

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Rosario

458 Mass. 1003 (2010) · Decided September 24, 2010

SUMMARY

The Massachusetts Supreme Judicial Court held that Mass. R. Crim. P. 15(d) requires the Commonwealth to pay a defendant’s reasonable attorney’s fees and costs incurred in opposing an interlocutory appeal, even when the appeal is withdrawn after the underlying indictments are not pressed. The court reversed the denial of the defendant’s fee motion and remanded for an award of \$2,500.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	September 24, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rosario appealed the denial and reaffirmance of his motion for attorney's fees and costs incurred in opposing the Commonwealth's application for an interlocutory appeal under Mass. R. Crim. P. 15.
STANDARD OF REVIEW	The court interpreted Mass. R. Crim. P. 15(d); no separate standard of review was expressly stated.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion
PARTIES	Jimmy Roman Rosario v. Commonwealth

TOPICS

- criminal procedure
- interlocutory appeal
- appellate procedure
- remedies
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- appellate procedure
- attorney's fees and costs
- interlocutory appeals
- court rule interpretation

QUESTIONS PRESENTED

1. Whether Mass. R. Crim. P. 15(d) authorizes an award of reasonable attorney's fees and costs when the Commonwealth obtains leave for an interlocutory appeal but the appeal is never entered because the underlying criminal case is nol prossed.
2. Whether Rosario was entitled to a specific award of attorney's fees and costs based on the record.

HOLDINGS

1. Mass. R. Crim. P. 15(d) mandates payment of a defendant's reasonable attorney's fees and costs incurred in opposing the Commonwealth's interlocutory appeal application, regardless of whether leave to appeal is allowed and, if allowed, regardless of whether the Commonwealth prevails or the appeal reaches completion. The rule applies even when the underlying case is nol prossed before the appeal is entered.
2. Rosario was entitled to an award of \$2,500 in reasonable attorney's fees and costs.

KEY QUOTATIONS

“The obligation to pay fees and costs is not itself conditional; it is mandatory.” (458 Mass. at 1004)

“We therefore conclude that Rosario is entitled to an award of reasonable attorney’s fees and costs under rule 15 (d).” (458 Mass. at 1004)

FACTUAL BACKGROUND

Rosario was indicted on drug and weapons charges, and his motion to suppress evidence obtained in execution of a search warrant was allowed. The Commonwealth sought and obtained leave to pursue an interlocutory appeal, but the appeal was never entered because Rosario was federally indicted based on the same evidence, the State indictments were nol prossed, and the Commonwealth withdrew its appeal. Rosario incurred attorney's fees and costs while opposing the Commonwealth's rule 15 application.

PROCEDURAL HISTORY

Rosario's motion to suppress evidence obtained through execution of a search warrant was allowed. The Commonwealth obtained leave for an interlocutory appeal, but the appeal was never entered in the full court because the underlying State indictments were nol prossed after Rosario was federally indicted on charges arising from the same evidence, and the Commonwealth withdrew its notice of appeal. Rosario then sought fees and costs under rule 15(d); a single justice denied the request and reaffirmed the denial on reconsideration. The Supreme Judicial Court reversed and remanded for an award of \$2,500.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the orders denying Rosario's motion for fees and costs and affirming that denial on reconsideration, and remand for entry of an order awarding Rosario \$2,500 in attorney's fees and costs.

CASES CITED

- Commonwealth v. Lopez, 430 Mass. 244, 246 & n.2 (1999)
- Commonwealth v. Gonsalves, 432 Mass. 613, 617 (2000), S.C., 437 Mass. 1020 (2002), and 441 Mass. 1007 (2004)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/massachusetts-supreme-judicial-court/2010/commonwealth-v-rosario-4kielbr4>