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SJC-12820

SEAN MURPHY vs. SUPERIOR COURT.

February 21, 2020.

Supreme Judicial Court, Superintendence of inferior courts.
Declaratory Relief. Practice, Criminal, Disqualification
of judge.

The plaintiff, Sean Murphy, appeals from a judgment of a single justice of this court denying his requests for declaratory relief pursuant to G. L. c. 231A, § 1. We affirm.

Murphy filed a complaint in the county court, seeking a declaration that a Superior Court judge, who was then presiding over a criminal matter in which he was the defendant, should be disqualified from hearing his criminal matter, and more generally, that the judge should be disqualified from hearing any criminal matters in Bristol County. A single justice of this court denied relief, and Murphy now appeals.

Murphy has filed a memorandum with this court in an attempt to comply with S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner seeking relief from 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." By its terms, that rule does not apply here, as Murphy is not appealing from an interlocutory ruling of the trial court. However, because it is apparent from Murphy's submissions that the single justice properly denied relief, we take this opportunity to affirm the judgment.

As a threshold matter, Murphy's request to have the judge removed from his criminal matter is moot, as Murphy has pleaded guilty, thus disposing of the criminal charge. In any event, the single justice was correct to deny declaratory relief on this issue. This court has recognized "a prohibition against issuing declaratory decrees concerning a pending criminal prosecution." Norcisa v. Selectmen of Provincetown, 368 Mass. 161, 172 (1975). Any contrary rule "would encourage fragmentation and proliferation of litigation and disrupt the orderly administration of the criminal law." Id. Moreover, Murphy had another available remedy, which was to file a motion for recusal of the judge in his then-pending criminal matter. Such a proceeding would have afforded Murphy "a fully adequate remedy." Dubois v. Chief of Police of Watertown, 389 Mass. 488, 489 (1983), citing Norcisa, supra at 168-173. See Jian Jiang v. Qilun Liu, 481 Mass. 1024, 1024 (2019) (holding that there is no reason denial of motion to recuse could not be adequately addressed in direct appeal from adverse judgment).

Murphy's request for a general declaration that the judge should not sit on any criminal matters in Bristol County is also patently without merit. Murphy has no right as a matter of law to seek an order compelling a judge's recusal from any case other than his own. And to the extent his request can be seen as an attempt to enforce the Code of Judicial Conduct through a private action, he has no right to do that either. See Matter of the Petition of Smallwood, 470 Mass. 1018, 1019 (2014) ("there is no private right of action to obtain discipline of a judge").

The single justice properly declined to exercise jurisdiction under G. L. c. 231A.

Judgment affirmed.

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

Sean Murphy, pro se.