

SJC-10605

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2009-0411
Worcester Superior Court
No. WOCV2006-00408

ALFRED COFFIN

vs.

ROBERT F. MURPHY, JR., in his capacity
as Superintendent of the Massachusetts
Treatment Center at Bridgewater, Massachusetts;
and JOSEPH D. EARLY, JR., in his capacity as
District Attorney of the County of Worcester

RESERVATION AND REPORT

Alfred Coffin ("petitioner"), filed a petition for extraordinary relief pursuant to G. L. c. 211, § 3, and for Issuance of Writ of Habeas Corpus pursuant to G. L. c. 248, § 1. He also filed a Complaint for Declaratory and Injunctive Relief pursuant to G. L. c. 231A and filed a separate motion for injunctive relief pursuant to Mass. R. Civ. P. 65.

The petitioner is currently being held at the Massachusetts Treatment Center at Bridgewater. The Commonwealth filed a petition pursuant to G. L. c. 123A on March 1, 2006, seeking the indefinite commitment of the petitioner as a sexually dangerous person ("SDP petition"). On that same date, the trial court issued an order of temporary commitment to the Treatment Center pursuant to G. L. c. 123A, § 12(e).

At the time that the Commonwealth filed the SDP petition in

2006, the petitioner was serving a sentence of incarceration stemming from a violation of his parole. He had tendered a guilty plea in July of 2002 to one count of indecent assault and battery, and part of his sentence included community parole supervision for life ("CPSL"). The violation of his CPSL served as the custodial basis for the Commonwealth's filing of the SDP petition.

Petitioner seeks, inter alia,¹ his immediate release from confinement on the grounds that the Court's decision in Commonwealth v. Pagan, 445 Mass. 161 (2005), invalidates the imposition of CPSL for a person in his position because he was not indicted as a subsequent offender.² He contends that his incarceration for violations of CPSL is unlawful and accordingly that any SDP petition based on this custody is invalid. He argues that the Commonwealth assented to a motion to correct the sentence in light of the decision in Pagan on February 24, 2006 and therefore should have been precluded from bringing an SDP petition subsequent to petitioner's motion to correct the sentence.

The Commonwealth opposes the petition and asserts that

¹ Petitioner also claims that he was entitled to counsel during his interview at the Treatment Center with a psychiatrist, prior to the institution of any SDP proceeding. I decline to reserve and report this issue, and deny relief in a separate order.

² The Commonwealth does not dispute this point.

because the petitioner failed to seek review of the denial of his motion to dismiss filed in trial court on July 11, 2007 which raised substantially the same issues raised here, he is precluded from seeking review under G. L. c. 211, § 3.³ The Commonwealth also contends that the petitioner may take advantage of the procedural remedies offered by the appellate process should he be committed under G. L. c. 123A.

Taking into account the forceful arguments on behalf of both the parties, and the likelihood that resolution of the issues by the single justice may nonetheless result in further examination by the full court, it is most practicable to reserve and report the case without decision for determination by the full Court.

The case is hereby reserved and reported on the following record:

1. Petition for Extraordinary Relief pursuant to G. L. c. 211, § 3, for Issuance of Writ of Habeas Corpus pursuant to G. L. c. 248, § 1 and Complaint for Declaratory and Injunctive Relief filed by petitioner;
2. Motion for Injunctive Relief filed by petitioner;
3. Memorandum of Law in Support of Plaintiff's Motion for Extraordinary Relief under G. L. c. 211, § 3, Petition for Writ of Habeas Corpus, and for Plaintiff's Motion for Preliminary and Permanent Injunctive Relief filed by Petitioner;
4. Affidavit of Alfred Coffin;

³ The petitioner did not seek reconsideration of the denial of this motion to dismiss. He subsequently filed a second motion to dismiss on an unrelated basis on September 9, 2009 which was denied by the trial court on October 2, 2009.

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ORDER OF DISMISSAL

Alfred Coffin ("petitioner"), filed a petition for extraordinary relief pursuant to G. L. c. 211, § 3, and for Issuance of Writ of Habeas Corpus pursuant to G. L. c. 248, § 1. He also filed a Complaint for Declaratory and Injunctive Relief pursuant to G. L. c. 231A and a separate motion for injunctive relief pursuant to Mass. R. Civ. P. 65.

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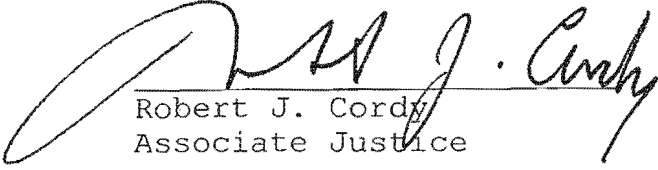
At the time that the Commonwealth filed the SDP petition in 2006, the petitioner was serving a sentence of incarceration stemming from a violation of his parole. He had tendered a guilty plea in July of 2002 to one count of indecent assault and battery, and part of his sentence included community parole supervision for life ("CPSL"). The violation of his CPSL served as the custodial basis for the filing of the SDP petition by the Commonwealth.

Petitioner contends, *inter alia*,¹ that he was entitled to counsel during his interview at the Treatment Center with an examiner appointed by the District Attorney's office to determine if he appeared to endorse the statutory criteria of a sexually dangerous person. He argues that this meeting constituted a "critical stage" requiring the assistance of counsel in accordance with the Sixth Amendment to the United States Constitution. The Legislature has provided for a right to counsel for a potential committee at various stages in an SDP proceeding by statute. See G. L. c. 123A, §§ 12(d)(1), 13(c), 14(b), 15; Commonwealth v. Ferreira, 67 Mass. App. Ct. 109, 114-115 (2006).

Moreover, the Court has recognized that a person subject to an SDP proceeding is not entitled to counsel during a psychiatric

¹ Petitioner's other claims have been addressed in a reservation and report.

interview with a qualified examiner because it is not a critical stage of the process. See Commonwealth v. Sargent, ("In an interview with a qualified examiner under G.L. c. 123A, a committed person is 'not confronted by the procedural system; he ha[s] no decisions in the nature of legal strategy or tactics to make.' A qualified examiner is not a representative of the Commonwealth requiring a defendant to 'defend himself against [a] direct onslaught of the prosecutor.'"), citing United States v. Byers, 740 F.2d 1104, 1117-1118 (D.C. Cir. 1984), alterations in original. I decline to recognize a preliminary, investigative interview by a psychiatrist as a critical stage because such a recognition would be in direct conflict with the intent of the Legislature and the existing case law. Therefore, it is ordered that the relief sought by the petitioner on this basis is denied and the petition dismissed.



Robert J. Cordy
Associate Justice

Entered: November 10, 2009