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SJC-12408

FRANKLIN B. ABERNATHY vs. COMMONWEALTH.

May 24, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

Franklin B. Abernathy appeals from a judgment of the county court denying, without a hearing, his petition for relief under G. L. c. 211, § 3. In 2014, Abernathy's convictions of breaking and entering during the daytime with intent to commit a felony and of possession of burglarious tools were affirmed by the Appeals Court, and we denied further appellate review. Commonwealth v. Abernathy, 85 Mass. App. Ct. 1117, S.C., 469 Mass. 1101 (2014). Abernathy filed a motion for a new trial, claiming that the indictments were defective. That motion was denied; the denial was affirmed by the Appeals Court, and we denied further appellate review. Commonwealth v. Abernathy, 91 Mass. App. Ct. 1119, S.C., 478 Mass. 1103 (2017). In addition, Abernathy filed his G. L. c. 211, § 3, petition, which was denied while the latter application for further appellate review was pending. We affirm the denial of relief.

Abernathy has filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a party challenging an interlocutory ruling of the trial court 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." That rule does not apply, as Abernathy is not challenging an interlocutory ruling of the trial court. Nonetheless, it is clear on the record that Abernathy had, and pursued, an adequate remedy in the ordinary process, namely, his appeal from the denial of his motion for a new trial. "Our

general superintendence power under G. L. c. 211, § 3, is extraordinary and to be exercised sparingly, not as a substitute for the normal appellate process or merely to provide an additional layer of appellate review after the normal process has run its course." Bishay v. Land Ct. Dep't of the Trial Court, 477 Mass. 1032, 1033 (2017), quoting Fennick v. Kittredge, 460 Mass. 1012, (2011).¹

Judgment affirmed.

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

Franklin B. Abernathy, pro se.

¹ Abernathy also contends that a systemic problem exists in the justice system. "This claim is beyond the scope of rule 2:21, which concerns only the alternative remedies, if any, available to the particular petitioner. Moreover, the single justice did not decide the petition on the merits or report the case to the full court to address [the] claim of systemic error, and we are loath to second-guess [his] discretion in this respect." Benjamin B. v. Commonwealth, 478 Mass. 1012, 1013 n.3 (2017), citing Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002).