. at 972-73, 797 N.W.2d at 765-66;

- Chris may have to divulge his juvenile disposition on employment applications. See, *Collateral consequences of juvenile adjudications—Use of juvenile record in employer background checks*, *Colgate Love, Roberts and Klingele, Collateral Consequences* § 2:70.

A case is moot only if it is shown that there is no possibility that any collateral consequences will be imposed on the basis of the challenged adjudication. That certainly is not the case here, as amply illustrated by the list of collateral consequences set out above. This lengthy, incomplete, list firmly demonstrates that Chris's appeal is not moot because of these significant collateral consequences. And, as pointed out by *S.B.A.*, 530 S.W.3d at 619-22, there is a movement to make more juvenile records even more public, so the list is likely to keep growing.³ Also see, *Collateral consequences of juvenile adjudications—Overview*, *Colgate Love, Roberts and Klingele, Collateral Consequences* § 2:68, noting that in recent years, adjudications of delinquency have increasingly resulted in extensive legal restrictions in a variety of areas, including education, employment, subsequent adult criminal justice system contact, military service, and housing.

³ E.g., *State v. Prince*, 534 S.W.3d 813 (Mo. banc 2017) (as a result of a constitutional amendment, evidence of defendant's juvenile court records regarding his adjudication as a delinquent for lewd and lascivious conduct was admissible even though it occurred before the amendment).

III. Conclusion:

Chris's appeal is not moot because it involves issues of general public interest and importance and first impression that will reoccur and are likely to evade appellate review; and the decision being appealed could have significant collateral consequences to Chris throughout the rest of his life. None of the policies behind the rule against entertaining moot controversies would be served by a dismissal in this case. There is nothing abstract, feigned, or hypothetical about this appeal. Nor is there any suggestion that Chris has been wanting in diligence in the litigation. The case is not moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 1st day of May, 2019, electronic copies of this Supplemental Brief of Appellant, D.C.M., Showing Cause Why the Appeal is Not Moot, and its Appellant's Supplemental Brief Appendix, were sent through the Missouri e-Filing System to opposing counsel of record.

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