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SJC-09220

WILLIAM J. ALLEN vs. COMMONWEALTH.

March 27, 2006.

Supreme Judicial Court, Appeal from order of single justice.  
Practice, Criminal, Postconviction relief.

William J. Allen was convicted of armed robbery while masked and felony-murder in the first degree as a joint venturer in the robbery, and we affirmed the conviction of felony-murder. Commonwealth v. Allen, 430 Mass. 252, 252 n.1, 259 (1999). Acting pro se, Allen subsequently filed in the Superior Court a motion for a new trial, a motion requesting findings of fact and conclusions of law, and other motions, all of which were denied. Allen then filed a petition, pursuant to G. L. c. 211, § 3, in the county court, essentially seeking review of at least some of the Superior Court judge's orders.

Although Allen's petition refers to G. L. c. 278, § 33E, he requests relief under G. L. c. 211, § 3. As we have said, however, relief under G. L. c. 211, § 3, is extraordinary, and a single justice does not err or otherwise abuse his discretion in denying relief where adequate alternative remedies exist. Lykus v. Commonwealth, 432 Mass. 160, 161-162 (2000). Because we have already accorded Allen plenary review on his direct appeal, he "is required to follow the specific provisions of § 33E for appealing from a Superior Court judge's denial of a motion seeking postconviction relief," including petitioning "a single justice for permission to appeal." Id. at 162. Where the mechanism of G. L. c. 278, § 33E, was available, the single justice did not err in denying relief pursuant to G. L. c. 211, § 3. Id. at 161.

While the single justice properly denied the petition under G. L. c. 211, § 3, it is unclear whether Allen may also have intended that his petition be treated as a gatekeeper petition, pursuant to § 33E. For that reason, we remand the case to the county court for reconsideration of the matter as a petition

under that statute. "[T]he decision of the single justice, acting as a gatekeeper pursuant to G. L. c. 278, § 33E, [will be] 'final and unreviewable.'" Commonwealth v. Herbert, 445 Mass. 1018, 1018 (2005), quoting Commonwealth v. Perez, 442 Mass. 1019, 1019 (2004).

So ordered.

The case was submitted on briefs.

William J. Allen, pro se.

Timothy J. Cruz, District Attorney, & Carolyn A. Burbine, Assistant District Attorney, for the Commonwealth.