

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Keith William DeBlasio,
Petitioner Below, Petitioner**

vs.) **No. 11-1075** (Morgan County 11-P-11)

**The Honorable Kermit Ambrose, Magistrate, and
The Honorable Gregory L. Miller, Magistrate,
Respondent Below, Respondent**

FILED

September 21, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Keith William DeBlasio, pro se, appeals the May 19, 2011, order of the Circuit Court of Morgan County denying his petition requesting that the circuit court direct the Magistrate Court of Morgan County to dismiss the misdemeanor charge of signing a false document. Respondents, the Honorable Kermit Ambrose, Magistrate, and the Honorable Gregory L. Miller, Magistrate, by David M. James, their attorney, filed a summary response to which petitioner filed a reply brief.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner was charged with the misdemeanor offense of signing a false document under West Virginia Code § 31E-1-129 in connection with a filing he made with the Office of the Secretary of State. The case began in the magistrate court, was briefly in the circuit court, and then was remanded to the magistrate court.

After petitioner's criminal case, No. 10-M-713, was remanded to the magistrate court, he filed a separate case, No. 11-P-11, in the circuit court in which he requested that the circuit court direct the magistrate court to dismiss the misdemeanor charge. The circuit court denied his petition on May 19, 2011.

During the pendency of petitioner's appeal from the circuit court's denial of his petition,^{*} No. 10-M-713 proceeded in the magistrate court. When the prosecution failed to appear for a hearing, petitioner moved to dismiss the case. The magistrate court granted his motion and

^{*} Petitioner's appeal became mature for this Court's consideration once his reply brief was filed on December 5, 2011.

dismissed No. 10-M-713 on June 11, 2012. On June 15, 2012, the magistrate court entered an order amending its dismissal of No. 10-M-713 to note that it was without prejudice.

The relief petitioner sought in No. 11-P-11 was the dismissal of No. 10-M-713. Accordingly, because No. 10-M-713 has now been dismissed, petitioner's appeal from the circuit court's denial of his petition in No. 11-P-11 has been rendered moot.

“Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.’ Syl. pt. 1, *State ex rel. Lilly v. Carter*, 63 W.Va. 684, 60 S.E. 873 (1908).” Syl. Pt. 1, *State ex rel. McCabe v. Seifert*, 220 W.Va. 79, 640 S.E.2d 142 (2006). On appeal, petitioner states he not only seeks to have No. 10-M-713 dismissed, but also to prohibit the re-filing of the misdemeanor charge in the magistrate court. However, the relief petitioner sought in his petition filed in the circuit court was for an order “commanding the Respondents to dismiss the action against the Petitioner entitled [Deputy] W. Shambaugh v. DeBlasio, Case No. 10M-0000731 [sic].” The prohibition of any re-filing of the charge in the magistrate court was never mentioned. Moreover, it would be only speculation whether the misdemeanor charge would be re-filed against petitioner and whether the charge would be re-filed in the magistrate court. In their response brief, the respondents note that the State thought it had petitioner's agreement to transfer the case to the circuit court and that the case was remanded to the magistrate court only because of petitioner's subsequent objection. Therefore, the magistrate court's amendment of its dismissal of No. 10-M-713 to note that it was without prejudice does not detract from the fact that the dismissal has rendered petitioner's appeal in No. 11-P-11 moot. Accordingly, this Court dismisses petitioner's appeal as moot.

Dismissed as Moot.

ISSUED: September 21, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh