

Commonwealth vs. Alfredo Companio

SJC-11832

July 6, 2015

The defendant was convicted in 1987 of murder in the first degree. In 2005, this court affirmed the conviction as well as several trial court orders on postconviction motions. *Commonwealth v. Companio*, 445 Mass. 39 (2005). The defendant has since filed additional motions in the trial court seeking postconviction relief, all of which have been denied. In December, 2014, a single justice of this court denied the defendant's application for leave to appeal from the denial of his most recent motion. See G. L. c. 278, § 33E. The single justice concluded that the defendant's claims were not "new and substantial" within the meaning of the statute. The defendant now purports to appeal to the full court from the single justice's ruling.

A defendant who is denied leave to appeal from a single justice acting as a gatekeeper pursuant to the last sentence of G. L. c. 278, § 33E, has no right to appeal from the single justice's ruling denying leave. The single justice's ruling is "final and unreviewable." See *Commonwealth v. Gunter*, 456 Mass. 1017, 1017 (2010), and cases cited. It cannot be appealed to the full court; it is not subject to review under G. L. c. 211, § 3; and it cannot be collaterally attacked. *Id.* We have routinely rejected attempts by defendants to obtain full court review of a single justice's ruling denying such leave to appeal. See, e.g., *Commonwealth v. Nesbitt*, 459 Mass.1005 (2011); *Commonwealth v. Monteiro*, 451 Mass. 1009 (2008); *Commonwealth v. Niemic*, 451 Mass. 1008 (2008); *Commonwealth v. Freeman*, 451 Mass. 1006 (2008); *Commonwealth v. Scott*, 437 Mass. 1008 (2002). "The special function of the single justice mandated by the statute would be futile and meaningless if his or her rulings were subject to appeal before the full court." *Leaster v. Commonwealth*, 385 Mass.547, 548 (1982).

The defendant's reference in his notice of appeal to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), does not improve his position. Rule 2:21 applies in cases where a single justice denies relief from a challenged interlocutory ruling of the trial court. It does not apply here. The denial of a postappeal motion for a new trial in a criminal case is not an interlocutory ruling. Moreover, Rule 2:21, in instances where it does apply, "does not create a new right of appeal" where none otherwise existed. *McMenimen v. Passatempo*, 452 Mass. 178, 190 & n.12 (2008).

Appeal dismissed.

The case was submitted on briefs.

Alfredo Companioni, pro se.

Robert C. Thompson, Assistant District Attorney, for the Commonwealth.

Footnotes

FN 1: As is our custom, we recite the defendant's name as it first appears in the indictment.