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SJC-11982

KAVEH L. AFRASIABI vs. COMMONWEALTH.

December 31, 2015.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Kaveh Afrasiabi, is the defendant in a criminal case in the Cambridge Division of the District Court Department in which he is charged with a single count of criminal harassment in violation of G. L. c. 265, § 43A (a). He filed a motion to dismiss the complaint, alleging, among other things, that the clerk-magistrate heard and considered perjured testimony at the show cause hearing and issued the complaint on that basis.¹ A judge in the District Court denied the motion. The petitioner then filed a pleading in the county court seeking relief pursuant to G. L. c. 211, § 3, which a single justice of this court denied without a hearing. The petitioner now appeals to the full court from the judgment of the single justice.

This is the third time that this petitioner has pursued an appeal to the full court that is subject to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), but has failed to comply with the rule. See Afrasiabi v. Commonwealth, 466 Mass. 1007, 1007 (2013); Afrasiabi v. Rooney, 432 Mass. 1006, 1007 (2000). The rule requires an appellant to file a memorandum setting forth "the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." The petitioner

¹ The petitioner's motion in the District Court also sought a new show cause hearing before the clerk-magistrate. But see Commonwealth v. DiBennadetto, 436 Mass. 310, 313 (2002) (holding that motion to dismiss, and not new show cause hearing, is only appropriate remedy once complaint is issued).

has not filed such a memorandum; instead, he simply refiled in the full court the exact same pleading he filed in the county court -- with the original date crossed out and a new date written in -- which completely fails to address the single issue identified by the rule. "Failure to comply with the rule in a case where it applies is a separate and sufficient reason for us to decline to disturb the single justice's judgment." Rasten v. Northeastern Univ., 432 Mass. 1003, 1003 (2000), cert. denied, 531 U.S. 1168 (2001), cited with approval in Afrasiabi v. Rooney, supra.

The petitioner fares no better on the merits. Here, as in the petitioner's two previous cases, the single justice properly declined to employ the court's extraordinary power of general superintendence because the petitioner had an adequate alternative remedy. Specifically, he can challenge the District Court's denial of his motion to dismiss in a direct appeal to the Appeals Court if he is convicted. See Soucy v. Commonwealth, 470 Mass. 1025, 1025-1026 (2015); Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002).

Judgment affirmed.

Kaveh L. Afrasiabi, pro se, submitted a brief.