

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Farley v. Commonwealth

435 Mass. 1010 (2001) · Decided November 30, 2001

SUMMARY

The Massachusetts Supreme Judicial Court affirmed judgments denying interlocutory review under S.J.C. Rule 2:21(2). The court held that the petitioner had not shown that review of the trial court’s rulings concerning testing and the use of prior-trial testimony could not adequately be obtained on appeal or through other available means. The court distinguished the circumstances from claims involving double jeopardy, where posttrial appellate review may be inadequate.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Massachusetts
DECIDED	November 30, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner sought review of interlocutory Superior Court rulings under Supreme Judicial Court Rule 2:21(2), challenging rulings concerning the possible use of testing results and, in a consolidated case, the admission of testimony and trial transcripts.
STANDARD OF REVIEW	Review under Supreme Judicial Court Rule 2:21(2) of whether the petitioner demonstrated that appellate review or another available remedy would be inadequate.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion
PARTIES	Farley v. Commonwealth

TOPICS

- interlocutory appeal
- appellate procedure
- criminal procedure
- evidence

PRACTICE AREAS

- criminal procedure
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether Farley satisfied Supreme Judicial Court Rule 2:21(2) by showing that review of the Superior Court's interlocutory ruling concerning testing results could not adequately be obtained on appeal or by another available means.
2. Whether Farley satisfied Rule 2:21(2) with respect to the interlocutory ruling concerning Roland James's testimony and transcripts from the first trial.
3. Whether the challenged interlocutory rulings implicated a concern comparable to the constitutional protection against being tried twice for the same offense, warranting pretrial appellate review.

HOLDINGS

1. The petitioner failed to establish that she could not obtain a favorable ruling at trial or that appellate review would be inadequate; therefore, she did not satisfy Rule 2:21(2).
2. The petitioner failed to demonstrate why she could not adequately obtain review of the trial judge's evidentiary ruling on appeal or by another available means, and the circumstances did not justify interlocutory review.

KEY QUOTATIONS

“The Superior Court judge’s ruling is interlocutory, so we examine whether the petitioner has met her obligation to “set forth . . . reasons why review of the trial court decision cannot adequately be obtained on appeal ... or by other available means.”” (435 Mass. at 1010)

“She has neither established that she is precluded from obtaining a favorable ruling at trial (if the Commonwealth were to offer evidence she obtained and chose not to use), nor demonstrated that appellate review would be inadequate, as it may be for those claiming a violation of the right not to be tried twice for the same offense.” (435 Mass. at 1010)

FACTUAL BACKGROUND

Farley was facing a retrial and challenged the possible use of test results that she might obtain but choose not to use. In a consolidated matter, she challenged a pretrial ruling permitting the testimony of Roland James or the use of transcripts from her first trial, at which James testified. She argued that unfavorable evidentiary rulings could impair her defense and lead to another wrongful conviction.

PROCEDURAL HISTORY

A Superior Court judge issued interlocutory rulings in two related criminal matters. Farley petitioned for appellate review, asserting that she could not obtain adequate relief after trial or on appeal. The Supreme Judicial Court concluded that she failed to satisfy Rule 2:21(2) and affirmed the judgments.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Trapp, 423 Mass. 356, 363, cert. denied, 519 U.S. 1045 (1996)
- Commonwealth v. Haggerty, 400 Mass. 437, 441 (1987)
- McGuinness v. Commonwealth, 423 Mass. 1003 (1996), S.C., 424 Mass. 1004 (1997)
- Costarelli v. Commonwealth, 374 Mass. 677, 680 (1978)

OPINION

PER CURIAM.

The Superior Court judge's ruling is interlocutory, so we examine whether the petitioner has met her obligation to "set forth... reasons why review of the trial court decision cannot adequately be obtained on appeal... or by other available means." S.J.C. Rule 2:21 (2).

The petitioner recites that if she proceeds with the testing, she risks having the Commonwealth's being allowed to use the results against her if they are unfavorable. She also contends that she cannot have a fair trial if the Commonwealth is not precluded from using test results that she obtains but does not use. Without passing judgment on the likelihood of the Commonwealth's being able to use test results the petitioner obtains and does not use, see Mass. R. Crim.

R 14 (a) (2) and (a) (3) (A), 378 Mass. 874 (1979); Commonwealth v. Trapp, 423 Mass. 356, 363, cert. denied, 519 U.S. 1045 (1996); Commonwealth v. Haggerty, 400 Mass. 437, 441 (1987), we conclude that the petitioner has not met the requirement of rule 2:21 (2). She contends that she "runs the high risk of being wrongfully convicted again" if the trial court is not forced "to make the correct pretrial ruling"; her preparation of her defense may be impeded; and she cannot adequately obtain relief on appeal because she will be incarcerated in the interim.

She has neither established that she is precluded from obtaining a favorable ruling at trial (if the Commonwealth were to offer evidence she obtained and chose not to use), nor demonstrated that appellate review would be inadequate, as it may be for those claiming a violation of the right not to be tried twice for the same offense. See McGuinness v. Commonwealth, 423 Mass. 1003 (1996), S.C., 424 Mass. 1004 (1997); Costarelli v. Commonwealth, 374 Mass. 677, 680 (1978).

In the consolidated case, according to the petitioner, a Superior Court judge denied the petitioner's "pretrial motion in limine to bar the testimony of Roland James, or the use of transcripts from her first trial, at which Roland James testified." Greg T. Schubert for the petitioner. Rule 2:21 is applicable here also because the trial court ruling at issue is interlocutory, so we consider whether the petitioner has fulfilled her obligation under rule 2:21 (2).

The petitioner argues that, if she is again convicted on certain evidence, especially that from Roland James, then the value of the pending new trial will have been significantly undermined ("infected with the same prejudicial effect of the ineffectiveness of counsel").

The petitioner also suggests that we adopt a new rule to deal with such a situation. We do not demean or minimize the potential impact on the petitioner of possibly having to bring an appeal following her retrial. Yet, the petitioner appears to assume that she cannot succeed in preventing use of the testimony at trial.

Moreover, she does not appropriately indicate why she cannot adequately obtain review of the judge's decision on appeal, or by other available means. See S.J.C. Rule 2:21 (2). The situation she describes here also does not rise to the level of one whose claim is based, for example, on a violation of the right not to be tried twice for the same offense. See *McGuinness v. Commonwealth*, supra at 1003; *Costarelli v. Commonwealth*, supra at 680.

Judgments affirmed. The case was submitted on the papers filed, accompanied by a memorandum of law.