SJC-12537

IN THE MATTER OF WAYNE CHAPMAN.

May 16, 2019.

Sex Offender. Practice, Civil, Sex offender, Civil commitment, Standing. Notice, Timeliness. Supreme Judicial Court, Superintendence of inferior courts.

This is the second of two cases we decide today involving Wayne Chapman. The petitioners in this case are individuals who are enrolled in the victim notification registry for Chapman. See 803 Code Mass. Regs. §§ 9.00 (2017). They are appealing from a judgment of a single justice of this court denying their petition for relief under G. L. c. 211, § 3, in which they sought, among other things, to enjoin Chapman's release from the Massachusetts Treatment Center (treatment center) after two qualified examiners opined that he was no longer sexually dangerous. We affirm.

Background. The facts concerning Chapman's history of criminal conduct, incarceration, and commitment to the treatment center are set forth in Chapman, petitioner, 482 Mass. (2019). In short, Chapman was civilly committed to the treatment center for an indeterminate period of from one day to life under G. L. c. 123A, after he completed his criminal sentences for rape of a child and other sexual offenses in 2004. In 2016, he filed a petition in the Superior Court for release pursuant to G. L. c. 123A, § 9, claiming that he was no longer sexually dangerous. As required by § 9, he was examined by two qualified examiners, both of whom, in May of 2018, rendered the opinion that he was no longer sexually dangerous.

Concerned that the opinions of the qualified examiners would result in Chapman's imminent release from custody, see Johnstone, petitioner, 453 Mass. 544, 553 (2009) ("in order for the Commonwealth to proceed to trial in a discharge proceeding under G. L. c. 123A, § 9, at least one of the two qualified examiners must opine that the [individual] remains sexually dangerous"), the petitioners applied for emergency relief in the county court, pursuant to G. L. c. 211, § 3, seeking to enjoin Chapman's release. They raised a variety of claims concerning the propriety of the G. L. c. 123A, § 9, proceeding in the Superior Court. They claimed, for example, that Chapman's petition for discharge had not been properly served on the district attorney and the Attorney General, as the statute requires; that the petitioners were not notified of the filing of Chapman's petition, as they had been in the past with respect to his earlier petitions; that they did not receive fourteen days' advance notice of Chapman's imminent release after the two qualified examiners found him to be not sexually dangerous, which they claimed was required by G. L. c. 258B, § 3 (t); and that the qualified examiners had not been properly appointed. In a supporting memorandum of law, the petitioners argued that they had properly invoked this court's extraordinary power of general superintendence to remedy the alleged deficiencies because Chapman "has a long history of being adjudicated too dangerous to be released into society"; because "the proceedings that led to his imminent release were not conducted in accordance with the law"; and because their statutory right to notice under G. L. c. 258B, § 3 (t), had been violated. They stated in their memorandum that they were seeking relief both on their own behalf and on behalf of the general public.[1]

[1] Thereafter, in a second memorandum filed in response to Wayne Chapman's opposition to their petition, they asserted additional claims: that the qualified examiners' reports were insufficient to justify Chapman's release because they were not subject to judicial review; and that this court's opinion in Johnstone, petitioner, 453 Mass. 544 (2009), did not in fact preclude the Commonwealth from proceeding to trial in these circumstances. They also claimed that the process was flawed because one of the two qualified examiners in this case had opined that Chapman remained sexually dangerous when Chapman filed a discharge petition in 2012. The jury that considered that petition found that Chapman remained sexually dangerous, but a retrial was ordered because the jury instructions in that case did not conform with our holding in Green, petitioner, 475 Mass. 64 (2016), and that petition was consolidated with the

The single justice denied the petition in June of 2018. With respect to the claim that the petitioners had not received proper advance notice of Chapman's imminent release, the single justice recognized that crime victims and other individuals who subscribe to the victim notification registry, see 803 Code Mass. Regs. §§ 9.00, as the petitioners in this case did, "are entitled to scrupulous compliance with the notice requirements provided by statute and regulation," but he concluded that the petitioners had received the requisite notice because Chapman had not yet been released, and more than fourteen days had elapsed since they had received notice. Second, with respect to the petitioners' objection to the process by which the qualified examiners had been appointed, the single justice noted that the petitioners had "failed to provide any legal authority granting them standing or a private cause of action," and he ruled that "[r]egardless, the qualification and appointment of the qualified examiners followed statutory requirements." And finally, as to the petitioners' objection to the fact that opinions of qualified examiners do not receive judicial review, the single justice stated that "such review would require a legislative change."

Discussion. 1. Commitment and discharge process. General Laws c. 123A carefully defines when and how an individual can become subject to a commitment petition; who may bring such a petition; the procedure for a commitment hearing; and the process by which an individual, once committed, can seek to be released from commitment. See G. L. c. 123A, §§ 9, 12-14. The commitment is a civil commitment, not a criminal incarceration. See Commonwealth v. Bruno, 432 Mass. 489, 502 (2000). It is not intended as further punishment for the crime or crimes the individual has committed; rather, the intent is preventative -- to protect society from individuals who, despite having completed their criminal punishment, cannot control their sexual impulses as a result of mental illness, mental abnormality, or

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petition in this case. In their second memorandum, the petitioners again purported to assert their claims both on their own behalf and on behalf of the general public.

We need not, and do not, address any additional issues or arguments that the petitioners did not raise before the single justice and have raised for the first time before the full court. See Ewing v. Davenport-Mello, 478 Mass. 1016, 1016 (2017).

personality disorder and thus are likely to reoffend sexually if not confined to a secure facility. See Dutil, petitioner, 437 Mass. 9, 14-15, 19-20 (2002).

Although the commitment is civil, not criminal, and the objective is preventative, not punitive, the consequence of an adjudication of sexual dangerousness is a severe deprivation of liberty. See Bruno, 432 Mass. at 502. An individual so adjudicated is committed to the treatment center for an indeterminate term of from one day to life, and can remain committed long after his or her criminal sentence has concluded. See G. L. c. 123A, § 14 (d). The individual is eligible for release only if and when he or she is found to be no longer sexually dangerous. See G. L. c. 123A, §§ 9, 14 (d).

Because of the potentially lengthy deprivation of liberty that ensues upon a finding of sexual dangerousness, one who is alleged to be sexually dangerous is entitled to an array of statutory and constitutional protections akin to those afforded to criminal defendants. He or she is entitled to the assistance of counsel both at the initial commitment trial and at subsequent discharge trials, and to trial by jury; he or she cannot be committed unless sexual dangerousness -- as defined by the statute -- is proved by the strictest of legal standards, proof beyond a reasonable doubt; and, once committed, when the individual petitions for discharge, he or she bears no burden to prove that he or she is no longer sexually dangerous. See G. L. c. 123A, §§ 9, 14 (b), (d). Rather, the Commonwealth must prove present sexual dangerousness beyond a reasonable doubt. See Dutil, 437 Mass. at 11.

2. Standing. Just as in criminal cases, where it is the Commonwealth, and the Commonwealth alone, that has the prerogative and the responsibility to prosecute defendants for criminal offenses, it is the Commonwealth, and the Commonwealth alone, that has the prerogative and the responsibility to file and prosecute the initial petition for civil commitment as a sexually dangerous person, G. L. c. 123A, § 12, and to defend every petition for discharge, G. L. c. 123A, § 9. Private individuals, including the victims of the crimes being prosecuted, have no standing in our system of justice to prosecute criminal cases and no authority to compel district attorneys or the Attorney General to do so. See Victory Distribs., Inc. v. Ayer Div. of the Dist. Court Dep't, 435 Mass. 136, 142 (2001) ("the right to pursue a criminal prosecution belongs not to a private party but to the Commonwealth"); Taylor

v. Newton Div. of the Dist. Court Dep't, 416 Mass. 1006, 1006 (1993) ("it is settled beyond cavil that a private citizen has no judicially cognizable interest in the prosecution of another"). Likewise, private individuals, including victims of sexual offenders, have no standing to prosecute commitment petitions under G. L. c. 123A, § 12, or to defend discharge petitions under G. L. c. 123A, § 9, and no authority to compel the Commonwealth to do so.

That said, crime victims have rights. In 1983, the Legislature enacted the so-called victims' bill of rights, G. L. c. 258B, which is applicable in criminal cases and, to some extent, in sexually dangerous person proceedings. Among the many rights granted to crime victims under this legislation is the right to be notified when an offender is released from custody. General Laws c. 258B, § 3 (t), states that crime victims have the right "to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody." Victims who wish to receive such notice must enroll in the victim notification registry, created by 803 Code Mass. Regs. §§ 9.00. The petitioners represent that each of them is enrolled in the registry. The statute governing sexually dangerous person discharge petitions, G. L. c. 123A, § 9, similarly states that when a person is discharged from the treatment center, "notice shall be given to . . . any victim of the sexual offense from which the commitment originated; provided, however, that said victim has requested notification pursuant to [G. L. c. 258B, § 3]." We discuss infra the petitioners' claim that they were not properly notified of Chapman's imminent discharge, but we first discuss briefly the effect of the victims' bill of rights, i.e., what it does and, more importantly, what it does not do.

The rights granted to victims of crime under G. L. c. 258B do not alter the fundamental rule that it is the Commonwealth, and the Commonwealth alone, that prosecutes criminal cases and commitment petitions and defends discharge petitions. By enacting the victims' bill of rights, the Legislature gave victims the right to be kept informed about and to participate in a limited way in these cases, but it did not give them a judicially cognizable role in their prosecution. Simply put, the statute confers on them certain rights as victims, but it does not confer on them the status of a party or grant them the rights that belong to parties. See Hagen v. Commonwealth, 437 Mass. 374, 380-381 (2002) (G. L. c. 258B does not alter "long-

standing," "well-entrenched" rule that victims have no judicially cognizable interest in prosecution of others). See also H.T. v. Commonwealth, 465 Mass. 1011, 1012 (2013); Carroll, petitioner, 453 Mass. 1006, 1006 (2009).

Standing is not a mere legal technicality. The principles governing standing in criminal cases and, as here, sexually dangerous person cases arise from the recognition that a criminal conviction and a civil commitment as a sexually dangerous person can result in a substantial deprivation of liberty. Our jurisprudence simply does not give private persons, even where they are victims, the authority to exercise the discretion involved in determining whose liberty will be placed at risk. See Victory Distribs., Inc., 435 Mass. at 142; Taylor, 416 Mass. at 1006. Cf. Berger v. United States, 295 U.S. 78, 88 (1935) (prosecutor is "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done"). And significantly, legal standing is a jurisdictional matter; if parties do not have standing, a court has no jurisdiction to adjudicate their claims. See Phone Recovery Servs., LLC v. Verizon of New England, Inc., 480 Mass. 224, 227 (2018), and cases cited.

The petitioners do not have standing to assert the bulk of the claims they have made. Most of their claims concern alleged deficiencies in the processing of Chapman's discharge petition (e.g., Chapman's alleged failure to serve his petition on the district attorney and the Attorney General; the allegedly improper appointment of the qualified examiners; the absence of an avenue for judicial review of the qualified examiners' reports; the validity and applicability of our holding in Johnstone; and the appearance of impropriety that allegedly resulted from the fact that the same qualified examiner came to a conclusion on the 2016 discharge petition that was different from the one he had reached on the consolidated 2012 discharge petition). Those claims do not concern the petitioners' specific rights under the victims' bill of rights, but instead assert rights that "are not private but in fact are lodged in the Commonwealth." Hagen, 437 Mass. at 380, quoting with approval Taylor, 416 Mass. at 1006.[2]

[2] Shortly after their appeal was entered in this court, the petitioners filed a motion asking the full court to enjoin

We reject the petitioners' contention that, despite their lack of standing in the underlying G. L. c. 123A proceeding, they are nevertheless entitled as a matter of right to invoke this court's extraordinary power of general superintendence to obtain a resolution of those claims or to enjoin Chapman's release based on those claims. They have no right to employ G. L. c. 211, § 3, as private attorneys general. Nothing we said in Brantley v. Hampden Div. of the Probate & Family Court Dep't, 457 Mass. 172 (2010), or in Bradford v. Knights, 427 Mass. 748 (1998), is to the contrary.

3. Advance notice of discharge. The only claim we can discern in the record before us for which the petitioners might have standing is their claim that they were not given proper advance notice of Chapman's imminent discharge. We need not reach the question whether the petitioners could properly assert such a claim by means of a G. L. c. 211, § 3, petition, however, because even if the claim were properly brought, it would not entitle the petitioners to the relief they seek -- an order enjoining Chapman's release -- for at least three reasons.

First, the claim fails on the facts. Chapman has not yet been released from custody, yet the petitioners were notified of his impending release on May 21, 2018, the day the qualified examiners' reports were filed. This means that the petitioners have received far more than the fourteen days' notice to which they claim they are entitled.

Second, the claim fails on the law. General Laws c. 123A, § 9, states that an individual must be discharged from the treatment center if the fact finder determines that he or she is no longer sexually dangerous, and that notice must be given to the victim or victims "[u]pon such discharge." Relying instead

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Chapman's release pending the appeal. We denied that motion in a lengthy memorandum and order that set forth many of the same principles that are set forth in this opinion. We noted in the order that nothing precluded the Commonwealth from asserting these claims in the Superior Court if it deemed it appropriate to do so. The Commonwealth thereafter pursued such relief in the Superior Court, unsuccessfully, which gave rise to the appeal in Chapman, petitioner, 482 Mass. (2019).

on G. L. c. 258B, § 3 (t),[3] and 803 Code Mass. Regs. § 9.09(2)(a),[4] the petitioners claim that they were entitled to fourteen days' advance notice of Chapman's discharge. Their claim is based on a misreading of this statute and this regulation. Both pertain to situations where an offender has a predetermined release date, such as when a defendant's criminal sentence is about to expire. Where the release date is known, fourteen days' advance notice is feasible. But when a fact finder finds that an individual committed under G. L. c. 123A is no longer sexually dangerous, the individual is entitled (in the absence of a stay of the judgment) to immediate release. The release date in this situation is neither scheduled nor known in advance, so fourteen days' advance notice is not possible. Instead, such situations are controlled by 803 Code Mass. Regs. § 9.09(4)(b), which provides that "[t]he custodial or supervising agency shall provide emergency notification by both telephone and mail, whenever an offender . . . receives a court-ordered release from custody."[5] In this case, the record contains an affidavit of a Department of Correction employee who avers that she and a fellow employee immediately gave notice of the possibility of Chapman's release to each of the petitioners on the day the two qualified examiners' reports were filed in the court. This action satisfied the notice requirements under 803 Code Mass. Regs. § 9.09(4)(b).

Third, even if the petitioners' right to notice under G. L. c. 258B, § 3 (t), had been violated, a lack of notice would not justify their requested remedy of enjoining Chapman's release from custody. Nothing in G. L. c. 258B suggests that the remedy for a failure to provide any of the various types of

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[3] General Laws c. 258B, § 3 (t), gives victims the right "to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody."

[4] Title 803 Code Mass. Regs. § 9.09(2)(a) (2017) provides that "[e]ach custodial or supervisory agency shall provide no less than [fourteen] days advance notification for the offender's . . . temporary, provisional, and final release from custody."

[5] Along the same lines, see 803 Code Mass. Regs. § 9.09(4)(d) (2017), which calls for "emergency notification" when an offender "receives a short sentence that prohibits [fourteen] days advance notice."

notice called for by the statute is to keep an individual in custody who is otherwise entitled to release.

Conclusion. The judgment of the single justice denying the petition filed pursuant to G. L. c. 211, § 3, is affirmed.

So ordered.

Wendy J. Murphy for the petitioners.

Joseph N. Schneiderman (Eric Tennen also present) for Wayne Chapman.

Mary P. Murray for Department of Correction.

Maura Healey, Attorney General, & Eric A. Haskell, Assistant Attorney General, for the Attorney General, amicus curiae, submitted a brief.

Jonathan W. Blodgett, District Attorney for the Eastern District, amicus curiae, submitted a brief.