

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)

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