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SJC-12249

IN THE MATTER OF A GRAND JURY INVESTIGATION.

May 25, 2017.

Supreme Judicial Court, Superintendence of inferior courts. Moot Question.

The petitioner, R.C., appealed from a judgment of the county court denying his petition for relief under G. L. c. 211, § 3. R.C. has been indicted for possessing and distributing child pornography. In his petition, he sought relief from an order of a Superior Court judge authorizing computers and digital storage devices (digital material) seized from his home to be searched for child pornography. R.C., who is an attorney, argued that the digital material may contain privileged data provided to him by his clients and that the Superior Court judge's order did not adequately protect any such privileged data because it does not conform to the protocol set forth in Preventive Med. Assocs. v. Commonwealth, 465 Mass. 810 (2013). After the single justice denied relief, R.C. moved to stay the Superior Court order pending this appeal. We denied that motion, thereby allowing the search to proceed. The Commonwealth has moved to dismiss this appeal as moot. It represents that the search has taken place pursuant to the protocol set forth in the Superior Court order, that files allegedly containing child pornography were transmitted to R.C.'s counsel, and that R.C. does not claim that any of those files are protected by the attorney-client privilege. R.C. has not disputed these representations or filed any response to the motion within the time set forth in Mass. R. A. P. 15 (a), 365 Mass. 859 (1974). R.C.'s challenge to the Superior Court order has become moot, as that order has been fully carried out. See Lenardis v. Commonwealth, 452 Mass. 1001, 1001 (2008). No effective relief can be provided. Moreover, we see no reason to

believe that the issue is capable of repetition, yet evading review, and R.C. has offered none.

Appeal dismissed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Andrew W. Piltser Cowan for the petitioner.

Varsha Kukafka & Anne S. Yas, Assistant District Attorneys, for the Commonwealth.