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SJC-12168

COMMONWEALTH vs. WILLIAM M. SHIPPS, JR.

November 10, 2017.

Practice, Criminal, Postconviction relief, Stay of proceedings.

William M. Shipps, Jr., was convicted of murder in the first degree, armed assault in a dwelling house, and armed robbery in 1984. This court affirmed the convictions. Commonwealth v. Shipps, 399 Mass. 820, 840 (1987). Shipps has since filed, in the Superior Court, several motions for postconviction relief, including, most recently, a motion for "post-verdict juror inquiries." A judge other than the trial judge (who had retired) denied the motion after a nonevidentiary hearing. Shipps then filed, in the county court, a gatekeeper application seeking leave to appeal pursuant to G. L. c. 278, § 33E. At the same time, he also filed a motion to stay action on the application pending completion of a transcript of the nonevidentiary hearing on the underlying motion. He claimed that staying action pending completion of the transcript would allow him to file a more comprehensive application.

Shipps's application and motion to stay were filed on September 21, 2015. The single justice held the application in abeyance for approximately ten months. On July 29, 2016, no transcript having been filed, the single justice denied the application on the basis that it did not raise a new and substantial issue. In so doing, the single justice implicitly declined to stay the matter any further.

Shipps appeals only from the denial of a further stay.¹ He argues that the single justice's refusal to stay the matter further denied him the ability to prepare and present a comprehensive gatekeeper application. Shipps filed his application and his motion to stay in September, 2015. He had ample time -- almost a year -- to file a more detailed application, even without a transcript from the nonevidentiary hearing on his underlying motion. He has presented no argument why the motion judge's detailed written decision, combined with the relevant papers filed in the trial court, including his own motion and the Commonwealth's opposition, did not provide him with all that he needed to present a comprehensive application. A transcript of a nonevidentiary hearing on the motion was not necessary and would have added little, if anything.² So too for the single justice, who had before him all the relevant materials that were before the motion judge. He did not err in declining to stay the matter further to await an unnecessary transcript.

The order denying the motion to stay action on the gatekeeper application pending completion of a transcript is affirmed.

So ordered.

William M. Shipps, Jr., pro se.
Marguerite T. Grant, Assistant District Attorney, for the Commonwealth.

¹ Shipps acknowledges that he has no right to appeal from the denial of the gatekeeper application pursuant to G. L. c. 278, § 33E, and he has not sought to do so.

² In his motion to stay, Shipps argued that a further stay was necessary to await both the preparation of the transcript as well as a ruling on his motion for funds for a private investigator. In his appeal to this court, he presses only the issue of the preparation of the transcript.