

484 Mass. 1058

Supreme Judicial Court of Massachusetts.

Miguel VAZQUEZ

v.

SUPERINTENDENT, MASSACHUSETTS
CORRECTIONAL INSTITUTION, Norfolk.

SJC-12939

|

May 29, 2020

Synopsis

Background: Defendant serving life sentence due to first-degree murder conviction petitioned for the Supreme Judicial Court to exercise its superintendence powers and order his release, because he remained in prison two months after his request for medical parole was granted. A single justice of the Supreme Judicial Court dismissed the petition as moot. Defendant appealed.

[Holding:] The Supreme Judicial Court held that the single justice was not required to decide moot issues or report them to full court.

Affirmed.

West Headnotes (2)

[1] Courts In issuance of writs

Single justice of Supreme Judicial Court was not required to decide issues or report them to full court, in defendant's petition to invoke superintendence powers that was rendered moot by his release on medical parole; defendant no longer had personal stake in outcome of dispute over whether he was released in timely manner after being granted parole, and justice had discretion as to whether to decide issues capable of repetition yet evading review. *Mass. Gen. Laws Ann. ch. 127, § 119A*; *Mass. Gen. Laws Ann. ch. 211, § 3*.

3 Cases that cite this headnote

[2] Courts In issuance of writs**Criminal Law**  Mootness

The Supreme Judicial Court, and its single justices, can, as a matter of discretion, decide issues that are moot when they are capable of repetition yet evading review.

1 Cases that cite this headnote

Supreme Judicial Court, Superintendence of inferior courts. Moot Question. Practice, Civil, Moot case. Parole. Imprisonment, Parole.

Attorneys and Law Firms

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

Ruth Greenberg, Swampscott, for the petitioner.

Opinion

***1058** The petitioner, Miguel Vazquez, appeals from a judgment of a single justice of this court dismissing as moot his petition pursuant to *G. L. c. 211, § 3*. We affirm.

Vazquez has been imprisoned since 1990, serving a life sentence after being convicted of murder in the first degree. In January 2020, the Commissioner of the Department of Correction (department) granted his request for medical parole pursuant to *G. L. c. 127, § 119A*, conditioned on release to a suitable nursing home or medical facility appropriate for treating his medical needs. Two months later, in March 2020, while he was still in prison, Vazquez filed his *G. L. c. 211, § 3*, petition asking this court to order his release. He argued that the department had failed in its duty, pursuant to both the medical parole statute and this court's recent decision in *Buckman v. Commissioner of Correction*, 484 Mass. 14, 138 N.E.3d 996 (2020), to timely release him after granting him medical parole. The respondent opposed the petition, arguing that despite its best efforts, it had thus far been unable to locate a suitable facility for Vazquez; that its efforts ****372** were ongoing; and that it was, at that time, awaiting a decision on a potential placement. And, indeed, while Vazquez's petition was pending, a suitable placement was found and Vazquez

was released. The single justice thereafter dismissed the petition as moot.¹

[1] Vazquez now appeals from that dismissal. He recognizes, as he must, that he “no longer has a personal stake in the outcome” because he has been released. He argues that the full court should nonetheless consider issues related to the timing of medical parole plans -- for example, that inmates who have been granted medical parole allegedly are not being released in a timely manner -- because the issues are capable of repetition yet evading review. See, e.g., [Buckman](#), 484 Mass. at 16 n.5, 138 N.E.3d 996.

[2] It is true that this court (and its single justices) can, as a matter of discretion, decide issues that are moot when they are capable of repetition yet evading review. [Lockhart v. Attorney Gen.](#), 390 Mass. 780, 782-783, 459 N.E.2d 813 (1984). The single justice here exercised her discretion not to do so. The only issue that is before us in this case, therefore, is whether the single justice abused her discretion in dismissing

the petition on the basis that it was moot and in choosing not to decide the issues or report them to the full court; in other words, whether the single justice was required to decide the issues or to report them. This is not a case in which a single justice's decision was made prior to the case becoming moot, where the issues become moot during the pendency of the appeal to the *1059 full court, and where the petitioner asks the full court to exercise its discretion to consider the merits of the petition. We are concerned only with whether the single justice abused her discretion. See [Commonwealth v. Rodriguez](#), 484 Mass. 1047, 1048-1049 (2020) (discussing abuse of discretion standard when single justice exercises discretion not to address substantive merits of G. L. c. 211, § 3, petition). We find no abuse of discretion.²

Judgment affirmed.

All Citations

484 Mass. 1058, 146 N.E.3d 371

Footnotes

- 1 The single justice also denied the petitioner's motion to report questions to the full court and his motion to join his case with another case that was then pending in the full court. See [Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court](#), 484 Mass. 431, 142 N.E.3d 525 (2020).
- 2 We also note that the legal issues raised in this petition have been reserved and reported by another single justice in a different case. See [Robert Malloy & another vs. Department of Correction](#), SJC No. 12961.