

**Massachusetts Supreme Judicial Court
Docket for Case #: SJ-2016-0334**

COMMONWEALTH v. JESSICA WAGLE

Date Filed: Aug 5, 2016
Status: Decided: petition denied
Jurisdiction: SUPREME JUDICIAL COURT for Suffolk CountyCase Docket
Case Location: Essex Superior Court
Case Type: H
Lower Court: Essex Superior Court
Lower Court Judge: Timothy Q. Feeley, J.
Nature: Superintendence c 211 s 3
Pet Role Below: Defendant in lower court
Single Justice: H
Status Date: Aug 8, 2017
TC Ruling: Bail Order Affirmed
TC Ruling Date: Aug 3, 2016
Parties and Attorneys

Plaintiff/Petitioner	Jessica Wagle
-----------------------------	----------------------

Plaintiff/Petitioner	Jessica Wagle
-----------------------------	----------------------

Defendant/Respondent	Commonwealth
-----------------------------	---------------------

Other interested party	Alec Karakatsanis
-------------------------------	--------------------------

Other interested party	American Civil Liberties Union o
-------------------------------	---

Other interested party	American Civil Liberties Union o
-------------------------------	---

Other interested party	American Civil Liberties Union o
-------------------------------	---

Other interested party	Maura Healey
-------------------------------	---------------------

Other interested party	Maura Healey
-------------------------------	---------------------

Other interested party	Maura Healey
-------------------------------	---------------------

Other interested party

Maura Healey

Out-of-state attorney

Alec Karakatsanis

Docket Entries

Keywords

Entry Date

Any date

Clear All

Entry #	Filing Date	PDF	Description
BL-1	Aug 5, 2016	Request	Case entered.
BL-2	Aug 5, 2016	Request	MOTION To Waive Filing Fee filed for Jessica Wagle by Atty. Shira Diner and Atty. Ryan Schiff.
BL-3	Aug 5, 2016	Request	Petition For Relief Pursuant To G. L. c. 211, with Certificate of Service, Appendix and Affidavit filed for Jessica Wagle by Atty. Shira Diner and Atty. Ryan Schiff.
BL-4	Aug 5, 2016	Request	MOTION For Admission Pro Hav Vice filed for Atty. Alec Karakatsanis by Atty. Shira Diner. (10/12/16: "Per the within, Motion is ALLOWED WITHOUT HEARING" (Hines, J.)).
BL-5	Aug 5, 2016	Request	Fee Waiver ALLOWED by Judge. (Spina, J.)
BL-6	Aug 15, 2016	Request	Letter to Clerk Maura S. Doyle from non-parties Carol D. Steiker, Alex Whiting, and Larry Schwartzol stating..."We write in support of petitioner's request that this matter be reported without decision for resolution by the Supreme Judicial Court for the Commonwealth..."
BL-7	Aug 16, 2016	Request	Commonwealth's Verified Preliminary Response To Defendant's Petition Pursuant To G. L. c. 211, 3 with Verification and Certificate of Service filed by ADA Catherine Langevin Semel.
BL-8	Aug 16, 2016	Request	Hearing scheduled for 08/17/2016.
BL-9	Aug 17, 2016	Request	Copy of MA Criminal History (BOP) filed by ADA Catherine Langevin Semel (IMPOUNDED).
BL-10	Aug 17, 2016	Request	Transcript of proceedings from Essex Superior Court, Docket No. 1613CR003391 , dated August 3, 2016 before Feeley, J. filed by ADA Catherine Langevin Semel.
BL-11	Aug 17, 2016	Request	Under advisement. (Hines, J.).
BL-12	Aug 17, 2016	Request	Hearing held before (Hines, J.)
BL-13	Aug 17, 2016	Request	ORDER: ... "after hearing and review of the parties' written submissions, it is ORDERED that the bail set in Lynn District Court shall be reduced from \$250.00 to \$200.00 cash." (Hines, J.)
BL-14	Aug 17, 2016	Request	Notice to counsel/parties, regarding paper #8 filed.

Entry #	Filing Date	PDF	Description
BL-15	Aug 22, 2016	Request	MOTION To Enlarge And Modify Relief Sought In Petition For Relief Pursuant To G. L. c. 211, 3 with Certificate of Service filed by Atty. Shira Diner.
BL-16	Aug 22, 2016	Request	Letter to Clerk Doyle from American Civil Liberties Union of Massachusetts (ACLU) Atty. Matthew Segal, Atty. Howard Cooper and Atty. Chauncey Wood saying ... "On behalf of the American Civil Liberties Union of Massachusetts (ACLU) and The Massachusetts Association of Criminal Defense Lawyers (MACDL), we write to support Jessica Wagle's request that this case be reported to the Full Court." ... filed.
BL-17	Aug 25, 2016	Request	INTERIM ORDER: " On August 17, 2016, I allowed in part the defendant's petition for relief pursuant to G. L. c. 211, 3, seeking review of a bail order set in the District Court. The order reduced the defendant's bail from \$250.00 to \$200.00, based on asserted facts suggesting that the defendant has the financial ability to post bail in this amount using the funds accessible from her canteen account, even assuming that she must pay a bail commissioner's fee of \$40. See affidavit of Norma Wassel, par. 5. Thus, as to this defendant, the bail issue is moot insofar as her claim is that bail was set without regard to her financial ability to post bail. I am mindful, however, that the defendant's petition raises constitutional issues that are potentially significant and that she has filed a motion to enlarge and modify relief, which appears to seek declaratory relief on behalf of a class of similarly situated defendants. I am not yet persuaded, however, that this case is in a suitable posture to be reserved and reported to the full court, although I am not ruling out that possibility. As drafted, the petition is in the form of an appellate brief, detailing the arguments supporting the defendant's claim that setting bail without regard to a defendant's ability to pay is unconstitutional. It lacks a statement of facts on which the court could rely in making such a determination, ignoring the principle that constitutional issues are not decided in the abstract. Given the potential gravity of the constitutional issue, the defendant is granted leave to file an amended petition within thirty days. The petition should be in the form of a typical pleading not written as an appellate brief, as it is now with numbered factual allegations and identifiable causes of action to which the Commonwealth will be able to file an answer. It will be up to the defendant and her counsel to decide whether, in these circumstances, to seek systemic relief in behalf of a class of similarly situated defendants even though this case is now moot. If the defendant decides to press her constitutional claim, she should consider whether she is an appropriate person with standing to pursue such relief, having a record of numerous failures to appear for hearings and, after reduction of the bail amount, an uncontested ability to post the bail. The amended petition should focus specifically on the terms of the Massachusetts bail statute and how it is being applied by Massachusetts judges, and why the defendant claims that our statute and its application are unconstitutional. A courtesy copy of the pleading should be sent to the Office of the Attorney General as well, so that the Attorney General is aware of it and has an opportunity to be heard if she wishes. After an amended petition is filed, the Commonwealth will have time to file an answer or other responsive pleading, and I will then be in a better position to know whether this issue should be reserved and reported. Both sides will be given an opportunity to be heard on the question of reservation and report before I make a decision on that. If the case is to be reserved and reported, I would also require an adequate record on which the full court can adjudicate the case. Among other things, the parties would be expected to prepare a statement of all agreed facts and exhibits; the failure to agree on the facts needed for a decision could impair the court's ability to decide the case." (Hines, J.)
BL-18	Aug 26, 2016	Request	Notice to counsel/parties, regarding paper #12 filed.
BL-19	Sept 23, 2016	Request	Amended Petition For Relief Under G. L. c. 211, 3 with Supplemental Appendix and Certificate of Service filed by Atty. Shira Diner.

Entry #	Filing Date	PDF	Description
BL-20	Oct 6, 2016	Request	Copy of Board of Bar Overseers Registration Statement For Pro Hac Vice Attorneys filed.
BL-21	Oct 7, 2016	Request	Under advisement. (Hines, J.).
BL-22	Oct 7, 2016	Request	Notice of Appearance with Certificate of Service filed for Commonwealth by ADA Catherine L. Semel.
BL-23	Oct 14, 2016	Request	Notice to counsel/parties, regarding paper #3 filed.
BL-24	Oct 25, 2016	Request	Office Of The Attorney General's MOTION To Enlarge Time For Filing Any Submission Concerning The Amended Petition with Certificate of Service filed by AAG Randall Ravitz and AAG Eric Haskel. (10/26/16: "Per the within, MOTION is ALLOWED WITHOUT HEARING" (Hines, J.)).
BL-25	Oct 25, 2016	Request	Commonwealth's Opposition To Defendant's Amended Petition For Relief Pursuant To G. L. c. 211, 3 with Supplemental Certificate of Service and Addendum filed by ADA Catherine Langevin Semel.
BL-26	Oct 26, 2016	Request	Notice to counsel/parties, regarding paper #18 filed.
BL-27	Oct 28, 2016	Request	Supplemental Certificate of Service filed by Atty. Catherine Langevin Semel.
BL-28	Nov 8, 2016	Request	*****END OF FOLDER NUMBER ONE*****
BL-29	Nov 8, 2016	Request	*****START OF FOLDER NUMBER TWO*****
BL-30	Nov 8, 2016	Request	Letter with Certificate of Service to Justice Hines from Atty. Kimberly West Chief, Criminal Bureau and Atty. Genevieve Nadeau Chief, Civil Rights Division saying ... "By order dated August 25, 2016, this Court requested that the Petitioner in the above referenced case provide the Office of the Attorney General with a copy of her Amended Petition for Relief Under G. L. c. 211, 3, so that the Attorney General would have the opportunity to be heard, noting that the petition "raise[d] constitutional issues that are potentially significant." We thank you for that opportunity. The Amended Petition raises significant questions concerning the constitutional rights of criminal defendants. But its suitability as a vehicle to answer those questions is diminished by other questions about the justiciability of this case, as well as the limited record before the Court. Accordingly, we respectfully submit that the issues raised by this case warrant referral to the Supreme Judicial Court's Standing Advisory Committee on the Rules of Criminal Procedure. We recommend that the Court refer the matter to the Committee on the Rules of Criminal Procedure. We recommend that the Court refer the matter to the Committee with a request that the Committee issue guidance that will ensure that no defendant is detained pending trial solely because he or she lacks the financial resources to post bail. ...In light of all the considerations referenced above - including the important statutory and constitutional questions raised by the Amended Petition, the significant consequences of pretrial detention for all involved, the issues regarding justiciability and the scope of the record, and the benefits of a thorough rulemaking process - the Attorney General suggests that this matter be referred to the Standing Advisory Committee on the Rules of Criminal Procedure to consider the issue of a defendant's ability to pay in setting cash bail pursuant to G. L. c. 278, 58." ... filed.
BL-31	Nov 21, 2016	Request	Petitioner's Response To Respondent's Request For Denial Of Amended Petition Without Decision Or Reservation And Report with Certificate of Service filed by Atty. Shira Diner and Atty. Ryan Schiff.
BL-32	Dec 27, 2016	Request	Letter to Stephen Cronin, Assistant Clerk from Atty. Shira Diner saying ... "the question before the court should be reported to the Full Bench, notwithstanding any issue of mootness. It is beyond question that the issue presented by this case is of great significance and affects the interests of thousands of indigent criminal defendants every year. ... " filed.

Entry #	Filing Date	PDF	Description
BL-33	Jan 3, 2017	Request	Hearing scheduled for January 26, 2017 at 10:00 a.m. (RESCHEDULED)
BL-34	Jan 3, 2017	Request	Notice to counsel and parties: The Court, Hines, J., has SCHEDULED this matter for a hearing on THURSDAY, JANUARY 26, 2017 @ 10:00 a.m. at the Supreme Judicial Court for the County of Suffolk, John Adams Courthouse, One Pemberton Square, Courtroom Two, Boston, Massachusetts (SEE BELOW)
BL-35	Jan 24, 2017	Request	Hearing scheduled for 01/27/2017.
BL-36	Jan 24, 2017	Request	All parties were notified via email and phone regarding the Hearing rescheduled to January 27, 2017 at 9:30 a.m.
BL-37	Jan 27, 2017	Request	Hearing held before (Hines, J.)
BL-38	Jan 27, 2017	Request	Appearance of Atty. Shira Diner for Jessica Wagle filed.
BL-39	Jan 27, 2017	Request	Appearance of Atty. Alec Karakatsanis (Pro Hac Vice) for Jessica Wagle filed.
BL-40	Jan 27, 2017	Request	Appearance of Atty. Ryan M. Schiff for Jessica Wagle filed.
BL-41	Jan 27, 2017	Request	Appearance of ADA Catherine L. Semel for Commonwealth filed.
BL-42	Jan 27, 2017	Request	Under advisement. (Hines, J.).
BL-43	Feb 6, 2017	Request	Letter to Assistant Clerk Cronin from Ryan M. Schiff dated January 31, 2017 filed with attachments.
BL-44	Feb 6, 2017	Request	Petitioner's Proposed Questions To Be Reported To The Full Bench with Certificate of Service filed by Atty. Shira Diner.
BL-45	Feb 6, 2017	Request	Letter to Stephen Cronin, Assistant Clerk from Atty. Ryan Schiff saying ... "During the January 27, 2017, hearing in this case, I erroneously stated that a 2016 study conducted by the Executive Office of the Trial Court had determined that approximately 13, 000 criminal defendant's in the District and Boston Municipal Courts had been detained in FY 2015 because they did not meet financial conditions of pretrial release. in fact, the study found that 11, 589 defendants were jailed because they did not post bail in 2015." ... filed.
BL-46	Mar 13, 2017	Request	Petitioner's Renewed Request For Reservation And Report To Full Bench with Certificate of Service filed by Atty. Shira Diner and Atty. Ryan Schiff.
BL-47	Aug 8, 2017	Request	JUDGMENT: denying relief under c. 211, s.3, after a hearing. (Hines, J.)
BL-48	Aug 8, 2017	Request	Notice to counsel/parties, regarding paper #34 filed.