

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. George

460 Mass. 1008 (2011) · Decided August 11, 2011

SUMMARY

The Supreme Judicial Court of Massachusetts affirmed the dismissal as moot of the Commonwealth’s petition under G. L. c. 211, § 3, challenging a Boston Municipal Court judge’s release of the defendant on personal recognizance. The court held that the judge’s reconsideration of the release order rendered the petition moot and that the single justice had broad discretion not to reserve and report the matter to the full court.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
JURISDICTION	Massachusetts
DECIDED	August 11, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	George appealed from a single justice's dismissal as moot of the Commonwealth's petition under G. L. c. 211, § 3, which challenged a Boston Municipal Court judge's authority to release George on personal recognizance after another division's judge had revoked his recognizance and set bail.
STANDARD OF REVIEW	Whether the single justice erred or abused his discretion in dismissing the petition as moot and declining to reserve and report it to the full court; the decision whether to reserve and report an interlocutory matter is highly discretionary.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court per curiam opinion
PARTIES	George v. Commonwealth

TOPICS

- mootness
- appellate procedure
- bail
- criminal procedure
- writ of certiorari

PRACTICE AREAS

- Criminal procedure
- Appellate procedure
- Bail

QUESTIONS PRESENTED

1. Whether the Central Division judge's reconsideration of the release order rendered moot the Commonwealth's G. L. c. 211, § 3, petition challenging that order.
2. Whether the single justice was required to reserve and report the moot petition to the full Supreme Judicial Court.

HOLDINGS

1. The Central Division judge's reconsideration of the order releasing George on personal recognizance rendered the Commonwealth's G. L. c. 211, § 3, petition moot.
2. The single justice had broad discretion to decide whether to reserve and report the matter to the full court and was not obligated to do so, even assuming the dismissal could be treated as a denial of relief under S.J.C. Rule 2:21.

KEY QUOTATIONS

“The Central Division judge’s subsequent reconsideration of his order rendered moot the Commonwealth’s petition.” (1009)

“The single justice, however, had broad discretion to decide whether to reserve and report the matter to the full court and was by no means obligated to do so.” (1009)

FACTUAL BACKGROUND

George faced charges in the Central Division of the Boston Municipal Court and was initially released on personal recognizance. After unrelated charges were brought in the West Roxbury Division, that division's judge revoked his recognizance and set bail, but the Central Division judge later ordered release on personal recognizance at George's request. Before the Commonwealth's challenge was resolved, the Central Division judge reconsidered and held that only the West Roxbury judge could reconsider the original bail order, while the underlying charges were dismissed, filed without a change of plea, or resolved by a guilty plea.

PROCEDURAL HISTORY

George was charged in the Central Division of the Boston Municipal Court and released on personal recognizance. After he was arraigned on unrelated charges in the West Roxbury Division, that division's judge revoked his recognizance and set bail; the Central Division judge later again released him on personal recognizance at George's request. The Commonwealth filed a G. L. c. 211, § 3, petition. While the petition was pending, the Central Division judge reconsidered and ruled that only the West Roxbury judge could reconsider the bail order, and the underlying criminal charges were resolved. The single justice dismissed the petition as moot, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Pagan, 445 Mass. 315, 324 (2005)
- McMenimen v. Passatempo, 452 Mass. 178, 189 (2008)

OPINION

PER CURIAM.

Brandon George appeals from a judgment of a single justice of this court dismissing the Commonwealth's petition for relief under G. L. c. 211, § 3. We affirm. George was charged with receiving stolen property and other offenses in the Central Division of the Boston Municipal Court Department. He was released on his personal recognizance. He was subsequently charged and arraigned on other, unrelated offenses in the West Roxbury Division of the same court.

A judge in that division revoked his recognizance and set bail. At a pretrial hearing in the Central Division, at George's request, the Central Division judge again ordered that George be released on personal recognizance.

The Commonwealth then filed its G. L. c. 211, § 3, petition, seeking relief on the ground that the Central Division judge lacked authority to rescind the order of the West Roxbury Division judge revoking George's recognizance.¹ In response, George requested that the single justice reserve and report the Commonwealth's petition to the full court. While the matter was pending, *1009the Central Division judge reconsidered his order and ruled that only the West Roxbury Division judge could reconsider his own order.

See Commonwealth v. Pagan, 445 Mass. 315, 324 (2005). It appears that George did not seek relief from the Central Division judge's order on reconsideration. In addition, the Central Division charges were resolved as follows: the charge of receiving stolen property was dismissed; a charge of drinking alcohol in public was filed without a change of plea; and George pleaded guilty to a charge of disorderly conduct.

The Commonwealth filed memoranda suggesting that its G. L. c. 211, § 3, petition had become moot due to these events in the trial court. The single justice agreed and dismissed the Commonwealth's petition as moot. The case was submitted on the papers filed, accompanied by a memorandum of law. Michael Quirk & Karen Hurvitz for the defendant. George has filed a memorandum and appendix pursuant to S.J.C.

Rule 2:21, as amended, 434 Mass. 1301 (2001). Bypassing the question whether the rule applies in these circumstances,² we conclude that the single justice did not err or abuse his discretion. The sole interlocutory ruling before the single justice was the Central Division judge's order releasing George on personal recognizance, allegedly contrary to the West Roxbury Division judge's bail order.

The Central Division judge's subsequent reconsideration of his order rendered moot the Commonwealth's petition. George was free to seek relief from the order on reconsideration, including by filing his own G. L. c. 211, § 3, petition, but did not do so.

The propriety of the order on reconsideration is not before us. George's principal argument now is that the single justice should have reserved and reported the Commonwealth's petition to the full court despite its mootness.

The single justice, however, had broad discretion to decide whether to reserve and report the matter to the full court and was by no means obligated to do so. See *McMenimen v. Passatempo*, 452 Mass. 178, 189 (2008) (Superior Court judge's decision not to report interlocutory ruling to Appeals Court was "highly discretionary"). Judgment affirmed.

The Commonwealth also requested that the Central Division judge be enjoined "from making any further orders under the bail statute or in regards to bail." The Commonwealth later withdrew this request. Supreme Judicial Court Rule 2:21 (1), 421 Mass. 1303 (1995), provides: "When a single justice denies relief from a challenged interlocutory ruling in the trial court and does not report the denial of relief to the full court, the party denied relief may appeal the single justice's ruling to the full court." Here, the single justice technically did not deny relief, but dismissed the Commonwealth's petition.

Even if we were to interpret the dismissal of the petition on the ground of mootness as a denial of relief from the Central Division judge's interlocutory ruling, "the party denied relief" was the Commonwealth, not George.