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SJC-13084

ANDRE MORRIS vs. COMMONWEALTH.

May 25, 2021.

Supreme Judicial Court, Superintendence of inferior courts.  
Practice, Criminal, Trial of complaints together.

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

Morris has been charged in six separate complaints with, among other things, several counts of violating an abuse prevention order, in violation of G. L. c. 265, § 13A (b); intimidation of a witness, in violation of G. L. c. 268, § 13B; stalking in violation of a restraining order, in violation of G. L. c. 265, § 43 (b); breaking and entering a building in the nighttime with intent to commit a felony, in violation of G. L. c. 266, § 16; and assault and battery on a family or household member, in violation of G. L. c. 265, § 13M (a). On the basis that the various incidents that led to the charges are interconnected, involved the same victim, and occurred within a couple of months of one another, the Commonwealth moved to join the cases. A judge in the District Court allowed the motion and subsequently denied Morris's motion for reconsideration. Morris thereafter filed his G. L. c. 211, § 3, petition, which a single justice denied 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 court or by other available means." S.J.C. Rule 2:21 (2). Morris has not made, and cannot make, such a showing. He

suggests that not reviewing the joinder decision now, at this interlocutory stage, could lead to "irreversible consequences or irreversible collateral damages." This is not so. The decision whether to join offenses is a routine, discretionary trial court ruling, regularly made and regularly challenged on direct appeal. See, e.g., Commonwealth v. Gaynor, 443 Mass. 245, 260 (2005), and cases cited (defendant challenged allowance of joinder, a decision "committed to the sound discretion of the trial judge," in appeal from convictions). If Morris is convicted "and if the judge did in fact abuse [his] discretion by joining the offenses for trial, an appellate court can reverse the convictions and order new, separate, trials." Cohen v. Commonwealth, 448 Mass. 1005, 1005 (2007).

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

Judgment affirmed.

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

Robert Opsitnick, Jr., for the petitioner.