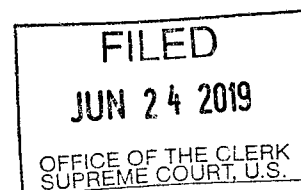


IN THE
SUPREME COURT OF THE UNITED STATES



No. 18A1369

JAIDEEP S. CHAWLA,

Applicant,

v.

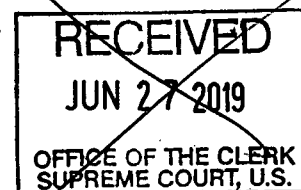
MASSACHUSETTS APPEALS COURT,

Respondent.

**APPLICATION TO THE HON. STEPHEN BREYER FOR AN EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME JUDICIAL COURT FOR
THE COMMONWEALTH OF MASSACHUSETTS**

Pursuant to Rule 13(5) of the Rules of this Court, Petitioner, Jaideep S. Chawla ("Petitioner"), acting *pro se*, respectfully requests that the time to file a petition for a writ of certiorari to the Supreme Judicial Court for the Commonwealth of Massachusetts extend for 60 days, to and including September 9, 2019 in the case of Chawla v. Mass. Appeals Court, No. SJC-12488 (Mass., Apr. 11, 2019). The Supreme Judicial Court for the Commonwealth of Massachusetts (the "SJC") issued its opinion on April 11, 2019 (the "Opinion," attached at Exhibit A).

The deadline to file a petition for a writ of certiorari runs from the date of the Opinion. The jurisdiction of this Court is based on 28 U.S.C. § 1257(a).



1. Pursuant to Rule 13(1) of the Rules of this Court, the date within which a petition for certiorari would be due, if not extended, is July 10, 2019.

2. Petitioner is the Relator pursuant to Mass.Gen.Laws ch. 12 §§ 5A *et seq.* in two state *qui tam* actions (the “*Qui Tam* Actions”). In the *Qui Tam* Actions, Petitioner brought multiple reverse false claims alleging that the defendants in those cases had failed to pay monetary obligations exceeding \$1 million to the Commonwealth as required under Mass.Gen.Laws ch. 64K §§ 1 *et seq.*

After the trial court allowed the Massachusetts Attorney General’s motions to dismiss the *Qui Tam* Actions and on appeal of that allowance, this controversy arose when then-Massachusetts Appeals Court Justice Gary Katzmman was elevated to the U.S. Court of International Trade. Then-Justice Katzmman’s elevation occurred during the pendency of a petition for rehearing, which alleged (based on facts unavailable in the trial court proceedings) that opposing counsel had a disqualifying financial conflict of interest and appeared to have entered into an unlawful *quid pro quo*. Before leaving, then-Justice Katzmman joined the original panel in entering an order requiring a response from the Massachusetts Attorney General to the petition for rehearing.

When a new panel was formed with a replacement justice (the “Replacement Justice”) and disposed of the petition for rehearing without notice of the formation of the new appellate panel, Petitioner filed a motion for recusal of the Replacement Justice alleging that the Replacement Justice had knowledge of disputed facts in the petition for rehearing. The recusal motion directed at the Replacement Justice was subsequently denied by the new panel.

In the Opinion, the SJC affirmed denial of the Petitioner’s motion to vacate the judgment in one of the two *Qui Tam* Actions for failure to conform to the notice requirements of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. The motion to vacate was brought because the Massachusetts Appeals Court panel was surreptitiously replaced, without notice or an opportunity to be heard, by a new panel that proceeded to deny a petition for rehearing in the same Massachusetts Appeals Court case. See Mass.R.App.P. 27 (“*A petition for rehearing shall be decided by the quorum or panel which decided the appeal.*”) (emphasis added).

In the Opinion, the SJC did not mention the words “due process” and “notice,” which formed the basis of the questions presented to the SJC by Petitioner. Despite Petitioner’s repeated exhortations in his briefs and during oral argument that the new appellate panel *lacked jurisdiction* to act on the petition for rehearing because no notice was provided of its formation, the SJC held that Petitioner should have filed an application for further appellate review and therefore had no basis for relief. When a judgment is void, however, the form of a litigant’s papers — mandamus, certiorari, further appellate review, or carrier pigeon — is of no consequence, because the Court is compelled to vacate.¹

¹ See *Field v. Mass. Gen. Hosp., et al.*, 393 Mass. 117, 118 (1984) (“Rule 60(b)(4) allows relief only from void judgments. *A court must vacate a void judgment.* It may not vacate a valid one. *No discretion is granted by the rule.*”) (emphasis added); *Pennoyer v. Neff*, 95 U.S. 714, 728 (1877) (holding validity of judgment depends upon proper jurisdiction of court rendering judgment); *Graciette v. Star Guidance, Inc.*, 66 FRD 424, 426 (S.D.N.Y. 1975) (noting void judgment may be challenged by collateral attack *in any court* where its validity is an issue); *Wright, Miller, and Kane*, 11 Federal Practice and Procedure at § 2862 (“There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4).”)

This Court must intervene to prevent the highest court of Massachusetts from expressly sanctioning the actions of a lower court which plainly acted *without jurisdiction*. Moreover, even if the Massachusetts Appeals Court had jurisdiction with its new panel, recusal of the Replacement Judge was required because he is a witness to disputed facts.

3. This case presents substantial questions of law, among which are (1) whether a state appeals court violates the Fourteenth Amendment by changing an appellate panel without notice or an opportunity to be heard contrary to its own written rules; and (2) whether the Fourteenth Amendment requires recusal of a judge who is a witness to disputed facts.

4. This Court previously denied a petition for a writ of certiorari filed by Petitioner in a related case. Chawla v. Commissioner, et al., No. 17-266 (Oct. 2, 2017) (certiorari denied after deadline to file extended 60 days based on date of entry of First Circuit's mandate where motion was treated by First Circuit as petition for rehearing).

5. Petitioner, acting *pro se* in this and one or more additional cases, requires the requested extension of time in order to adequately research the legal issues and to prepare a petition in conformity with the arduous Rules of this Court, which have changed since the filing of his last certiorari petition. Petitioner also requires the additional requested time to assess whether he qualifies for *in forma pauperis* status.

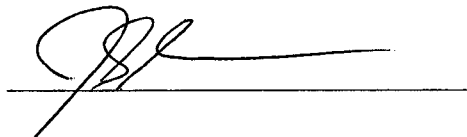
6. As of the filing of this Application and to the best of Petitioner's knowledge, no state or federal court has made a finding that any filing made by Petitioner

was frivolous in the more than five years of litigation out of which the matter at bar arises.

7. Petitioner avers that an extension of time will not prejudice the Respondent, which is an intermediate state appeals court represented by counsel.

For the foregoing reasons, Petitioner hereby requests that an extension of time to and including September 9, 2019, be granted within which Petitioner may file a petition for a writ of certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Jaideep S. Chawla', is written over a horizontal line.

Jaideep S. Chawla

PRO SE

Mailing Address:

12 Lexington Avenue

Charlestown, MA 02139

Dated: June 24, 2019

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

JAIDEEP S. CHAWLA,

Applicant,

v.

MASSACHUSETTS APPEALS COURT,

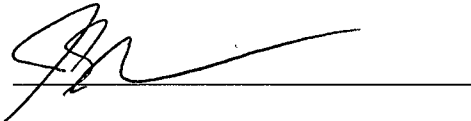
Respondent.

CERTIFICATE OF SERVICE

I, Jaideep S. Chawla, acting *pro se*, hereby certify that one copy of the attached Application to Associate Justice Stephen Breyer for an Extension of Time to File a Petition for a Writ of Certiorari to the Supreme Judicial Court for the Commonwealth of Massachusetts was served on the following:

Attorney General of the Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Service was made by USPS first class mail on June 24, 2019.



Jaideep S. Chawla
PRO SE

Mailing Address:
12 Lexington Avenue
Charlestown, MA 02129

EXHIBIT A

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-12488

JAIDEEP S. CHAWLA vs. APPEALS COURT.

April 11, 2019.

Practice, Civil, Action in nature of mandamus. Supreme Judicial Court, Superintendence of inferior courts.

Jaideep S. Chawla appeals from a judgment of a single justice of this court denying his complaint for relief in the nature of mandamus or, in the alternative, for relief pursuant to G. L. c. 211, § 3. We affirm.

Background. Pursuant to the False Claims Act, Chawla commenced a qui tam action in the Superior Court against two individuals being prosecuted by the Federal government for narcotics offenses.¹ In general, Chawla sought recovery of taxes due under the controlled substances tax, G. L. c. 64K, on the illegal narcotics allegedly possessed by certain individuals as part of their criminal enterprise. After investigation, the Attorney General elected not to intervene in the qui tam action, see G. L. c. 12, § 5C (3), and moved to dismiss it. See G. L. c. 12, § 5D (2). Chawla appealed from the allowance of the motion, and a panel of the Appeals Court affirmed the judgment dismissing the case. See Chawla v. Gonzalez, 90 Mass. App. Ct. 1102 (2016). Chawla next filed a petition for rehearing in the Appeals Court. See Mass. R. A. P. 27 (a), as appearing in 396 Mass. 1218 (1986). One of the original panel members was no

¹ The False Claims Act "encourages individuals with direct and independent knowledge of information that an entity is defrauding the Commonwealth to come forward by awarding to such individuals a percentage of the Commonwealth's recovery from the defrauding entity." Scannell v. Attorney Gen., 70 Mass. App. Ct. 46, 48 (2007).

longer a member of that court, and another associate justice (replacement judge) of the Appeals Court was called in to take part in the decision. See Mass. R. A. P. 24 (a), 365 Mass. 872 (1974). The petition for rehearing was denied. Chawla's subsequent motion for recusal of the replacement judge was denied.² Chawla did not file an application for further appellate review.³

Chawla thereafter filed a complaint in the county court, which he amended twice. The second amended complaint seeks relief in the nature of mandamus, pursuant to G. L. c. 249, § 5, to compel the replacement judge to demonstrate the basis for his decision not to recuse himself from participation in the proceeding, to order the judge's recusal, and to compel the Appeals Court both to vacate the denial of his petition for rehearing and to reconsider it. In addition, pursuant to G. L. c. 211, § 3, Chawla seeks appointment of a special prosecutor to investigate the Attorney General and an order vacating the Superior Court's judgment in the qui tam action. The single justice correctly denied relief.

Discussion. "It would be hard to find any principle more fully established in our practice than the principle that neither mandamus nor certiorari is to be used as a substitute for ordinary appellate procedure or used at any time when there is another adequate remedy." Myrick v. Superior Court Dep't, 479 Mass. 1012, 1012 (2018), quoting Rines v. Justices of the Superior Court, 330 Mass. 368, 371 (1953). Chawla could have sought review of the replacement judge's decision not to recuse himself, and the alleged effect of that decision on the panel's ultimate ruling on the petition for rehearing, by filing an

² Chawla seeks the recusal of the replacement judge on the ground that, years before becoming an associate justice of the Appeals Court, he was employed as an assistant district attorney and his responsibilities included prosecution of alleged narcotics dealers and gang members. Although the employment was completed years before and in a different county from the one in which the events underlying the qui tam action occurred, Chawla nonetheless asserted that the associate justice "has or should have" knowledge of material facts underlying Chawla's qui tam claim, including with respect to enforcement of the controlled substances tax, G. L. c. 64K, § 9. Nothing about these bare assertions required the replacement judge to recuse himself.

³ Chawla sought and obtained from this court an extension of time in which to file an application, but never filed one.

application for further appellate review. See Abdullah v. Secretary of Pub. Safety, 447 Mass. 1009, 1009 (2006) (relief properly denied under G. L. c. 211, § 3, where petitioner could have, but did not, seek leave to obtain further appellate review). See also Ewing v. Commonwealth, 451 Mass. 1005, 1006 (2008).

Moreover, a judge's decision whether to recuse him- or herself from a particular proceeding is generally, as it was here, within the judge's discretion.⁴ A complaint in the nature of mandamus is limited to requiring a public official to perform a "clear cut duty," as opposed to requiring the exercise of discretion in a particular way. Ardon v. Committee for Pub. Counsel Servs., 464 Mass. 1001, 1001 (2012), cert. denied, 571 U.S. 872 (2013), quoting Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Court Dep't, 448 Mass. 57, 59-60 (2006). "[M]andamus will not issue to direct a judicial officer to make a particular decision or to review, or reverse, a decision made by a judicial officer on an issue properly before him or her." Myrick v. Appeals Court, 481 Mass. 1029, 1030 (2019), quoting Montefusco v. Commonwealth, 452 Mass. 1015, 1015 (2008). In this case, the single justice properly declined mandamus relief to compel the recusal of the replacement judge, to require the Appeals Court to recall its rescript, to vacate the denial of Chawla's petition for rehearing, or to compel reconsideration of the petition. None of these things is a type of action that could be compelled by a complaint for mandamus.

With respect to Chawla's request pursuant to G. L. c. 211, § 3, that the single justice appoint a special prosecutor to investigate the Attorney General, or to order the Superior Court to vacate its judgment, the single justice determined that "[t]his is not a matter for the exercise of the court's extraordinary power under [G. L. c. 211, § 3]." We agree. The court's power of general superintendence is reserved for extraordinary circumstances, where the petitioner has demonstrated both a substantial violation of a substantive right and the absence of an adequate alternative remedy. See Pandey

⁴ Chawla cites no authority for his claim that an associate justice of the Appeals Court is required to state his or her reasons for denying a recusal motion. Cf. S.J.C. Rule 1:22 (b), 458 Mass. 1301 (2010) (justice of Supreme Judicial Court is encouraged but not required to "provide a brief statement of his or her reasons for denying" recusal motion). Mandamus will not lie to impose such a requirement.

v. Roulston, 419 Mass. 1010, 1011 (1995). Chawla made no showing of any substantive right to an investigation of the Attorney General in these circumstances. See generally Carroll, petitioner, 453 Mass. 1006 (2009). With respect to the Superior Court's judgment, he also failed to demonstrate the absence or inadequacy of remedies alternative to G. L. c. 211, § 3. Specifically, he could have filed an appropriate postjudgment motion in the Superior Court, see Mass. R. Civ. P. 60, 365 Mass. 828 (1974), and appealed from any adverse ruling.

The single justice neither erred nor abused his discretion in denying the complaint.⁵

Judgment affirmed.

Jaideep S. Chawla, pro se.

Jeffrey T. Walker, Assistant Attorney General (Amy Crafts, Assistant Attorney General, also present) for the defendant.

⁵ We decline to consider matters that were not raised before the single justice, or that are inadequately presented on appeal. See Dowd v. Dedham, 440 Mass. 1007, 1007-1008 (2003).