

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2021-0069

ARNOLD EMMA

vs.

MASSACHUSETTS PAROLE BOARD

REPORT OF QUESTIONS

This matter came before me on a complaint for relief in the nature of certiorari pursuant to G. L. c. 249, § 4, in which the plaintiff alleged that the Massachusetts Parole Board erred in failing to reparole him after revoking his medical parole. The Commissioner of Correction had released the plaintiff on medical parole pursuant to G. L. c. 127, § 119A, but his parole was provisionally revoked on January 5, 2021. At the final revocation hearing on February 10, 2021, the board affirmed the revocation of parole based on a finding that the plaintiff had failed to comply with the terms and conditions of the parole. The board declined to reparole the plaintiff on the basis that it had no authority to do so.

The plaintiff then sought certiorari relief in this court, asking the court to order the board to reparole and release him. On March 17, 2021, I issued a decision denying relief. I did so on the basis that nothing in the governing statute or

regulations gives the board the authority to reparole a prisoner whose medical parole has been revoked. Only the Commissioner has the authority, pursuant to G. L. c. 127, § 119A, to release a prisoner on medical parole (and, more specifically, to re-release him or her after he or she has been found to have violated parole).

The plaintiff then filed a "Motion to Reconsider, Request for a Hearing, and to Report a Question of Law." I reconsidered my decision and, in a separate order issued today, determined that my decision will stand, for the reasons set forth in that order. I also recognize, however, that the case raises statutory and constitutional issues relevant to the process that ensues when medical parole is revoked that are novel, recurring, significant, and time sensitive, and that might often escape appellate review in the ordinary course. With that in mind, I report the following questions of law to the full court, with the hope and expectation that the court will provide as much guidance as it can on this record to assist the parties in this case and to assist the board, the Commissioner, and medical parolees in future cases who are found to have violated the terms of their medical parole:

1. Does the Parole Board have authority to reparole a medical parolee -- in other words, release him or her back into the community after it finds that the individual has violated

his or her parole -- and, if so, what is the process by which it may do so;

2. Does the Commissioner have authority to reparole an individual whose medical parole has been revoked by the board after he or she has violated parole, and, if so, what is the process by which she may do so;

3. Does the statutory and regulatory scheme regarding the revocation of medical parole violate a parolee's due process rights, where it does not permit the board to release the parolee back into the community once it finds that he or she has violated the terms of his or her parole.

The record before the full court shall include all of the papers filed in the county court in this case, my Memorandum of Decision dated March 17, 2021, my Order on Motion for Reconsideration of today's date, and this Report of Questions. Additionally, the parties are to prepare and file in the full court a statement of agreed facts that is sufficiently comprehensive to enable the court to resolve the reported questions. Among other pertinent facts, the parties should provide the court with factual information as to:

- the number of prisoners who have been released on medical parole and subsequently had their parole revoked;
- the process currently in place, if any, for a prisoner whose medical parole has been revoked to seek review of that revocation;

- the process currently in place, if any, by which a medical parolee whose parole has been revoked may seek to be reparaoled;
- the number of prisoners who have had their medical paroles revoked who have subsequently applied for reparole with the Commissioner, and the results of those applications (i.e., whether the Commissioner granted or denied the applications for reparole).

The statement of agreed facts shall be finalized in time for inclusion in the parties' record appendix. If the plaintiff appeals from my rulings on his complaint, on his motion for reconsideration, or both, his appeal shall be consolidated for purposes of briefing and argument with these reported questions. Given the time-sensitivity of this case for the plaintiff and future medical parolees, the case shall be heard at the full court's May sitting, and the parties shall work with the Clerk of the full court to establish an appropriate briefing schedule for that to happen.

Finally, it appears that the Commissioner of Correction is a necessary party for purposes of answering my reported questions. Accordingly, the Clerk of the county court shall provide the Commissioner with a copy of this report, and she shall be added as a defendant-appellee in the full court.

By the Court,

/s/ David A. Lowy  
David A. Lowy  
Associate Justice

Entered: April 5, 2021