

IN THE
SUPREME COURT OF MARYLAND

SEPTEMBER TERM, 2023

NO. 7

ADNAN SYED,

Petitioner

v.

YOUNG LEE, AS VICTIM REPRESENTATIVE, ET AL.,

Respondents

ON WRIT OF CERTIORARI
TO THE APPELLATE COURT OF MARYLAND

BRIEF OF SURVIVORS OF VIOLENCE CLINIC AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Survivors of Violence & Trauma Clinic at the University of Maryland Francis King Carey School of Law represents clients who have experienced interpersonal and systemic violence and trauma, including but not limited to physical and sexual assault, intimate partner violence, and gun violence. Recognizing that survivors often have significant needs that are not met through criminal prosecution, the Clinic seeks to help clients address trauma outside of the criminal legal system. Many clients that the clinic serves have themselves had contact with the criminal legal system as defendants.

The appearance of *amicus* in this case is motivated by the conviction that efforts to recognize the rights of victims must include *all* victims, including those who have been wrongfully convicted and wrongfully deprived of their liberty due to acts of police and/or prosecutorial misconduct. Prosecutors, in their capacity as representatives of the State and community, wield immense power and discretion in the criminal legal system. While prosecutors are obligated to recognize, respect, and uphold the statutory and constitutional rights of crime victims and their representatives, so too are they charged with ensuring the State does not wield that power and discretion in a way that violates or perpetuates the violation of a defendant's rights, creating more victims in their wake.

For this reason, *amicus* is concerned that the Appellate Court of Maryland's ruling below interferes with prosecutorial discretion in a way that potentially constrains the State's ability to remedy wrongful convictions and deliver justice to victims of police and/or prosecutorial misconduct. We offer our view respectfully as a friend of the court.

INTRODUCTION

On September 19, 2022, after 23 years of incarceration, Adnan Syed's convictions for the murder and kidnapping of Hae Min Lee were vacated following a vacatur hearing in the Circuit Court for Baltimore City. The vacatur was prompted by the discovery of exculpatory information withheld from Mr. Syed by the State that called into question the integrity of Mr. Syed's convictions. Hae Min Lee's representative, her brother Young Lee, was notified that the State was reexamining Mr. Syed's case, notified of the pending filing for vacatur, and notified in advance of the scheduled vacatur hearing. On the day of the September 19th hearing, Mr. Lee was represented by counsel present in the courtroom, appeared personally for the proceeding via Zoom, and was given an opportunity to address the court.

Following a presentation by the State and Mr. Syed's counsel, the court granted the motion to vacate Mr. Syed's convictions. The court ordered the State to schedule a new date for trial or enter a nolle prosequi of the vacated counts within 30 days. Mr. Lee, acting as victim representative, noted an appeal on September 28, 2022, alleging that the court's denial of his request for a postponement in order to attend the hearing in person violated his rights. On October 11, 2022, 23 days after Mr. Syed's convictions were vacated, the State entered a nolle prosequi to all counts, supported by DNA test results of Hae Min Lee's shoes that excluded Mr. Syed and further called the integrity of his convictions into question.

The Appellate Court of Maryland's holding that the entry of a nolle prosequi did not render Mr. Lee's appeal moot has the dangerous potential to constrain prosecutorial

discretion to dismiss cases in unprecedented ways that will curtail the State's ability to do justice in cases like Mr. Syed's where the State has an obligation to right past wrongs and restore the liberty of victims of police and/or prosecutorial misconduct. At the heart of the question before the Court is the State's authority to exercise its discretion regarding whether to proceed with a prosecution in light of its duty to seek justice.

ARGUMENT

[A prosecutor] is the presentative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer. – Justice Sutherland writing for the majority in *Berger v. United States*¹

Prosecutorial discretion regarding whether to charge a defendant is a well-established principle of criminal law and is essential to the State's obligation to pursue justice. That discretion encompasses decisions related to whether to charge cases, what charges to pursue, and when or if to offer a plea bargain.² The State's authority to dismiss charges against a defendant is widely recognized as within the purview and discretion of prosecutors.³ While Maryland Rule 4-247(a) requires the State to enter a nolle prosequi

¹ *Berger v. United States*, 295 U.S. 78, 88 (1935)

² See *McCleskey v. Kemp*, 481 U.S. 279, 311-12 (1987), “The capacity of prosecutorial discretion to provide individualized justice is firmly entrenched in American law.”

³ *State v. Simms*, 456 Md. 551, 561 (2017)

in open court and prior to final judgment, its authority to do so does not otherwise require judicial approval or the defendant's consent.⁴

An elected prosecutor is required to utilize their discretion to pursue justice in individualized cases, at times balancing public safety and fundamental rights of the accused.⁵ When pursuing charges against a criminal defendant, prosecutors are charged with, “a heightened duty to ensure the fairness of the outcome of a criminal proceeding from a substantive perspective – to ensure both that innocent people are not punished and that guilty people are not punished with undue harshness.”⁶ Critically, what constitutes justice may shift over time as communities evolve in their views, values, and goals related to public safety and punishment. As elected officials, it is a prosecutor's duty to make both broad policy decisions and individualized case decisions that reflect the values, principals, and priorities of the community that elected them.

Judicial oversight of a prosecutor's well-established and broad discretion regarding the decision to initiate or dismiss charges against a criminal defendant is generally constrained by both separation of powers⁷ and the long held acknowledgement

⁴ *Ward v. State*, 290 Md. 76, 83 (1981). *See also Williams v. State*, 140 Md. App. 463, 473-74, *cert. denied*, 367 Md. 90 (2001) (“The State has an absolute right, without court approval, to enter a nolle prosequi to charges, provided it does so in open court.”)

⁵ *Berger*, 295 U.S. 78, 88 (1935).

⁶ Bruce A. Gree, *Why Should Prosecutors “Seek Justice”?* 26 *Fordham Urb. L.J.* 607, 636 (1999).

⁷ *See United States v. Moran*, 759 F.2d 777, 783 (9th Cir. 1985) (court declined to substitute its own judgment for the prosecutor's in deciding whether an indictment should be issued), *United States v. Greene*, 697 F.2d. 1229, 1235 (5th Cir.), *cert. denied*, 463 U.S. 1210 (1983) (authority and discretion vested in prosecutors is grounded in separation of powers).

that courts are poorly positioned to review such decisions of the executive branch.⁸ The State's authority to control the cases which it prosecutes has been restrained by Maryland courts in only two circumstances: when a nolle pros is used to circumvent a defendant's speedy trial rights or used to deny a defendant a fair trial.⁹ Neither scenario is at issue here.

Instead, the Appellate Court of Maryland has created a third class of cases, where a prosecutor's authority to nolle prosequi a case is interrupted when a victim representative alleges a procedural violation on appeal. The Appellate Court of Maryland's holding that Mr. Lee's appeal of the vacatur was not rendered moot by the State's entry of a nolle prosequi in Mr. Syed's underlying criminal case dangerously interferes with prosecutorial discretion. The danger here is not simply in disturbing long held principle, but instead how that disturbance interferes with the prosecutor's duty to dismiss charges to ensure justice in cases like Mr. Syed's where the State recognizes instances of misconduct and has a duty to provide a remedy. Here, upon discovering a *Brady* violation that called into question the integrity of Mr. Syed's convictions, the State took appropriate steps to remedy the violation while also respecting the rights of Mr. Lee, keeping him informed of the process and giving him an opportunity to attend the proceedings.

⁸ See *United States v. Williams*, 738 F.2d 172, 175 n.2 (7th Cir. 1984) (court declined to intervene as to how prosecutor prioritized cases for prosecution); *Wayte v. United States*, 105 S. Ct. 1524, 1531 (1985) (recognizing that prosecutors enjoy broad discretion in determining which cases to prosecute and that such decisions are ill-suited to judicial review).

⁹ See *State v. Simms*, 456 Md. 551 (2017), *Hook v. State*, 315 Md. 25 (1989).

After the conviction was vacated, the State was *required* to make a decision within 30 days to either dismiss the charges against Mr. Syed or move forward with a new trial. The State could not act consistently with its duty to ensure that “the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence” without dismissing the charges in light of what it had learned about the integrity of the investigation and the results of new DNA testing.¹⁰

In holding that the trial court must redo the vacatur hearing to remedy what amount to procedural errors, the Appellate Court not only interferes with the State’s discretion to dismiss charges, but further perpetuates harm against Mr. Syed. A necessary implication of the Appellate Court’s decision is that Mr. Syed’s conviction will be reinstated and that he will be reincarcerated for an offense that the State no longer believes he is responsible for. This is an especially egregious outcome in light of the fact that Mr. Lee has been unable to demonstrate that the alleged procedural errors of the vacatur hearing impacted its ultimate outcome.

CONCLUSION

Discussion of victims and their rights in the criminal legal system has typically centered on victims of statutory crime. In reality, the criminal legal system encapsulates a broad spectrum of victims, including defendants who are victimized by the State through acts of police or prosecutorial misconduct. When police and prosecutors commit acts of misconduct in service of obtaining a conviction, their acts are not merely ethical

¹⁰ ABA Commission on Evaluation of Prof’l Standards, Am. Bar Ass’n, Model Rules of Professional Conduct Rule 3.8 (2002).

breaches. An innocent individual who is wrongfully convicted is deprived of his or her liberty, his or her family is deprived of their loved one, and communities are deprived of their citizens.

Data suggests that Mr. Syed is not an anomaly in his experience with the criminal justice system. A national study of 2,400 exonerations found that *Brady* violations, the most common type of prosecutorial misconduct noted by the study, were present in 44% of cases resulting in a later exoneration.¹¹ Unsurprisingly, racial disparities were evident in the analysis. Among those exonerated, black defendants were more likely to be victims of police and/or prosecutorial misconduct.¹²

While legislatures have increasingly sought to recognize and redress these wrongs on the back end through mechanisms like compensation programs, the burden remains on the State through its prosecutors to both prevent wrongful convictions due to misconduct and to seek legal redress for those already harmed. Restricting a prosecutor's ability to exercise discretion and dismiss cases where justice for victims of misconduct requires it makes it impossible for a prosecutor to fulfill his or her duties, but also undermines confidence and faith in the criminal legal system. Accordingly, *amicus* respectfully requests that this Court reverse the judgment of the Appellate Court.


¹¹ Samuel R. Gross et al. Government Misconduct and Convicting the Innocent: *The Role of Prosecutors, Police and Other Law Enforcement*, National Registry of Exonerations, September 2020, accessed here

https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

¹² *Id.*

**CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH RULE 8-112**

1. This brief contains 1,958 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the requirements stated in Rule 8-112.



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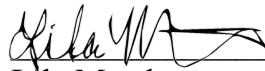
CERTIFICATE OF SERVICE

I, Lila Meadows, hereby certify that on August 28, 2023, a copy of this Brief of Amicus Curiae was delivered via the MDEC system and paper copies were sent by first class mail or courier to:

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