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SJC-12333

COMMONWEALTH vs. LARRY D. WAMPLER, JR.

August 18, 2017.

Practice, Criminal, Capital case, Postconviction relief, Appeal.

The defendant, Larry D. Wampler, Jr., was convicted of murder in the first degree by reason of deliberate premeditation. We affirmed the conviction. Commonwealth v. Hung Tan Vo, 427 Mass. 464 (1998).¹ The defendant recently filed, in the Superior Court, a motion to vacate, set aside, or correct sentence, which was denied. He then applied to a single justice of this court for leave to appeal from the denial of that motion pursuant to G. L. c. 278, § 33E. The single justice denied the application. The defendant has appealed, and the Commonwealth has moved to dismiss the appeal. "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.'" Commonwealth v. Companonio, 472 Mass. 1004 (2015), quoting Commonwealth v. Gunter, 456 Mass. 1017, 1017 (2010). The defendant cannot appeal to the full court.²

Appeal dismissed.

¹ At the time of trial, the defendant was referred to as Hung Tan Vo. He now goes by the name Larry D. Wampler, Jr.

² Because the defendant has no right to appeal to the full court, his motion for appointment of counsel in this court is also denied. There is no right to counsel where there is no right to appeal.

The case was submitted on briefs.

Larry D. Wampler, Jr., pro se.

Jamie Michael Charles, Assistant District Attorney, for the
Commonwealth.