**IN THE COURT OF CRIMINAL APPEALS**
**OF TEXAS**

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**NO. WR-94,066-01**

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**IN RE JACKI L. PICK, Relator**

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**ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, MOTION TO SEAL PROCEEDINGS, AND MOTION TO STAY**
**CAUSE NO. 05-22-00817-CV**
**IN THE FIFTH COURT OF APPEALS**
**CAUSE NO. OSW-22-00030-H**
**IN THE CRIMINAL DISTRICT COURT NO. 1**
**DALLAS COUNTY**

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**NEWELL, J., filed a concurring opinion in which HERVEY, RICHARDSON and MCCLURE, JJ., joined.**

As things currently stand, Relator is under no obligation to appear before the special grand jury in Fulton County, Georgia. The order

compelling her to do so, signed by the District Judge presiding over the Criminal District Court No. 1 of Dallas County, has expired. By its own terms, the order "found" that Relator would be required in attendance to testify between July 12, 2022 and August 31, 2022. The order required Relator to "appear before the Superior Court of Fulton County, for one day, beginning August 25, 2022." Whether the terms of the order expired on August 25th or August 31st, there is no dispute the order has now expired. Accordingly, Relator's motion for leave to file and the underlying petition for mandamus relief is now moot, and the Court rightly dismisses it as such without passing on the merits of the underlying petition.

No, this case does not fall into the "capable of repetition but evading review" exception to the doctrine of mootness. This doctrine applies only in exceptional circumstances where two circumstances are simultaneously present: 1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and 2) there is a reasonable expectation that the same complaining party will be subject to the same action again.[1] While I agree that Relator can reasonably expect another attempt by the State of Georgia to secure

[1] *See Spencer v. Kemna*, 523 U.S. 1, 17 (1998).

her attendance, the nature of the proceeding below is not the type that renders Relator's arguments capable of evading effective judicial review. There must be a showing that the window for review will *always* be so short as to evade review.[2] Grand jury proceedings, assuming this is a "grand jury proceeding," are not the types of emergency proceedings that have been held capable of evading review.[3] After all, we have already judicially reviewed the terms of this statute before in *Ex parte Armes*.[4] So, this case is still moot even if we might *really* want to review the issues Relator raises.

Because the case is moot, readers should understand that this Court is left with no order to review. Relator effectively has the relief she sought. Considering and deciding Relator's arguments in anticipation of future filings would amount to an advisory opinion from this Court, which we are without constitutional or statutory authority to

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[2] *Id.* at 18 (rejecting parolee's challenge to parole revocation because he failed to establish that the time between an inmate receiving parole and the expiration of sentence would always be too short for effective review).

[3] *See, e.g., Ex parte Flores*, 130 S.W.3d 100, 105 (Tex. App.—El Paso 2003, pet. ref'd.) (applying the "capable of repetition yet evading review exception to mootness in the context of an emergency protective order).

[4] *Ex parte Armes*, 582 S.W.2d 434, 439 (Tex. Crim. App. 1979) (construing the statute at issue in the case after previously holding that the matter was moot after the time for the subpoena expired); *see also Armes v. State*, 573 S.W.2d 7, 8-9 (Tex. Crim. App. 1978) (holding that issue of out-of-state grand jury subpoena was moot when the day for testimony had passed).

render.[5] Further, readers should remember that there are many good reasons for judges not to weigh in on the merits of Relator's claims when there is no effective court order to review. For example, silence regarding the merits of Relator's arguments avoids providing new arguments to one party over another that might give that party an edge in future filings. It also avoids virtue signaling to the parties how a judge or judges might rule on the merits of Relator's claim should they come up again. Any non-response to Relator's arguments should be taken for what it is, a judicious decision to refrain from pre-judging a particularly sensitive case, not an implied rejection of the underlying merits of Relator's claims.

With these thoughts, I join the Court's order dismissing Relator's motion for leave to file as moot.

Filed: September 1, 2022

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[5] *See Ex parte Ruiz*, 750 S.W.2d 217, 218 (Tex. Crim. App. 1988) ("It is well-established that this Court is without constitutional or statutory authority to . . . render advisory opinions.").