SJC-13373

IN THE MATTER OF TWO APPLICATIONS FOR A CRIMINAL COMPLAINT.

October 11, 2023.

Supreme Judicial Court, Superintendence of inferior courts. Practice, Criminal, Complaint, Standing.

The petitioner appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. We affirm.

The petitioner filed in the District Court an application for a criminal complaint charging a certain individual with witness intimidation, G. L. c. 268, § 13B, and unlawful wiretapping, G. L. c. 272, § 99 C 1. An assistant clerk-magistrate in the District Court found no probable cause and did not issue the requested complaint. The petitioner filed a motion for redetermination. A judge in the District Court denied that motion. Thereafter, alleging that the individual had committed further unlawful acts, the petitioner filed another application for a criminal complaint, this time in the Boston Municipal Court (BMC), charging the individual with witness intimidation. The clerk-magistrate of the BMC found no probable cause and did not issue the requested complaint. The petitioner has not sought redetermination in the BMC. The petitioner's G. L. c. 211, § 3, petition, as supplemented,[1] sought relief pertaining to both the District Court and BMC proceedings and particularly sought the issuance of criminal complaints. The single justice denied relief without addressing the merits.

[1] The petitioner initially filed a petition concerning only the District Court proceedings. The single justice permitted him to supplement his petition to include the BMC proceedings.

The single justice neither erred nor abused his discretion by denying relief. "As we have explained, '[a] single justice considering a petition filed pursuant to G. L. c. 211, § 3, performs a two-step inquiry. . . . The first step requires the single justice to decide "whether to employ the court's power of general superintendence to become involved in the matter," . . . or, stated differently, to "decide, in his or her discretion, whether to review 'the substantive merits of the . . . petition.'"'" Commonwealth v. Monteiro, 492 Mass. 1013, 1014 (2023), quoting Commonwealth v. Brown, 487 Mass. 1007, 1008 (2021). See Commonwealth v. Fontanez, 482 Mass. 22, 24 (2019). "The single justice need not take the second step (which is to resolve the petition on its substantive merits) 'if the petitioner has an adequate alternative remedy or if the single justice determines, in his or her discretion, that the subject of the petition is not sufficiently important and extraordinary as to require general superintendence intervention.'" Brown, supra, quoting Commonwealth v. Dilworth, 485 Mass. 1001, 1002 (2020). "Where, as here, the single justice denied relief without reaching the substantive merits of the . . . petition, 'it is incumbent on the [petitioner] to show that on the record before him, the single justice was required to exercise the court's superintendence power: that is, that the [petitioner] had no adequate alternative remedy and that the single justice abused his discretion by failing to reach the merits of [his] petition.'" Monteiro, supra, quoting Brown, supra. The petitioner's complaint is that the clerks-magistrate of the District Court and the BMC considered his applications, found they were not supported by probable cause, and declined to issue the requested criminal complaints. The decision to issue or not to issue a criminal complaint is a routine matter in those courts. The single justice was not obligated to exercise this court's extraordinary superintendence power in these circumstances.

Even considering the merits, the petitioner fares no better. "It is well established that 'a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.'" Matter of an Application for a Criminal Complaint, 477 Mass. 1010, 1011 (2017), quoting Ellis, petitioner, 460 Mass. 1020, 1020-1021 (2011). "For this reason, 'we have consistently declined to review, under the authority given to us by G. L. c. 211, § 3, refusals to issue complaints.'" Matter of an Application for a Criminal Complaint, supra, quoting Bradford v. Knights, 427 Mass. 748, 752 (1998). In our system, "[a] private party's rights with

respect to the criminal complaint process are limited to the filing of an application and court action on that application. Once a private party alerts the court of the alleged criminal activity through the filing of an application and the court responds to that application, the private party's rights have been satisfied." Victory Distribs., Inc. v. Ayer Div. of the Dist. Court Dep't, 435 Mass. 136, 141 (2001). The petitioner filed his applications, and the District Court and the BMC acted on them. He has no standing to obtain extraordinary relief in this matter.[2] Matter of an Application for a Criminal Complaint, supra.

Judgment affirmed.

The case was submitted on briefs.
The petitioner, pro se.

[2] We express no view as to whether probable cause exists to charge the individual with witness intimidation or any other offense.

**COMMONWEALTH OF MASSACHUSETTS**

**HAMPDEN, ss.**

**DISTRICT COURT DEPARTMENT**
**SPRINGFIELD DIVISION**
**DOCKET NO. 2223AC000803**

---

RIAN WATERS

v.

AIDAN KEARNEY

---

**ORDER OF THE COURT ON**
**COMPLAINANT'S MOTION TO REDETERMINE ISSUANCE OF CRIMINAL COMPLAINT**

*Introduction*: The complainant, Rian Waters has requested redetermination of a decision made by Assistant Clerk Magistrate Fung with where he found no probable cause regarding a private criminal complaint he filed against Aidan Kearney. After review of the filings and the hearing, the request for redetermination is **DENIED.**

*Procedural History:* On or about March 25, 2022, Mr. Waters filed a private criminal complaint with the Springfield District Court clerk's office against Mr. Kearney alleging two counts of Intimidation of a Witness, G.L. ch. 268, § 13B, and Unlawful Wiretap in violation of G.L. ch. 272, § 99(C)(1). The matter was originally scheduled for hearing on April 13, 2022. On April 7, 2022, Mr. Kearney requested a continuance because he had another matter scheduled for the same time, Case No: 2223AC0620 filed by "another private citizen". The court allowed the motion to continue and rescheduled the hearing to May 25, 2022. Despite the allowance, on April 13, 2022, Mr. Waters filed a motion to "Hold hearing 4/13/2022 or Provide Alternate Relief". It does not appear as though the court acted on the motion since the matter was already continued at Mr. Kearney's request to May 25, 2022.

On May 12, 2022, Mr. Waters filed a motion seeking that two additional counts of Intimidation of a Witness, G.L. ch. 268, § 13B be included in the Application for Criminal Complaint. This motion was allowed administratively by the court.

On May 25, 2022, Assistant Clerk Magistrate Fung presided over the probable cause hearing which was conducted over ZOOM. Mr. Waters appeared remotely. ACM Fung commenced the hearing at approximately 2:55 pm. Mr. Kearney did not appear. At the commencement of the hearing ACM Fung stated that he had read "the file several times before the hearing". The file consisted of the "Complainant's Statement of Facts/Affidavit" (8 pages) and Exhibits A-F (30 pages, including Exhibit designation). The hearing lasted until approximately 3:44 pm. During the hearing, ACM Fung took the time to listen to Mr. Waters, inquired as to the evidence and conducted the hearing in a fair and deliberate manner. When he had questions, he asked Mr. Waters to explain. In short, the court finds that ACM Fung gave Mr. Waters every opportunity to present evidence supportive of the claims. At the conclusion of the hearing, Mr. Waters stated that he has petitioned the United States Supreme Court on a *writ of certiori*.

*Discussion*: "If the complainant seeks redetermination by a judge of the clerk-magistrate's decision to deny the issuance of a criminal complaint, the judge may examine the denied applications and the records associated with them." *See Boston Globe Media Partners, LLC v. Chief Justice of Trial Court*, 483 Mass. 80, 88–89 (2019); *See also* standard 3:22 of the Complaint Standards. A request for redetermination is not formally an appeal, because there is no entitlement to review by a judge. *See id.* "If the magistrate denies a complaint, the complainant may not appeal the magistrate's determination, but may request a judge to redetermine the matter". *See Id.*

Where a redetermination is requested, the judge has the discretion to (1) "consider the application de novo" and hold a new show cause hearing, (2) to review the factual information previously provided to the clerk-magistrate, or (3) to deny redetermination, presumably because the complainant's allegations do not warrant further review. *Id.* If the judge denies redetermination or declines to issue a complaint after redetermination, the complainant has no right to further judicial review. *See Commonwealth v. Orbin O.*,

478 Mass. 759, 765 (2018), *quoting Bradford*, 427 Mass. at 751 ("even where the Legislature has given a private party the opportunity to seek a criminal complaint, we have uniformly held that the denial of a complaint creates no judicially cognizable wrong").

Based on the court's review of the record and submissions, the petition for redetermination is **DENIED**. *See Boston Globe Media Partners, LLC*, 483 Mass. at 88–89; *See also* standard 3:22 of the Complaint Standards.

SO ORDERED.

September 8, 2022
Date entered

Kevin V. Manby
First Justice, Springfield District Court

**Additional material from this filing is available in the Clerk's Office.**