SJC-13042

HENRY QUINONES vs. COMMONWEALTH.

February 4, 2021.

Supreme Judicial Court, Superintendence of inferior courts. Practice, Criminal, Discovery.

The petitioner, Henry Quinones, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

Quinones has been charged in a complaint with solicitation to commit a crime, in violation of G. L. c. 274, § 8. The charge stems from an incident that occurred while he was incarcerated at Old Colony Correctional Center (prison). According to a Department of Correction (department) disciplinary report, inmate mail monitoring and telephone surveillance revealed that Quinones conspired with and solicited parties outside the prison to "introduce an illicit substance into a correctional facility for profit." Essentially, on the basis of information from an informant, the department intercepted a letter, purportedly written by Quinones, providing directions for Quinones's family to purchase Suboxone that would ultimately be brought into the prison.

During the course of the trial court proceedings, Quinones sought discovery related to the informant from the department pursuant to Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004). The department opposed the motion on the basis that Mass. R. Crim. P. 17, as appearing in 378 Mass. 885 (1979), rather than rule 14, applied to Quinones's request because the information in question was in the control and custody of the department. In the department's view, it is a third party to the proceedings, and therefore subject to rule 17, and not, as

Quinones would have it, a part of the prosecution team such that the department's records would be subject to rule 14. Quinones also filed a motion for an evidentiary hearing to determine whether the department is a third party or whether it had participated in the investigation for the district attorney. A judge in the trial court denied both motions.[1] Quinones then filed a motion to compel production of informant information from the department pursuant to rule 17. The department opposed the motion, and a different judge denied it on the basis that Quinones had not met the requirements of Commonwealth v. Lampron, 441 Mass. 265 (2004).[2]

Quinones's G. L. c. 211, § 3, petition followed. There, he asked a single justice of this court to vacate the trial court's orders denying his various discovery-related motions. He argued that the department regularly filed applications for criminal complaints for matters that occur within its facilities and that there is no well-established law addressing whether rule 14 or rule 17 applies to a defendant's related discovery requests. A single justice denied the petition without a hearing on the basis that Quinones has an adequate alternative remedy in the normal appellate process and that the case does not present an extraordinary circumstance that warrants the exercise of this court's authority pursuant to G. L. c. 211, § 3.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a showing that "review of the trial court decision cannot adequately be

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[1] The judge's decision refers by name only to Quinones's motion for an evidentiary hearing, but it seems apparent from the text of the brief decision that the judge was also denying Quinones's rule 14 discovery motion.

[2] A party seeking to subpoena documents from the third party prior to trial pursuant to rule 17 must show

> "(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition'" (citation omitted).

Commonwealth v. Lampron, 441 Mass. 265, 269 (2004).

obtained on appeal from any final adverse judgment in the trial court or by other available means." S.J.C. Rule 2:21 (2). Quinones has not made such a showing. As a starting point, Quinones's argument that the "matter may not be appealable" after a trial misses the mark. He argues that if he proceeds to trial with no further discovery related to the letter that he purportedly wrote, the letter, in his view, should be excluded at trial (for reasons related to the Commonwealth's ability, or lack thereof, to prove that he wrote the letter). Alternatively, he argues that the letter might be admitted and he might nonetheless be found not guilty.

In either scenario, Quinones argues, there will be no appealable issue related to the letter and to the discovery that Quinones sought but did not receive. Quinones will not, in other words, have an opportunity to contest the denial of his discovery motions. While this may be true, it is equally true that Quinones will not have been prejudiced in either of those scenarios. In the first scenario, if the letter is excluded, it cannot be used as evidence against him and he will not be harmed in any way by not having had access to it; in the second scenario, if the letter is admitted and Quinones is acquitted, he likewise is not harmed. If, on the other hand, the letter is admitted and Quinones is convicted, he can raise the issue in the normal course of a direct appeal. He has, in other words, the quintessential adequate appellate remedy.

Quinones also argues that whether the department is subject to rule 14 or rule 17 in cases such as this that arise out of the department's facilities is a recurring issue in the trial court that needs resolving, and that for that reason, the single justice abused his discretion in denying the petition. "While a single justice might be warranted in finding exceptional circumstances when . . . [a] petition raises a novel or systemic issue . . . the single justice is not compelled to do so every time one of those criteria is present. Each case must be examined by the single justice on its own, to determine whether general superintendence intervention is necessary in that particular case." Commonwealth v. Dilworth, 485 Mass. 1001, 1003 (2020), citing Commonwealth v. Fontanez, 482 Mass. 22, 26 (2019). That the issue allegedly arises with some regularity in the trial court is not in and of itself extraordinary. Furthermore, it is not, in any event, an abuse of discretion to decline to consider the issue, particularly in a case such as this where if Quinones is prejudiced as a result of the denial of his discovery motions, he can seek review of any error in the normal appellate process.

The single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

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

Christian Baillet, Committee for Public Counsel Services, for the petitioner.