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SJC-12576

ENRIQUE PEREZ-ACEVEDO vs. COMMONWEALTH.

October 15, 2018.

Supreme Judicial Court, Superintendence of inferior courts.

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

Perez-Acevedo pleaded guilty, in May, 2016, on one indictment charging trafficking in a class A substance, in violation of G. L. c. 94C, § 32E (c); and five indictments charging distribution of a class A substance, in violation of G. L. c. 94C, § 32 (a). In December, 2017, he filed a motion to withdraw his guilty pleas and for a new trial, which was denied. He appealed from the denial of that motion, but, on his own motion, the appeal was subsequently dismissed.¹ He also filed, in June, 2018, a motion for release from unlawful restraint pursuant to Mass. R. Crim. P. 30 (a), as appearing in 435 Mass. 1501 (2001). After that motion was denied, he filed, in this court, an "application for writ of mandamus pursuant to ch. 211, sec. 3 by a single justice." In the petition he argued that he had not received a fair hearing in the trial court on his motion for release from unlawful restraint, as well as that he had received ineffective assistance of counsel. (Although it is not entirely clear from the record, this appears to be in reference to Perez-Acevedo's plea counsel.) The single justice treated the application as a petition pursuant to G. L. c. 211, § 3, and denied it without a hearing.

¹ Prior to the dismissal of his appeal, he also filed an application for direct appellate review, which this court denied in May, 2018.

Perez-Acevedo has now filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001). Even though rule 2:21 does not apply in this situation, because he is not challenging any interlocutory ruling of the trial court, it is clear that he is not entitled to review pursuant to G. L. c. 211, § 3. Relief under G. L. c. 211, § 3, is properly denied where, as here, "there are other routes by which the petitioning party may adequately seek relief." Sabree v. Commonwealth, 432 Mass. 1003, 1003 (2000). Perez-Acevedo appears to be arguing that because of the magnitude of the purported errors, only this court can properly review the circumstances and provide relief. His arguments to the contrary notwithstanding, this case does not present the type of exceptional circumstance that requires the exercise of this court's extraordinary power of general superintendence pursuant to G. L. c. 211, § 3. There is no reason why he cannot seek relief in the Appeals Court in an appeal from the denial of his motion for release from unlawful restraint. Indeed, as the single justice himself noted, Perez-Acevedo has already commenced just this process by filing a notice of appeal in the trial court.

The single justice did not err or abuse his 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.

Enrique Perez-Acevedo, pro se.