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SJC-12071

JONATHAN MARTINEZ vs. COMMONWEALTH.

July 26, 2016.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Criminal, Discovery, Subpoena.

Jonathan Martinez appeals from a judgment of a single justice in the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. Martinez stands indicted for several drug offenses. Pursuant to Mass. R. Crim. P. 17 (a) (2), 378 Mass. 885 (1979), he moved for issuance of a subpoena, seeking certain statistical data maintained or controlled by the registry of motor vehicles, which he claimed would be relevant to support his claim that he was subjected to selective enforcement and racial profiling.¹ A judge in the Superior Court denied the motion. Martinez's G. L. c. 211, § 3, petition followed. We affirm the judgment.

The case is before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires Martinez to "set 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." Martinez has

¹ Martinez also filed a motion pursuant to Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004), seeking an order that the Commonwealth produce similar information maintained by the Braintree police department. That motion was denied by the same judge, as was a motion for reconsideration. Martinez filed a G. L. c. 211, § 3, petition challenging those rulings (first petition), which a different single justice denied without a hearing. Martinez did not appeal from that judgment to the full court. The first petition is thus not before us.

not done so. If Martinez is convicted of any offense, he will have the opportunity to raise his issues in the ordinary appellate process.² Discovery matters such as this are routinely addressed on direct appeal. See Deming v. Commonwealth, 438 Mass. 1007, 1007 (2002), citing Carr v. Howard, 426 Mass. 514, 517 n.3 (1998) (discovery disputes generally not appropriate for review under G. L. c. 211, § 3). The single justice neither erred nor abused his discretion by denying extraordinary relief.

In addition, Martinez has not filed a memorandum pursuant to rule 2:21, but has filed only what appears to be a copy of the petition he filed in the county court. This does not comply with the rule. S.J.C. Rule 2:21 (2) ("The record appendix shall be accompanied by eight copies of a memorandum . . . in which the appellant must set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal . . . or by other available means" [emphasis added]). "The purpose of this requirement is to focus the court's and counsel's attention on the narrow question whether, regardless of the merits of the substantive claim of error, the petitioner has an adequate remedy apart from resort to G. L. c. 211, § 3." McDonald v. Commonwealth, 450 Mass. 1020, 1021 (2008). Martinez's failure to comply with the rule presents a further reason not to disturb the judgment of the single justice.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Christopher L. Malcolm for the petitioner.

² Martinez suggests that if he is acquitted of all charges, he will not have this opportunity to obtain appellate review. In that circumstance, however, any selective enforcement will not have caused him any harm remediable in the criminal proceeding. This does not provide a basis for extraordinary relief.