

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,	NO. 96143-3
v.	ANSWER REGARDING MOOTNESS
D.L., Petitioner.	

I. IDENTITY OF MOVING PARTY

Petitioner, D.L., files this answer in response to the Court's question about whether this matter is moot.

II. STATEMENT OF RELIEF SOUGHT

D.L. asks this Court to find that even if technically moot, the constitutional issues he raises on appeal are of continuing, substantial public interest that merit review by this Court.

III. GROUND FOR RELIEF SOUGHT

This Court should grant review of D.L.'s case because even if his case became moot during the course of his appeal, this Court may review the merits of a moot case when, as here, the petitioner raises issues of continuing and substantial public interest. *In re Dependency of A.K.*, 162 Wn. 2d 632, 643, 174 P.3d 11 (2007).

D.L. was sentenced to serve 36-40 weeks of confinement. He was released on April 28, 2018. Though D.L. has completed his sentence, the issues of first impression he raises on appeal are of continuing and substantial public interest. *State v. Bigsby*, 189 Wn.2d 210, 214 n. 3, 399 P.3d 540 (2017).

In deciding whether an issue of substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination that will provide future guidance to public officers; and (3) the likelihood that the question will recur. *A.K.*, 162 Wn.2d at 643. This matter meets all three criteria.

The public has a great interest in the protection of juveniles and their treatment in court proceedings. *See A.K.*, 162 Wn.2d at 644 (“the public has a great interest in the care of children and the workings of the foster care system”). Specifically here, the Court of Appeals recognized “the strong public concerns about fairness in the juvenile justice system” raised by D.L.’s case. *State v. D.L.*, No. 77360-7-I, slip op. at 6 (June 25, 2018).

The Court of Appeals recognized that the issues raised by D.L. specifically implicate the public’s perception of the fairness of juvenile proceedings, noting that “[t]he juvenile, the rehabilitative process, and the

public perception of the justice system would be better served” if the juvenile had notice prior to entering a plea that the probation officer could independently seek a manifest injustice sentence. Slip op. at 6.

The Court of Appeals’ observations also highlight the second factor— the need for guidance to public officers. *A.K.*, 162 Wn.2d at 643. Review by this Court is needed to guide public officials in the requirements of due process and separation of powers in order to ensure that juvenile proceedings are conducted in a fair and just manner. Guidance by this Court will ensure that the public’s perception of the fairness of juvenile proceedings is not undermined. Slip op. at 6.

Third, the issues raised in D.L.’s case are likely to recur. In my office alone, there are two cases pending in the Court of Appeals that raise the issue of a juvenile’s right to notice of the aggravating factors prior to entry of the plea or verdict in *State v. M.S.*, No. 78442-1-I, and *State v. M.H.*, No. 78427-7-I.

Finally, this Court may consider the likelihood that the issue will escape review because the facts of the controversy are short-lived. *Bigsby*, 189 Wn.2d at 214 n. 3. Juvenile commitments tend to be much shorter than adult sentences. *See* RCW 13.40.0357 (maximum sentence for even the most serious offense is 260 weeks). Because juvenile sentences are short in relation to the appeals process, which in D.L.’s case, took nine

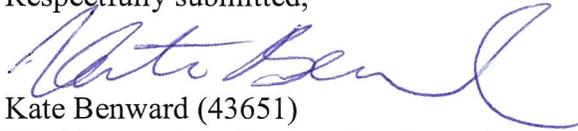
months before the Court of Appeals issued its opinion even though his case was on expedited review, it is thus unlikely that important constitutional questions arising in juvenile proceedings will be resolved if this Court denies review because the case is technically moot. Here, review by this Court is necessary to address the matters of substantial interest that are likely to recur as raised in D.L.'s Motion for Discretionary Review before this Court.

IV. CONCLUSION

The issues raised here are matters of first impression of substantial public interest that will recur on appeal. Accordingly this Court should find that the matters raised in D.L.'s Motion for Discretionary Review are properly before the Court and grant review.

DATED this 5th day of October 2018.

Respectfully submitted,



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 96143-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: October 5, 2018

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