

SUPREME COURT OF LOUISIANA

No. 2021-KD-00634

ANTHONY W. WILLIS

VS.

MARK T. GARBER

*On Supervisory Writ to the 15th Judicial District Court,
Parish of Lafayette*

GRIFFIN, J., dissents, would grant and docket, and assigns reasons.

I respectfully dissent. Exceptions to the mootness doctrine exist to prevent a party from creating technical mootness that would otherwise deprive a court of jurisdiction. *See Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance*, 98-0601, p. 9 (La. 10/28/98), 720 So.2d 1186, 1194. Where an issue is capable of repetition yet evades review, courts will consider whether: 1) the action challenged is too short in duration to be fully litigated prior to its cessation; and 2) there is a reasonable expectation the same complaining party would be subjected to the same action again. *Shepherd v. Schedler*, 15-1750, p. 15 (La. 1/27/16), 209 So.3d 752, 765; *see also State v. Rochon*, 11-0009, p. 13 (La. 10/25/11), 75 So.3d 876, 885 (observing federal courts frequently disregard the latter requirement when the matter is of significant public importance).

The constitutionality of the ordinance is not a moot issue as Mr. Willis – and others similarly situated – face the very real prospect of successive arrest and detention. *See Cat's Meow*, 98-0601, p. 8, 720 So.2d at 1193 (“an issue is moot when a judgment or decree on that issue has been deprived of practical significance or made abstract or purely academic”) (internal quotations omitted). As the trial court astutely observed:

In this particular case I think the likelihood of repetition is high. In the last week I myself alone have seen two cases involving the exact same [ordinance]. And in regards to Mr. Willis himself, this is by the State's own affidavit of arrest his seventh time being cited under this ordinance since January. So I think the likelihood of repetition is extremely high.

In regards to evading review I think a perfect example of that is the simple fact that in this particular case the charges weren't refused until the motion itself was actually filed, and that was the only reason that Mr. Willis was released.

Thus, the present matter is not only capable of repetition, but one which has repeated several times already yet still evades review.

Further problematic is that the City attorney's office controls the timing of its decision to refuse charges and could therefore indefinitely prevent a constitutional challenge by voluntary cessation. "[I]f a defendant voluntarily stops allegedly wrongful conduct, then that change alone does not make the case moot, for the defendant would then be free to return to his old ways. Therefore, the defendant must show with assurance that there is no reasonable expectation that the alleged violation will recur." *Id.*, 98-0601, pp. 9-10, 720 So.2d at 1194. The opposite has been shown to be true here. Accordingly, I would grant and docket this matter for full briefing and argument.