SJC-12519

ROBERT BEAUCHAMP vs. COMMONWEALTH.

February 7, 2019.

Supreme Judicial Court, Superintendence of inferior courts, Jurisdiction. Practice, Criminal, Capital case.

The petitioner, Robert Beauchamp, appeals from a judgment of a single justice of this court denying his petition for extraordinary relief pursuant to G. L. c. 211, § 3. We affirm.

Beauchamp was indicted for murder in 1971,[1] and a jury convicted him of murder in the second degree in 1973. For reasons that are not relevant here, his direct appeal was not decided until 1997. See Commonwealth v. Beauchamp, 424 Mass. 682, 683 (1997). We reviewed the appeal pursuant to G. L. c. 278, § 33E, because that statute as it existed at the time of his offense required us to review every case "in which the defendant was tried on an indictment for murder in the first degree and was convicted of murder either in the first or second degree."[2] G. L. c. 278, § 33E, as amended through St. 1962,

[1] The indictment did not specify the degree of murder; therefore, as a matter of law, it charged murder in the first degree. Metcalf v. Commonwealth, 338 Mass. 648, 649 (1959).

[2] Effective July 1, 1979, the definition of "capital case" in G. L. c. 278, § 33E, was changed to no longer include cases in which a defendant indicted for murder in the first degree is convicted of murder in the second degree. St. 1979, c. 346, § 2. Our practice, which we followed in the 1997 appeal, has been to apply the statute as it existed prior to the amendment to cases in which the defendant has been tried for murder in the first degree and convicted of murder in the second degree for an

c. 453. We reversed and remanded for a new trial based on errors in the jury instructions on self-defense. Beauchamp, supra at 690.

Beauchamp was retried in 1998. Although, technically speaking, the indictment had not changed in the meantime, the Commonwealth was barred by double jeopardy principles from retrying Beauchamp for murder in the first degree, where Beauchamp "effectively was acquitted of that charge when the jury found him guilty of murder in the second degree" at his first trial in 1973. Commonwealth v. Acevedo, 446 Mass. 435, 451 n.20 (2006). At the outset of the retrial, the Commonwealth confirmed that it no longer was pressing the indictment insofar as it charged murder in the first degree, and that it would try the defendant only for murder in the second degree. The trial proceeded on that basis, and the jury found Beauchamp guilty of murder in the second degree.

Beauchamp appealed again. Both before and after his appeal was decided, this court considered the question whether the appeal should be entered in this court and heard by us in the first instance pursuant to G. L. c. 278, § 33E, as it existed prior to the amendment in 1979, as was done with his first appeal (see note 2, supra), or whether the appeal should be entered in the Appeals Court and decided there in the first instance. We decided that the latter course was correct. As we explained in our order denying Beauchamp's motion to reconsider the denial of his application for further appellate review, "[t]he defendant having been retried on only so much of the indictment as charged murder in the second degree, his case was no longer a capital case within the meaning of [§ 33E], either before or after the statute's amendment." In other words, because it was abundantly clear at the retrial that the Commonwealth was going forward on only so much of the indictment as charged murder in the second degree -- indeed, the Commonwealth was precluded from pursuing a charge of murder in the first degree -- the defendant was no longer being "tried on an indictment for murder in the first degree" within the meaning of the statute. The case therefore remained in the Appeals Court and was decided there. The Appeals Court affirmed his conviction, and, as stated, we denied his application for further appellate review. See Commonwealth v. Beauchamp, 49 Mass. App. Ct. 591 (2000), S.C., 432 Mass. 1107 (2000).

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offense that was committed before the amendment. See Commonwealth v. Davis, 380 Mass. 1, 15-17 (1980).

Not only did we expressly consider the question at the time of Beauchamp's second appeal, but Beauchamp has also continued to raise this same jurisdictional argument in subsequent proceedings before the Appeals Court and before this court, including in the present G. L. c. 211, § 3, petition. Each time his claim has been rejected. Beauchamp is simply not entitled to further review under G. L. c. 211, § 3, of an issue that he has already raised, and which has already been resolved, in the course of his direct appeal and in subsequent proceedings. Votta v. Police Dep't of Billerica, 444 Mass. 1001, 1001 (2005) ("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."). Votta v. Commonwealth, 444 Mass. 1001, 1001 (2005) ("Our general superintendence power cannot be invoked simply to get another bite of the apple.").

The single justice did not err or abuse her discretion in denying the petition.

Judgment affirmed.

Robert Beauchamp, pro se.
Jamie M. Charles, Assistant District Attorney, for the Commonwealth.