

ORIGINAL

FILED

05/28/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0661

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 18-0661

AGUSTIN RAMON,

Plaintiff and Appellant,

v.

ROBY BOWE, in his capacity and his official
capacity as Sheriff of Lincoln County and
Administrator of Lincoln County Detention
Center,

Defendant and Appellee.

FILED

MAY 28 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Appellee Roby Bowe has moved to dismiss Appellant Agustin Ramon's appeal from an Order Denying Application for Temporary Restraining Order and Preliminary Injunction issued by the Nineteenth Judicial District Court, Lincoln County. Bowe argues first that the underlying case has been resolved and thus this matter is moot. Secondly, he argues that he is no longer Sheriff of Lincoln County and thus any order enjoining him from acting in that capacity would be without purpose. Ramon has objected to the motion to dismiss.

Ramon filed an Application for Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause in the District Court's Cause No. DV-18-218, seeking to enjoin Bowe from holding him subject to an immigration detainer when he would otherwise be released on bail. Ramon argued that Montana law does not provide the authority to hold prisoners in custody on state criminal charges for a civil federal immigration detainer after they otherwise would have been released. Ramon's bond in an underlying felony burglary charge had been set at \$25,000, but when a bail bondsman attempted to post bail, he was informed that Ramon was subject to an immigration detainer and that the staff at the Lincoln County Detention Center (LCDC) intended to cooperate with immigration officials regarding the detainer. Thus, Ramon was not released on bail

pending trial only because of the existence of the civil detainer.

The District Court denied Ramon's application on November 16, 2018, and Ramon filed his notice of appeal on November 21, 2018. Bowe filed this motion to dismiss on April 30, 2019. By this time, Ramon's criminal matter had been resolved, and he was no longer incarcerated at the LCDC. Bowe therefore argues that this appeal is moot.

In response, Ramon urges this Court to hear his appeal under an exception to the mootness doctrine, either as a matter capable of repetition yet evading review, or as a question of public interest. *Common Cause v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices*, 263 Mont. 324, 328, 868 P.2d 604, 606 (1994) ("When faced with constitutional questions which are capable of repetition yet could avoid review, the Court will consider the merits of the issues raised on appeal."); *Gateway Opencut Mining Action Grp. v. Bd. of County Comm'rs*, 2011 MT 198, ¶ 14, 361 Mont. 398, 260 P.3d 133 (citing *Morawicz v. Hynes*, 929 N.E.2d 544, 549 (Ill. App. 1st Dist. 2010)) (The public interest exception to the mootness doctrine "applies where the case presents a question of public importance that will likely recur and whose answer will guide public officers in the performance of their duties . . ."). As evidence that this is a matter capable of repetition yet evading review, as well as a question of public interest, Ramon further draws this Court's attention to *Valerio-Gonzales v. Jarrett*, 2017 Mont. LEXIS 764, 390 Mont. 427, 410 P.3d 177, which presented a similar legal issue through a petition for writ of habeas corpus that this Court dismissed because the petitioner had been released from the Gallatin County Detention Center prior to our consideration of the petition.

As noted above, Ramon has been released from LCDC, and thus there is nothing to enjoin. We decline to dismiss the appeal at this juncture, however, in favor of allowing the parties to brief the merits of Ramon's arguments, including whether we should determine this case under an exception to the mootness doctrine.

As to Bowe's second argument, M. R. App. P. 25(3) provides:

When a public officer is a party to an appeal or other proceeding in the supreme court in an official capacity and during its pendency . . . ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting

the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time

Under this Rule, this Court may substitute Bowe's successor without adverse effect on the ongoing litigation.

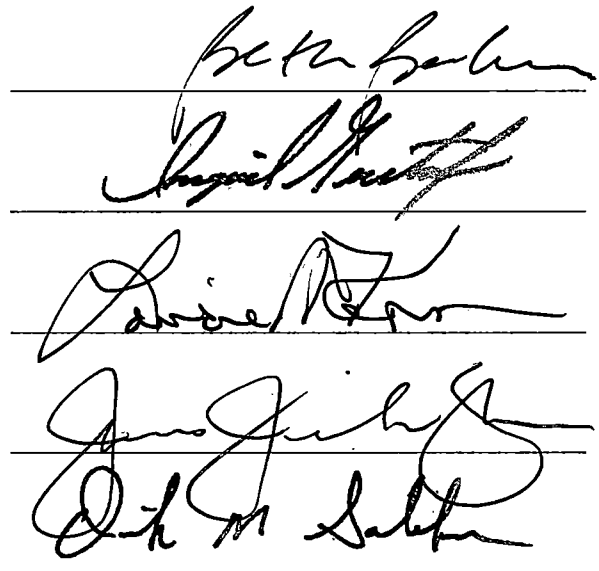
Therefore,

IT IS ORDERED that the motion to dismiss this appeal is DENIED. As per this Court's March 26, 2019 Order, Appellant shall have 45 days from the date of this Order to file and serve his opening brief.

IT IS FURTHER ORDERED that Darren Short, Sheriff of Lincoln County and Administrator of the Lincoln County Detention Center, is substituted for Roby Bowe in this matter.

The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 28th day of May, 2019.



Justices