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SJC-12667

COMMONWEALTH vs. BRUCE ANDERSON.

July 16, 2019.

Practice, Criminal, Capital case, Postconviction relief, Appeal.

The defendant, Bruce Anderson, was convicted of murder in the first degree by reason of deliberate premeditation and extreme atrocity or cruelty. Commonwealth v. Anderson, 408 Mass. 803, 803-804 (1990). In 2018, he filed a motion for a new trial, which was denied.¹ He then applied to a single justice of this court for leave to appeal from the denial, pursuant to the gatekeeper provision of G. L. c. 278, § 33E. The single justice denied the application. Anderson has appealed from the single justice's ruling, and the Commonwealth has moved to dismiss the appeal.

A single justice, acting as a gatekeeper pursuant to G. L. c. 278, § 33E, may allow an appeal to the full court to proceed under that statute if the appeal presents a "new and substantial" question. See Commonwealth v. Gunter, 459 Mass. 480, 487, cert. denied, 565 U.S. 868 (2011). If the appeal fails on either count, and the single justice denies the application, that decision "is final and unreviewable." Commonwealth v. Gunter, 456 Mass. 1017, 1017 (2010). "A defendant who is denied leave to appeal from a single justice acting as a gatekeeper pursuant to the last sentence of G. L. c. 278, § 33E, has no right to appeal from the single justice's ruling denying leave." Commonwealth v. Companonio, 472 Mass. 1004, 1004 (2015), quoting Gunter, 456

¹ The defendant had twice previously filed a motion for a new trial, but withdrew each of the motions before they were acted on in the Superior Court.

Mass. at 1017. The defendant's attempt to appeal from the single justice's denial of his application must therefore be dismissed.

Appeal dismissed.

Donna-Marie Haran, Assistant District Attorney, for the Commonwealth.

Bruce Anderson, pro se.