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SJC-12341

Benjamin B., a juvenile vs. COMMONWEALTH.

November 9, 2017.

Supreme Judicial Court, Superintendence of inferior courts, Appeal from order of single justice. Juvenile Court, Delinquent child. Practice, Criminal, Juvenile delinquency proceeding, Complaint, Dismissal.

The juvenile appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. The juvenile has been charged by a delinquency complaint with making a bomb threat.¹ A judge in the Juvenile Court, apparently believing that she lacked authority to dismiss the complaint prior to arraignment, arraigned the juvenile.² But see Commonwealth v. Humberto H., 466 Mass. 562, 575-576 (2013) (Juvenile Court judge has discretion to dismiss complaint prior to arraignment where complaint is not supported by probable cause). See also Commonwealth v. Mogelinski, 473 Mass. 164, 166-167 (2015) (authority to dismiss before arraignment where judge determines that Juvenile Court lacks jurisdiction). The following day, the judge reconsidered that decision, determined she did have authority to consider a motion to dismiss before arraignment, and entered an order vacating the arraignment of the juvenile and directing the probation department to expunge

¹ The juvenile was also charged, in a separate delinquency complaint, with threatening to commit a crime. That complaint was voluntarily dismissed by the Commonwealth.

² At that time, the juvenile had not filed a written motion to dismiss the complaint. However, his attorney did argue at the arraignment that the judge had authority to consider such a motion before arraignment.

the juvenile's court activity record information (CARI). The probation department moved for reconsideration, arguing that it was obligated to maintain CARI records and could not expunge them. After further briefing and argument, the judge again reversed herself, reinstating the juvenile's arraignment and vacating the expungement order. The juvenile's G. L. c. 211, § 3, petition sought relief from this interlocutory ruling. We affirm the judgment.

The case is before us on the juvenile's memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a party challenging an interlocutory ruling of the trial court to "set forth the reasons 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." The juvenile has not met his burden under the rule. He argues that review in the ordinary appellate process would not be adequate because he would irrevocably lose the opportunity to have the complaint dismissed without creating a CARI record. We have recently rejected similar arguments in determining that there was no absolute right to immediate interlocutory review, pursuant to G. L. c. 211, § 3, of the denial of a motion to dismiss. See N.M. v. Commonwealth, 478 Mass. 89, 91 (2017) (loss of privacy and confidentiality protections afforded by delinquency proceedings does not entitle juvenile to extraordinary review of denial of motion to dismiss youthful offender indictment); Brea v. Commonwealth, 473 Mass. 1012, 1012-1013 (2015) (fact that arraignment appears on adult defendant's criminal record does not entitle defendant to extraordinary review of denial of prearraignment motion to dismiss).

Although the juvenile is, strictly speaking, not challenging the denial of a motion to dismiss, the effect is the same: the case against him will proceed, along with the creation of a sealed CARI record, even if the charge is ultimately resolved in his favor. These circumstances are typical of juvenile proceedings and do not entitle the juvenile as a matter of right to invoke our extraordinary power under G. L. c. 211, § 3.³

³ The juvenile also contends that a systemic problem exists in the juvenile justice system that requires this court to instruct judges on what the law is regarding their authority to dismiss a complaint prior to arraignment. This claim is beyond the scope of rule 2:21, which concerns only the alternative remedies, if any, available to the particular petitioner.

Judgment affirmed.

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

Joseph N. Schneiderman for the juvenile.

Moreover, the single justice did not decide the petition on the merits or report the case to the full court to address the juvenile's claim of systemic error, and we are loath to second-guess her discretion in this respect. Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002). In any event, we think Commonwealth v. Humberto H., 466 Mass. 562 (2013), and Commonwealth v. Mogelinski, 473 Mass. 164 (2015), adequately explain Juvenile Court judges' authority in these circumstances.