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SJC-13085

EDWARD G. WRIGHT vs. DEPARTMENT OF CORRECTION & another.¹

May 25, 2021.

Supreme Judicial Court, Superintendence of inferior courts.
Commissioner of Correction. Mail.

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

Wright is an inmate in the custody of the Massachusetts Department of Correction (DOC). In 2018, he filed a complaint in the Superior Court that, as amended, sought declaratory and injunctive relief in connection with two DOC standard operating procedures (SOPs) implemented earlier that year.² The first SOP provided that, in certain correction facilities, "all incoming non-privileged inmate mail shall be photocopied prior to distribution to the inmate," and only photocopy duplicates would be distributed to the inmate. An inmate could choose to have the original mail sent to a designated person; otherwise, the SOP instructed that original mail be shredded after a retention period. The second SOP concerned the treatment of inmate mail following an inmate's transfer to a different correction facility. In essence, Wright claimed that the SOPs violated his constitutional rights and that they had been adopted in violation of 103 Code Mass. Regs. § 403 (2017) and 103 Code Mass. Regs. § 481 (2021), and the Massachusetts Administrative

¹ The former superintendent of Souza-Baranowski Correctional Center.

² In November 2018, Wright filed an amended verified complaint, and a second amended verified complaint.

Procedures Act, G. L. c. 30A. In addition, Wright sought a temporary restraining order and a preliminary injunction to prevent DOC from enforcing the SOPs during the pendency of the case.

The defendants opposed the motion and moved to dismiss the complaint. After a hearing, the judge denied Wright's injunction request as moot, "given the defendants' assurances to the court that they will maintain Wright's original mail until the conclusion of this case." The judge also denied the defendants' motion to dismiss.

In September 2020, on cross motions for summary judgment, the judge ordered that judgment enter declaring that implementation of the first SOP violates 103 Code Mass. Regs. § 481 (governing inmate mail), and that DOC was required to meet the requirements of G. L. c. 30A before it could adopt that SOP. The judge ordered that final judgment enter for purposes of appeal, but stayed execution of her judgment "for 180 days to permit DOC to take such action as it may deem appropriate, including amending 103 Code Mass. [Regs.] § 481 in conformance with [G. L. c. 30A]."³ That same day, Wright filed a "motion to correct" the judgment or for reconsideration. The motion was denied, as were subsequent motions seeking other postjudgment relief.

Wright thereafter filed a petition in the county court, pursuant to G. L. c. 211, § 3, seeking review of the Superior Court's judgment and the judge's other orders. As amended, the petition generally claimed that the judge erred in failing to adjudicate the controversy relative to the SOPs, including the claimed violation of 103 Code Mass. Regs. § 403 (governing inmate property), and G. L. c. 30A, and in failing to order injunctive relief. The single justice denied the petition.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner 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." S.J.C. Rule 2:21 (2). Wright failed to meet that burden. While he asserts that the ordinary appellate process is inadequate

³ The 180-day period ended on March 19, 2021. In its opposition to Wright's G. L. c. 211, § 3, petition, the DOC represented that it had drafted new procedures, and that public hearings had been scheduled.

because of the time required to complete the process, the court's power of superintendence is reserved for those cases where either there is no alternative remedy or the alternative is truly inadequate. Where, as here, a litigant basically seeks a shortcut around the ordinary appellate process without compelling circumstances, extraordinary relief from this court properly is denied. See Votta v. Police Dep't of Billerica, 444 Mass. 1001 (2005). Not only could Wright have pursued an appeal to the Appeals Court, but he "also could have requested that the Appeals Court expedite such an appeal" if he believed time was of the essence. Blonde v. Antonelli, 463 Mass. 1002, 1002 (2012), quoting Gifford v. Gifford, 451 Mass. 1012, 1013 (2008). We do not "assume that an expedited appeal before the Appeals Court would have been unavailable or inadequate" if warranted by the circumstances. C.E. v. J.E., 472 Mass. 1016, 1016 (2015). In addition, he could have sought injunctive relief while the appeal was pending, if he believed an injunction was necessary. See Mass. R. A. P. 6, as appearing in 481 Mass. 1608 (2019). The single justice simply was not obliged to allow the petitioner to bypass the ordinary process and jump to the front of the appellate queue.⁴

Judgment affirmed.

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

Edward G. Wright, pro se.

⁴ The Superior Court judge accepted the DOC's assurances that it was "preserving plaintiff's original mail during the pendency of the Superior Court action." Although the Superior Court docket does not indicate that Wright has filed a notice of appeal, a single justice of the Appeals Court has power to allow a late filing of a notice of appeal within one year of the date of the judgment or order appealed from. See Mass. R. A. P. 2, as appearing in 481 Mass. 1603 (2019); Mass. R. A. P. 14 (b), as appearing in 481 Mass. 1626 (2019). While we express no opinion on whether any such motion should be allowed, we expect that the DOC will continue to preserve Wright's original mail for a brief further period to give Wright an opportunity to seek leave to file a late notice of appeal.