

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRporter@sjc.state.ma.us

SJC-13114

COMMONWEALTH vs. RICKY SIMMONS & another.¹

July 28, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

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

Background. In 2008, defendant Ricky Simmons pleaded guilty in the Superior Court to several drug crimes. In December 2020, he filed a motion for a new trial seeking to withdraw his guilty pleas on the basis that chemist Sonja Farak analyzed the drugs in question while she was employed at the William A. Hinton State Laboratory Institute (Hinton lab). Similarly, defendant Israel Cedeno-Martinez pleaded guilty in the Superior Court to a drug crime in 2008, and the drugs in his case were also analyzed by Farak while she was employed at the Hinton lab. On that basis, Cedeno-Martinez filed, in September 2020, a motion for discovery in anticipation of filing a motion for a new trial. In both cases, the defendants pointed to rulings made by a Superior Court judge in another case that also involved drugs analyzed by Farak during her time at the Hinton lab, Commonwealth vs. Sutton, Middlesex Super. Ct., No. 0481-CR-00986, in support of their respective postconviction motions.

In the Sutton case, Sutton had filed both a motion to vacate his convictions and a motion for discovery based on Farak's role in analyzing the drugs relevant to his convictions. In the course of the ensuing proceedings, the judge issued

¹ Israel Cedeno-Martinez. The Commonwealth also avers that there are hundreds of other similarly situated defendants.

several detailed rulings related to the district attorney's obligations to review the facts related to Farak's performance at the Hinton lab and to disclose any exculpatory information to the defendant. Essentially, pursuant to the judge's rulings, the Office of the Inspector General (OIG) produced to the district attorney the files from its review of the Hinton lab that related to Farak, amounting to more than 141,000 pages of documents in hard copy and more in electronic form. The district attorney, in turn, proposed to turn over all of the documents to Sutton without first reviewing them herself. Both the OIG and Sutton objected to this "open file" discovery approach, and the judge rejected it, concluding that, for a variety of reasons, the district attorney's "passive" approach would be inadequate.

The Commonwealth thereafter filed a petition pursuant to G. L. c. 211, § 3, seeking review of, and relief from, the judge's discovery orders, arguing that the judge erred in ordering the district attorney to review the OIG's "massive file" related to its investigation of the Hinton lab. The single justice denied the petition on the merits. The Commonwealth did not appeal from that decision to the full court, as it could have done.

Rather, in the trial court, the Commonwealth conducted the required review of the OIG's files and produced responsive documents to Sutton. The judge subsequently determined, however, that the district attorney still had an unfulfilled duty to conduct her own investigation of Farak's work at the Hinton lab. In short, the judge concluded that the Commonwealth could not simply rely on the OIG's investigation of the Hinton lab and that the district attorney needed to conduct her own independent review. The judge then allowed Sutton's motion for a new trial, which the Commonwealth, at that point, did not oppose. The Commonwealth did not seek review of that ruling either via G. L. c. 211, § 3, or by requesting that the judge report the ruling to an appellate court. Instead, the Commonwealth voluntarily nol prossed the charges against Sutton. That was the conclusion of that case.

In their respective motions in the trial court in the present case, Simmons and Cedeno-Martinez sought relief similar to Sutton and relied on the judge's rulings in that case to support the requested relief. Simmons, like Sutton, sought a new trial on the basis of Farak's alleged misconduct. Cedeno-Martinez, in turn, in his motion for postconviction discovery, specifically sought the same discovery that was provided to

Sutton. In response, the Commonwealth filed the G. L. c. 211, § 3, petition that is currently before us.²

Discussion. Significantly, the single justice denied the Commonwealth's petition without prejudice. He acknowledged that the allegations of Farak's misconduct at the Hinton lab are serious, and that this court in time may be required to decide the issues that the Commonwealth had raised in its petition. He concluded, however, that relief pursuant to G. L. c. 211, § 3, was not required in the procedural circumstances in which the petition was brought before him. Among other things, he noted that there were no specific rulings in either the Simmons case or the Cedeno-Martinez case (or in any other active prosecution) being challenged in the petition. The only trial court rulings that the district attorney appeared to question in the petition were the rulings previously made in the Sutton case; as stated, however, that case concluded when the Commonwealth voluntarily nol prossed the charges against Sutton.

The Commonwealth has now filed what purports to be a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). The rule does not apply in this situation, however, where the Commonwealth is not challenging interlocutory rulings of the trial court in any active case. Indeed, that was one of the very reasons why the single justice denied the petition. Although the rule does not apply, it is nonetheless clear that the Commonwealth is not entitled to review as of right pursuant to G. L. c. 211, § 3, in these circumstances.

The Commonwealth's petition is, in a word, premature. The Commonwealth argues that a "global resolution" on the issue whether it can rely in the pending cases on the OIG investigation as far as Farak's conduct at the Hinton lab is concerned, or whether it must conduct an investigation of its own, is necessary to prevent piecemeal litigation on the issue, with potentially divergent results, as there are numerous

² The Commonwealth has not yet responded in the Superior Court to Simmons's motion for a new trial, and the proceedings in that case have been stayed pending the outcome of this appeal. In Cedeno-Martinez's case, the Commonwealth did provide at least some of the requested discovery, prior to filing its G. L. c. 211, § 3, petition. There is no indication that the proceedings in that case have been stayed, and while the matter has been pending in this court, Cedeno-Martinez has sought additional discovery.

defendants similarly situated to Simmons and Cedeno-Martinez. In the Commonwealth's view, this compels the court to address the issue now under our extraordinary power of general superintendence. The single justice was well within his discretion in declining to employ our superintendence power in these circumstances, where the Commonwealth has not actually been required in any of the pending cases to do that which it challenges. The single justice was mindful that it is not our role -- indeed, we have no authority -- to superintend the district attorney or to provide "guidance" (as she requested) on how to proceed in the circumstances. He correctly determined that the resolution of these issues is best left to a situation where they have been litigated in a pending case in the trial court and an order has issued or, at least, where a judge has presented us with a properly reported matter.

The Commonwealth correctly notes that this court has exercised its power of superintendence in other cases involving misconduct at both the Hinton lab and the State Laboratory Institute in Amherst, in which the parties sought, as the Commonwealth does here, a "global remedy." See, e.g., Committee for Pub. Counsel Servs. v. Attorney Gen., 480 Mass. 700, 701, 703 (2018); Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298, 300 (2017). Those cases arrived before us on a very different footing, however, with the particular issues raised therein at the forefront of the disputes in active cases, and, very significantly, unlike here, with the single justices in those cases having exercised their discretion to reserve and report the matters to the full court.

To be clear, nothing that the single justice said was an adjudication on the merits of the Commonwealth's claims or forecloses the Commonwealth from litigating these issues in either of the two underlying cases or in any other case involving a similarly situated defendant, or from seeking review by this court if need be, if and when the issue arises, just as it did in the Sutton case.

Conclusion. Our holding, like the single justice's judgment on the G. L. c. 211, § 3, petition, is limited to the procedural posture of the petition. The single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3, in these specific circumstances.

Judgment affirmed.

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

Marian T. Ryan, District Attorney for the Middlesex District, for the Commonwealth.

J. Gregory Batten for Ricky Simmons.

Christopher K. Post for Israel Cedeno-Martinez.