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SJC-13111

COMMONWEALTH vs. LARRY D. WAMPLER, JR.

August 20, 2021.

Practice, Criminal, Capital case, Postconviction relief, Appeal, Dismissal.

The defendant, Larry D. Wampler, Jr., was convicted of murder in the first degree by reason of deliberate premeditation in 1992. We affirmed the conviction. See Commonwealth v. Hung Tan Vo, 427 Mass. 464 (1998).¹ He has filed several postconviction motions in the trial court, most recently, in May 2019, a "Renewed Motion to Determine Competency Prior to Trial, and Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Mass. R. Crim. P. 30 (a)." After the motion was denied, Wampler applied to a single justice of this court for leave to appeal from the denial, pursuant to G. L. c. 278, § 33E. The single justice denied the application. Wampler has appealed from the single justice's ruling, and the Commonwealth has moved to dismiss the appeal.

Wampler has no right to appeal from the single justice's ruling. "A single justice, acting as a gatekeeper pursuant to G. L. c. 278, § 33E, may allow an appeal to the full court to proceed under that statute if the appeal presents a 'new and substantial' question." Commonwealth v. Anderson, 482 Mass. 1027, 1027 (2019), citing Commonwealth v. Gunter, 459 Mass. 480, 487, cert. denied, 565 U.S. 868 (2011). "If the appeal fails on either count, and the single justice denies the application, that decision 'is final and unreviewable.'" Anderson, supra, quoting Commonwealth v. Gunter, 456 Mass. 1017, 1017 (2010). "A

¹ At the time of trial, the defendant was known as Hung Tan Vo. He now goes by the name Larry D. Wampler, Jr.

defendant who is denied leave to appeal from a single justice acting as a gatekeeper pursuant to the last sentence of G. L. c. 278, § 33E, has no right to appeal from the single justice's ruling denying leave." Commonwealth v. Companonio, 472 Mass. 1004, 1005 (2015), and cases cited. Wampler's attempt to appeal from the single justice's denial of his application must therefore be dismissed.

Appeal dismissed.

Jamie Michael Charles, Assistant District Attorney, for the Commonwealth.

Larry D. Wampler, Jr., pro se.