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SJC-13136

COMMONWEALTH vs. RANDY ARIAS.

September 16, 2021.

Estoppel. Practice, Criminal, Postconviction relief, Verdict, New trial.

The defendant, Randy Arias, appeals from the denial of his motion under Mass. R. Crim. P. 25 (b) (2), as amended, 420 Mass. 1502 (1995), to reduce the verdict of murder in the second degree to manslaughter or to grant a new trial. We transferred the appeal to this court on our own motion to consider whether principles of direct estoppel apply where, as here, the same general issues raised by the rule 25 (b) (2) motion were previously raised, considered, and rejected in his direct appeal. Concluding that direct estoppel does apply, we affirm the order of the Superior Court judge denying the rule 25 (b) (2) motion. Neither Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001), nor rule 25 (b) (2) provides an additional or alternative route to revisit an issue that already has been finally decided.

Background. The facts established at trial previously have been described, and we need not detail them here. See Commonwealth v. Arias, 84 Mass. App. Ct. 454, 455-458 (2013) (Arias I). In short, the defendant was convicted of murder in the second degree in the 2008 shooting death of Julio Zuniga and assault and battery by means of a dangerous weapon causing serious bodily injury to Roberto Francisco Sanchez Rios. The central issue at trial was the identity of the shooter. Id. at 454-455. On direct appeal, the Appeals Court affirmed the convictions. It concluded, insofar as is relevant here, that the defendant's claim that the judge failed properly to instruct the jury on defense of another had not been preserved for

purposes of appeal, and that the judge's instruction did not create a substantial risk of a miscarriage of justice. Id. at 464. The Appeals Court explained:

"The judge's defense of another instruction, when considered as a whole against the backdrop of the trial, would have been interpreted by a reasonable juror to have adequately conveyed the nature of the defense and its components. Even if the instruction were infirm, given the nature of the defense was that the defendant did not shoot anyone and defense of another was not a live issue that was contested at trial, there was no substantial risk of a miscarriage of justice."

Id. at 455.

Thereafter, the trial judge denied the defendant's motion pursuant to rule 30 (b) for a new trial and other postconviction relief. Among other grounds for the motion, the defendant again argued that the instruction on defense of another was infirm, contending that the instruction failed adequately to explain "that the jury could convict him of manslaughter if they found he was using excessive force to defend another." Commonwealth v. Arias, 87 Mass. App. Ct. 1126 (2015) (Arias II). The Appeals Court panel rejected the argument, reasoning that the claim substantially had been decided in the direct appeal, and that the defendant could not obtain "'review and reconsider[ation]' of questions already 'reviewed by an appellate court.'" Id., quoting Commonwealth v. McLaughlin, 364 Mass. 211, 229 (1973). Although the defendant argued that the instructional issues presented were "completely different," the Appeals Court determined that the issue, no matter how it was phrased, had been waived and, accordingly, was subject to review only for a substantial risk of a miscarriage of justice. As to that, the panel concluded that the defendant's claims were without merit and that, "even if there were error in the instructions, the court 'could not conclude that the defendant suffered any real prejudice or that the error materially influenced the verdict.'" Arias II, supra, quoting Arias I, 84 Mass. App. Ct. at 467-468.

In July 2020, more than nine years after trial, the defendant filed a motion pursuant to the second sentence of rule 25 (b) (2) to reduce the verdict of murder in the second degree or to grant a new trial, once again focusing on the instruction on defense of another. In particular, he argued that the trial judge had "failed to inform the jury that the use of excessive force in defense of another could serve as a mitigating factor

permitting a conviction of manslaughter instead of murder." In addition, he asserted that his relative youth (he was twenty years old at the time of the murder) and "its attributes," in combination with the claimed errors in the defense of another instruction, supported a reduction in the verdict.

A second Superior Court judge initially denied the motion, but subsequently allowed a motion for reconsideration. On reconsideration, a third Superior Court judge concluded that, although the "five-day limit in the first sentence of [r]ule 25 (b) (2) may not bar Arias' [m]otion brought pursuant to the second sentence, see Commonwealth v. Guy G., 53 Mass. App. Ct. 271, 278 (2001), . . . there are no substantive grounds to either reduce the verdict or order a new trial in this case." The judge concluded that principles of estoppel precluded revisiting issues that substantially had been decided previously. In addition, she rejected as misplaced the defendant's argument that his relative "youth and personal experiences" warranted a lesser verdict, both because the propriety of the instructions had been previously established and because "there was no evidence presented at the trial or in support of this motion of any 'personal circumstances' or 'distinctive attributes' . . . to warrant a reduction," citing Commonwealth v. Pagan, 471 Mass. 537, 544, cert. denied, 577 U.S. 1013 (2015). This appeal followed.

Discussion. The determination whether direct estoppel precludes relief on the motion under Mass. R. Crim. P. 25 (b) (2) presents a question of law that we review de novo. See Commonwealth v. Aldana, 477 Mass. 790, 801 (2017) (questions of law considered de novo).

Although motions filed under the first sentence of rule 25 (b) (2) must be filed within five days of the discharge of a jury, motions filed under the second sentence of the rule, like motions filed pursuant to Mass. R. Crim. P. 30, may be filed at any time.¹ See Commonwealth v. Keough, 385 Mass. 314, 318

¹ Rule 25 (b) (2) of the Massachusetts Rules of Criminal Procedure, as amended, 420 Mass. 1502 (1995), states: "Motion After Discharge of Jury. If the motion [for a required finding of not guilty] is denied and the case is submitted to the jury, the motion may be renewed within five days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned, the judge may on motion set aside the verdict and order a new trial, or order the entry of a finding of not guilty, or order the entry of a

(1982), citing Commonwealth v. Gaulden, 383 Mass. 543, 552 n.6 (1981), and Commonwealth v. Therrien, 383 Mass. 529, 537 n.7 (1981). The fact that there is no time limit for filing motions under the second sentence of the rule, see Keough, supra at 318 n.3, does not mean that the rule authorizes a duplicative determination of claims. We construe the rules of criminal procedure "to secure simplicity in procedure, fairness in administration, and the elimination of expense and delay." Mass. R. Crim. P. 2 (a), 378 Mass. 844 (1979). See Commonwealth v. Gilbert, 447 Mass. 161, 166 (2006). That construction includes minimizing duplication of judicial effort, Keough, supra, and supports application of principles of direct estoppel to preclude review of claims "already litigated and determined," regardless of the procedural vehicles selected. Commonwealth v. Watkins (No. 1), 486 Mass. 801, 806 (2021), quoting Commonwealth v. Sanchez, 485 Mass. 491, 498 (2020). Justice would not be well served by permitting the relitigation of the same or similar claims on multiple occasions simply by selecting different procedural vehicles.

In general, a defendant is directly estopped from obtaining review of a claim where the Commonwealth demonstrates that the issue was "already litigated and determined . . . , that such determination was essential to the . . . conviction, and that the defendant had an opportunity to obtain review of the determination" (citation omitted). Watkins (No. 1), 486 Mass. at 806. See Sanchez, 485 Mass. at 498, quoting Commonwealth v. Rodriguez, 443 Mass. 707, 710-711 (2005) (where "the 'facts and the law are literally the same [as in the direct appeal],' direct estoppel prevents a judge from granting relief . . . solely 'based on [the] assertion that [the] direct appeal was decided wrongly'"). In this case, as the third motion judge properly recognized, the defendant's postconviction motions each were predicated on the central claim that was rejected on direct appeal, i.e., that the "trial judge's . . . instructions [on defense of another] were 'errant,' 'confusing,' and 'nonexistent' because they did not adequately explain that the jury could convict him of manslaughter if they found he was using excessive force to defend another." Direct estoppel thus precludes further consideration of the issue.

We reject the defendant's argument that further consideration of the issue is warranted because, even though the trial judge's instructions may not have warranted a new trial

finding of guilty of any offense included in the offense charged in the indictment or complaint."

(as the Appeals Court twice concluded), they were sufficiently flawed as to merit a reduction of the verdict pursuant to rule 25 (b) (2). Principles of direct estoppel are not, however, so circumscribed as to be limited to cases in which the defendant seeks the exact same relief that previously was denied. In Rodriguez, 443 Mass. at 711, for example, we considered a defendant's motion for a new trial under rule 30 (b). We concluded that direct estoppel applied because the substantive issues underlying the motion previously had been litigated and finally adjudicated in the context of a motion to suppress. We held "that principles of direct estoppel operate as a bar to the defendant's attempt in her rule 30 (b) motion to relitigate issues in her motion to suppress." Id. See Commonwealth v. Leary, 92 Mass. App. Ct. 332, 345 (2017) (where issues raised in connection with rule 25 [b] [2] motion were addressed in connection with direct appeal, arguments merged and issues were considered moot).

We recognize that both Sanchez and Rodriguez involved motions that were brought and decided pursuant to rule 30 (b). Although a rule 30 (b) motion challenges the validity of a verdict, whereas a motion pursuant to rule 25 (b) (2) challenges the degree of a verdict, that is a distinction without a practical difference for estoppel purposes. Cf. Commonwealth v. Brescia, 471 Mass. 381, 388 n.7 (2015) (rule 30 [b] vests judge with authority "substantially similar to the authority on a motion under" rule 25 [b] [2]). See also Commonwealth v. Pring-Wilson, 448 Mass. 718, 732 n.14 (2007) ("judge has similar broad discretion to grant a new trial in the interests of justice under both rules"); Gilbert, 447 Mass. at 167 (where "the nature and substance of the defendant's motion was that his conviction for murder in the first degree could not stand because of errors in the instructions given to the jury," such motion "could have been filed under either rule 25 [b] [2] or rule 30 [b]"). A defendant may not avoid basic concepts of waiver, estoppel, and preclusion by the expedient of recasting claims decided adversely to him or her into a motion filed under rule 25 (b) (2).

Finally, we reject the defendant's contention that his "youth and immaturity" at the time he committed the murder now warrant a reduction in the verdict. As the motion judge noted, the defendant was twenty years old at the time, and he presented no evidence of "personal circumstances" or "distinctive attributes" that persuaded the judge that the verdict of murder in the second degree was unsupported by the evidence, against the weight of the evidence, or not consonant with justice. See

Commonwealth v. Grassie, 476 Mass. 202, 214 (2017). Viewing the claim of youth and immaturity either alone or in combination with the alleged instructional error, the defendant has not demonstrated any abuse of discretion. See id.; Commonwealth v. Medina, 430 Mass. 800, 802 (2000); Gaulden, 383 Mass. at 557 (in reviewing judge's determination that verdict should [or should not] be reduced under rule 25 [b] [2], "we should not engage in an independent analysis of the question," considering instead only "whether the judge abused his [or her] discretion or committed an error of law").

Conclusion. Principles of direct estoppel preclude another review, pursuant to Mass. R. Crim. P. 25 (b) (2), of the issues the defendant raises. The issues were previously decided against him in his direct appeal and in his collateral appeal from the denial of his postconviction motions under Mass. R. Crim. P. 30 (b). The order denying the motion for reduction of the verdict or for a new trial is therefore affirmed.

So ordered.

The case was submitted on briefs.

Sharon Dehmand for the defendant.

Kenneth E. Steinfield, Assistant District Attorney, for the Commonwealth.