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SJC-12241

JAMES MURRAY vs. MASSACHUSETTS PAROLE BOARD & another.<sup>1</sup>

December 27, 2018.

Supreme Judicial Court, Superintendence of inferior courts.  
Practice, Criminal, Sentence, Parole.

The petitioner, James Murray, also known as James Hines, appeals from the judgment of a single justice of this court denying, without a hearing, his petition for equitable relief. We affirm.

The petitioner was convicted in 1982 of armed robbery and escape. His consecutive committed sentences "were to be served from and after sentences he was, and still is, serving in Federal prison in connection with offenses committed in the District of Columbia. In 2003, he was granted parole from Federal prison, but declined to be released because he did not want to return to Massachusetts to serve his 'from and after' sentences." <sup>2</sup> Murray v. Massachusetts Parole Bd., 451 Mass.

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<sup>1</sup> Advisory Board of Pardons.

<sup>2</sup> The petitioner's multiple prior attempts to challenge aspects of his Massachusetts sentences have been unsuccessful. See Murray v. Commonwealth, 455 Mass. 1016, 1017 (2009) (dismissing as moot petition for equitable relief concerning sentence appeals); Murray v. Massachusetts Parole Bd., 451 Mass. 1002, 1003 (2008) (Parole Board without authority to make parole decisions where petitioner not serving Massachusetts sentences); Murray v. Commonwealth, 447 Mass. 1010, 1010 (2006) (seeking relief in nature of mandamus concerning sentence appeals); Hines, petitioner, 432 Mass. 1004, 1005 (2000) (G. L. c. 211, § 3, petition seeking certification of question concerning

1002, 1003 (2008) (seeking order directing Massachusetts Parole Board to aggregate Massachusetts and District of Columbia sentences). See Murray vs. Bledsoe, U.S. Dist. Ct., Nos. 10-11019, 11-10905 (D. Mass. Sept. 11, 2012), aff'd, U.S. Ct. App., No. 12-2245 (1st Cir. June 03, 2014) ("[s]ince 2003, the United States Parole Commission has ordered the petitioner paroled to the custody of Massachusetts authorities on at least three occasions. Each time the petitioner has refused to sign the parole certificate, nullifying the parole").

Although the petitioner has not yet begun serving his Massachusetts sentences, the petition filed in the county court essentially sought an order requiring that he be considered for parole, citing G. L. c. 127, § 134 (c),<sup>3</sup> and general principles of equity. The single justice properly denied the petition. "To the extent that the petitioner seeks credit toward satisfaction of his Massachusetts sentences for the time he has remained incarcerated in Federal prison since he was granted but refused release on parole, such relief is not available because he is not currently serving his Massachusetts sentences; the [Massachusetts Parole] [B]oard is authorized to make parole decisions affecting only 'prisoners in [S]tate and county correctional institutions,'" Murray, 451 Mass. at 1003, quoting G. L. c. 127, § 128, including "inmate[s] serving a

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constitutionality of consecutive sentences or an advisory opinion); Hines v. Commonwealth, 425 Mass. 1013, 1013 (1997) (G. L. c. 211, § 3, petition alleging errors in connection with sentence appeals); Hines v. Commonwealth, 423 Mass. 1004, cert. denied, 519 U.S. 984 (1996) (seeking relief, pursuant G. L. c. 211, § 3, from imposition of consecutive sentences on and after sentence being served in District of Columbia). See also Hines v. Superior Court, 423 Mass. 1005, cert. denied, 519 U.S. 984 (1996) (seeking relief from convictions, pursuant to G. L. c. 211, § 3).

<sup>3</sup> General Laws c. 127, § 134 (c), provides in part that "in the case of an inmate serving a Massachusetts sentence in another [S]tate, the chairman may request the paroling authority of that [S]tate or at the written request of the inmate the [F]ederal paroling authority with jurisdiction over the institution in which said inmate is housed to conduct a hearing in lieu of the Massachusetts board for the purpose of ascertaining the suitability of such inmate for a parole permit and to report its findings and recommendations as to parole and conditions of parole to the board."

Massachusetts sentence in another [S]tate." G. L. c. 127, § 134 (c). The petitioner is not such an inmate.<sup>4</sup> See Murray vs. Stempson, U.S. Dist. Ct., No. 92-0118 (D.D.C. May 1, 1992) (denying petitioner's request for order directing District of Columbia Parole Board to aggregate his District of Columbia sentences with his Massachusetts sentences).

In Murray v. Commonwealth, 455 Mass. 1016, 1016-1017 (2009), we described the petitioner's history of filing multiple improper and ultimately unsuccessful actions in this court to challenge his Massachusetts sentences. We put him "on notice that any future attempt to seek extraordinary relief from this court, pursuant to G. L. c. 214, § 1; G. L. c. 211, § 3; or otherwise, raising like claims may result in appropriate action by the court." Id. at 1017. We now order, therefore, that until such time as the petitioner actually begins serving his Massachusetts sentences, he shall not be permitted to file any further action in this court challenging the validity or status of his sentences or his entitlement to parole, without prior approval of a single justice of this court.<sup>5</sup>

Judgment affirmed.

James Murray, pro se.

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<sup>4</sup> We again "express no view on the merits of the petitioner's claims were he to raise them after returning to Massachusetts to begin serving his sentences." Murray, 451 Mass. at 1003 n.3.

<sup>5</sup> We decline to address additional issues raised by the petitioner on appeal that were not raised before the single justice, or to consider materials that were not included in the record before her. See Hines, petitioner, 432 Mass. at 1005 n.1, citing Milton v. Boston, 427 Mass. 1016, 1017 (1998), and Campiti v. Commonwealth, 426 Mass. 1004, 1005 (1997).