

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

**SUPREME JUDICIAL COURT
NO.
APPEALS COURT
No. 2023-P-0105**

COMMONWEALTH OF MASSACHUSETTS

V.

QUASIM HASTINGS

**ON APPEAL FROM JUDGMENTS OF THE BERKSHIRE
SUPERIOR COURT**

APPLICATION FOR DIRECT APPELLATE REVIEW

Sharon Dehmand
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June 2023

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REQUEST FOR DIRECT APPELLATE REVIEW

This case presents two questions which have been answered with disparity amongst motion judges presiding in different courts of this Commonwealth. These questions have been reported to the Appeals Court by a Superior Court judge and are worthy of this Court's direct review to settle the law: 1) whether Mr. Hastings who has been appointed counsel for his parole hearing as result of the Parole Board's request to the Committee For Public Counsel Services based on his recognized disability caused by a serious mental illness - which no one contests - has a constitutionally protected right to public funds in pursuant to G.L. c. 261, §27C, in order to obtain the necessary services of a social service advocate in order to accommodate his disability as required by law where there are no other available means to obtain such funding; and 2) whether a mentally impaired defendant must be provided with the expert funds in order to protect his rights guaranteed by article 114 of the amendments to the Massachusetts constitution and cognate statutory law not to be "excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity within the commonwealth" on account of his mental impairment.

STATEMENT OF PRIOR PROCEEDINGS¹

On March 12, 2004, Mr. Hastings pled guilty to second-degree murder in Berkshire Superior Court, in accordance with G.L. c. 265, §2, and was sentenced to a mandatory prison term of life with the possibility of parole after 15 years by Judge Curley, J., presiding. (A. 3).

Mr. Hastings is statutorily eligible to be considered for release on parole under his sentence. See G.L. c. 127, §133A, as amended through St. 1996, c.43. Mr. Hastings has been diagnosed by the Department of Corrections (DOC) with Major Depressive Disorder with psychotic features, Antisocial Personality Disorder, Other Specified Trauma and Stressor-related Disorder, and Alcohol and Cannabis Disorders.

On March 6, 2018, the Parole Board requested an appointment of counsel from the Committee for Public Counsel Services based on Hastings' mental health disability. Counsel was appointed on March 19, 2018. (A. 4).

On August 12, 2022, Mr. Hastings filed an ex parte motion for

¹ A copy of the Berkshire Superior Court docket entries and trial court's memorandum of decision and report to the Appeals Court is appended at A. 1-14.

funds to obtain the services of a social services advocate in order to assist with his upcoming parole hearing. On September 22, 2022, Honorable Judge Wilkins, J., denied the motion after requesting and receiving a memorandum addressing the court's legal authority under G.L. c. §27B. (A. 5).

On October 24, 2022, Mr. Hastings' filed a motion for reconsideration and requested a hearing. On November 15, 2022, the court denied this motion after a hearing on November 4, 2022, but reported its denial to the Appeals Court under Mass. R. Civ. P. 64(a) and Mass. R. Crim . P. 34. Id.

On December 14, 2022, Mr. Hastings filed a motion to assent and joined the lower court's reporting of the legal issue in this case. (A. 6). Mr. Hastings' appeal was entered on the docket of the Appeals Court on February 2, 2023. Mr. Hastings filed a brief in this case on June 23, 2023.

STATEMENT OF RELEVANT FACTS

Mr. Hastings adopts the facts as set forth by the motion judge:

Mr. Hastings is indigent. He is eligible for parole consideration. He has received appointment of counsel in the parole proceeding because he requires the assistance of counsel due to mental illness or self-injurious behavior affecting his ability to communicate or participate in his parole proceedings. He is mentally disabled and has requested funds to ensure that

he is not denied the opportunity for parole because of his disabilities. To support his request for parole he needs a comprehensive parole release plan that addresses his specific needs, including the need for intra-agency referrals, completion of psychosocial assessments and coordination of specialized residential care. A Social Services expert is necessary to prepare such a plan. Otherwise, the Parole Board may well lack the information needed to make a decision about his readiness to be in the community in light of his mental disability and psychological status, as well as to conclude that he has presented a post-release plan that minimizes the probability of reoffense and shows a reasonable probability that he will live without violating the law. A person with sufficient funds would spend his or her own money for such a purpose when seeking release on parole.

The parole Board has no funding for expert evaluations. It lacks the administrative structure to pay a third-party vendor for such evaluations. (A. 8-14)

**STATEMENT OF ISSUES WARRANTING
DIRECT APPELLATE REVIEW²**

- I. Whether Mr. Hastings who has been appointed counsel for his parole hearing based on his recognized disability caused by a serious mental illness has constitutionally protected right to public funds in pursuant to G.L. c. 261, §27C, in order to obtain the necessary services of a social service advocate in order to accommodate his disability as required by law where there are no other available means to obtain such funding.
- II. Whether a mentally impaired defendant must be provided with the expert funds in order to protect his rights not to be “excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity within the Commonwealth” on account of his mental

² The issue has been reported directly by the motion judge and the defendant preserved this issue with a motion to assent and join the lower court reporting of the issue as appearing at A. 6-7.

impairment.

ARGUMENT

- I. MR. HASTINGS WHO HAS BEEN APPOINTED COUNSEL FOR HIS PAROLE HEARING BASED ON HIS RECOGNIZED DISABILITY CAUSED BY A SERIOUS MENTAL ILLNESS HAS CONSTITUTIONALLY PROTECTED RIGHT TO PUBLIC FUNDS IN PURSUANT TO G.L. C. 261, §27C, IN ORDER TO OBTAIN THE NECESSARY SERVICES OF A SOCIAL SERVICE ADVOCATE IN ORDER TO ACCOMMODATE HIS DISABILITY AS REQUIRED BY LAW WHERE THERE ARE NO OTHER AVAILABLE MEANS TO OBTAIN SUCH FUNDING.

A. Standard Of Review.

Where the motion judge took no evidence and decided what process was due to Mr. Hastings on a documentary record, this Court is "in as good a position as the judge below" to evaluate that record. See Barry v. Commonwealth, 390 Mass. 285, 289 (1983). When an appeal presents an issue of statutory interpretation, a de novo review is warranted. See Commonwealth v. Soto, 476 Mass. 436, 438 (2017).

B. Like His Juvenile Counterparts, Mr. Hastings, As A Mentally Disabled Adult Has A Constitutional Right To A Meaningful Access To A Parole Hearing.

Article I, §10, of the U.S. Constitution provides: "No state shall ... pass any ... ex post facto law." Article 24 of the Massachusetts Declaration of Rights states: "Laws made to punish for actions done

before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.” This Court has interpreted the meaning and scope of the ex post facto clauses of the Federal and State Constitutions identically. See In re Dutil, 437 Mas. 9, 19 n.8 (2002); Commonwealth v. Bruno, 432 Mass. 489, 492 n.4 (2000). The 5th Amendment protects a defendant’s expectation of finality in his sentence under the prohibition against double jeopardy. See Aldoupolis v. Commonwealth, 386 Mass. 260, 274 (1982).

In its decision and report to the Appeals Court, the motion judge distinguished Mr. Hastings’ case from Diatchenko v. District Attorney for the Suffolk District, (Diatchenko II) 471 Mass. 12 (2015), on the grounds that people serving juvenile life sentences have a constitutional “right to a parole hearing,” while Mr. Hastings’ right to parole consideration merely “arises by statute.” (A.10). According to the motion judge, the courts have no role in allocating necessary funds to disabled parole applicants because the Parole Board’s duty to accommodate disabilities “has nothing to do with the court’s sentence or constitutional constraints upon sentencing” but rather are part of the

Board's "purely executive function of considering whether to grant parole." Id.

This attempt to distinguish the cases is incorrect. First, while it is true that Mr. Hastings' right to parole consideration arises by statute, it is not true that Mr. Hastings' right to parole consideration arises only by statute. (Emphasis added). Once a sentence has been imposed in accordance with the statute mandating parole consideration, Mr. Hastings and others like him have a Federal and State constitutional right to their parole consideration which cannot be taken away even if the Massachusetts legislature decides to take away a defendant's right to parole consideration under the statute. See Stewart v. Chairman of the Mass. Parole Bd., 35 Mass. App. Ct. 843, 845 (1994).

The Supreme Court has deemed unconstitutional the retroactive application of parole laws where the increase in punishment is certain and demonstrable. See Lynce v. Mathis, 519 U.S. 433, 446–447 (1997). The U.S. Constitution and the Massachusetts Declaration of Rights provide protection from the operation of ex post facto laws. See Commonwealth v. Kelley, 411 Mass. 212, 214 (1991); Police Dep't of Salem v. Sullivan, 460 Mass. 637, 644 n. 11 (2011). The ex

post facto clause is intended to prohibit laws that “retroactively alter the definition of crimes or increase the punishment for criminal acts.” See Collins v. Youngblood, 497 U.S. 37, 43 (1990). This Court has stated that “the controlling inquiry as to whether the retroactive application of a law affecting parole constitutes an ex post facto violation is whether such application ‘creates a significant risk of prolonging [an individual's] incarceration.’” See Clay v. Massachusetts Parole Bd., 475 Mass. 133, 136-137 (2016).

In the case at bar, taking away Mr. Hastings’ right to parole consideration altogether would certainly create a significant risk of prolonged incarceration and as such would operate as an unconstitutional ex post facto application. Mr. Hastings who relied on the sentencing scheme that allowed for the possibility of parole when he pled guilty is constitutionally entitled to the finality of his disposition. While the legislature can certainly make changes or abolish the parole statute, G.L. c. 127, §133A, it cannot take away Mr. Hastings’ right to parole consideration since doing so would be in violation of his 5th Amendment right. See Martin v. Commonwealth, 209 N.E. 3d 488, 492-493 (2023)(illegal sentence upheld based on double jeopardy grounds once the defendant's reasonable expectation

of finality “crystallized”).

Thus, it can be reasoned that Mr. Hastings has a Constitutional right to his parole proceeding just like his juvenile offender counterparts. Therefore, similarly to the defendant in Diatchenko II, Mr. Hastings should be entitled to expert funding under G.L. c. 261, §§27A-G as construed by the SJC.

C. This Court Has Previously Construed G.L. C. 261, §§27A-27G To Authorize A Superior Court Judge To Allow Payment Of Fees To An Expert in Parole Proceedings.

In Diatchenko II, 471 Mass. at 15, this Court held that a juvenile offender had the right to public funds in order to secure reasonably necessary expert assistance at their parole hearings because “parole eligibility is an essential component of a constitutional sentence under art. 26 for a juvenile homicide offender.” Id. at 18.

The Court construed G.L. c. 261, §§ 27A- 27G, to authorize payment of expert fees whenever such expenditures are necessary to guarantee meaningful access to “postconviction procedures”—even if the particular postconviction procedure in question is “not constitutionally guaranteed.” Diatchenko II, 471 Mass. at 26-27 & n. 27; Commonwealth v. Conceicao, 388 Mass. 255, 261-262 (1983). While,

the Court’s holding in Diatchenko II about access to expert funds did not apply to any other class of offenders beyond people serving life sentences for juvenile offenses, there is no good reason that the holding should not also apply to disabled parole applicants who need expert assistance to ensure that they are not excluded from the benefits of parole “by reason of [their] disability.” See Crowell v. Mass. Parole Bd., 477 Mass. 106, 112 (2017).

The question presented in the case at bar is quite narrow; where can appointed counsel turn to obtain the necessary expert funds since the Parole Board lacks the statutory authority and funding infrastructure to provide this expert assistance itself? Since, no one contests that Mr. Hastings has a disability, that he was properly appointed counsel, or that the services of a social service advocate are reasonably necessary; the only avenue of relief that is workable and supported by this Court’s precedent, as in Diatchenko II, is for counsel to obtain the needed funds by filing a motion, under G.L. c. 261, §27C.

II. A MENTALLY IMPAIRED DEFENDANT MUST BE PROVIDED WITH THE EXPERT FUNDS IN ORDER TO PROTECT HIS RIGHTS NOT TO BE “EXCLUDED FROM PARTICIPATION IN, DENIED THE BENEFITS OF, OR SUBJECT TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY WITHIN THE

COMMONWEALTH” ON ACCOUNT OF HIS MENTAL
IMPAIRMENT.

A. Standard Of Review.

As stated previously, this Court is "in as good a position as the judge below" to evaluate that record. See Barry, supra.

A. Mr. Hastings Is Protected Against Disability- Based
Discrimination In Parole Related Matters.

This Court has held that Article 114 of the Amendments to the Massachusetts Constitution, G.L. c. 93, §103, and the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq. (ADA), each “prohibit the same conduct: disabled persons may not be....denied the benefits of services, programs, or activities [of a public entity], and they may not be subjected to discrimination.” See Crowell v. Mass. Parole Bd., 477 Mass. 106, 112 (2017).

These protections are guaranteed to a prisoner with a qualifying disability who appears before the Board. Id. at 111; In re McDonough, 457 Mass. 512, 514 (2010) (obligation to accommodate an individual with disabilities). Thus, Massachusetts Constitution protects disabled people, like Hastings, who has been diagnosed by the DOC as being

mentally ill and require the assistance of counsel at his parole hearing, from discrimination based on their disabilities.

The assistance of counsel without the aid of needed experts will not only render assistance of counsel ineffective as argued infra but also render the Board's referral to CPCS for assignment of counsel meaningless and the proceedings before the Board will violate the requirements of the Massachusetts parole statute, the ADA, and this Court's decision in Crowell.

B. The Requested Funds Are Necessary To Ensure That Mr. Hastings' Parole Hearing Comports With Due Process.

A hearing implicating an individual's liberty interests must be conducted in a manner that "comports with the requirements of due process." See Matter of Minor, 484 Mass. 295, 306 (2020); Doucette v. Massachusetts Parole Bd., 86 Mass. App. Ct. 531, 535 (2014). Sections 130 and 136 of Chapter 127 require that Hastings be provided with a hearing that "carefully and thoroughly" considers whether, if he is released on parole with appropriate conditions and supervision, he "will live and remain at liberty without violating the law and that release is not incompatible with the

welfare of society.” However, in the absence of a comprehensive release plan addressing Hastings’ mental health needs, the hearing to which Hastings is entitled cannot “carefully and thoroughly” assess whether he is suitable for parole.

The affidavits submitted in support of Hastings’ motion for funds establish that disabled lifers like Hastings regularly seek funds for expert assistance, such motions are allowed, (Hastings’ two previous motions for funds for an expert psychologist had been allowed), the Board does not have the infrastructure to provide such funding, the Board considers the evaluations and testimony of experts such as mental health professionals and social workers, in determining whether a prisoner is suitable for parole. No reasonable person in Hastings’ position who had the means would proceed without the expert assistance sought here, as held by the motion judge.

C. The Requested Funds Are Necessary To Ensure That Mr. Hastings Receives Effective Assistance Of Counsel.

The Board requested assignment of counsel for Hastings based his mental illness diagnoses affecting

his capacity to communicate or participate meaningfully in his parole proceedings. See 120 Code Mass. Regs, §300.08(2)(b); Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973) (due process requires assistance of counsel).

Counsel has a duty to provide her client with effective assistance of counsel. Indeed, whenever there is a right to the assistance of counsel, “from whatever source,” that assistance must be effective.” Commonwealth v. Patton, 458 Mass. 119, 128 (2010). Given that Mr. Hastings has been diagnosed with suffering from mental illnesses, counsel must rely on the expertise of a forensic psychologist to not only assess and explain his mental illnesses, but also to be able to learn how to communicate with him in order to obtain necessary information from him to make effective representation to the Board explaining his institutional adjustment, benefits of programming, and the crime itself amongst other related matters. Counsel also needs the assistance of a social worker in order to identify Mr. Hastings’ needs upon release, available assistance in the community, and to devise an appropriate release plan. This

counsel has neither of those expertise. In order to provide the Board with the information needed to “carefully and thoroughly” consider whether, if Mr. Hastings is released on parole with appropriate conditions and supervision, he “will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society” she requires proper experts.

REASONS FOR DIRECT APPELLATE REVIEW

The questions presented here are of first impression and the answers will impact a substantial number of pending parole cases. There has not been a clear judicial guidance as to whether the phrase “in any court” appearing in G.L. c. §27C(4) limits the authority of the motion judges to authorize payment by the Commonwealth for costs associated with representation of mentally ill during their constitutionally and statutory mandated parole hearing. These issues should be submitted to this Honorable Court for final determination in order to limit the disparate rulings in different courts of this Commonwealth.

Without a clear judicial guidance in order to settle the matter, the courts will continue to nonuniformly interpret the wording of the

applicable statute as each court deems fit evidenced by disparity in allowance of identical motions in different courts of this Commonwealth. In fact, in this instant case, two prior motions for funds were allowed while one motion for fund was denied by different motion judges.

CONCLUSION

For the foregoing reasons, this Court should allow the application for direct appellate review.

Respectfully submitted,
Quasim Hastings
By his attorney,

/s/ Sharon Dehmand_____
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Dated: June 23, 2023

ADDENDUM

Table of Contents

Berkshire Superior Court Docket Entries 0376CR00106.....	A. 1-7
Memorandum of Decision and Report to the Appeals Court.....	A. 8-14

COUNSEL’S CERTIFICATE OF COMPLIANCE

I, Sharon Dehmand, do hereby certify that this brief complies with all rules of the Court that pertain to the filing of briefs, including, but not limited to: Rule 11(b)(Contents of Application); Rule 16(a)(13)(addendum); Rule 16(e)(references to the record); Rule 18(appendix to the briefs); Rule 20(form and length of the brief, appendices, and other documents) by using proportionally spaced Times New Roman font size of 14, containing 1,959 non-excluded words utilizing Microsoft Office Word 2016 in compliance with Rule 11(b)(5).

/s/ Sharon Dehmand

Attorney for Defendant

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

**SUPREME JUDICIAL COURT
NO.
APPEALS COURT
NO. 2023-P-0105**

COMMONWEALTH OF MASSACHUSETTS

V.

QUASIM HASTINGS

CERTIFICATE OF SERVICE

I, Sharon Dehmand, counsel of record for the above-named appellant, depose and say as follows:

1. On June 23, 2023, I served a copy of the defendant's brief and record appendix electronically by e-service on Assistant District Attorney Jennifer K. Zalnasky.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 23rd DAY OF JUNE 2023.

/s/ Sharon Dehmand

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0376CR00106 Commonwealth vs. Hastings, Quasim L

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 05/14/2003
- DCM Track:
- I - Inventory
- Initiating Action:
- MURDER c265 §1
- Status Date:
- 05/14/2003
- Case Judge:
-
- Next Event:
-

All Information **Party** **Charge** **Event** **Docket** **Disposition**

Party Information

Commonwealth
- Prosecutor

Alias

Party Attorney

- Attorney
- Capeless, Esq., David F
- Bar Code
- 072570
- Address
- 38 West Center Rd
- West Stockbridge, MA 01266
- Phone Number
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[More Party Information](#)

Hastings, Quasim L
- Defendant

Alias

Party Attorney

- Attorney
- Dehmand, Esq., Sharon
- Bar Code
- 632944
- Address
- Law offices of Sharon Dehmand
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- Fourth Floor
- Quincy, MA 02169
- Phone Number
- (508)648-3013

[More Party Information](#)

Party Charge Information

- **Hastings, Quasim L**
- - Defendant
- **Charge # 1:**
- **265/1-0 - Felony** MURDER c265 §1

- Original Charge
- 265/1-0 MURDER c265 §1 (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date

Disposition
03/12/2004
Guilty Plea - Lesser Included

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/23/2003 02:00 PM	Criminal 1		Arraignment		Not Held
05/30/2003 02:00 PM	Criminal 1		Arraignment		Held as Scheduled
06/18/2003 02:00 PM	Criminal 1		Pre-Trial Conference		Held as Scheduled
07/30/2003 02:00 PM	Criminal 1		Status Review		
08/13/2003 02:00 PM	Criminal 1		Status Review		Held as Scheduled
09/08/2003 02:00 PM	Criminal 1		Hearing		Canceled
10/22/2003 10:00 AM	Criminal 1		Hearing		Held as Scheduled
11/24/2003 02:00 PM	Criminal 1		Status Review		Held as Scheduled
01/07/2004 02:00 PM	Criminal 1		Status Review		Rescheduled
01/23/2004 02:00 PM	Criminal 1		Status Review		Held as Scheduled
01/30/2004 02:00 PM	Criminal 1		Status Review		Held as Scheduled
02/06/2004 02:00 PM	Criminal 1		Status Review		Held as Scheduled
03/12/2004 09:00 AM	Criminal 1		Evidentiary Hearing on Suppression		Rescheduled
03/12/2004 09:00 AM	Criminal 1		Hearing for Change of Plea		Held as Scheduled
11/04/2022 02:00 PM	Criminal 1		Motion Hearing for Reconsideration		Held as Scheduled

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/14/2003	Order of the Court under G.L.Ch. 277, Sec. 68 issued in hand to deputy sheriff.	1	
05/21/2003	SERVICE RETURNED: as to Defendant Quasim Hastings. Service was made on 5/19/03 at 1:10 p.m. to wit: by delivering in hand to Quasim hasting at 467 Cheshire Road, Pittsfield MA, filed.	2	
05/30/2003	Notice of Assignment of Counsel Leonard H. Cohen, filed.	3	
05/30/2003	Appearance of Deft's Atty: Leonard H. Cohen, filed.	4	
05/30/2003	RE Offense 1:Plea of not guilty -- Defendant held without bail, without prejudice, PTC 6/18/03; Status 7/30/03 (Ford, J).		
05/30/2003	Deft arraigned before Court		
07/30/2003	Pre-trial conference report filed	5	
07/30/2003	Defendant's Omnibus Discovery Motion, filed.	6	
08/15/2003	Notice sent to appear for hearing on Defendant's Omnibus Discovery Motion on Monday, September 8, 2003 at 2:00 p.m.		
10/22/2003	Defendant's omnibus discovery motion-1a-allowed; 1b-allowed as amended; 1c-allowed; 1d-allowed as to any past cooperation known to the Comm; 1e & f-allowed; 1I-Comm. will produce all written statements and substance of oral statements to be proffered at trial; 1II-Comm. will make physical evidence available; 1V-Comm. will disclose any known precipient witnesses; 1Va-denied; 1Vb-if the victim threatened the defendant, that may be disclosed; 1Vc-limited to the defendant, otherwise denied; 1VI-allowed-reciprocal (Carhart, J.) (at Springfield)		
10/31/2003	Habe: returned w/service, filed.	7	
11/24/2003	Case on for status-deft. held, not present; discovery not yet completed; further status on 1/7/04 at 2:00 PM (Ford,J.).		
01/13/2004	Case on for status-defendant held not present-discovery is complete-any motion to suppress to be filed on or about 1/23/04; further status on 1/23/04 at 2:00 pm (Ford,J).		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/23/2004	Case on for status-deft. held not present; motions were filed today; further status on 1/30/04 at 2:00 PM (Ford,J.).		
01/23/2004	Defendant's motion to suppress statements filed.	8	
01/23/2004	Affidavit in support of motion to suppress statements filed.	9	
01/23/2004	Memorandum of law in support of motion to suppress statements filed.	10	
01/23/2004	Defendant's motion to sever filed.	11	
01/23/2004	Affidavit in support of motion to sever filed.	12	
01/23/2004	Memorandum of law in support of motion to sever filed.	13	
01/23/2004	Ex parte motion of the defendant filed and allowed, (Ford,J.).	14	
01/23/2004	Defendant's motion for funds for private investigator filed and allowed, (Ford,J.).	15	
01/30/2004	Case on for status -- defendant held; not present. Further status 2/6/04 at 2:00 p.m. (Ford, J).		
02/06/2004	Case on for status-deft. held not present; a hearing on defendant's motion to suppress scheduled for Friday, March 12, 2004 at 9:00 A.M. (Agostini, J.)		
02/06/2004	Commonwealth's motion for reciprocal discovery filed and allowed-to be complied with by February 27, 2004 (Agostini, J.).	16	
03/12/2004	Waiver of defendants' rights, filed.	17	
03/12/2004	RE Offense 1:Guilty plea (lesser offense) -Defendant retracts and pleads Guilty to Murder in the Second Degree (Ch. 265, sec.1)-Plea accepted. Sentence Imposed: LIFE, MCI Cedar Junction with credit of 331 days, defendant assessed \$90.00 victim witness fee (Curley, J). Mitimus issued in hand to deputy sheriff.		
03/19/2004	Assessment paid re: Victim Witness fee paid in the amount of \$90.00 received from MCI Concord.	18	
12/10/2004	Mittimus as to indictment #03-106, returned and filed.	19	
02/23/2006	Letter from defendant requesting docket entries, received.		
02/23/2006	Defendant's pro se motion for attested copies of the indictment, grand jury minutes, criminal complaint, trial transcripts and sentencing proceedings, filed.	20	
02/23/2006	Motion (P#20): a copy of the Grand Jury minutes has presumably already been provided to the defendant's attorney. If and when the defendant files a motion to withdraw his guilty plea, the court can determine whether the transcript is necessary to resolve his claims. The original complaint would be in the District Court Clerk's Office. Accordingly, this motion is denied without prejudice (Daniel A. Ford, Justice). Copies mailed 2/24/2006		
03/28/2006	Defendant, Quasim Hasting's pro se motion to withdraw his guilty plea and request for new trial, with certificate of service, filed.	21	
03/28/2006	Defendant, Quasim Hasting's pro se affidavit in support of defendant's motion to withdraw guilty plea and request for new trial, filed.	22	
03/28/2006	Defendant, Quasim Hasting's pro se motion for free transcripts of guilty plea, filed and allowed on 3/29/06.	23	
04/05/2006	Order for change of plea transcript held on 3/12/04 entered. Copy certified to Harriet Sears, court reporter	24	
05/22/2006	Transcript of change of plea of 3/12/04 from Harriet Sears, Stenographer received.		
05/30/2006	Motion (P#21): Even though I was not the plea judge, I am permitted to review the transcript of the plea colloquy and to consider it, and I have done so. Commonwealth v. Goodreau, 442 Mass. 341, 354 (2004). I find Judge Curley's colloquy to have been exemplary. See Smith, Criminal Practice and Procedure (2nd Edition), Section 1238. The judge could not have been more clear that if the defendant did not understand something, he was to stop the proceeding and say so, and the defendant agreed. (Tr.p.4) The defendant now claims in his affidavit that he did not understand some of the words that the judge used. I am not required to believe that self-serving assertion, and		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	the transcript makes it abundantly clear that the defendant was in no way confused. See Commonwealth v. Murphy, 442 Mass. 485, 507 (2004); (Tr. p.25), Defense counsel, who is an experienced lawyer with an excellent reputation, told the judge that he spent "a lot of time" with the defendant and explained everything to him in great detail. (Tr.p.19-24). The defendant's present claim that Attorney Cohen told him what to say and somehow coerced a guilty plea is patently unworthy of belief. Accordingly, the motion is denied. (Daniel A. Ford, Justice). Copies mailed 5/30/2006.		
10/15/2007	Defendant, Quasim Hasting's pro se motion for free plea colloquy transcript, filed.	25	
10/15/2007	Defendant, Quasim Hasting's Affidavit of Indigency, filed.	26	
10/16/2007	Copy of transcript mailed directly to defendant, Quasim Hastings at MCI Cedar Junction on 10/16/07.		
04/03/2018	Attorney appearance On this date Leonard Howard Cohen, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Quasim L Hastings		
04/03/2018	Attorney appearance On this date Sharon Dehmand, Esq. added as Limited Appearance Counsel for Defendant Quasim L Hastings -- Attorney Dehmand has requested a copy of the plea hearing transcript before (Curley, J) on March 12, 2004. Copy mailed 04/03/2018.	27	
06/06/2018	Defendant 's EX PARTE Motion for funds Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	28	
06/06/2018	Affidavit of Attorney Sharon Dehmand in support of defendant's ex-parte motion, filed. Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	29	
06/06/2018	Sharon Dehmand, Esq.'s Memorandum in support of defendant's ex-parte motion, filed. Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	30	
06/08/2018	Endorsement on Defendant Quasim Hasting's Ex Parte Motion for Funds, (#28.0): ALLOWED (Mason, J.) Judge: Mason, Hon. Mark D Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
06/08/2018	The following form was generated: Endorsement on Defendant Quasim Hasting's Ex Parte Motion for Funds, (#28.0): ALLOWED (Mason, J.) A Clerk's Notice was generated and sent to: Attorney: Sharon Dehmand, Esq.		
10/16/2018	General correspondence regarding Copy of file mailed to Attorney Sharon Dehmand.	31	
08/08/2019	Defendant 's EX PARTE Supplemental, Motion for funds with Affidavit in support thereof, filed. Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	32	
08/09/2019	Endorsement on Supplemental Motion for funds , (#32.0): ALLOWED (Goodwin, J.) Judge: Goodwin, Hon. Karen Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
08/12/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Sharon Dehmand, Esq. Attorney: David F Capeless, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)		
06/06/2022	Defendant 's EX PARTE Motion FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	33	
06/06/2022	Affidavit of of Attorney Sharon Dehmand in support of Defendant's Ex Parte Motion FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	34	
06/06/2022	Defendant 's Memorandum of Law in support of Defendant's Ex Parte Motion FILED	35	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
06/10/2022	Endorsement on Motion Defendant's Ex Parte Motion FILED, (#33.0): ALLOWED Judge: Mulqueen, Hon. Jane E Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
06/13/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
08/12/2022	Defendant 's EX PARTE Motion FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	36	
08/12/2022	Affidavit of of Attorney Sharon Dehmand in support of Defendant Quasim Hastings' Ex Parte Motion FILED	37	
08/24/2022	Endorsement on Motion Ex Parte, (#36.0): Other action taken 8/24/2022 Counsel shall provide authority for authorizing funds for use in a parole hearing. (Wilkins, J.) Judge: Wilkins, Hon. Douglas H Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
08/25/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
09/02/2022	Quasim L Hastings's Memorandum of Law providing authority for his Ex Parte Motion FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	38	
09/02/2022	Quasim L Hastings's Memorandum of Law in support of Quasim Hastings' Ex Parte Motion FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	39	
09/22/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
09/22/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
10/24/2022	Defendant 's EX PARTE Motion for reconsideration FILED *****Sent to Judge Wilkins 10/25/0222 (msd)***** Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	40	
10/24/2022	Sharon Dehmand, Esq.'s Memorandum in support of the Defendant's Ex Parte Motion for Reconsideration with List of Exhibits A through C FILED Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	41	
10/24/2022	Affidavit of of Mara Voukydis, Esq. FILED	42	
10/24/2022	Affidavit of Kristin Dame, LMHC FILED	43	
10/25/2022	The following form was generated: Notice to Appear 11/4/2022 at 2:00 p.m. for Defendant's Ex-Parte Motion for Reconsideration -- Before Judge Wilkins -- ZOOM SESSION Sent On: 10/25/2022 10:51:42		
11/04/2022	Event Result:: Motion Hearing for Reconsideration scheduled on: 11/04/2022 02:00 PM Has been: Held as Scheduled-under advisement		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Hon. Douglas H Wilkins, Presiding Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
11/15/2022	MEMORANDUM & ORDER: Memorandum of Decision and Report to the Appeals Court on Defendant's Motion for Reconsideration of the Denial of the Defendant's Motion for Funds, ENTERED (Wilkins, J). Certified copy to Attorney Sharon Dehmand. Judge: Wilkins, Hon. Douglas H **IMPOUNDED**	44	
12/07/2022	General correspondence regarding Letter received from Attorney Sharon Dehmand indicating that pursuant to Judge Wilkins' Order dated November 15, 2022, she will be filing a motion to assent to the reporting of the issue to the Appeals Court and assembly, a motion to partially unimpound, and a motion for relief pending appeal. Request to hold off on the assembly of the record until the motions are filed. Applies To: Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	45	 Image
12/20/2022	Defendant Sharon Dehmand, Esq.'s Motion to Assent to the Reporting of Issue to the Appeals Court. Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	46	 Image
12/20/2022	Defendant Sharon Dehmand, Esq.'s Motion in Relief Pending Appeal. FILED Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	47	 Image
12/20/2022	Defendant Sharon Dehmand, Esq.'s Motion to Modify Ex Parte and Impoundment Status Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	48	 Image
12/20/2022	Defendant Sharon Dehmand, Esq.'s Motion to Supplement the Record for Appeal. With Exhibits. FILED Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	49	
12/23/2022	Docket Note: *****#44-#49 sent to Judge Wilkins *****		
12/23/2022	Endorsement on Motion for relief pending appeal, FILED., (#47.0): ALLOWED Judge: Wilkins, Hon. Douglas H		
12/23/2022	Endorsement on Motion to modify ex-parte and impoundment status, FILED., (#48.0): ALLOWED Judge: Wilkins, Hon. Douglas H		
12/28/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169 Prosecutor: Commonwealth No addresses available		
12/28/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169 Prosecutor: Commonwealth No addresses available		
02/02/2023	Endorsement on Motion to assent to the reporting of issue to the Appeals Court, (#46.0): ALLOWED (Wilkins, J.) Judge: Wilkins, Hon. Douglas H Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
02/02/2023	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
02/02/2023	Endorsement on Motion to supplement the record for appeal, (#49.0): ALLOWED (Wilkins, J.) Judge: Wilkins, Hon. Douglas H		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
02/02/2023	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Sharon Dehmand, Esq. Law offices of Sharon Dehmand 15 Cottage Ave Fourth Floor, Quincy, MA 02169		
02/02/2023	Notice to Clerk of the Appeals Court of Assembly of Record Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	50	 Image
02/02/2023	Notice of assembly of record sent to Counsel Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	51	 Image
02/02/2023	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Commonwealth (Prosecutor); Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	52	 Image
02/02/2023	Docket Note: Assembly of Record on Report by Justice Wilkins e-mailed to Appeals Court Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)		
02/03/2023	Notice of Entry of appeal received from the Appeals Court Appeals Court Docket No, 2023-P-0105 Applies To: Hastings, Quasim L (Defendant); Dehmand, Esq., Sharon (Attorney) on behalf of Hastings, Quasim L (Defendant)	53	

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Plea	03/12/2004	

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*** IMPOUNDED PER G.L. c. 261, §§ 27A-27G ***

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT
CRIMINAL NO. 0376CR00106

COMMONWEALTH

V.

QUASIM HASTINGS

**MEMORANDUM OF DECISION AND REPORT TO THE APPEALS COURT
ON DEFENDANT'S MOTION FOR RECONSIDERATION
OF THE DENIAL OF THE DEFENDANT'S MOTION FOR FUNDS**

The defendant, Quasim Hastings ("Hastings") pled guilty to second degree Murder on March 12, 2004. He was sentenced to life in the state prison. G.L. c. 127, § 133A. On August 12, 2022, Hastings filed an ex parte motion for funds for an expert in his upcoming parole hearing. After requesting and receiving a memorandum addressing the court's legal authority under G.L. c. 261, § 27B to grant funds for a parole hearing, the court endorsed that motion on September 22, 2022:

Endorsement on Memorandum of Law in Support of Quasim Hastings' Ex Parte Motion, (#39.0): Other action taken After review, denied. The Court's authority under G.L. c. 261, sec. 27B is limited to "any civil, criminal or juvenile proceeding or . . . appeal in any court." A parole hearing is not "in any court." While the defendant may have a constitutional right to funds, the obligation to provide those funds resides in the Parole Board or the executive agency or with the legislature. (Wilkins, J.)

On October 24, 2022, Hastings' counsel filed "Defendant's Ex-Parte Motion for Reconsideration of the Denial of the Defendant's Motion for Funds," ("Motion") requesting a hearing. The court held an ex parte hearing by zoom on November 4, 2022. After hearing, the Motion is DENIED. Because the legal issue recurs frequently and requires appellate resolution, the court REPORTS

MSA

ITS DENIAL TO THE APPEALS COURT UNDER MASS. R. CIV. P. and also, if the defendant consents, under Mass. R. Crim. P. 35.

FINDINGS OF FACT

Mr. Hastings is indigent. He is eligible for parole consideration. He has received appointment of counsel in the parole proceeding because he requires the assistance of counsel due to mental illness or self-injurious behavior affecting his ability to communicate or participate in his parole proceedings. He is mentally disabled and has requested funds to ensure that he is not denied the opportunity for parole because of his disabilities. To support his request for parole he needs a comprehensive parole release plan that addresses his specific needs, including the need for intra-agency referrals, completion of psychosocial assessments and coordination of specialized residential care. A Social Services expert is necessary to prepare such a plan. Otherwise, the Parole Board may well lack the information needed to make a decision about his readiness to be in the community in light of his mental disability and psychological status, as well as to conclude that he has presented a post-release plan that minimizes the probability of reoffense and shows a reasonable probability that he will live without violating the law. A person with sufficient funds would spend his or her own money for such a purpose when seeking release on parole.

The Parole Board has no funding for expert evaluations. It lacks the administrative structure to pay a third-party vendor for such evaluations.

DISCUSSION

Section 27B of G.L. c. 261 provides in relevant part:

Upon or after commencing or answering to any civil, criminal or juvenile proceeding or appeal **in any court**, including but not limited to civil actions, proceedings for divorce or separate support, summary and supplementary processes, and proceedings upon petitions to vacate, for review or, upon appeal in a criminal case, any party may file with the clerk

an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs upon a form prescribed by the chief justice of the supreme judicial court and in accordance with the standards set forth in sections twenty-seven C to twenty-seven F, inclusive, and sworn to under oath by the affiant. [Emphasis added].

The phrase “in any court” limits the authority to authorize payment by the Commonwealth. The Supreme Judicial Court “has held that G. L. c. 261, § 27C (4), provides ‘extra fees and costs,’ including funds for expert witnesses, [Note Omitted] only in the context of a ‘prosecution, defense or appeal.’” Diatchenko v. District Attorney for the Suffolk District, 471 Mass. 12, 26 (2015), citing Commonwealth v. Davis, 410 Mass. 680, 684 (1991). See also Commonwealth v. Arriaga, 438 Mass. 556, 569 (2003). In another administrative proceeding governed by due process requirements and addressing post-conviction consequences, the Supreme Judicial Court has also stated that G.L. c. 261, § 27A “refers solely to fees and costs connected to court proceedings.” Doe, Sex Offender Registry Bd. No. 89230 v. Sex Offender Registry Bd., 452 Mass. 764, 778-780 (2008). As the court noted in Diatchenko, 471 Mass. at 27, “these cases have generally addressed the availability of costs for indigent defendants pursuing nonconstitutionally mandated procedures.” The Defendant cites no general constitutional right to parole for adult offenders sentenced to life imprisonment, and the right to seek parole is statutory. G.L. c. 127, § 133A. Whatever the wisdom of the policy advocated by the Defendant in this case, this court is bound by the clear statutory language of G.L. c. 261, § 27B, as interpreted authoritatively by the Supreme Judicial Court.

The Supreme Judicial Court has recognized a constitutionally-based exception to this rule:

Because the postconviction proceeding at issue here, **a parole hearing for a juvenile homicide offender, is required in order to ensure that an offender's life sentence conforms to the proportionality requirements of art. 26**, the proceeding is not available solely at the discretion of the State. Rather, it is constitutionally mandated, and

as such, it requires certain protections not guaranteed in all postconviction procedures. It is appropriate, therefore, to construe G. L. c. 261, §§ 27A-27G, to authorize a Superior Court judge, upon motion of a parole-eligible, indigent juvenile homicide offender, to allow for the payment of fees to an expert witness to assist the offender in connection with his or her initial parole proceeding in certain limited contexts -- specifically, where it is shown that the juvenile offender requires an expert's assistance in order effectively to explain the effects of the individual's neurobiological immaturity and other personal circumstances at the time of the crime, and how this information relates to the individual's present capacity and future risk of reoffending. The judge may exercise discretion to do so when the judge concludes that the assistance of the expert is reasonably necessary to protect the juvenile homicide offender's meaningful opportunity for release.

Diatchenko, 471 Mass. at 27. The key rationale underlying this exception is the juvenile's right to a parole hearing arising out of a constitutional limitation on the court's authority to order a life sentence.

That is not the case here (assuming that the Supreme Judicial Court does not extend Diatchenko to defendants who just barely qualified as adults). In this case, the court imposed a life sentence for murder in the second degree. The defendant's right to parole consideration therefore arises by statute. G.L. c. 127, § 133A. That statute specifically delegates the authority over that parole proceeding and subsequent decision to "[t]he parole board." As the entity conducting the parole hearing, the Parole Board has the duty to accommodate the Defendant's disability. Crowell, 477 Mass. at 113 ("once the board became aware that the plaintiff's disability could potentially affect his ability to qualify for parole, it had the responsibility to determine whether reasonable modifications could enable the plaintiff to qualify, without changing the fundamental nature of parole."). This duty has nothing to do with the court's sentence or constitutional constraints upon sentencing. It affects the Parole Board at the time of exercising the purely executive function of considering whether to grant parole.

The fact that the Legislature and Parole Board had provided no statutory avenue for relief against the Executive does not require disregarding the plain language of G.L. s. 261, § 27B or

the controlling authority under that statute. Even if there is no statutory means of redress for violation of his state constitutional rights under Art. Amend. 114, Defendant may still have rights against the Parole Board and the Executive branch to access the funds he needs. See Layne v. Superintendent, Massachusetts Correctional Institution, Cedar Junction, 406 Mass. 156, 159-160 (1989). The court, however, has no authority to misread § 27B to accomplish that result.

Solely as a matter of statutory constraint, therefore, the court denies the request for funds under G.L. c. 261, § 27A-H. Without that statutory limitation, it would grant the Motion.

REPORT TO THE APPEALS COURT

Mass. R. Civ. P. 64(a) appears to govern a report of the court's ruling on the Motion in this case. This conclusion is not entirely clear, however.

Though captioned as a motion in a criminal case, the Motion does not address any proceeding in, or relief available, from the criminal court. The leading authority, Diatchenko, arose in a civil action commenced in the Supreme Judicial Court for Suffolk County. See also Crowell v. Mass. Parole Board, 477 Mass. 106, 112 (2017). That case followed a long line of cases holding that the grant of parole "lies exclusively within the province of the executive branch" and that denial of parole is reviewable in a civil action in the nature of certiorari. Id., 471 Mass. at 28-30. If parole were denied improperly, due to the failure to accommodate the Defendant's disabilities, review would be by certiorari. See Crowell, 477 Mass. at 112. Accordingly, the court reports the Denial of the Motion pursuant to Mass. R. Civ. P. 64(a) based upon the above findings of fact and, in the alternative finds that the order on the Motion so affects the merits of the controversy that the matter ought to be determined by the appeals court before any proceedings in this court.

Of course, the defendant could also consent to the report, in the event that Mass. R. Crim. P. 34 governs, or could appeal the denial pursuant to G.L. c. 261 § 27D. In either case, the question of the criminal or civil nature of the court's ruling would become moot.

The court believes that appellate resolution of this court's authority to authorize fees for experts in parole proceedings for adult defendants is highly desirable. It appears from Exhibit B to the Memorandum of Law in Support of the Defendant's Ex Parte Motion for Reconsideration (at ¶ 16) that at least 37 similar motions have been allowed, including an earlier motion in this very case. The Motion does not set forth the number of motions that have been denied, but, to the best of the court's recollection, the undersigned has denied one such motion in Middlesex County, which does not appear in the affidavit.¹ It is not surprising that there is no report of denials, because only allowances would result in paper trails of payments to experts.

REQUEST FOR RELIEF PENDING APPEAL

If the Defendant files a motion for relief pending appeal (Mass. R. App. 6(a), (b); G.L. c. 261, § 27D), the Court would seriously entertain a request to authorize the requested funds to be expended during the pendency of appeal. The Defendant's efforts for release on parole are highly time-sensitive, the loss of time in pursuit of parole is irreparable, and there is little burden on the Commonwealth, because the Treasury would almost certainly incur no net impact, where some agency of the Commonwealth likely has a duty to expend funds to accommodate the Defendant's disability during pursuit of his parole application.

CONCLUSION

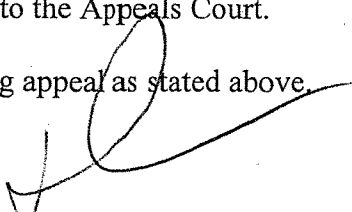
For the above reasons:

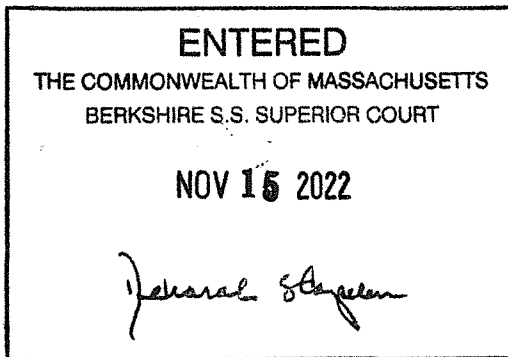
1. The court **DENIES** Defendant's Ex-Parte Motion for Reconsideration of the Denial of the Defendant's Motion for Funds.

¹ It is not clear whether a different judge subsequently granted that motion in Middlesex.

2. The Court **REPORTS** the correctness of its ruling to the Appeals Court.
3. The Court will entertain a motion for relief pending appeal as stated above.

Dated: November 15, 2022


/s/Douglas H. Wilkins
Douglas H. Wilkins,
Justice of the Superior Court



A True Copy
Attest: *Jeharal Stager*
Clerk