

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Perella

464 Mass. 274 (2013) · Decided February 1, 2013

SUMMARY

The Massachusetts Supreme Judicial Court held that, under G. L. c. 277, § 63, an indictment for armed robbery must be found and filed within the ten-year statute of limitations. The filing of a criminal complaint within that period does not toll the limitations period when the indictment is returned after it has expired, so the court affirmed dismissal of the indictment.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Duffly, J.
JURISDICTION	Massachusetts
DECIDED	February 1, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth appealed from a Superior Court order dismissing an armed-robbery indictment as untimely. The Supreme Judicial Court granted the Commonwealth's application for direct appellate review.
STANDARD OF REVIEW	De novo review of statutory interpretation.
PRECEDENTIAL VALUE	Published, precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	Commonwealth v. Perella

TOPICS

- statutory interpretation
- plain meaning rule
- rule of lenity
- criminal procedure

PRACTICE AREAS

- criminal procedure
- statutory interpretation
- criminal law

QUESTIONS PRESENTED

1. Whether the filing of a criminal complaint within the ten-year period tolls the statute of limitations for armed robbery when the indictment is returned and filed after that period.

2. Whether G. L. c. 277, § 79, permits the word 'complaint' to be substituted for 'indictment' throughout G. L. c. 277, § 63.
3. Whether the catch-all limitations provision in the sixth sentence of G. L. c. 277, § 63, applies to criminal complaints as well as indictments.

HOLDINGS

1. For armed robbery under G. L. c. 265, § 17, G. L. c. 277, § 63, requires that an indictment be found and filed within ten years after the offense. Filing a criminal complaint within that period, followed by the filing of an indictment after the period has expired, does not timely commence the criminal proceeding.
2. The catch-all provision in the sixth sentence of § 63 may sensibly be read to apply to criminal complaints as well as indictments, because otherwise offenses within the District Court's concurrent jurisdiction could lack a statute of limitations.
3. G. L. c. 277, § 79, does not authorize substituting 'complaint' for 'indictment' whenever the latter word appears in § 63.

KEY QUOTATIONS

“We conclude that § 63 requires the filing of an indictment within the ten-year limitations period for armed robbery, G. L. c. 265, § 17, and that the filing of a complaint within the limitations period, and the return of an indictment outside that period, does not constitute timely commencement of the criminal proceeding.” (464 Mass. at 275)

“where the Legislature has specifically provided that an indictment must be found and filed for purposes of framing the time within which a specified criminal charge must be brought, the filing of a complaint will not toll a statute of limitations.” (464 Mass. at 281)

“Based on the language of § 63, and construing the statute of limitations for armed robbery in favor of repose, we conclude that § 63 requires the filing of an indictment to toll the statute of limitations as to that offense.” (464 Mass. at 284)

FACTUAL BACKGROUND

An armed robbery occurred at the Randolph Savings Bank in Stoughton on January 20, 2000. Police recovered a winter hat from the getaway vehicle, and DNA testing performed in 2007 and reported in January 2010 linked the hat to Perella. A criminal complaint issued on January 19, 2010, but the grand jury did not return an indictment until May 12, 2010, more than ten years after the robbery.

PROCEDURAL HISTORY

A criminal complaint charging a January 20, 2000 armed robbery issued in the District Court on January 19, 2010, one day before the ten-year limitations period expired. A grand jury returned the indictment on May 12, 2010, after the ten-year period had ended. The Superior Court dismissed the indictment with prejudice, concluding that only a timely filed indictment could toll the applicable statute of limitations. The Commonwealth appealed, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. George W. Prescott Publ. Co., 463 Mass. 258, 264 n.9 (2012)
- Commonwealth v. Millican, 449 Mass. 298, 300-301 (2007)
- Commonwealth v. Dixon, 458 Mass. 446, 453-455 (2010)
- Commonwealth v. Galvin, 388 Mass. 326, 328, 330 (1983)
- Beeler v. Downey, 387 Mass. 609, 616 (1982)
- Wheatley v. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 601 (2010)
- Commonwealth v. Williamson, 462 Mass. 676, 681 (2012)
- Charles C. v. Commonwealth, 415 Mass. 58, 65 (1993)
- Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982)
- Commonwealth v. Wilcox, 437 Mass. 33, 34 (2002)
- WBZ-TV4 v. District Attorney for the Suffolk Dist., 408 Mass. 595, 599-600 (1990)
- Commonwealth v. Northern Telecom, Inc., 25 Mass. App. Ct. 255, 257 (1988)
- Champigny v. Commonwealth, 422 Mass. 249, 251 (1996)
- Commonwealth v. George, 430 Mass. 276, 280 (1999)
- Commonwealth v. Clinton, 374 Mass. 719, 721 (1978)
- Commonwealth v. McLaughlin, 431 Mass. 241, 250 (2000)
- Commonwealth v. Ruiz, 426 Mass. 391, 394 (1998)
- United States v. Habig, 390 U.S. 222, 227 (1968)
- United States v. Scharton, 285 U.S. 518, 522 (1932)
- Lexington v. Bedford, 378 Mass. 562, 570 (1979)
- Commonwealth v. Callahan, 440 Mass. 436, 440-441 (2003)
- Toussie v. United States, 397 U.S. 112, 114-115 (1970)
- Connor v. Commonwealth, 363 Mass. 572, 576-578 (1973)

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