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SJC-12924

JASON RAMOS vs. COMMONWEALTH.

June 16, 2020.

Supreme Judicial Court, Superintendence of inferior courts.

Jason Ramos (defendant) appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. We affirm.

The defendant, who has been charged with firearms offenses, filed a motion to suppress, which was allowed by a judge in the District Court in February, 2018.¹ The Commonwealth applied for leave to prosecute an interlocutory appeal pursuant to Mass. R. Crim. P. 15 (a) (2), as amended, 476 Mass. 1501 (2017). On October 2, 2018, a single justice of this court allowed the application and directed the appeal to the Appeals Court. On June 3, 2019, the record had not yet been assembled, and so the appeal had not yet been entered in the Appeals Court. The defendant therefore filed a motion in the District Court to dismiss the charges against him, arguing that his speedy trial and due process rights had been violated.² On July 2, 2019, a second District Court judge issued an order giving the Commonwealth "until July 31, 2019, to perfect its appeal . . . or face dismissal of the case." The Commonwealth's appeal was

¹ The motion to suppress was initially denied, but was allowed on reconsideration.

² To be clear, the defendant did not seek merely to dismiss the interlocutory appeal. He sought to dismiss the entire prosecution because, he alleged, the Commonwealth's appeal was taking too long. See Campiti v. Commonwealth, 426 Mass. 1004, 1004-1005 (1997).

not perfected (as the record still was not assembled) by July 31, 2019, but the judge did not dismiss the charges against the defendant.

The interlocutory appeal was eventually entered in the Appeals Court on October 23, 2019, promptly after the record had been assembled, but more than a year after the single justice had granted the Commonwealth leave to appeal. The defendant then renewed his motion in the District Court to dismiss the underlying charges, and the motion was again denied. The defendant's G. L. c. 211, § 3, petition in the county court, in which he sought leave to cross-appeal to the Appeals Court from the denial of his motion to dismiss the charges, followed.³

The case is before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a party challenging an interlocutory ruling of the trial court to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." Ramos has not met his burden under the rule. "The 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. Unless a single justice decides the matter on the merits or reserves and reports it to the full court, neither of which occurred here, a defendant cannot receive review under G. L. c. 211, § 3, from the denial of his motion to dismiss." Bateman v. Commonwealth, 449 Mass. 1024, 1024-1025 (2007), quoting Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002). This principle applies where, as here, a defendant's motion to dismiss is based on speedy trial and due process grounds. See Cousin v. Commonwealth, 442 Mass. 1046, 1046 (2004); Jackson, supra; Esteves v. Commonwealth, 434 Mass. 1003, 1004 (2001).

Ramos has not shown that the ordinary process of trial and appeal is inadequate for him to obtain review of his speedy trial and due process claims, and, if warranted, dismissal of the charges against him. Regardless whether the specific relief the defendant seeks under G. L. c. 211, § 3, is an order from this court dismissing the charges or leave to take an immediate interlocutory cross-appeal to the Appeals Court from the District Court's denial of his motions to dismiss, the single

³ The proceedings in the Appeals Court have been stayed pending our decision in this case.

justice neither erred nor abused his discretion by denying relief.⁴

Judgment affirmed.

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

Jason C. Howard for the petitioner.

⁴ Although we uphold the judgment of the single justice, we take note of the relatively lengthy delay in the Commonwealth's interlocutory appeal arriving in the Appeals Court, caused, at least in part, by the Commonwealth's missteps. The defendant's motion to suppress was allowed on February 2, 2018. The record before us suggests that the Commonwealth received an enlargement of time to file its rule 15 application, due to its own administrative error, and leave to file its late notice of appeal nunc pro tunc, due to the prosecutor's admitted lack of awareness of procedural requirements in taking an interlocutory appeal. Additionally, after leave to appeal was granted by the single justice, it was more than one year before the record was actually assembled and the appeal was entered in the Appeals Court; there is no indication in the record whether that time is attributable in any way to the Commonwealth's failure to meet any of its obligations as an appellant, or was attributable to the trial court clerk, or was perhaps attributable to other causes.