

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12926

COMMITTEE FOR PUBLIC COUNSEL SERVICES and
MASSACHUSETTS ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS,
Petitioners,

v.

CHIEF JUSTICE OF THE TRIAL COURT, et al.
Respondents.

ON A RESERVATION AND REPORT BY A JUSTICE OF THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

CHIEF JUSTICE OF THE TRIAL COURT'S RESPONSE
TO PETITIONERS' MOTION FOR RECONSIDERATION
OR MODIFICATION OF DECISION

April 22, 2020

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Introduction

In response to Petitioners' Motion for Reconsideration or Modification of Decision ("Motion for Reconsideration"), Respondent Chief Justice of the Trial Court ("Trial Court") submits this brief memorandum.

Argument

I. A Reasonable Time Should Be Permitted for the Filing of Oppositions to Motions to Stay Execution of Sentence

Petitioners' Motion for Reconsideration urges this Court to amend its April 3, 2020 decision to:

[r]equire motions for stays to be heard no later than two business days after the filing of the motion, with a decision to be rendered promptly thereafter. *See CPCS v. Trial Court*, 484 Mass. at 453 (ordering "a hearing within two business days" for those pretrial detainees entitled to a rebuttable presumption of release).

Motion for Reconsideration at 11. In an accompanying footnote, Petitioners write: "[g]iven the urgent nature of the pandemic, Petitioners request that this time frame apply to all motions for stay, including those filed under Mass. R. Crim. P. 31 and Mass. R. App. P. 6(b)." Motion for Reconsideration at 11 n.9.

Petitioners' recommendation that the Trial Court should hear all motions to stay execution of sentence within two (2) business days of the motion's filing would impair reasoned decision-making on complex and highly consequential matters. Such a schedule would provide no reasonable amount of time for the

court to receive a response from the Commonwealth. Trial Court judges need to know the Commonwealth's position on any motion, especially, but not limited to, motions concerning serious and complicated cases. While the Trial Court is ready and able to handle these motions promptly, some reasonable period must be allowed for the Commonwealth to provide the judge with the benefit of its response to such motions, and for the judge to give the issues careful consideration.

In addition, Trial Court judges should not be required to conduct hearings on all motions for stay. Many such motions are properly subject to denial on the papers, based on the absence of any substantial issue presented, pursuant to Mass. R. Crim. P. 30(c)(3). This Court's decision in this action does not and should not change that rule.

II. The Trial Court Requests Guidance on the Application of the Tolling Established by this Court's April 1, 2020 Order on Court Operations to Motions under Mass. R. Crim. P. 29

In the review of Mass. R. Crim. P. 29 motions, an issue has arisen concerning the application of the tolling provision in this Court's Order Regarding Court Operations under the Exigent Circumstances Created by the Covid-19 (Coronavirus) Pandemic (OE-144) ("Order") dated April 1, 2020. The Order provides in pertinent part:

Deadlines set forth in statutes or court rules, standing orders, or guidelines. Unless otherwise ordered by the applicable court, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired or will expire between March 16, 2020, and May 4, 2020, are tolled until May 4, 2020[.]

Order at ¶ 12. Based on the example that the Order sets forth, defendants have argued that Rule 29's 60-day, post-sentencing limitation on the filing of motions to revise and revoke tolls from March 16, 2020 until May 4, 2020. Any remainder of the 60-day limitation would resume being counted after May 5, 2020.

Nevertheless, on April 3, 2020, in *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, 484 Mass. 431 (2020), two days after the issuance of the Court's above-quoted April 1, 2020 Order, the Court wrote:

Our broad power of superintendence over the courts does not grant us the authority to authorize courts to revise or revoke defendants' custodial sentences . . . unless a defendant (1) has moved under Mass. R. Crim. P. 29, within sixty days after imposition of sentence or the issuance of a decision on all pending appeals, to revise or revoke his or her sentence[.]

484 Mass. at 450. This specific and later language may be read to preclude reliance upon the application of the tolling provision of the April 1 Order to motions under Rule 29. The Trial Court takes no position on the Order's application in this context. However, the SJC's guidance on this issue would ensure consistency of results across courts.

Conclusion


WHEREFORE, Respondent Chief Justice of the Trial Court opposes Petitioners' motion insofar as it moves to amend this Court's April 3, 2020 decision to require that all motions to stay execution of a sentence be heard within two business days of the motion's filing, and further respectfully requests the Court's guidance on the application of the tolling provision of its April 1, 2020 Order to Mass. R. Crim. P. 29 motions.

Respectfully submitted,

CHIEF JUSTICE OF THE TRIAL COURT

by her attorneys,

MAURA HEALEY
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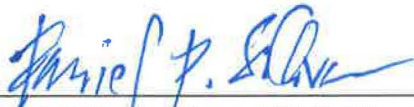

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Dated: April 22, 2020

CERTIFICATES

Pursuant to Mass. R. App. P. 16(k), I certify that this brief complies with the rules of court that pertain to the filing of briefs. Specifically, I certify that this brief complies with the length limit of Mass. R. App. P. 20(a)(2)(A) by using 14-point proportionally spaced font (*i.e.*, "Times New Roman") and comprising 769 words excepting those excluded by Mass. R. App. P. 20(a)(2)(D).

Pursuant to Mass. R. App. P. 13(e), I further certify that, on April 22, 2020, I have e-filed this brief and served the individuals on the attached list via the e-filing system or email or both.



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