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SJC-12423

ELSON DEBARROS¹ vs. COMMONWEALTH.

May 24, 2018.

Supreme Judicial Court, Superintendence of inferior courts. Moot Question. Practice, Civil, Moot case.

Elson Debarros appeals from a judgment of the county court denying his petition for relief under G. L. c. 211, § 3. Debarros was tried in the District Court on the charge of accosting and annoying a person of the opposite sex. G. L. c. 272, § 53. The jury were unable to reach a unanimous verdict, and the judge declared a mistrial. Debarros moved to dismiss on the ground that the evidence was insufficient to warrant a conviction. That motion was denied, and Debarros's G. L. c. 211, § 3, petition sought relief from that denial.

Shortly after the single justice denied relief, the criminal charge was dismissed for lack of prosecution. The Commonwealth has therefore moved to dismiss this appeal as moot. We agree that the appeal must be dismissed. Where the underlying criminal case has been dismissed, there are no charges pending against Debarros, and he "no longer has a personal stake in the outcome of this litigation." Matter of Rudnicki, 421 Mass. 1006, 1007 (1995), quoting Delaney v. Commonwealth, 415 Mass. 490, 492 (1993). The dismissal of the charge, "in effect, rendered moot any defects in the underlying proceedings." Burns v. Commonwealth, 430 Mass. 444, 447 (1999). Moreover, the issues raised by Debarros in his G. L. c. 211, § 3, petition, "while capable of repetition, will

¹ The petitioner's motion to proceed with a pseudonym in the county court was denied, and his motion to do so in the full court is likewise denied.

not necessarily evade review in future cases before becoming moot." Cook v. Commonwealth, 463 Mass. 1014, 1014 (2012), citing Guardianship of Nolan, 441 Mass. 1012, 1013 (2004).

Appeal dismissed.

The case was submitted on briefs.

Ilya Liviz for the petitioner.

Hallie White Speight, Assistant District Attorney, for the Commonwealth.