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SJC-09804

CHUKWUMA E. AZUBUKO vs. COMMONWEALTH.

April 17, 2007.

Supreme Judicial Court, Superintendence of inferior courts.

Chukwuma E. Azubuko (petitioner) appeals from a judgment of a single justice of this court denying his petition for relief pursuant to G. L. c. 211, § 3. We affirm.

The petitioner was charged in the District Court with assault and battery by means of a dangerous weapon. Following a jury trial, he was convicted of assault and battery and sentenced to a term of probation. He claims that he filed a timely notice of appeal. Following unsuccessful attempts in the single justice session of the Appeals Court to stay his probationary sentence pending appeal, the petitioner filed a G. L. c. 211, § 3, petition in the county court. There, he again sought a stay of his probationary sentence. He also claimed that his conviction was unlawful because, among other things, hearsay statements of the alleged victim had been admitted at his trial in violation of the confrontation clause of the Sixth Amendment to the United States Constitution. A single justice of this court denied the petition without a hearing. On appeal from that judgment, the petitioner argues only that his conviction was improper.

We review the single justice's denial of relief under G. L. c. 211, § 3, only to determine whether he abused his discretion or made some other error of law. The single justice did neither. The petitioner's attempt to obtain review of his conviction under G. L. c. 211, § 3, is misplaced; a direct appeal to the Appeals Court is the proper avenue for seeking such review. "We have emphasized that relief under G. L. c. 211, § 3, is extraordinary and may not be sought as a substitute for normal appellate review." Foley v. Lowell Div. of the Dist. Court Dep't, 398 Mass. 800, 802 (1986), citing Soja v. T.P. Sampson Co., 373 Mass. 630, 631 (1977). The petitioner claims that he has filed a timely notice of appeal from his conviction and presents no reason that he cannot pursue that appeal in the regular course.

Judgment affirmed.

Chukwumae E. Azubuko, pro se.  
Annapurna Balakrishna, Assistant Attorney General, for the  
Commonwealth.