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SJC-13291

EDMOND CARRIERE vs. DEPARTMENT OF CORRECTION.

November 10, 2022.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Civil, Action in nature of mandamus, Moot case.

The petitioner, Edmond Carriere, appeals from a judgment of a single justice of this court denying his petition for extraordinary relief.¹ We dismiss the appeal as moot.

Carriere is currently incarcerated at the Massachusetts Correctional Institution, Norfolk, serving a life sentence after being convicted of murder in the first degree. In March 2022, he filed a petition for medical parole. While that petition was still pending, he filed his petition for extraordinary relief in the county court in May 2022. In the latter petition, he asked the court to order the respondent, the Department of Correction (department), to create a medical parole plan, including having Carriere evaluated for placement in a specific institution. He also asked the court to report a question to the full court related to the department's responsibilities in connection with medical parole petitions. A single justice denied the petition without a hearing on the basis that Carriere has an adequate alternative remedy -- that is, that if the Commissioner of Correction (commissioner) denied medical parole, Carriere could

¹ The petitioner filed a "petition for extraordinary relief and for reported question pursuant to [G. L. c. 211, § 3,] requesting writ of mandamus." General Laws c. 211, § 3, is not applicable in the circumstances, and we treat the petition as one seeking relief in the nature of mandamus pursuant to G. L. c. 249, § 5. See Troila v. Department of Correction, 490 Mass. 1013, 1014 n.1 (2022).

seek review of the decision pursuant to G. L. c. 249, § 4. The commissioner has now denied the petition, and on that basis, we dismiss Carriere's appeal as moot.²

We recently addressed, in essentially the same circumstances involving medical parole, the issues of both mootness and the propriety of mandamus relief in Troila v. Department of Correction, 490 Mass. 1013 (2022). There, as here, the petitioner had filed a petition for medical parole and, while the petition was pending, sought extraordinary relief in the county court. See id. at 1013-1014. Also in that case, like the circumstances here, the commissioner denied Troila's petition for medical parole and a single justice denied his petition for extraordinary relief. See id. at 1014. As we stated in Troila, where the "petition for medical parole has been denied, the question of preparing a medical parole plan for [the petitioner] is moot, as is any legal question concerning the department's obligations with regard to medical parole planning." Id.

Furthermore, as in Troila, 490 Mass. at 1014, the petitioner here would fare no better even were we to consider the merits. A single justice's decision denying relief in the nature of mandamus "will rarely be overturned." Id., and cases cited. Relief in the nature of mandamus is not to be "used as a substitute for ordinary appellate procedure or used at any time when there is another adequate remedy." Id., and cases cited. There is no indication in the record before us whether Carriere is challenging the denial of medical parole, as he is entitled to do pursuant to G. L. c. 249, § 4, but even if the appeal were not moot, that is where his remedy would lie.

Appeal dismissed.

The case was submitted on briefs.
Ruth Greenberg for the petitioner.
Mary Eiro-Bartevyan for the respondent.

² It appears from the record that the commissioner denied the petition for medical parole just prior to the date of the single justice's decision (i.e., the single justice was likely unaware of the commissioner's decision).