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SJC-13056

JAN TORRES vs. COMMONWEALTH.

April 14, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Jan Torres, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

Torres has been charged in a complaint with trafficking in heroin, in violation of G. L. c. 94C, § 32E (c); operating a motor vehicle with a suspended license, in violation of G. L. c. 90, § 23; and two civil motor vehicle infractions.¹ In August 2019, he filed a motion to suppress, which a judge in the District Court denied after an evidentiary hearing. Torres then filed an application for leave to pursue an interlocutory appeal, pursuant to Mass. R. Crim. P. 15 (a) (2), as amended, 476 Mass. 1501 (2017). A single justice of this court denied the application. Then, back in the District Court, Torres filed a motion for leave to file a renewed motion to suppress as well as a motion for recusal of the District Court judge. The judge denied both motions, and Torres thereafter filed his G. L. c. 211, § 3, petition. A different single justice denied the petition without a hearing.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a showing that "review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial

¹ The trafficking charge was subsequently amended to possession with intent to distribute a class A substance, in violation of G. L. c. 94C, § 32.

court or by other available means." S.J.C. Rule 2:21 (2). Torres has not made, and cannot make, such a showing. He argues that during the course of the trial court proceedings there have been "multiple" decisions by the judge that have been "unfairly prejudicial" to him -- that the judge interrupted his counsel during the cross-examination of a witness at the evidentiary hearing on his motion to suppress; that the judge did not allow defense counsel to submit a posthearing memorandum; and that the judge denied Torres's motion for leave to file a renewed motion to suppress and his motion to recuse without a hearing.

To the extent that Torres seeks review of issues related to the motion to suppress, those issues were the proper subject of Torres's application to pursue an interlocutory appeal from the denial of that motion, and indeed he raised at least one of those issues in that application, which the single justice denied. Torres has "already availed himself of the opportunity to seek leave to pursue an interlocutory appeal (albeit unsuccessfully), and can still raise his challenge to the suppression ruling [and related issues] in a direct appeal if he is convicted after trial." Goguen v. Commonwealth, 457 Mass. 1006, 1006 (2010). The denial of Torres's motion to recuse can equally be addressed in a direct appeal. See, e.g., Jian Jiang v. Qilun Liu, 481 Mass. 1024, 1024 (2019), and cases cited ("[T]here is no reason why the denial of any such motion [to recuse] could not be adequately addressed in a direct appeal from any adverse judgment").² Notwithstanding Torres's arguments to the contrary, there is nothing exceptional about his case that warrants the exercise of this court's extraordinary power pursuant to G. L. c. 211, § 3.

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

Judgment affirmed.

² The petitioner is correct that in Commonwealth v. Cousin, 484 Mass. 1042 (2020), we considered the issue of a judge's denial of a motion to recuse in an interlocutory appeal, by the Commonwealth, pursuant to G. L. c. 211, § 3. In that case, the single justice, in her considerable discretion, had considered the substantive merits of the petition. See id. at 1045. That is a different circumstance from the one presented here, where the single justice, again in his considerable discretion, declined to consider the merits of the petition on the basis that the petitioner has an adequate alternative remedy.

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

Laurence J. Cohen for the petitioner.