

COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN,
YASIR CREACH, and
MIGUEL CUEVAS,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK
COUNTY and
DISTRICT ATTORNEY FOR ESSEX
COUNTY,

Respondents.

SUPREME JUDICIAL COURT FOR
SUFFOLK COUNTY
DOCKET NO.:

PETITION SEEKING RELIEF PURSUANT TO GEN. LAWS C.211, §3

QUESTIONS PRESENTED

In light of the unprecedented crisis at the William A. Hinton State Laboratory Institute, which has violated the due process and common law rights of more than 40,000 defendants ("Dookhan defendants"), this Court should exercise its authority under G.L. c.211, §3, to address the following questions:

1. Whether, to vindicate the rights of Dookhan defendants, to eliminate the apprehension of vindictive prosecution from chilling their exercise of post-conviction rights and to restore the integrity of the criminal justice system, due process and common law principles require a clear, prophylactic rule that Dookhan defendants who seek post-conviction relief cannot be subjected to more severe punishment as a result of the reinstatement of previously dismissed charges, any prosecution of new charges based on the same conduct, or the imposition of increased sentences?

2. Whether inordinate and prejudicial delay in providing post-conviction relief to Dookhan defendants violates due process, where it has already been more than two years since managers in the Hinton Lab learned of serious misconduct by chemist Annie Dookhan, yet the vast majority of Dookhan defendants have not even been assigned counsel, much less been

provided discovery, had their convictions reviewed, or received any relief whatsoever?

RELIEF SOUGHT

Petitioners request that this petition be referred to Justice Botsford, who has continuing jurisdiction over Hinton Lab matters by virtue of the rulings in Commonwealth v. Charles, 466 Mass. 63, 89 (2013), or else that this petition be reserved and reported to the full Court. Petitioners seek the following relief:

1. This Court should establish a clear, prophylactic rule that defendants who seek post-conviction relief based upon Dookhan's outrageous misconduct in the Hinton Lab cannot be convicted of more serious offenses than those underlying their tainted convictions, or be sentenced to longer prison terms than were previously imposed.

2. This Court should order that prosecutors have 90 days to notify individual defendants, or their counsel, whether they intend to re-prosecute them, and further that:

a. If notice is not provided within 90 days, the underlying convictions will be vacated with prejudice; or

b. If timely notice of re-prosecution is provided, prosecutors will have six months to bring such cases to trial or to conclude them with guilty pleas.

BRIEF STATEMENT OF GROUNDS FOR RELIEF

The grounds for the requested relief are explained fully in the accompanying Memorandum in Support. Briefly, however, petitioners request this relief to remedy Dookhan's unprecedented fraud at the Hinton Lab, which reportedly affected at least 40,323 defendants who have been convicted of state drug offenses in the Commonwealth.

Long after lab managers discovered misconduct by Dookhan in June 2011, many Dookhan Defendants fear that if they pursue justice and challenge their tainted drug convictions by withdrawing their guilty pleas or moving for new trials, they could face even harsher punishments than they initially received. Worse yet, such challenges have been inordinately and prejudicially delayed by factors well beyond the control of these defendants.

The combination of fear, which chills the exercise of post-conviction rights, and delay, which frustrates the ability to obtain post-conviction relief, has deprived Dookhan defendants - including petitioners Kevin Bridgeman, Yasir Creach and Miguel Cuevas - of their due process and common law rights to meaningful post-conviction proceedings and relief. Through this petition, they seek to vindicate their rights and restore the integrity of the criminal justice system.

PROCEDURAL HISTORY

I. THE PETITIONERS.

Due to the fear of harsher punishment, the uncertainty regarding the post-conviction process, and the inordinate and prejudicial delays in that process, petitioners have received no relief to date: one petitioner, Miguel Cuevas, filed a new trial motion, but he is still waiting for basic discovery regarding his convictions, and two petitioners, Kevin Bridgeman and Yasir Creach, have opted not to challenge their convictions until this Court clarifies how such challenges will be resolved.

A. KEVIN BRIDGEMAN.

Petitioner Kevin Bridgeman was the defendant in two "Dookhan" cases. Bridgeman is disabled and collects Social Security Disability Insurance Benefits. Affidavit of Kevin Bridgeman ("Bridgeman Aff.") at R. 1, ¶ 2.¹ He is a longstanding volunteer for a non-profit organization supporting the formerly incarcerated. Id. at R. 1, ¶ 5.

In October 2005, Bridgeman pleaded guilty to possession with intent to distribute cocaine, distribution of cocaine, and non-drug offenses. Id. at R. 2, ¶ 8. The court sentenced Bridgeman to two to three years' incarceration and three years' probation, and he has completed that sentence. Id. at R. 3, ¶

¹ "R. ___" refers to a citation in the Record Appendix to this petition.

9; R. 336. In April 2008, Bridgeman again pleaded guilty to possession with intent to distribute cocaine and distribution of cocaine. See Bridgeman Aff. at R. 3, ¶ 12. This time, the court imposed a sentence of three to five years' incarceration. Id. at R.2, ¶ 13. In both cases, the grand jury that indicted Bridgeman reviewed drug certificates that Dookhan signed. See R. 358, 385-386. In the face of those certificates, and in exchange for the dismissal of more serious charges that carried mandatory minimum sentences, Bridgeman twice waived his right to a jury trial. See Bridgeman Aff. at R.4, ¶¶ 15-16.

In both cases, however, Bridgeman likely would have sought to negotiate different plea agreements, or would have gone to trial, if had he known about Dookhan's outrageous misconduct. See id.; see also Affidavit of Joseph Griffin ("Griffin Aff.") at R. 17, ¶ 12; Affidavit of Paul Carrigan ("Carrigan Aff.") at R. 21, ¶¶ 13-15. Now, however, given the considerable uncertainty concerning what may happen if he challenges his tainted convictions, Bridgeman is unsure how to proceed:

I am concerned that if I seek to withdraw my guilty plea or otherwise vacate my conviction on the basis of Ms. Dookhan's misconduct, I could be prosecuted for the serious charges which the Commonwealth moved to dismiss and be sentenced to a longer prison term.

Bridgeman Aff. at R. 4, ¶ 17. As a result, he has yet to seek any post-conviction relief.

B. YASIR CREACH.

In April 2005, petitioner Yasir Creach pleaded guilty to possession of cocaine, and the court sentenced him to one year's imprisonment. See Affidavit of Yasir Creach ("Creach Aff.") at R. 7, ¶ 4. Creach decided to forego his right to a jury trial, in part, because the Commonwealth produced a drug certificate, signed by Dookhan, that reported the samples in his case had tested positive as cocaine. Id. at R. 4, ¶ 5; R. 434-435.

If Creach had known about Dookhan's extensive fraud, he likely would have consulted with his attorney about the issue and attempted, at the very least, to negotiate a more favorable plea agreement. Creach Aff. at R. 7, ¶¶ 7-8; see also Affidavit of Amy Joe Freedman ("Freedman Aff.") at R. 24, ¶ 8. Creach has yet to file a Rule 30 motion.

C. MIGUEL CUEVAS.

In January 2009, petitioner Miguel Cuevas pleaded guilty to distribution of cocaine and heroin, and the court sentenced him to four-and-a-half to five years in prison. See Affidavit of Miguel Cuevas ("Cuevas Aff.") at R. 10, ¶¶ 6-7; R. 445. Cuevas completed his sentence, and he now works full time as a

warehouse employee for a major department store, and is active in community and charitable events. Cuevas Aff. at R. 9, ¶¶ 2-3.

Cuevas would have sought to negotiate a more favorable plea agreement or gone to trial, if he had known of Dookhan's misconduct. Id. at R. 10-11, ¶¶ 9-11; see also Affidavit of Lawrence McGuire ("McGuire Aff.") at R. 26, ¶ 15-18. In fact, in October 2012, Cuevas moved for a new trial and for discovery regarding the Hinton Lab. See Cuevas Aff. at R. 11, ¶ 12; R. 446. The Commonwealth was ordered to respond to the discovery motion by February 13, 2014; no date has been set for a hearing on the new trial motion. See R. 446.

In sum, years ago, petitioners were convicted based upon Dookhan's fraud in the Hinton Lab. All three of them would have made different decisions, if they had known of Dookhan's extensive and egregious misconduct. In addition, petitioners would have received different advice from their trial counsel, who were also unaware of the misconduct and mismanagement in the Hinton Lab, despite their demands for all exculpatory discovery (including impeachment materials) from the Commonwealth. See Griffin Aff. at R. 14-15, ¶¶ 3-5, R. 17, ¶ 12; Carrigan Aff. at R. 19-20, ¶¶ 5-6, R. 21, ¶¶ 13-15; Freedman Aff. at R. 24, ¶¶ 5-6, 8; McGuire Aff. at R. 27, ¶¶ 5-6, R.29, 15-18. Now, Bridgeman and Creach fear more severe punishments if they

challenge their tainted convictions. And Cuevas, who has moved for a new trial, must wait six months simply to find out whether he will receive discovery concerning the Hinton Lab. In this way, petitioners and the other Dookhan defendants have suffered – and will continue to suffer – violations of their due process and common law rights through no fault of their own. Without the requested remedy from this Court, they have no meaningful relief in sight.

II. THE HINTON LAB LITIGATION BEFORE THIS COURT.

Despite extensive litigation before this Court, there has been no comprehensive remedy for the vast injustice arising from Dookhan's misconduct. An overview of this litigation, including earlier efforts to seek a remedy, appears below.

A. THE COMMONWEALTH'S EMERGENCY PETITIONS AGAINST SHUBAR CHARLES, HECTOR MILETTE AND THE SUPERIOR COURT.

The initial litigation before this Court involved a trio of emergency petitions by the Commonwealth, not by Dookhan defendants. These petitions presented only narrow procedural questions, and they did not address the broader substantive issue: How to vindicate the due process and common law rights of Dookhan defendants and restore the integrity of the criminal justice system?

The Commonwealth's first petition argued that neither Superior Court Justices nor Special Magistrates in the drug lab

sessions could stay sentences in cases with pending new trial motions. See Commonwealth's Petition at 12-18, Commonwealth v. Charles, SJ-2013-0066 (filed Feb. 14, 2013) (Botsford, J.). Shubar Charles opposed the petition, arguing that such stays were lawful. He also asked the Single Justice to report to the full Court the question whether, under G.L. c.211, §3, the Court "should direct and endorse a range of equitable judicial remedies designed to protect the due process rights of affected defendants, to restore the integrity of the affected judicial system, and to ensure the public's confidence therein." Opposition to Commonwealth's Petition by Charles at 3, Charles, SJ-2013-0066. Noting that defendants "fac[ed] long waits to obtain counsel, file motions, and obtain merits hearings," Charles argued that delays yielded "new constitutional violations on top of those that have already occurred." Id. at 35.

The Commonwealth's second petition challenged the authority of Special Magistrates to reconsider orders by Superior Court Justices concerning stays. See Commonwealth's Petition at 11-17, Commonwealth v. Milette, SJC-2013-0083 (filed Feb. 20, 2013) (Botsford, J.). Hector Milette opposed the petition and, like Charles, asked the Single Justice to address a broader question: "whether this Court should exercise its own authority to specify

a range of equitable remedies, including presumptive stays of sentences, governing the Hinton Lab litigation[.]” Opposition to Commonwealth’s Petition by Milette at 5, Milette, SJC-2013-008. Milette reasoned that, given the “protracted and uncertain litigation in the lower courts,” this Court’s intervention was “necessary to safeguard the due process rights of defendants and to restore the integrity of the criminal justice system.” Id. at 3, 14-16.

The Commonwealth’s third petition challenged the authority of Special Magistrates to accept guilty pleas in the drug lab sessions. See Commonwealth’s Petition at 7-13, Dist. Att’y v. Sup. Ct. (filed Mar. 1, 2013) (Botsford, J.). The Superior Court opposed the petition and defended the plea process.

In Charles, Milette and Superior Court, Justice Botsford reported only the narrow questions framed by the Commonwealth concerning (1) staying sentences, (2) reconsidering such orders, and (3) accepting pleas. Justice Botsford declined, however, to report the broader issues raised by Charles and Milette. She reasoned that, while it might be “appropriate ... at some point” to address “the systemic impact of the alleged misconduct at the laboratory,” it was “premature” at that time. Reservation and Rep. at 4, Commonwealth v. Charles, 466 Mass. 63 (2013).

The Committee for Public Counsel Services ("CPCS") had moved to intervene in Charles and Milette. On behalf of tens of thousands of defendants affected by the Hinton Lab crisis, CPCS sought "the fair resolution of a large number of cases, while avoiding inefficient and costly case-by-case litigation." Mot. to Intervene by CPCS at 10, Commonwealth v. Charles, SJ-2013-0066, Commonwealth v. Millette, SJC-2013-0083. In light of her ruling that a broader remedy was "premature," Justice Botsford denied, without prejudice, CPCS's motion to intervene. Reservation and Rep. at 4.

The Court issued its full opinion in all three cases on July 22, 2013. See Commonwealth v. Charles, 466 Mass. 63 (2013). Although it decided only the narrow issues raised by the Commonwealth,² the Court nonetheless recognized the paramount issues of justice and fairness. Because the "burden of [a] 'systemic lapse' in [the] administration of justice 'is not to be borne by defendants,'" this Court concluded:

Given the ongoing investigation of misconduct at the Hinton drug lab and the uncertainty about when such investigation will be completed, the interest of justice is not served by the continued imprisonment

² In Charles, the Court held that Superior Court Justices, but not Special Magistrates, may stay sentences when Dookhan defendants move for new trials. Id. at 79. In Milette, the Court held that Special Magistrates cannot reconsider (and allow) motions for stays after Superior Court Justices have denied those motions. Id. at 83. Finally, in Superior Court, the Court held that the special procedure by which defendants plead guilty before Special Magistrates, subject to review and acceptance by Superior Court Justices, "passes legal muster." Id. at 89.

of a defendant who may be entitled to a new trial.

Id. at 74-75, quoting Lavallee v. Justices in the Hampden Sup. Ct., 442 Mass. 228, 246 (2004). Now, more than two years after fraud by Dookhan was discovered in June 2011, petitioners Bridgeman, Creach and Cuevas submit that it is no longer "premature" for this Court to squarely address this ongoing "systemic lapse" in the criminal justice system.

B. THE COMMONWEALTH'S APPEALS FROM ORDERS ALLOWING NEW TRIAL MOTIONS.

The second wave of litigation to reach this Court resulted from appeals by the Commonwealth (and, in one instance, a defendant) from orders on new trial motions. In fact, even before issuing its opinion in Charles, this Court granted direct review in six drug lab appeals.³

Many of the defendants in these pending appeals have encouraged this Court to exercise its superintendence powers pursuant to G.L. c.211, §3, and fashion an appropriate remedy

³ In four cases, the Commonwealth appealed from orders allowing motions to withdraw guilty pleas to various drug charges. See Commonwealth v. Davila, SJC-11473; Commonwealth v. Bjork, SJC-11464; Commonwealth v. Scott, SJC-11465; Commonwealth v. Torres, SJC-11466. In one case, the Commonwealth appealed from an order dismissing without prejudice the drug charges against the defendant. See Commonwealth v. Gardner, SJC-11470. And in one case, the defendant, who is currently facing deportation due to his drug convictions, appealed from an order denying his motion to withdraw his guilty plea. See Commonwealth v. Rodriguez, SJC-11462. In the trial court, all six defendants argued that, when they pleaded guilty, they had relied on the drug certifications for which Dookhan was the "primary" or "secondary" chemist, but that due her misconduct, those certifications could not be considered reliable evidence.

for all Dookhan defendants. See, e.g., Brief for Scott at 45-47, Commonwealth v. Scott, SJC-11465 (asking this Court to order the trial courts to "allow Rule 30 motions" for all Dookhan defendants); Brief for Rodriguez at 24-29, Commonwealth v. Rodriguez, SJC-11462 (asking this Court to vacate convictions for all Dookhan defendants and, in the event of any retrial, require the Commonwealth to "show beyond a reasonable doubt that Dookhan did not tamper with the sample or destroy its chain of custody").

In these appeals, CPCS again submitted an amicus brief proposing a "comprehensive remedy." As it had done in Charles and Milette, CPCS emphasized "the magnitude of the problem" and argued that "no proper solution can be found in our usual case-by-case approach to providing relief, which, in this situation, is actually an obstacle to a solution." Brief for CPCS as Amici Curiae at 5, 26, Rodriguez, SJC-11462-SJC 11466. To avoid the massive burden and undue delay of any case-by-case approach, CPCS proposed that this Court "either dismiss all Dookhan cases with prejudice or provide the Commonwealth with a limited opportunity for reprosecution and then dismiss all remaining cases after one year." Id. at 27. CPCS contended that dismissal of all tainted convictions would be "proportionate" to the "sweeping misconduct" and a "practical" solution to the

otherwise "insurmountable problem" of reviewing tens of thousands of individual challenges. Id. at 35, 37.

At an October 10, 2013 hearing, oral argument focused on the particular circumstances of the six defendants, with this Court expressing interest in whether the defendants needed to establish, by affidavit, that they would not have pleaded guilty but for the drug certifications by Dookhan. Meanwhile, the Commonwealth urged this Court not to depart from the typical case-by-case approach, claiming that Rule 30 offers adequate relief to all Dookhan defendants. These appeals remain pending.

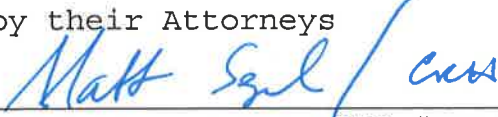
CONCLUSION

For the foregoing reasons, and for the reasons explained in the accompanying Memorandum in Support, Petitioners respectfully request that this Court provide the relief outlined above.

Respectfully submitted,

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Dated: January 9, 2014.

CERTIFICATE OF SERVICE

I, Shrutih V. Ramlochan-Tewarie, an attorney for petitioners, hereby certify that on January 9, 2014, I served the foregoing by causing copies to be mailed, by Federal Express, to the following:

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