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SJC-12969

COMMONWEALTH vs. LARRY WATKINS (No. 2).

February 11, 2021.

Practice, Criminal, New trial, Appeal by Commonwealth, Execution of sentence. Moot Question.

The defendant, Larry Watkins, was convicted of murder in the first degree and other crimes¹ in connection with the killing of Edward Keen. His convictions subsequently were affirmed in Commonwealth v. Watkins, 375 Mass. 472, 492 (1978). In 2019, a judge granted the defendant's most recent motion for a new trial, and allowed the defendant's request for release pending the Commonwealth's appeal from the motion judge's order granting a new trial.² A single justice of this court subsequently vacated the motion judge's release order. Before us is the

¹ The defendant was also convicted of armed robbery and kidnapping.

² Although the defendant presented his request for release as a motion to stay execution of his sentence pending appeal pursuant to Mass. R. Crim. P. 31 (a), as appearing in 454 Mass. 1501 (2009), this request should have been brought as a motion for release pending appeal pursuant to Mass. R. Crim. P. 30 (c) (8) (A), as appearing in 435 Mass. 1501 (2001). Rule 30 (c) (8) (A) provides that, where an appeal is taken from a final order under rule 30, such as an order for a new trial under Mass. R. Crim. P. 30 (b), "the defendant shall not be discharged from custody pending final decision upon the appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal." In contrast, rule 31 (a) permits a stay of execution where an appeal has been taken from a defendant's conviction.

defendant's appeal from the single justice's decision. As we have reversed the order granting the defendant a new trial, see Commonwealth v. Watkins (No. 1), 486 Mass. (2021), we now dismiss the defendant's appeal from the single justice's ruling vacating the order to release the defendant as moot.

Appeal dismissed.

Konstantin Tretyakov, Assistant District Attorney, for the Commonwealth.

Michael A. Nam-Krane for the defendant.