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SUPREME COURT OF ARKANSAS

No. CR-18-481

	Opinion Delivered: January 24, 2019
EUGENE WESLEY PETITIONER V. HON. WILLIAM R. WRIGHT, CIRCUIT JUDGE RESPONDENT	PRO SE PETITION FOR WRIT OF MANDAMUS [NEVADA COUNTY CIRCUIT COURT, NO. 50CR-93-27] DISMISSED AS MOOT.

RHONDA K. WOOD, Associate Justice

Petitioner Eugene Wesley filed a petition for writ of mandamus, which we dismiss as moot. The petitioner filed his petition for writ of mandamus after his pro se petition to correct an illegal sentence was not ruled on for a significant period. Upon the filing of the writ, the circuit court swiftly acted on the original petition and entered an order that mooted the petition for writ of mandamus. The circuit court's order contained the following explanation for not acting on the petition in a timely manner.

> The Petition consisted of 15 pages, and the only Certificate of Service was to the Attorney General's office in Little Rock, Arkansas, This Court was not aware of the filing until receiving a copy of a letter from the Office of the Criminal Justice Coordinator for the Supreme Court directed to the Petitioner.

A circuit court is not required to be notified in the certificate of service of a pleading before it and should have a mechanism in place to be aware of all filings. All courts have a

duty to act timely. There is no indication that this is anything but an isolated event. As the writ is moot, we dismiss it; however, we urge the circuit court to take necessary corrective measures so this does not occur again.

Dismissed as moot.

HART, J., dissents.

JOSEPHINE LINKER HART, Justice, dissenting. I dissent. The majority characterizes the length of time it took the circuit judge to address Wesley's petition to correct an illegal sentence as "a significant period of time." While not inaccurate, this characterization does not adequately present the factual situation at issue here.

Wesley filed his petition to correct an illegal sentence on July 18, 2017 in the Nevada County Circuit Court. The circuit judge did not address Wesley's petition in any way until receiving a letter from the Criminal Justice Coordinator's office (CJC) after Wesley filed in this court for a writ of mandamus to compel the circuit court to address his petition—more than eleven months after Wesley filed the petition with the circuit court. The impromptu four-sentence order then issued by the circuit court denying Wesley's petition offered an explanation for the delay, placing the blame with Wesley, a pro se litigant.

Specifically, the circuit court's order provides that the circuit judge had been unaware of Wesley's petition because Wesley failed to include the circuit judge in the certificate of service attached to the petition; essentially, the circuit judge's order blames Wesley for failing to serve the circuit judge with the petition. Most any practitioner in this

state could tell you that, while there are some instances in which it would be appropriate to address a filing directly to a circuit court (as opposed to the clerk's office/any opposing party), such as when providing a copy of an appellate brief to the trial court (see Ark. Sup. Ct. R. 4-4(e)), this is not one of them. The fact that the certificate of service at issue here did not contain the circuit judge's name was entirely immaterial, and the circuit court's proffered explanation suggesting otherwise is troubling.

In response to Wesley's petition for writ of mandamus filed in this court, the attorney general opts not to address the length of the delay, merely reciting the language in the circuit court's order, and instead simply argues that the circuit court's since-issued order denying Wesley's petition to correct an illegal sentence renders his petition for writ of mandamus moot.

The majority acknowledges the illegitimacy of the circuit judge's explanation for the delay, but nonetheless opts not to require further explanation from the circuit judge. Instead, the majority simply offers that "[t]here is no indication that this is anything but an isolated event" and declares the issue moot. I disagree with this decision. I would instead order the circuit court to provide an explanation as to the actual circumstances leading to this objectively excessive delay, and then proceed accordingly. *See McCoy v. Phillips*, 357 Ark. 368, 166 S.W.3d 564 (2004) (per curiam) ("Because there was no explanation (regarding the delay) in the State's response . . . or in the court's order, we requested an amended response explaining the delay.").

Generally, a case does become moot when any judgment rendered would have no practical legal effect upon a then existing legal controversy. *Kinchen v. Wilkins*, 367 Ark. 71, 238 S.W.3d 94 (2006). We have, however, recognized two exceptions to the mootness doctrine. *Id.* The first exception involves issues that are capable of repetition, yet evade review, and the second exception concerns issues that raise considerations of substantial public interest which, if addressed, would prevent future litigation. *Id.*

The case at bar presents a classic example of an issue that is capable of repetition yet evades review. While it is true that the circuit court has since ruled on Wesley's petition, justice is not served by a mere conciliatory chiding under these circumstances. The prompt resolution of all matters before a court is vital to the administration of justice. *See Thompson v. Erwin*, 310 Ark. 533, 534–35, 838 S.W.2d 353, 354 (1992) (explaining that the imperative of Canon (3)(A)(5) of the Code of Judicial Conduct to promptly dispose of cases may provide recourse in mandamus proceedings). It bears *repeating* that, in order for the courts to comply with this judicial obligation, a system must be in place in every judicial district whereby each judge is made fully aware of all filings on his or her docket. *See McCoy*, 357 Ark. at 369, 166 S.W.3d at 565 (per curiam) ("We take this opportunity to urge all judicial districts to develop a system whereby judges are made aware of filings in their courts.").

This court should not continue to encourage a system whereby a trial court can effectively bar (or, at the very least, significantly delay) a litigant from accessing the courts by simply declining to acknowledge the litigant's application for relief (wittingly or

unwittingly), and then, in the event that any such litigant has the wherewithal to seek mandamus from this court to compel action by the trial court, allow the trial court to escape accountability for that failure by simply filing an impromptu order disposing of the litigant's application and mooting the mandamus issue. The people's right to access the courts must be closely guarded, regardless of whether the circumstances feature a litigant who is rich or poor, free or incarcerated, prominent or infamous, represented by counsel or pro se.