

MASSACHUSETTS SUPREME JUDICIAL COURT

Erickson v. Commonwealth

462 Mass. 1006 (2012) · Decided April 24, 2012

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the denial of Heidi K. Erickson’s petition under G. L. c. 211, § 3, challenging a District Court probation violation proceeding and seeking related relief. The court held that ordinary appellate remedies were available and that the single justice did not abuse his discretion in denying recusal based on adverse rulings.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                              |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Massachusetts Supreme Judicial Court                                                                                                                                                                                                                                         |
| JURISDICTION       | Massachusetts                                                                                                                                                                                                                                                                |
| DECIDED            | April 24, 2012                                                                                                                                                                                                                                                               |
| DISPOSITION        | affirmed                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE | The petitioner appealed from a single justice's judgment denying her petition for extraordinary relief under G. L. c. 211, § 3, and from the denial of her motion to recuse the single justice.                                                                              |
| STANDARD OF REVIEW | Extraordinary relief under G. L. c. 211, § 3 is available only when adequate alternative remedies do not exist. A judge's refusal to recuse is reviewed for abuse of discretion and ordinarily requires a showing of bias or prejudice arising from an extrajudicial source. |
| PRECEDENTIAL VALUE | Published Massachusetts Supreme Judicial Court opinion; precedential.                                                                                                                                                                                                        |
| PARTIES            | Heidi K. Erickson v. Commonwealth                                                                                                                                                                                                                                            |

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief
- standard of review
- preservation of error

PRACTICE AREAS

- criminal procedure
- appellate procedure
- judicial recusal
- probation violation proceedings
- extraordinary writs

QUESTIONS PRESENTED

1. Whether extraordinary relief under G. L. c. 211, § 3 was available to challenge the probation violation proceeding and obtain a stay when ordinary appellate and other remedies were available.
2. Whether the single justice abused his discretion by denying the petitioner's motion for recusal based on adverse rulings in the present and prior proceedings.

## HOLDINGS

1. Relief under G. L. c. 211, § 3 was properly denied because adequate alternative remedies existed: a stay had already been sought through other available avenues, and an appeal from the final disposition of the probation proceeding lay in the Appeals Court.
2. The single justice did not abuse his discretion by denying recusal because the petitioner showed no bias or prejudice arising from an extrajudicial source; adverse rulings alone do not establish judicial bias.

## KEY QUOTATIONS

*“The court’s superintendence power under G. L. c. 211, § 3, is reserved for extraordinary occasions where adequate alternative remedies do not exist.”* (462 Mass. at 1006)

*“To show that a judge abused his discretion by failing to recuse himself, a [litigant] ordinarily must show that the judge demonstrated a bias or prejudice arising from an extrajudicial source”* (462 Mass. at 1007)

## FACTUAL BACKGROUND

The petitioner was found to have violated terms of her probation in a District Court proceeding and received thirty days of home detention and modified probation terms. She sought a stay and other relief, first from the District Court and Appeals Court, and then through a G. L. c. 211, § 3 petition in the Supreme Judicial Court. She also sought recusal of the single justice based principally on his adverse rulings in her case and prior cases.

## PROCEDURAL HISTORY

A District Court probation violation proceeding resulted in a finding that Erickson violated probation and the imposition of thirty days of home detention with modified probation terms. After the District Court and Appeals Court single justice denied substantially similar requested relief, Erickson petitioned a single justice of the Supreme Judicial Court under G. L. c. 211, § 3; that petition and her recusal motion were denied, and the full court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- McGuinness v. Commonwealth, 420 Mass. 495, 497 (1995)
- Commonwealth v. Al Saud, 459 Mass. 221, 226 (2011)
- Commonwealth v. Adkinson, 442 Mass. 410, 415 (2004)
- Liteky v. United States, 510 U.S. 540, 551 (1994)

- *Demoulas v. Demoulas Super Mkts., Inc.*, 428 Mass. 543, 546-552 (1998)
- *Haddad v. Gonzalez*, 410 Mass. 855, 862 (1991)
- *Lena v. Commonwealth*, 369 Mass. 571, 574-576 (1976)
- *Commonwealth v. Daye*, 435 Mass. 463, 470 n.4 (2001)

## OPINION

### PER CURIAM.

The petitioner, Heidi K. Erickson, appeals from a judgment of a single justice of this court denying her petition, pursuant to G. L. c. 211, § 3. Her petition challenged various aspects of a probation violation proceeding in the District Court that resulted in a finding that she had violated certain terms of her probation and the imposition of a thirty-day period of home detention, together with probation on modified terms.

She also sought a stay of the modified terms of probation and other relief pending appeal. After the single justice denied her petition, the petitioner moved that the single justice be recused. That motion also was denied.

We affirm. 1. The court's superintendence power under G. L. c. 211, § 3, is reserved for extraordinary occasions where adequate alternative remedies do not exist. *McGuinness v. Commonwealth*, 420 Mass. 495, 497 (1995). With respect to her request for a stay pending appeal, the petitioner had already sought and been denied substantially similar relief from the District Court judge and a single justice of the Appeals Court.

The single justice of this court was not obligated to consider the matter further. With respect to her claims concerning \*1007the probation violation proceeding, an appeal from the final disposition in such a proceeding lies in the Appeals Court. See *Commonwealth v. Al Saud*, 459 Mass. 221, 226 (2011) (defendant may challenge finding of probation violation "on appeal from a final disposition of revocation or modification").

The single justice therefore properly denied relief under G. L. c. 211, § 3. Heidi K. Erickson, pro se. Douglas J. Humphrey, Assistant District Attorney, for the Commonwealth. 2. The petitioner also challenges the single justice's denial of her motion that he recuse himself. "To show that a judge abused his discretion by failing to recuse himself, a [litigant] ordinarily must show that the judge demonstrated a bias or prejudice arising from an extrajudicial source...." (emphasis added).

*Commonwealth v. Adkinson*, 442 Mass. 410, 415 (2004), citing *Liteky v. United States*, 510 U.S. 540, 551 (1994) ("not subject to deprecatory characterization as 'bias' or 'prejudice' are opinions held by judges as a result of what they learned in earlier proceedings"). See generally *Demoulas v. Demoulas Super Mkts., Inc.*, 428 Mass. 543, 546-552 (1998); *Haddad v. Gonzalez*, 410 Mass. 855, 862 (1991); *Lena v. Commonwealth*, 369 Mass. 571, 574-576 (1976).

The petitioner points to nothing more than the single justice's adverse rulings in this case and prior cases to support her claim that he was not impartial.<sup>1</sup> There has been no showing in what is before us that the single justice was biased in this case, or that his ruling was "influenced by any considerations other than the law." *Commonwealth v. Daye*, 435 Mass. 463, 470 n.4 (2001).

Nothing suggests the single justice abused his discretion or failed to apply the correct legal standards in denying relief.<sup>2</sup> Judgment affirmed. The single justice has presided over other matters filed by the petitioner in the county court. A judge who has ruled against a litigant is not thereby barred from participating in subsequent proceedings involving that litigant.

We remind the petitioner that extraordinary relief is properly denied where an alleged error can adequately and effectively be remedied through the normal trial and appellate process or by other available means. Multiple attempts to seek extraordinary relief from this court, pursuant to G. L. c. 211, § 3, or otherwise, that suffer from similar deficiencies may result in action by the court, including the restriction or denial of oral argument or, possibly, the restriction of future filings.