

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

DISTRICT COURT DEPARTMENT
FRAMINGHAM DIVISION
DOCKET NOS. 0749CR2845
0749CR3236

COMMONWEALTH OF MASSACHUSETTS

v.

STEPHANIE GREEN

REPORT OF QUESTIONS OF LAW WITHOUT DECISION
TO THE APPEALS COURT PURSUANT TO MASS. R. CRIM. P. 34

BACKGROUND AND FINDINGS OF FACT

On October 8, 2008, the defendant, Stephanie Green, pleaded guilty to eight drug related offenses. Docket Nos. 0749CR2845, 0749CR3236. Docket No. 0749CR2845 indicates that the Court placed the defendant on probation on count two for two years, and ordered her to pay a \$40 victim-witness fee and a probation service fee of \$65 per month, for a total of \$1,560. The docket also reflects that this amount was paid in full. On Docket No. 0749CR3236, the Court imposed a \$2,000 fine, a \$500 surfine, and \$50 victim witness fee on Count 1, and a \$2,000 fine and \$500 surfine on Count 2. Both dockets reflect that an order of forfeiture was also allowed (Docket No. 0749CR3236 contains an entry reflecting that on September 14, 2007, that the Commonwealth filed a notice of intent to seek forfeiture).

A True Copy Attest

Assistant Clerk

On April 19, 2017, as the result of the Annie Dookhan/Hinton drug lab scandal, the single justice of the Supreme Judicial Court issued a global order (Docket No. SJ-2014-0005, hereinafter, the “global Dookhan order.”) Pursuant to that order, the defendant’s eight convictions were vacated and dismissed with prejudice.

On August 25, 2017, the defendant filed a “Motion for Return of Property,” citing to *Nelson v. Colorado*, 137 S.Ct. 1249 (2017), seeking the return of fines totaling \$5,000, probation supervision fees totaling \$1,560, victim witness assessments in the amount of \$100, and forfeited moneys in the amount of \$1,411.63.

The Commonwealth thereafter filed an opposition to the defendant’s motion, dated October 13, 2017. In it, the Commonwealth (1) does not dispute that the defendant may be entitled to the return of the \$5,000 assessment in fines on Docket No. 0749CR3236, but that there must be an evidentiary hearing on the whether the fines were actually paid, (2) asserts that the District Attorney is not the proper party with respect to requests for refunds of probation supervision fees and victim witness fees, and (3) argues that the defendant is not entitled to the return of forfeited property.

In response, the defendant filed a motion, dated October 17, 2017, to join the Chief Justice of the District Court Department and the Commissioner of Probation as parties to the defendant’s motion.

On October 27, 2017, I held a hearing and indicated my intent to report questions raised by the filings pursuant to Mass. R. Crim. P. 34, and I invited the

parties (including the Commissioner of Probation) to participate in and offer suggestions for framing the questions of law for the report. Subsequently, the defendant and the Commonwealth submitted “Joint Proposed Findings of Fact and Defendant’s and Commonwealth’s Proposed Question of Law for Report Pursuant to Rule 34.” In it, the parties supplemented the record with a letter received by defense counsel from the Middlesex District Attorney’s office dated August 11, 2017, an affidavit from Assistance District Attorney Paris Daskalakis with an attached form “Notice of Asset Seizure,” and a replacement affidavit from Attorney Joseph M. Shields, who represented the defendant on the criminal case. The Commissioner of Probation also filed separately proposed questions to the Appeals Court.

Other than denying the motion to join the Chief Justice of the District Court to this litigation, this Court has taken no action on the motions and makes the following report pursuant to Mass. R. Crim. P. 34.

DISCUSSION AND REPORTED QUESTIONS

This Court is aware that the case of Commonwealth v. Jose Martinez, Docket No. 0938CR1515, has been reported pursuant to Mass. R. Crim. P. 34 (Docket No. 17-P-1226), and raises many of the issues that are raised by this defendant’s motion – the return of victim witness fees and probation service fees paid as a result of a conviction that has been subsequently invalidated. In addition to the issues already identified in that report, this case raises the additional issues as to the procedure to be followed for return of punitive fines imposed and what, if any, obligation the Commonwealth has to return money ordered forfeited.

The motions that have been filed also raise the additional question of who is the proper party to a motion to return money assessments that are dependent on a conviction subsequently invalidated.

Like the Haverhill case, this motion here raises issues of first impression, and the resolution of the defendant's motion could have a significant impact on the Commonwealth where the defendant's convictions have been vacated and dismissed with prejudice as part of the global Dookhan order issued in SJ-2014-0005. In the exercise of my discretion, I report the following questions of law to the Appeals Court pursuant to Mass. R. Crim. P. 34:

Motion to Join

Where the District Court does not have the authority to join the Chief Justice of the District Court as a party to an action filed in the District Court, I deny that motion. I take no action on the motion to join the Commissioner of Probation and report the following questions:

Who is the proper party to be named in a defendant's motion to return money assessments that are dependent on a conviction that was subsequently invalidated? Is designation of the proper party dependent on the type of monetary assessment sought to be refunded? In what Court should such a motion be filed, and what, if any, entities other than the District Attorney's office should receive notice of such a motion?

Fines

The Commonwealth does not dispute that the defendant is entitled to the return of punitive fines imposed on a conviction that has been subsequently vacated. However, the motions raise the following question:

What is the showing a defendant must make to be entitled to a refund of punitive fines imposed upon a conviction that has

subsequently been invalidated, and from what source should punitive fines be refunded?

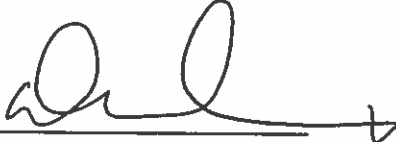
Forfeited Money

While it appears that “[a] forfeiture proceeding initiated by motion filed in a related criminal proceeding is outside the scope of the criminal matter and constitutes a civil proceeding,” *Commonwealth v. Brown*, 426 Mass. 475, 480 (1998), and is therefore not “dependent upon a conviction.” *Nelson*, 137 S.Ct. at 1258:

Does *Nelson v. Colorado*, 137 S.Ct. 1249 (2017) require refunding money that was ordered forfeited by the criminal court pursuant to G.L. c. 94C, § 47(b) where the conviction in the related criminal proceeding is subsequently invalidated and no retrial will occur? If so, what is the showing a defendant must make to be entitled to a refund of such forfeited moneys, and from what source would such a refund be paid?

Date: 12/1, 2017

BY THE COURT:



David W. Cunis
First Justice of Framingham
and Natick District Courts