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SJC-12906

COMMONWEALTH vs. NANCY NIEVES.

October 23, 2020.

Controlled Substances. Parole. Practice, Criminal, Parole,
Request for fees and costs.

In 2008, Nancy Nieves pleaded guilty to possession with intent to distribute cocaine and conspiracy to violate a drug law. She was sentenced to from three to five years on the possession offense, and the conspiracy conviction was placed on file. After serving three years, Nieves was released on parole, and while on parole, she paid parole supervision fees of \$400 to the parole board.

In 2018, pursuant to the protocol established in Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298 (2017), both of Nieves's convictions were vacated and the charges against her were dismissed with prejudice due to the misconduct of Annie Dookhan, a chemist at the William A. Hinton State Laboratory Institute. Dookhan had analyzed the substances seized in Nieves's case. Nieves thereafter filed a motion in her criminal case, seeking a refund of the parole supervision fees that she had paid as a result of the invalidated convictions and a waiver of the remaining balance that she owed.¹ See Nelson v. Colorado, 137 S. Ct. 1249 (2017). A Superior Court judge initially deferred action on the motion, so that notice of the motion could be given to the parole board. Nieves eventually filed a second motion seeking a refund, accompanied by an affidavit and documentation from the parole board

¹ The parole board has since waived Nieves's balance of unpaid parole supervision fees, amounting to \$480.

confirming that she had made five payments to the board totaling \$400. After a hearing, the judge denied Nieves's motion on the basis that a motion filed in the criminal case was not the correct way to seek a refund of parole fees. Nieves appealed, and we allowed her application for direct appellate review..

On appeal, the Commonwealth concedes that the parole supervision fees must be refunded in these circumstances. After considering the issue independently, see Commonwealth v. Watt, 482 Mass. 1031, 1032 (2019), citing Commonwealth v. Poirer, 458 Mass. 1014, 1015 (2010), we agree. Under the principles described in Commonwealth v. Martinez, 480 Mass. 777 (2018), "the State is obligated under the due process clause of the Fourteenth Amendment [to the United States Constitution] to refund monies where three elements are satisfied: (1) the monies were 'exacted from the defendant' upon conviction and as a consequence of the conviction; (2) the amounts 'exacted' were actually paid by the defendant; and (3) the conviction has been 'invalidated by a reviewing court and no retrial will occur.'" Id. at 784-785, quoting Nelson, 137 S. Ct. at 1252. Each of those of those elements is present here.

With respect to the first Martinez element, parole supervision fees, like the probation fees at issue in Martinez, are "taken from [a defendant] solely on the basis of a conviction," albeit at the time the individual is paroled, and are directly attributable to the sentence for the conviction. Martinez, 482 Mass. at 785, quoting Nelson, 137 S. Ct. at 1257. See Watt, 482 Mass. at 1033, quoting Martinez, supra at 784 ("'exacted from the defendant' upon conviction and as a consequence of the conviction"). In Nieves's case, parole fees would not have been incurred by her but for her conviction of possession with intent to distribute and the term sentence she received for it. Once her conviction was invalidated, however, the Commonwealth no longer had any plausible claim of right to that money, because it was "paid solely as a consequence of [the] subsequently invalidated conviction[]." Martinez, supra, quoting Nelson, 137 S. Ct. at 1257. Unlike inmate account fees and property that has been civilly forfeited, which need not be refunded or returned, see Watt, supra; Martinez, supra, parole supervision fees, again being akin to probation fees, arise directly out of the underlying criminal conviction and are a consequence of the sentence that is imposed.

With respect to the second Martinez element, there is no factual dispute that Nieves actually paid \$400 in parole supervision fees. And with respect to the third Martinez element, there is no denying that her convictions were legally invalidated with no chance of a retrial, within the meaning of Nelson and Martinez.

Having established that Nieves is entitled to return of the parole fees she paid, we turn to the mechanics of the remedy. As we said in Martinez, 480 Mass. at 796:

"It continues to be the responsibility of the courts to order the refund of fines, fees, and court costs where due process so requires. And the source of payment for such refunds continues to be the Commonwealth, generally its general fund. We will not attempt to specify the means by which such payment is accomplished; it suffices to say that the court must order the refund and the Commonwealth must timely comply with that order by providing the defendant or juvenile with the money to which he or she is entitled."

In this case, Nieves filed her motion for a refund in the same criminal case in which her convictions had been invalidated. That approach "provides a fair, prompt, and efficient means of resolving a defendant's claim." Commonwealth v. Sacco, 401 Mass. 204, 208 (1987). In Martinez, 482 Mass. at 792-795, we outlined the process a claimant should follow when seeking refund of other categories of fees after a conviction has been invalidated. The process begins with the defendant filing a motion for refund "in the court where he or she was convicted." Id. at 793. That same process should be followed when seeking return of parole supervision fees.

Conclusion. We need go no further.² The order denying Nieves's motion for refund of parole supervision fees is vacated, and the case is remanded to the Superior Court for further proceedings on the motion consistent with this opinion.

² As in Commonwealth v. Martinez, 480 Mass. 777, 797 (2018), we refrain from attempting to craft a global remedy for the refund of fines, fees, and costs in all of the cases tainted by Annie Dookhan and Sonia Farak. We respect the parties' ongoing efforts to resolve the matter globally in litigation that is pending in the Federal District Court.

So ordered.

The case was submitted on briefs.

Benjamin H. Keehn, Committee for Public Counsel Services, & Susan F. Damiano for the defendant.

Randall E. Ravitz, Assistant Attorney General, for the Commonwealth.