

No. SC97595

In the
Supreme Court of Missouri

IN THE INTEREST OF D.C.M.,

Appellant,

v.

JUVENILE OFFICE,

Respondent.

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

SUPPLEMENTAL BRIEF OF RESPONDENT

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ARGUMENT

I. This appeal is not moot due to potential collateral consequences from Appellant’s juvenile adjudication and the public interest exception to mootness.

D.C.M. (“Chris”)¹, a juvenile, appeals from a § 211.031.1(3) juvenile-delinquency judgment that he made a terrorist threat in the second degree, a class E felony under § 574.120 if committed by an adult. Chris was 16 both when he made the terrorist threat and when his adjudication was held in February 2018. He turned 18 and was released from supervision shortly before the April 2019 oral argument in this case. This Court has directed the parties to provide supplemental briefing on whether, in light of Chris turning 18, this appeal is moot. The Court has further directed that, if collateral consequences are the reason the appeal is not moot, then the parties should identify the potential collateral consequences. As explained below, the State agrees with Appellant that this appeal is not moot, both because of potential collateral consequences, and because the public interest exception to mootness.

Appellate courts must dismiss moot appeals unless the appeal falls in one of the three mootness exceptions: (1) where the case becomes moot after it is argued and submitted; (2) where the issue raised is one of general public interest and importance, is likely to recur, and will otherwise evade appellate

¹ To preserve confidentiality, minors throughout this brief will be referred to by their first name only.

review; or (3) if the decision could have significant collateral consequences for one or more of the parties. *In Interest of S.B.A.*, 530 S.W.3d 615, 619-20 (Mo. App. E.D. 2017) (citations omitted). Chris turned 18 and was released from supervision before this appeal was argued and submitted, so the first exception does not apply. Nonetheless, as explained below, the remaining two mootness exceptions do apply.

A. Missouri case law provides that an appeal from a juvenile adjudication is not moot where the juvenile turns 18 before the appeal is decided because of potential collateral consequences.

The Missouri Court of Appeals has held that an “adjudication could have significant collateral consequences for [a] juvenile into his adult life, and therefore, the third exception to the mootness doctrine applie[s]” when the juvenile has turned 18. *S.B.A.*, 530 S.W.3d at 620. Because this reasoning is persuasive, Appellee agrees with Appellant that this case is not moot.

Juvenile court records are normally closed, but § 211.321.2 provides an exception if the offense is one that would be considered a felony if committed by an adult, as is the case for Chris’s offense. As the Eastern District has explained, under § 211.321.2, “the records of [the juvenile’s] dispositional hearing under certain circumstances may be open to the public which represents a significant collateral consequence for Juvenile into his adult life.” *In Interest of N.R.W.*, 482 S.W.3d 473, 475 (Mo. App. E.D. 2016) (citations omitted). The Western District has similarly found an exception to mootness

because “the movement to make more juvenile records public” means a juvenile could “face significant collateral consequences in the future.” *T.S.G. v. Juvenile Officer*, 322 S.W.3d 145, 148 (Mo. App. W.D. 2010).

In addition to the records being open to the public, “such evidence could be introduced during the sentencing phase if the juvenile were later tried for an offense as an adult.” *S.B.A.*, 530 S.W.3d at 620. And as Appellant correctly points out, Chris’s juvenile adjudication could have implications in his college, military, employment, or professional applications. See Appellant’s Supplemental Brief at 11-12.

Chris was found to have made a terrorist threat in the second degree, a class E felony under § 574.120 if committed by an adult. That fact can be used against him if he commits an additional offense as an adult, and that fact may be opened to the public in certain circumstances. Chris may have to disclose the adjudication on various applications in the future. As such, there are collateral consequences sufficient to satisfy the third prong of the mootness doctrine.

B. Missouri case law provides that an appeal from a juvenile adjudication is not moot where the juvenile turns 18 before the appeal is decided because of the “public interest” exception to mootness.

Missouri law allows for a “public interest” exception to mootness. “Under this very narrow exception, a court may consider an otherwise moot case if it 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.” *Matter of Missouri-American Water Co.*, 516 S.W.3d 823, 829-30 (Mo. banc 2017) (citations omitted). The Missouri Court of Appeals has applied this exception to hold that a juvenile’s appeal is not mooted by being released from supervision. *In re A.G.R.*, 359 S.W.3d 103, 108 (Mo. App. W.D. 2011). As the Western District explained, some juvenile issues “are prevalent and likely to evade appellate review” due to the nature of juvenile proceedings, so the court can “apply the public interest exception to the mootness doctrine” where there are “important issues of general public interest and of first impression.” *Id.*

This case presents important issues of first impression before this court. Specifically, this case raises questions about (1) whether a juvenile can raise an ineffective assistance of counsel (IAC) claim on direct appeal, (2) the precise mechanisms by which juveniles can raise an IAC claim, (3) what standard should be used to review juvenile IAC claims, and (4) whether sufficient evidence exists to sustain Chris’s § 211.031.1(3) juvenile-delinquency judgment that he made a terrorist threat in the second degree. These topics are of public importance, as evidenced by this Court granting transfer.

Further, if this case is held to be moot simply because Chris turned 18, such controversies will frequently evade appellate review. As the Eastern District explained in *S.B.A.*, to hold mootness would be to “imply that the merits of a juvenile adjudication could not be reviewed on appeal simply

because . . . the individual has . . . reached an age where the court no longer has jurisdiction over him.” *In Interest of S.B.A.*, 530 S.W.3d 615, 619-20 (Mo. App. E.D. 2017) (citations omitted). “[S]uch a result would be unacceptable and minimize the value of an individual’s pursuit of justice.” *Id.* While many juvenile adjudications, particularly offenders who are not near the age of 18 at their offense, would still have time for an appeal, juveniles approaching the age of majority (such as Chris) would frequently have their appeal mooted.

CONCLUSION

The juvenile’s appeal is not moot under case law from the Missouri Court of Appeals, and this Court should affirm the decision of the Juvenile Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document was served on counsel of record through the Court's electronic notice system on May 13, 2019.

This Brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. This Brief contains 1,293 words, excluding the cover, signature and this Certificate.

The electronic copies of this Brief were scanned for viruses and found virus free through the anti-virus program.

/s/ Christopher R. Wray
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