

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Garden v. Commonwealth

460 Mass. 1018 (2011) · Decided November 15, 2011

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the denial of Tyrone Garden’s petition under G. L. c. 211, § 3, challenging the retroactive application of an extended statute of limitations for aggravated rape and related charges. The court held that the statute of limitations defense and the petitioner’s remaining claims could be addressed through ordinary pretrial proceedings, trial, and appeal, so extraordinary relief was unavailable.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
JURISDICTION	Massachusetts
DECIDED	November 15, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner sought relief under G. L. c. 211, § 3, from interlocutory Superior Court rulings denying his motions to dismiss criminal indictments on statute-of-limitations grounds. A single justice denied the petition without a hearing, and the petitioner appealed to the full Supreme Judicial Court under S.J.C. Rule 2:21.
STANDARD OF REVIEW	Under S.J.C. Rule 2:21, the petitioner had to demonstrate why adequate review could not be obtained through an appeal from a final adverse judgment or other available means.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential
PARTIES	Tyrone Garden v. Commonwealth

TOPICS

- appellate procedure
- appellate jurisdiction
- criminal procedure
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- appellate procedure
- statute of limitations

QUESTIONS PRESENTED

1. Whether extraordinary relief under G. L. c. 211, § 3, was available to review the denial of the petitioner's pretrial statute-of-limitations motions.
2. Whether the petitioner demonstrated under S.J.C. Rule 2:21 that the statute-of-limitations issue could not adequately be reviewed through the ordinary course of trial and appeal.

HOLDINGS

1. A statute-of-limitations defense in a criminal case can be adequately addressed through ordinary pretrial proceedings, trial, and appeal; therefore, G. L. c. 211, § 3, cannot be used to obtain interlocutory review of the denial of such a defense.

KEY QUOTATIONS

“The rule requires the petitioner to demonstrate “why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means.”” (460 Mass. at 1019)

“The denial of a motion to dismiss in a criminal case is not appealable until after trial, and we have indicated many times that G. L. c. 211, § 3, may not be used to circumvent that rule” (460 Mass. at 1019)

FACTUAL BACKGROUND

The alleged offenses occurred on September 18, 1991. A criminal complaint was issued on September 11, 2006, and indictments followed seven months later. The petitioner argued that the indictments were barred by the ten-year limitations period in effect when the offenses allegedly occurred, while the Commonwealth relied on a 1996 amendment extending the period to fifteen years.

PROCEDURAL HISTORY

The Worcester District Court issued a criminal complaint in 2006 charging aggravated rape based on conduct allegedly occurring in 1991. The petitioner was later indicted for aggravated rape and assault with intent to commit rape, and the Superior Court denied his motions to dismiss, concluding under *Commonwealth v. Barger* that the 1996 extension of the limitations period applied retrospectively. After the Superior Court denied reconsideration and declined to report the matter, the petitioner sought extraordinary relief in the county court; the single justice denied the petition, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Commonwealth v. Barger*, 402 Mass. 589 (1988)
- *Sanchez v. Commonwealth*, 450 Mass. 1003 (2007)
- *Ackerman v. Commonwealth*, 445 Mass. 1025, 1025-1026 (2006)
- *Jackson v. Commonwealth*, 437 Mass. 1008, 1009 (2002)

OPINION

Garden v. Commonwealth

460 Mass. 1018

PER CURIAM.

The petitioner, Tyrone Garden, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm. On September 11, 2006, the Worcester District Court issued a criminal complaint against the petitioner charging him with aggravated rape, arising out of an incident that is alleged to have occurred on September 18, 1991, some fourteen years and eleven months earlier. Seven months later, the petitioner was indicted for the same offense as well as assault with intent to commit rape. At the time the offenses are alleged to have been committed, G. L. c. 277, § 63, as appearing in St. 1987, c. 489, required an indictment for such offenses to be found and filed within ten years of the date of the commission of the offense. The statute was amended in 1996, however, to enlarge the limitations period to fifteen years. G. L. c. 277, § 63, as amended by St. 1996, c. 26 (effective May 23, 2006). The petitioner moved to dismiss the indictments in the Superior Court, arguing that they were barred by the applicable statute of limitations. Relying on *Commonwealth v. Barger*, 402 Mass. 589 (1988), the Superior Court judge concluded that the 1996 amendment applied retrospectively and that the petitioner's prosecution was not time barred, and he denied the motion to dismiss the indictment. The judge also denied the petitioner's motions for reconsideration, and declined to report the matter to the Appeals Court. The petitioner thereafter filed a petition in the county court seeking relief from the Superior Court judge's interlocutory rulings, pursuant to G. L. c. 211, § 3. He alleged that retroactive application of the 1996 amendment to G. L. c. 277, § 63, violates his constitutional rights to due process and equal protection; that *Commonwealth v. Barger*, supra, was wrongly decided; and that, irrespective of the retroactive application of the statute, the date of the indictments rather than the date of the criminal complaint is the date criminal process commenced for purposes of the limitations period. A single justice denied the petition without a hearing. The case was submitted on the papers filed, accompanied by a memorandum of law. John M. Goggins for the petitioner. Joseph J. Reilly, III, & Ellyn H. Lazar-Moore, Assistant District Attorneys, for the Commonwealth. The case is now before the court pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). The rule requires the petitioner to demonstrate "why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." S.J.C. Rule 2:21 (2). He has failed to do so. A statute of limitations defense can adequately be addressed in the ordinary course of pretrial motions, trial, and appeal. See *Sanchez v. Commonwealth*, 450 Mass. 1003 (2007); *Ackerman v. Commonwealth*, 445 Mass. 1025, 1025-1026 (2006). See also *Jackson v. Commonwealth*, 437 Mass. 1008, 1009 (2002), and cases cited ("The denial of a motion to dismiss in a criminal case is not appealable until after trial, and we have indicated many times that G. L. c. 211, § 3, may not be used to circumvent that rule"). Although the petitioner claims that he has a

right not to be tried on the indictment because of the passage of time, a statute of limitations defense — unlike a double jeopardy claim, which vindicates “the right not to be tried at all” ■— protects only the right to have charges brought in a timely fashion (emphasis in original). *Ackerman v. Commonwealth*, *supra* at 1025. The petitioner’s remaining claims similarly may be raised and decided during the ordinary course of trial and appeal. Judgment affirmed.