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SJC-12833

CHAD J. FALCONE vs. COMMONWEALTH.

October 22, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Bail.

Chad J. Falcone (defendant) appeals from a judgment of the county court denying, without a hearing, his petition under G. L. c. 211, § 3, for relief from home confinement as a condition of his bail. We affirm.

The defendant was charged with open and gross lewdness, subsequent offense, after he allegedly stood in his driveway and exposed himself to passersby. Prior to this incident, the defendant had been convicted of similar offenses on numerous occasions.

At the defendant's arraignment, a judge in the District Court set bail and, as a condition of release, ordered that the defendant be subject to global positioning system (GPS) monitoring and confined to the interior of his home. The defendant signed an "order of GPS supervision conditions" indicating that he understood these conditions and agreed to observe them. Bail was posted, and the defendant was released subject to these conditions.

The defendant subsequently filed a petition for bail review in the Superior Court. The defendant filed, in the District Court, a motion to be released from home confinement for four hours in order to attend the bail review hearing.¹ The bail

¹ It appears that on other occasions, the defendant has successfully moved for temporary release from home confinement

judge denied that specific request, but instead ordered the defendant to appear in the District Court at the appointed time, thence to be released to the Superior Court for the hearing. The defendant thus appeared at the bail review hearing, and his petition was denied. His G. L. c. 211, § 3, petition in the county court, in which he challenged only the order of home confinement, followed.

We have long held that a petition under G. L. c. 211, § 3, is a proper means of obtaining interlocutory appellate review of a bail determination made in the trial court. See Brangan v. Commonwealth, 477 Mass. 691, 696-697 (2017); Comnesso v. Commonwealth, 369 Mass. 368, 372 (1975). Frequently, a defendant has no other means of obtaining adequate appellate review of a bail order. See Brangan, supra at 697. In this case, in our order allowing the defendant's appeal to proceed pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), we directed the parties to address whether the defendant has an adequate alternative remedy in this case due to his ability to obtain release from home confinement on an ad hoc basis. See note 1, supra. The parties have done so. In our view, ad hoc release does not provide an adequate alternative remedy in the particular circumstances of this case. Although ad hoc orders temporarily releasing the defendant would permit him to attend important events such as court hearings or medical appointments, they are not practicable to address an important aspect of the underlying order, namely that he be confined to the inside of his home at all other times. Moreover, the availability of ad hoc orders is not an adequate substitute for resolving whether he should ever have been confined to his home in the first place. Because the defendant had no adequate remedy apart from G. L. c. 211, § 3, we turn to the merits.

"When a party appeals from an adverse judgment by the single justice under G. L. c. 211, § 3, we review the single justice's order for clear error of law or abuse of discretion." Brangan, supra at 697. "We must also consider the propriety of the . . . underlying bail order." Id., citing Commonwealth v. Chism, 476 Mass. 171, 176-179 (2017). We find no error or abuse of discretion in the circumstances of this case. "Being restricted to one's home is not the equivalent of being incarcerated." Commonwealth v. Morasse, 446 Mass. 113, 120 (2006). Particularly where the defendant is alleged to have exposed himself in his driveway, just outside his house, and has

to attend hearings and medical appointments and to meet with his attorney.

a history of exposing himself in public, the bail judge was within his discretion to order the defendant to remain inside the house. The single justice properly denied relief under G. L. c. 211, § 3.

Judgment affirmed.

The case was submitted on briefs.

Thomas J. Chirokas for the petitioner.

Marguerite T. Grant, Assistant District Attorney, for the Commonwealth.