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SJC-12821

TYRONE GARDEN vs. COMMONWEALTH.

April 22, 2020.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Tyrone Garden, appeals from a judgment of a single justice of this court denying his petition for extraordinary relief under G. L. c. 211, § 3. In substance, Garden sought an order from the single justice vacating his 2012 plea to aggravated rape and dismissing the underlying indictment, which was obtained after the expiration of the applicable statute of limitations. We affirm.

The issues raised by Garden have all been raised and adjudicated through the normal appellate process. Garden filed a motion to withdraw his guilty plea in the Superior Court in 2017, on the same grounds raised here. The motion was denied, and the defendant appealed. The Appeals Court affirmed the denial. See Commonwealth v. Garden, 93 Mass. App. Ct. 1108 (2018), cert. denied, 139 S. Ct. 1365 (2019). This court denied further appellate review. Commonwealth v. Garden, 480 Mass. 1107 (2018). It is well established that this court's superintendence power is not available as an additional layer of appellate review once all other avenues have been exhausted. See Tavares v. Commonwealth, 481 Mass. 1044, 1045 (2019); Fort v. Commonwealth, 455 Mass. 1006, 1007 (2009); Votta v. Police Dep't of Billerica, 444 Mass. 1001, 1001 (2005). "Our general superintendence power cannot be invoked simply to get another bite of the apple." Votta v. Commonwealth, 444 Mass. 1001, 1001 (2005).¹

¹ Garden also raised the statute of limitations issue in a prior petition pursuant to G. L. c. 211, § 3, filed in an

The single justice did not err or abuse his discretion in denying relief.

Judgment affirmed.

Tyrone Gardner, pro se.
Ellyn H. Lazar, Assistant District Attorney, for the
Commonwealth.

attempt to obtain interlocutory review of the denial of his motion to dismiss the indictment in Superior Court. We affirmed the denial of that petition on the ground that Garden's claims could be raised and decided during the ordinary course of trial and appeal. Garden v. Commonwealth, 460 Mass. 1018, 1019 (2011). To the extent the present petition can be viewed as a motion for reconsideration of that decision, the single justice was well within his discretion to deny it, as it was filed over seven years after the issuance of that opinion.