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SJC-12716

GABRIEL AROIAN vs. COMMONWEALTH.

October 31, 2019.

Sex Offender Registration and Community Notification Act.  
Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Gabriel Aroian, filed a petition in the county court pursuant to G. L. c. 211, § 3, seeking review of an order of a District Court judge denying his motion for relief from the requirement that he register as a sex offender. A single justice of this court denied the petition without a hearing. We affirm.

Background. After an investigation, police traced an uploaded child pornography file to a computer at Aroian's home. A search warrant issued, and a laptop computer, tablet computer, and a computer storage device were seized. Thirty images of child pornography were found on the laptop, consisting of "pre-pubescent females approximately four through ten years of age in various states of nudity with lewd displays of their genitals or engaged in sexual activity." Fifteen images of child pornography were found on the storage device. On June 16, 2016, Aroian was charged with possession of child pornography, in violation of G. L. c. 272, § 29C. After a plea colloquy, a District Court judge accepted his guilty plea on March 26, 2018, and sentenced him to eighteen months of probation, with conditions.

By pleading guilty to possession of child pornography, in violation of G. L. c. 272, § 29C, Aroian presumptively was required to register as a sex offender. See G. L. c. 6, § 178C (possession of child pornography included within definition of

"sex offense"). See also Commonwealth v. Ronald R., 450 Mass. 262, 264 (2007). Because he was not sentenced to "immediate confinement," he was eligible to seek relief from the registration requirement. See G. L. c. 6, § 178E (f) (sex offender may be relieved from obligation to register where judge determines "the circumstances of the offense in conjunction with the offender's criminal history indicate that the sex offender does not pose a risk of reoffense or a danger to the public"). In his motion for relief, Aroian asserted that he presented an "extremely low" risk of reoffending, and submitted a mental health evaluation by a forensic psychologist. After a hearing, the same District Court judge denied the motion in a ruling dated March 28, 2018. See L.L. v. Commonwealth, 470 Mass. 169, 179 (2014); Ronald R., supra at 269.<sup>1</sup> The judge found that the weight of the forensic psychologist's report was compromised by his failure to obtain a "comprehensive, complete and credible history of [Aroian's] background and issues." He concluded that Aroian failed to establish that he should be relieved of the requirement that he register as a sex offender. The judge subsequently denied Aroian's motion to stay the registration requirement.

Nearly ten months later, on January 16, 2019, Aroian filed a G. L. c. 211, § 3, petition in the county court, seeking relief from judge's decision not to waive the registration requirement. We review the single justice's decision to deny the petition for abuse of discretion or error of law. See, e.g., Adoption of Iris, 427 Mass. 582, 586 (1998). Finding neither, we affirm.

Discussion. We recognize that "[a] sex offender aggrieved by a denial of relief from registration under § 178E (f) has 'no automatic right of appeal.'" L.L., 470 Mass. at 173 n.8, quoting Ronald R., 450 Mass. at 266-267. Even where an alternative avenue of review is unavailable, however, no party "should expect this court to exercise its extraordinary power of general superintendence lightly."<sup>2</sup> Commonwealth v. Richardson,

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<sup>1</sup> In his brief, Aroian indicates that he subsequently registered with the Sex Offender Registry Board (SORB), and that he was classified as a level one offender.

<sup>2</sup> Aroian did not file a motion in the District Court seeking reconsideration of the judge's § 178E (f) order, specifically arguing the points that he now raises in this appeal. See Hunt v. Appeals Court, 441 Mass. 1011, 1012 (2004) (failure to seek

454 Mass. 1005, 1006 (2009), citing Commonwealth v. Narea, 454 Mass. 1003, 1004 n.1 (2009). "A single justice, in his or her discretion, may . . . properly decline to employ the court's extraordinary power of general superintendence where exceptional circumstances are not present." Narea, supra.

In assessing whether exceptional circumstances are present, a petitioner's failure promptly to seek the court's intervention, pursuant to G. L. c. 211, § 3, may be considered. See Commonwealth v. Ruiz, 480 Mass. 683, 696 (2018) (noting that there "may be circumstances in which a single justice might deny such a petition as untimely"); Commonwealth v. Lucerno, 450 Mass. 1032, 1033 (2008) (six week lapse "not so lengthy as to compel the denial of relief"). Here, as G. L. c. 6, § 178E (f), required, the District Court judge acted on Aroian's motion within fourteen days of sentencing. After a hearing, the judge also denied Aroian's motion to stay the registration requirement. Aroian nonetheless delayed filing his G. L. c. 211, § 3, petition for nearly 300 days after the denial of his § 178E (f) motion, until the Sex Offender Registry Board (SORB) concluded its registration and classification proceedings. See L.L., 470 Mass. at 173 n.8 (noting availability of "statutory review process for decisions of [SORB]" under G. L. c. 6, § 178M). In view of Aroian's failure promptly to seek review under G. L. c. 211, § 3, the single justice properly could have concluded that the circumstances did not require the court's intervention.

Conclusion. The court's extraordinary power of general superintendence under G. L. c. 211, § 3, is "to be used sparingly" (citation omitted). Doe, Sex Offender Registry Bd. No. 76819 v. Sex Offender Registry Bd., 480 Mass. 212, 221 n.3 (2018). In view of Aroian's failure promptly to seek review under G. L. c. 211, § 3, the single justice properly could have concluded that there were not exceptional circumstances that required the court to exercise its extraordinary power of general superintendence.

Judgment affirmed.

Edward Crane for the petitioner.  
Ellyn H. Lazar, Assistant District Attorney, for the Commonwealth.

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reconsideration among reasons for denial of G. L. c. 211, § 3, petition).