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SJC-12524

ELADIO SANTOS vs. COMMONWEALTH.¹

October 15, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Eladio Santos, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

Santos was convicted in 2003 on one indictment charging rape of a child and eight indictments charging indecent assault and battery on a child under fourteen years of age. The Appeals Court affirmed the convictions, and this court denied Santos's subsequent application for further appellate review. See Commonwealth v. Santos, 66 Mass. App. Ct. 1116, S.C., 447 Mass. 1109 (2006). In 2011, Santos filed his first motion for a new trial, which was denied. The Appeals Court affirmed the ruling, and we again denied Santos's application for further appellate review. See Commonwealth v. Santos, 83 Mass. App. Ct. 1126, S.C., 465 Mass. 1109 (2013). The same result ensued in response to Santos's second motion for a new trial, which he filed in 2014. See Commonwealth v. Santos, 88 Mass. App. Ct. 1117 (2015), S.C., 473 Mass. 1109 (2016).

In 2018, Santos filed his G. L. c. 211, § 3, petition in the county court. In the petition he alleged that in October, 2017, he "presented" two "structural defects in the trial process" to the trial court. He included with the petition a copy of a motion to vacate, set aside, or correct sentence that,

¹ The petitioner named the Superior Court Department as the respondent. The court is a nominal party only. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996).

it appears, he claims to have filed in the trial court. He argued that the trial court "ignored" the motion, and he asked the single justice either to rule on the merits of the motion or to remand the matter to the trial court for a ruling. The single justice denied the petition without a hearing.

Santos has now filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). Technically speaking, that rule does not apply here because Santos is not seeking relief from any interlocutory ruling of the trial court. Rather, he is asking us to act on, or to direct the trial court to act on, a motion that purportedly has been filed and is pending in that court. It is unclear from the record, however, whether the motion was actually ever received by and filed in the trial court. Nothing on the trial court docket shows that such a motion was received and filed, and there is no indication on the copy of the motion included in the record before us (e.g., a date stamp indicating receipt) that the motion was ever received by the trial court. Any question concerning the actual receipt and filing of the motion is something that should itself be resolved in the trial court in the first instance. See Matthews v. D'Arcy, 425 Mass. 1021, 1022 (1997). If Santos did in fact file the motion, there is no reason why it should not be docketed and acted on accordingly. Alternatively, if the motion was never in fact filed in the trial court, Santos should file it there now, rather than filing a G. L. c. 211, § 3, petition in this court.

On the basis of the record before her, the single justice did not err or abuse her discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

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

Eladio Santos, pro se.