

24

Michael Elbery
168 Fairfield St.
Needham, Mass. 02492
7-7-99

Supreme Judicial Court of Massachusetts
New Court House, Pemberton Sq.
Boston, Mass.02108

RE: Com. v. Michael Elbery 93-0135; Petition under C. 211 s. 3

Dear Sir:

Please find enclosed,

**Petition for Relief Under General Superintendence of all the Courts to Prevent Abuses of
Lower Courts
Massachusetts C. 211 s. 3**

thank you.

my copy

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Michael Elbery, pro se
petitioner

Mass. C. 211 s. 3

v.

Judge Dan Toomey
Worcester Superior Court
Worcester District Attorney's Office
Massachusetts Attorney General's Office
respondents

**Petition for Relief Under General Superintendence of all the Courts to Prevent Abuses of
Lower Courts**

Massachusetts C. 211 s. 3



FILED

JUL 06 1999

ATTEST: *Living P. Lemouneuf* CLERK

1. This defendant/petitioner, Michael Elbery, (hereinafter defendant) was illegally convicted in Worcester Superior Court before Judge Dan Toomey on 7-2-93 and sentenced to 10 years in state prison. That criminal case was Com. v. Elbery 93-0135. See Ex. M of Ex 5.

2. This defendant has filed, on 7-6-99, a meritorious Motion for New Trial under M.R.C.P. 30, see Ex. 5.

3. This defendant in 1997, as a result of being incorrectly advised by a bar-attorney/relative, motioned Judge Dan Toomey to allow additional pages to comprise his anticipated motion for new trial. See Ex. #1.

4. This defendant realizing that he was incorrect, via Ex. 1 above, as a matter of law, that there is no page limit to Criminal Motions under Superior Court Rule 9 or 9b, motioned to withdraw his motion in paragraph #3. See Ex. #2.

5. Regardless of the law and this defendant's motion in paragraph #4 above Judge Dan Toomey maintained, in Violation of Due Process of Law, the 60 page limit to this defendant's motion for new trial, this including exhibits. See Exs. #3 and #4.

ARGUMENT

There is no discretion for Judge Dan Toomey to limit this defendant's Motion for New Trial to 60 pages or any other amount. There is no such provision under M.R.C.P. - Rule 30 or Mass. Rules of Superior Court Rule 9 or 9b. The attachments or exhibits, alone, to this New Trial Motion are over 60 pages.

The Supreme Judicial Court has jurisdiction to stop this illegal discretion by Toomey via Mass. C. 211 s. 3. There is no other remedy available to prevent this limitation by Toomey of this defendant's Due Process of Law under the Fourteenth Amendment of the U.S. Constitution. This page limit by Toomey is arbitrary.

As per Ex #5 the trial of the conviction of this defendant was one giant miscarriage of justice and a continuum of violations of this defendant's Constitutional Rights under the U.S. Constitution. There were so many illegalities during that trial that it requires over 100 pages of factual Memorandum of Fact and Law in order that justice can be served.

This defendant asks the Supreme Judicial Court of Massachusetts to prevent further abuse of this defendant's rights by ordering Judge Toomey to obey the law and remove his page limit regarding this defendant's Motion For New Trial.

The pages in excess of 60, as per Ex. # 5, is required to present the injustice of that conviction. Without these pages (all), per Ex. 5, this defendant's rights will once again be violated. The Federal government will deem such a state procedure illegal for the purposes of habeas corpus ad subjiciendum. *Messer v. Roberts* C.A. 10 (Kan.) 1996, 74 F. 3d 1009, *Calderon v. U.S. Dist. Court for Eastern Dist. of Calf.* C.A. 9 (Cal) 1996, 96 F 3d 1126, (state procedures must be applied in even handed manner and consistently enforced, the state procedures must be regular and adequate).

WHEREFORE,

this defendant, Michael Elbery, asks the Supreme Judicial Court to order no limit on this defendant's rights via pages of his Motion for New Trial under Rule 30 of the M.R.C.P.

This defendant also asks that Toomey not delay and make quick time of a decision regarding this defendant's Motion for New Trial in order that this wrongly convicted citizen may regain his liberty at the Superior Court level or upon exhaustion of remedies both state and federal.

Defendant/Petitioner Requests Hearing on this matter.

A handwritten signature in cursive script that reads "Michael Elbery, pro se". The signature is written in dark ink and is positioned above the typed name.

Michael Elbery, pro se

168 Fairfield St.

Needham, Mass. 02492

781-444-7324

7-2-99

Ex. 1

Michael Elbery
168 Fairfield St.
Needham, Mass. 02192
617-444-7324
2-25-97

Loring P. Lamoureux
Clerk of the Courts
Room 21 Court House
2 Main St.
Worcester, Mass. 01608-1176

Dear Sir:

Please find enclosed for immediate filing and review by Judge Daniel Toomey DEFENDANT'S MOTION FOR ALLOWANCE OF FORTY ADDITIONAL PAGES TO COMPLETE MOTION FOR NEW TRIAL.

Respectfully submitted,

Michael Elbery

Michael Elbery

FILED

JUL 06 1999

ATTEST: *Loring P. Lamoureux* CLERK

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.
Worcester Superior Court
Criminal Docket #93-0135

Commonwealth
v
Michael Elbery

MOTION FOR ALLOWANCE OF FORTY ADDITIONAL PAGES TO COMPLETE MOTION
FOR NEW TRIAL

The defendant moves the court for leave from Superior Court Rule 9A-b-4 which limits a motion memoranda to 20 pages. This pro se litigant asks the Court for leave to submit an additional 40 pages. I can not present all factual claims, all being U.S. Constitutional violations, on 20 pages.

Each factual claim not only requires statement of fact, legal authority and argument but also requires an explanation of resulting prejudice. At this point I have 12 factual claims each containing subsets of additional violations of law and related factual claims.

To exclude any of these factual claims allowed by Rule 30 would be an injustice. Each claim not only depicts a constitutional violation but rises to a miscarriage of justice, all claims must be presented in order that this pro se litigant can fairly present the injustices surrounding his conviction on 7-2-93.

Thank you for your immediate attention regarding this
matter.

FILED

JUL 06 1999

ATTEST:

Living P. Lemoine CLERK

Respectfully submitted,

Michael Elbery

Michael Elbery

168 Fairfield St.

Needham, Mass. 02192

617-444-7324

Ex. 2

Michael Elbery
168 Fairfield St.
Needham, Mass. 02192
617-444-7324

3-12-97

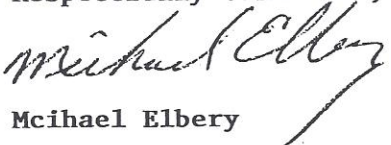
Loring P. Lamoureux
Clerk of the Courts
Room 21 Court House
2 Main St.
Worcester, Mass. 01608-1176

Dear Sir:

Please find enclosed for immediate filing and review by Judge Toomey

COMBINED MOTION TO WITHDRAW DEFENDANT'S MOTION FOR ALLOWANCE OF FORTY ADDITIONAL
PAGES TO COMPLETE MOTION FOR NEW TRIAL AND MOTION TO CORRECT ERROR OF LAW.

Respectfully submitted,


Michael Elbery

COMBINED MOTION TO WITHDRAW DEFENDANT'S MOTION FOR ALLOWANCE OF FORTY ADDITIONAL
PAGES TO COMPLETE MOTION FOR NEW TRIAL AND MOTION TO CORRECT ERROR OF LAW

The defendant moves to withdraw motion attached, expansion of new trial motion
to 40 pages.

The defendant was in error, in that Rule 9A of Sup. Ct. applies only to civil cases.
Evidently the defendant was in good company as the Court's staff did not pick up
this error .

The defendant withdraws the motion attached and maintains the status quo, as
Massachusetts Law allows , there is no page limit under a Rule 30 motion.

FILED

JUL 06 1999

ATTEST: *Lois P. Lamoreaux* CLERK

Respectfully submitted,

Michael Elbery

Michael Elbery

168 Fairfield St.
Needham, Mass. 02192
617-444-7324

3-10-97

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.
Worcester Superior Court
Criminal Docket #93-0135

Commonwealth
v
Michael Elbery

MOTION FOR ALLOWANCE OF FORTY ADDITIONAL PAGES TO COMPLETE MOTION
FOR NEW TRIAL

22

The defendant moves the court for leave from Superior Court Rule 9A-b-4 which limits a motion memoranda to 20 pages. This pro se litigant asks the Court for leave to submit an additional 40 pages. I can not present all factual claims, all being U.S. Constitutional violations, on 20 pages.

Each factual claim not only requires statement of fact, legal authority and argument but also requires an explanation of resulting prejudice. At this point I have 12 factual claims each containing subsets of additional violations of law and related factual claims.

To exclude any of these factual claims allowed by Rule 30 would be an injustice. Each claim not only depicts a constitutional violation but rises to a miscarriage of justice, all claims must be presented in order that this pro se litigant can fairly present the injustices surrounding his conviction on 7-2-93.

2/28/97 ALLOWED, PROVIDED, HOWEVER, THAT DEFENDANT'S MEMORANDUM SHALL NOT EXCEED 60 PAGES INCLUDING ITEMS OF APPENDIX, ADDENDUM AND COPIES OF DOCUMENTS

AS TO WHICH DEFENDANT MAKES REFERENCE IN THE MEMO.

-DE Toomey JSC

NOTIFY PARTIES

2/28/97 copy to DA Adit KE

COMBINED MOTION TO WITHDRAW DEFENDANT'S MOTION FOR ALLOWANCE OF FORTY ADDITIONAL PAGES TO COMPLETE MOTION FOR NEW TRIAL AND MOTION TO CORRECT ERROR OF LAW

23

The defendant moves to withdraw motion attached, expansion of new trial motion to 40 pages.

The defendant was in error, in that Rule 9A of Sup. Ct. applies only to civil cases. Evidently the defendant was in good company as the Court's staff did not pick up this error .

The defendant withdraws the motion attached and maintains the status quo, as Massachusetts Law allows , there is no page limit under a Rule 30 motion.

Respectfully submitted,

Michael Elbery

Michael Elbery

168 Fairfield St.
Needham, Mass. 02192
617-444-7324

3-12-97

FILED

MAR 13 1997

ATTEST

[Signature]

CLERK

3/17/97 NOTWITHSTANDING DEFENDANT'S WITHDRAWAL OF HIS MOTION, THIS COURT, AS A MATTER OF DISCRETION, DIRECTS THAT HIS INITIAL SUBMISSIONS IN SUPPORT OF HIS RULE 30 MOTION SHALL NOT EXCEED 60 PAGES.
-D. Rooney JSC

3/17/97
copy to DA
adit
ye

Certificate of Service

I the defendant, Michael Elbery, sent this 211 s. 3 Petition to the Mass. SJC at Pemberton SQ., Boston, Mass., hand delivered on 7-8-99 and the Mass. Attorney General's Office via U.S. mail on 7-7-99 to 1 Ashburton Place, Boston, Mass. and to the Clerk - Worcester Superior Court at 2 Main St., Worcester, Mass. and to the Worcester District Attorney's Office at 2 Main St., Worcester, Mass. both hand delivered on 7-6-99.