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SJC-13102

RINALDO DEL GALLO, THIRD vs. COMMONWEALTH.¹

May 2, 2022.

Supreme Judicial Court, Superintendence of inferior courts.
Habeas Corpus.

The petitioner, Rinaldo Del Gallo, III, appeals from the judgment of a single justice of this court denying his petition for review pursuant to G. L. c. 211, § 3, and for a writ of habeas corpus, pursuant to G. L. c. 248. He also appeals from the denial of his motion for reconsideration. The petitioner characterizes his filing as an interlocutory appeal from the denial of his motion to dismiss a criminal complaint; we consider it as such and affirm.

Background. We summarize the information provided in the application for the criminal complaint against the petitioner. Police officers from two municipalities responded to a request for police assistance at a residential address. When the officers arrived, the petitioner was not at the scene. The complainant reported that the petitioner had attempted to leave the residence with two minor children in his vehicle, "which she did not agree with." She reported that, when she attempted to reach into the vehicle to remove her keys, the defendant closed the door on her head and began to drive away. The complainant later informed the officers that the petitioner punched her in

¹ The Southern Berkshire Division of the District Court Department of the Trial Court also was named as a respondent; we treat it as a nominal party. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996). See also Fadden v. Commonwealth, 376 Mass. 604, 609 (1978), cert. denied, 440 U.S. 961 (1979).

the head several times and that he also pushed one of the children and struck the other. At the scene, the officers observed a small laceration on one child's head as well as blood at the scene. The officers arrested the petitioner at a different location that same day.²

After the petitioner's arrest, a police officer filed an application for a complaint charging him with four offenses. See Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court, 483 Mass. 80, 82 (2019) (Boston Globe); Eagle-Tribune Publ. Co. v. Clerk-Magistrate of the Lawrence Div. of the Dist. Court Dep't, 448 Mass. 647, 648-649 (2007) (Eagle-Tribune). "Under these circumstances, the clerk-magistrate reviewing the application must authorize the criminal complaint if he or she determines that it is supported by probable cause." Boston Globe, supra. As we described in Boston Globe:

"An arrested individual, of course, has no right to be heard by a judicial officer before being arrested, and has no right to dispute the existence of probable cause before the clerk-magistrate who decides whether to issue a criminal complaint. See Eagle-Tribune, 448 Mass. at 655 (accused not present during ex parte 'complaint procedure for arrested individuals, in which a law enforcement officer swears to the underlying facts before a clerk-magistrate who must determine probable cause'); standard 2:02 of the [District Court Standards of Judicial Practice: The Complaint Procedure (2008)]. . . . Therefore, if the accused is arrested and a criminal complaint issues, he or she may challenge the validity of the complaint only by filing a motion to dismiss. See Commonwealth v. DiBennadetto, 436 Mass. 310, 313 (2002) ('motion to dismiss . . . is the appropriate and only way to challenge a finding of probable cause' after issuance of complaint)."

Id. at 83. The clerk-magistrate authorized the criminal complaint as to three charges. The petitioner was arraigned on the complaint, pleaded not guilty to the charges, and was released on the following conditions: (1) that he obey all local, State, and Federal laws and court orders; and (2) that he have no contact with the alleged adult victim.

The petitioner subsequently filed a motion to dismiss the complaint on the ground that there was not probable cause to

² The complainant also was arrested and charged in connection with the incident.

charge him with a crime. See DiBennadetto, 436 Mass. at 313, citing Commonwealth v. McCarthy, 385 Mass. 160 (1982) (failure to present sufficient evidence), and Commonwealth v. O'Dell, 392 Mass. 445 (1984) (violation of integrity of proceeding). A District Court judge denied the motion, and the petitioner thereafter filed his petition in the county court challenging that order. After a single justice denied the petition, this appeal followed.

Discussion. The gravamen of the petitioner's argument is that the criminal complaint should have been dismissed because there was not "reasonably trustworthy" information to support "probable cause as to each essential element of the offense[s]." Commonwealth v. Humberto H., 466 Mass. 562, 565, 566 (2013). The District Court judge considered and rejected that argument when he denied the petitioner's motion to dismiss. At this interlocutory stage of the proceedings, no further review is required. See Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002). "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." Id., and cases cited. Whether couched in terms of due process considerations or otherwise, the petitioner has not demonstrated that the single justice erred in denying relief pursuant to G. L. c. 211, § 3.³ See Ramos v. Commonwealth, 485 Mass. 1004, 1004-1005 (2020); Jackson, supra.

The petitioner's effort to seek review pursuant to G. L. c. 248 is equally unavailing. It is well established that a writ of habeas corpus does not substitute for the ordinary process of trial and appeal. See Doyle v. Commonwealth, 472 Mass. 1002, 1003 (2015). See also Crystal, petitioner, 330 Mass. 583, 590 (1953) ("habeas corpus cannot be employed as a substitute for ordinary appellate procedure and so in general

³ To the extent that the petitioner suggests that the doctrine of present execution applies, "there was nothing at all preventing him from asserting his claim that the doctrine of present execution applied by filing a notice of appeal and testing the applicability of the doctrine in the trial court and, if necessary, in the appellate court, if he believed it applied to his situation." McMenimen v. Passatempo, 452 Mass. 178, 186-187 (2008).

is not available where there is a remedy by writ of error or appeal"). While we do not doubt that the court has the power to issue a writ of habeas corpus in an appropriate case, see, e.g., Comnesso v. Commonwealth, 369 Mass. 368, 372 (1975), this is not such a case. The petitioner is subject to an order of pretrial release on a pending criminal complaint, does not claim to be aggrieved by the denial of admission to bail, and may challenge the correctness of the District Court judge's order declining to dismiss the complaint on direct appeal if he is convicted of any of the charged offenses. See Sheriff of Suffolk County v. Pires, 438 Mass. 96, 99 (2002), citing Randall v. Bridge, 2 Mass. 549, 553 (1807) (habeas corpus concerns unlawful imprisonments; it does not "alter the law authorizing commitments"); Clark's Case, 12 Cush. 320, 321 (1853) (improper to use writ "to inquire into the merits of a judgment under which a party is committed"). The petitioner has not demonstrated an appropriate occasion for a writ of habeas corpus.

Conclusion. No more need be said. We have considered the other arguments raised by the petitioner and conclude that it is unnecessary to address them at this preliminary, interlocutory stage. The judgment of the single justice denying the petition is affirmed.

So ordered.

The case was submitted on briefs.
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the Commonwealth.