

No. 1-11-1221

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|------------------|
| <i>In re</i> DEANGELO H., A MINOR |) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| |) | Cook County. |
| Petitioner-Appellee, |) | |
| |) | |
| v. |) | No. 11 JD 973 |
| |) | |
| DEANGELO H., a minor, |) | Honorable |
| |) | Curtis Heaston, |
| Respondent-Appellant). |) | Judge Presiding. |

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Robert E. Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal of *habeas corpus* action dismissed where respondent had been released and neither the public-interest, nor the capable of repetition but evading review exceptions to the mootness doctrine applied.

¶ 2 Respondent minor Deangelo H. appeals from the denial of his emergency petition for a writ of *habeas corpus*. He contends that it was properly sought and should have been granted because he was being held pursuant to a void "hold in custody" order issued during the pendency of his delinquency petition.

¶ 3 The record shows that respondent was arrested on March 10, 2011, and the State filed a petition for adjudication of wardship against him on March 14, 2011, alleging that he committed the offenses of aggravated unlawful use of a weapon and unlawful possession of firearms. Respondent received a detention hearing in Calendar 80 on the same date. At the hearing, respondent stipulated that there was probable cause to believe that he was delinquent. Based on the State's representation that respondent was already being held in custody on a separate petition in Calendar 55, the court ordered respondent be released upon request to his mother and set a trial date of April 7, 2011 for the State's petition for adjudication of wardship in this weapons case.

¶ 4 On the morning of the scheduled trial date, the State requested a continuance, which the court granted to April 25, 2011. The State also asked the court to find, for the first time, that it was a matter of "urgent and immediate necessity" to hold respondent in custody pending trial based on "the minor's background, his violation of probation, and the pending new cases, [and] the new arrests."

¶ 5 Respondent objected to the State's request because this information existed on March 14, 2011, when the State chose "not to ask for a hold on this case. They chose to ask for a hold in [Calendar] 55." Respondent argued that the State's attempt to revisit that choice was not allowed by statute, that the State was asking for a "brand new 30-day hold on this case" when "there's still time left on the hold in 55." The court acknowledged the timing of the State's request but found an urgent and immediate necessity existed based on respondent's background. The court therefore ordered that respondent be held in custody pending trial.

¶ 6 In the afternoon, respondent filed the subject emergency petition for a writ of *habeas corpus* alleging that the court's order placing him in the custody of the juvenile temporary detention center violated the statute governing how long an arrested minor may be held in

temporary custody before he must be either released or brought before the court for a detention or shelter care hearing. Respondent presented the petition before a third judge who heard the parties' arguments and denied the writ, reasoning, in part, that this was in the nature of an improper motion to reconsider.

¶ 7 On April 25, 2011, four days after he filed a notice of appeal from the denial of his emergency *habeas* petition, respondent was released from custody when the charges against him were nol-prossed.

¶ 8 In this court, respondent contends that the trial court erred in failing to grant his emergency petition for a writ of *habeas corpus*. He argues that any changes to the initial "release upon request" determination may only be made if there is "new conduct or additional information" that has become available between the detention hearing and when the State seeks to revisit the matter of custody.

¶ 9 The State initially responds that this issue is moot and does not warrant our review because respondent was released from custody four days after he filed his notice of appeal. Respondent acknowledges that the detention issue is moot but urges this court to reach the merits under the public interest exception to the mootness doctrine. He further states that juvenile detention cases are classic examples of cases that are subject to repetition but evasive of review.

¶ 10 An appeal is moot when the issues involved in the trial court no longer exist due to intervening events rendering it impossible for the reviewing court to grant effectual relief to the appellant. *In re Dawn H.*, 2012 IL App (2d) 111013, ¶ 3. Although reviewing courts generally will not decide moot questions or render advisory opinions, courts may review an otherwise moot issue under the public interest exception which requires (1) the existence of a question of public importance, (2) the desire for an authoritative determination to guide public officers in the performance of their duties, and (3) the question will likely recur. *In re J.T.*, 221 Ill. 2d 338, 349-

50 (2006). Additionally, courts may review an otherwise moot issue under the "capable of repetition, yet evading review" exception which requires a reasonable expectation that the same complaining party would be subject to the same action again and the action challenged is of such a short duration that it cannot be fully litigated prior to its cessation. *J.T.*, 221 Ill. 2d at 350. A clear showing of each criterion is required to bring the case within these exceptions. *J.T.*, 221 Ill. 2d at 350.

¶ 11 Problematic for respondent, however, is that neither exception applies in this case. The exception for cases of short duration evading review does not apply because it is unlikely that respondent will be subject to the same action again, and if he were, he could raise the detention issue before the court making that determination. *J.T.*, 221 Ill. 2d at 350. As for the public interest exception, we agree that pretrial juvenile detention is a matter of public importance but conclude that respondent has failed to carry his burden of demonstrating the "likely to recur" element of the exception where the issue presented, *i.e.*, when a juvenile is being held in simultaneous custody for two separate offenses but where the State fails to raise all information supporting detention in one of the hearings, involves a unique factual pattern that is unlikely to arise again. *In re Merrilee M.*, 409 Ill. App. 3d 377, 378 (2011).

¶ 12 Appeal dismissed.