

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-979

BODHISATTVA SKANDHA

vs.

COMMONWEALTH & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, Bodhisattva Skandha, filed a pro se complaint on behalf of, and as "next friend" of, four of his fellow prison inmates. The motion judge dismissed the complaint because Skandha's actions constituted the unauthorized practice of law. Skandha appeals. We affirm.

Discussion. "No individual, other than a member, in good standing, of the bar of this [C]ommonwealth shall practice law." G. L. c. 221, § 46A. "The purpose of [this] limitation is to protect the public." LAS Collection Mgmt. v. Pagan, 447 Mass. 847, 850 (2006), citing Matter of the Shoe Mfrs. Protective Ass'n, 295 Mass. 369, 372 (1936). "[F]or an activity to be considered the 'practice of law' such that a nonlawyer cannot

¹ District Attorneys Jonathan Blodgett, Rachel Rollins, Timothy Cruz, and David Sullivan.

perform it without committing the unauthorized practice of law, the activity itself must generally fall 'wholly within' the practice of law" (citation omitted). Matter of Bott, 462 Mass. 430, 432 (2012). The practice of law includes, among other things, "[d]irecting and managing the enforcement of legal claims and the establishment of the legal rights of others . . ." (citation omitted). Real Estate Bar Ass'n for Mass., Inc. v. National Real Estate Info. Servs., 459 Mass. 512, 518 (2011). "[A]n individual who prosecutes his own action is not engaging in the practice of law." LAS Collection Mgmt., 447 Mass. at 850. However, the prosecution and commencement of legal proceedings in court, on behalf of another, is undoubtedly reserved exclusively for members of the bar. See id. at 849-850.

Here, even though Skandha filed the civil complaint pro se, he sought to assert not his own legal rights, but rather the legal rights of his four fellow inmates. Although filed in the form of a civil complaint, the complaint in substance more closely resembles a motion under Mass. R. Crim. P. 30(a), as appearing in 435 Mass. 1501 (2001), where Skandha seeks to challenge each inmate's conviction by way of claims of factual innocence and structural defects in the trial process. Regardless of the form in which Skandha filed the pleading, his

actions undoubtedly constitute the practice of law.² See LAS Collection Mgmt., 447 Mass. at 850. Because Skandha is not a member of the bar of this Commonwealth, he has engaged in the unauthorized practice of law, as prohibited by G. L. c. 221, § 46A. As such, the motion judge acted well within his authority to dismiss Skandha's complaint. See Burnham v. Justices of the Superior Ct., 439 Mass. 1018 (2003).

Moreover, notwithstanding the issue of unauthorized practice of law, the vehicle in which Skandha sought to bring these claims, namely a civil complaint, is also improper. The only proper course of action would have been for an attorney to file (or for each inmate file for himself pro se) a separate motion in each inmate's case pursuant to Mass. R. Crim. P.

² Skandha claims he properly filed the complaint as "next friend" of his fellow inmates, pursuant to Mass. R. Civ. P. 17 (b), as appearing in 454 Mass. 1402 (2009). Such filing, however, was not proper. In an overly conclusory fashion, Skandha recited that each inmate was "incompetent," without any meaningful evidence to support such a claim. The appointment of a "next friend" is reserved only for infants or incompetent persons who by reason of their incompetency are not adequately represented. See Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation (No. 4), 424 Mass. 476, 478-479 (1997). Without any meaningful evidence of incompetency, and without evidence of inadequate representation of the inmates' legal claims, the refusal to permit Skandha to serve as next friend of the four inmates was proper. See id. at 479. As such, where Skandha could not claim to serve as next friend of the four inmates, he lacked standing to bring forth this complaint. See Klein v. Catalano, 386 Mass. 701, 714 (1982) (plaintiffs lacking individual standing may not assert another's rights).

30 (a). See Mass. R. Crim. P. 30 (a) ("Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts"). See also Commonwealth v. Rodriguez, 443 Mass. 707, 709 (2005), quoting Leaster v. Commonwealth, 385 Mass. 547, 549 (1982) ("Rule 30 was adopted in 1979 as the exclusive vehicle for postconviction relief").

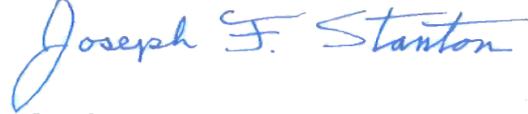
Furthermore, rule 30(a) specifically awards jurisdiction over such motions to the trial judge who presided over the criminal conviction. See McCastle, petitioner, 401 Mass. 105, 107 (1987) (rule 30 [a] motion assigned to trial judge who presided over defendant's case due to judge's familiarity with case).³ Accordingly, because none of the four inmates were

³ In the event the trial judge is no longer available to rule on the motion, the clerk "shall forward the motion and accompanying papers to the regional administrative justice for the county in which the conviction occurred" (emphasis added). Rule 61A (B) of the Rules of the Superior Court (2020).

convicted within Norfolk County, the Norfolk Superior Court was not the proper venue for the case.⁴ See id.

Judgment affirmed.

By the Court (Meade, Shin & Walsh, JJ.⁵),



Clerk

Entered: October 5, 2021.

⁴ All four inmates were convicted outside of Norfolk County. Jean Claude Jules was convicted of first-degree murder in Plymouth County. See Commonwealth v. Jules, 464 Mass. 478 (2013). Jose Acevedo was convicted of numerous offenses in Essex County, stemming from a home invasion. See Commonwealth v. Merced, 81 Mass. App. Ct. 1107 (2012). Richard Freiberg was convicted of first-degree murder in Suffolk County. See Commonwealth v. Freiberg, 405 Mass. 282 (1989). Frederick Perry was convicted of first-degree murder and kidnapping in Franklin County. See Commonwealth v. Perry, 432 Mass. 214 (2000).

⁵ The panelists are listed in order of seniority.