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SJC-13082

ANEUDY DELGADO TORRES vs. COMMONWEALTH.

October 8, 2021.

Supreme Judicial Court, Superintendence of inferior courts.
Protective Order.

The criminal defendant in the underlying Superior Court case, Aneudy Delgado Torres, appeals from a judgment of a single justice of this court denying his petition for relief pursuant to G. L. c. 211, § 3.¹ We affirm.

Torres is awaiting trial on two counts of murder in the first degree and related firearm offenses, in connection with the shooting deaths of two men in the parking lot of an apartment complex. The Commonwealth sought and obtained a protective order pursuant to G. L. c. 268, § 13D (d), and Mass. R. Crim. P. 14 (a) (6), as appearing in 442 Mass. 1518 (2004), prohibiting defense counsel from providing Torres with copies of certain discovery materials on the ground that there was reason to believe, based on specific and articulable facts, that Torres poses a threat to the witnesses involved in this case. In his petition for relief in the county court, Torres made several arguments as to why the protective order should be vacated, including that the order would violate his constitutional right

¹ Torres originally styled his petition in the county court as an application for leave to file an interlocutory appeal pursuant to Mass. R. Crim. P. 15 (a) (2), as amended, 476 Mass. 1501 (2017). Because the order from which the defendant sought relief was a protective order issued during the discovery process, rather than an order on a motion to suppress, the single justice treated the petition as one filed pursuant to G. L. c. 211, § 3.

to prepare his defense given the risks to his attorney of in-person visitation in the midst of the COVID-19 pandemic and given certain other alleged limitations on Torres's ability to process and comprehend information relayed orally by his attorney. The Commonwealth opposed the petition, and the single justice issued a judgment denying the petition without a hearing. Torres timely appealed.

The case is now before us pursuant to 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." Torres has failed to meet this burden.

In his memorandum, Torres repeats his several arguments on the merits as to why he is entitled to relief from the protective order. As to the issue whether he has an adequate alternative remedy on direct appeal, the defendant contends that it would be an "unwarranted and unlawful constitutional burden," after a conviction at trial, to require him to demonstrate prejudice from the protective order, as it would require him "to explain how he was harmed by the unknown." However, this court has consistently declined to exercise its extraordinary authority to review similar protective orders in criminal cases on the ground that the defendant has an adequate alternative remedy on direct appeal. See Madison v. Commonwealth, 466 Mass. 1033, 1033-1034 (2013); Ray v. Commonwealth, 447 Mass. 1008, 1008 (2006), S.C., 467 Mass. 115 (2014). See also Commonwealth v. Holliday, 450 Mass. 794, 799-806, cert. denied sub nom. Mooltrey v. Massachusetts, 555 U.S. 947 (2008) (addressing challenge to protective order in criminal case on direct appeal). Torres has failed to establish that the remedy of direct appeal would be inadequate in his case.

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

Judgment affirmed.

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

Bernard Grossberg for the petitioner.