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SJC-12492

ELENA KURBATZKY vs. COMMONWEALTH.

July 2, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Elena Kurbatzky, appeals from a judgment of a single justice of this court denying her petition pursuant to G. L. c. 211, § 3. We affirm.<sup>1</sup>

Kurbatzky has been indicted on several counts of medical assistance fraud by a provider, in violation of G. L. c. 118E, § 40, and larceny over \$250, in violation of G. L. c. 266, § 30 (1). At her arraignment on July 11, 2017, she pleaded not guilty. The case against her is currently pending in the Superior Court. On February 6, 2018, she filed, in the county court, a "motion to appeal the ruling on July 11, 2017," in which she argued that, in the process of indicting her, the Commonwealth failed to comply with Mass. R. Crim. P. 5, as appearing in 442 Mass. 1505 (2004). The single justice treated the motion as a petition pursuant to G. L. c. 211, § 3, and denied it without a hearing.

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<sup>1</sup> The petitioner has named two other purported petitioners in addition to herself -- Natan Zalyapin and Harmony Home Health Care, LLC. Although Kurbatzky, who is not a lawyer, is free to represent herself, she may not represent another person or entity, including Harmony Home Health Care, LLC, of which she appears to be the owner. See Varney Enters., Inc. v. WMF, Inc., 402 Mass. 79, 79 (1988) ("[A] corporation may not be represented in judicial proceedings by a corporate officer who is not an attorney licensed to practice law in the Commonwealth").

Kurbatzky has now filed what appears to be a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), although she is not challenging any interlocutory ruling of the trial court. In fact, she is not challenging any specific ruling at all, but rather the validity of the indictments themselves. Regardless whether rule 2:21 applies, however, she is not entitled to relief pursuant to G. L. c. 211, § 3. Her remedy as to the indictments is to seek their dismissal in the trial court. Indeed, just prior to filing her G. L. c. 211, § 3, petition, she did just this.<sup>2</sup>

This case does not, in short, present a situation where extraordinary relief from this court is required, and the single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

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

Elena Kurbatzky, pro se.

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<sup>2</sup> That motion has since been denied and is not the subject of, or relevant to, this appeal. We note, in any event, that Kurbatzky is not entitled, under G. L. c. 211, § 3, to interlocutory review of the denial of the motion to dismiss. We have said repeatedly that "[t]he denial of a motion to dismiss in a criminal case is not appealable until after trial, and we have indicated many times that G. L. c. 211, § 3, may not be used to circumvent that rule." Bateman v. Commonwealth, 449 Mass. 1024, 1024-1025 (2007), quoting Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002). See Ventresco v. Commonwealth, 409 Mass. 82, 83-84 (1991), and cases cited.