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SJC-12944

SJC-12963

ANGEL OQUENDO vs. COMMONWEALTH.

March 10, 2021.

Bail. Pretrial Detention.

The petitioner, Angel Oquendo, appeals from two judgments of a single justice of this court denying his petitions for extraordinary relief pursuant to G. L. c. 211, § 3, by which he sought pretrial release or a reduction in bail. We affirm.

We summarized the procedural background of these related appeals in a prior order:

"[Oquendo] is charged with one count of rape and one count of indecent assault and battery on a person [age fourteen or older]. At his arraignment in the Superior Court, bail was set in the amount of \$75,000, an amount that he was unable to post. After this court issued its opinion in Committee for Pub. Counsel Servs. v. Chief Justice of [the] Trial Court, 484 Mass. 431, S.C., 484 Mass. 1029 (2020), Oquendo filed a motion for immediate release, among other things, based upon the dangers of the COVID-19 pandemic. The Superior Court denied the motion. Oquendo then petitioned a single justice of this court for relief pursuant to G. L. c. 211, § 3. The single justice denied the petition, and Oquendo filed a notice of appeal. The appeal was docketed in this court (No. SJC-12944).

"Oquendo subsequently filed, through counsel, a motion for a further bail hearing in the Superior Court. A hearing was held before a different judge [from] the one who had decided the motion for release. At the hearing, Oquendo's

counsel did not renew the argument for release based on the dangers of the COVID-19 pandemic. The judge reduced Oquendo's bail to \$25,000, with certain conditions for release. Oquendo was unable to post bail in this amount. Oquendo petitioned a single justice of this court for relief pursuant to G. L. c. 211, § 3. The single justice denied the petition, and Oquendo appealed (No. SJC-12963)."

We consolidated the appeals for purposes of briefing, and we now resolve them together.

We review a single justice's denial of a petition pursuant to G. L. c. 211, § 3, for clear error of law or abuse of discretion. See Brangan v. Commonwealth, 477 Mass. 691, 697 (2017). Where a petition concerns a request for bail relief, we also consider the propriety of the underlying bail order. See id. "In reviewing both the single justice's judgment and the bail judge's order, we must consider the legal rights at issue and independently determine and apply the law, without deference to their respective legal rulings." Id., citing Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 603 (2000).

In his brief on appeal, Oquendo raises two main issues. First, he argues that the judge who considered his initial motion for pretrial release based on the changed circumstances of the COVID-19 pandemic erred by considering Oquendo's dangerousness as a factor when setting his bail under G. L. c. 276, § 57. Second, he argues that both judges erred by calculating bail without properly considering Oquendo's asserted indigence and lack of resources. As to all these alleged errors, Oquendo seeks relief in the form of a new bail hearing in the Superior Court.

As a threshold matter, Oquendo's request for a new bail hearing based on alleged errors in the first judge's resolution of the initial, COVID-19-related motion for release is moot. Oquendo already received a new hearing in connection with his later motion for bail reduction. See Carrington v. Commonwealth, 455 Mass. 1014, 1015 (2009) (claims moot where specific relief sought by petitioner is no longer available).

Turning to the second judge's order reducing Oquendo's bail from \$75,000 to \$25,000, although the judge's oral findings were cursory, those findings were made against the backdrop of the first judge's specific findings regarding Oquendo's criminal history and risk of flight, the second judge explicitly stated that she considered the defendant's financial resources, and her

consideration of that factor was reflected in the significant reduction in the bail amount. On this record, we cannot conclude that the single justice erred or abused her discretion in denying relief.

Judgments affirmed.

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

Joseph N. Schneiderman for the petitioner.

Cynthia Cullen Payne, Assistant District Attorney, for the Commonwealth.