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SJC-13065

COMMONWEALTH vs. ANTONIO M. FERREIRA.

June 22, 2022.

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

The defendant, Antonio M. Ferreira, was convicted of murder in the first degree by reason of deliberate premeditation and extreme atrocity or cruelty. After plenary review, we affirmed the conviction and the denial of his motion for a new trial. See Commonwealth v. Ferreira, 481 Mass. 641, 642 (2019). Ferreira subsequently filed in the Superior Court a motion seeking postconviction relief, which was denied. He then applied to a single justice of this court, pursuant to the gatekeeper provision of G. L. c. 278, § 33E, for leave to appeal from the denial. The single justice denied the application. Ferreira now purports to appeal from the single justice's ruling. The appeal must be dismissed.¹

A single justice, acting as gatekeeper pursuant to G. L. c. 278, § 33E, may authorize an appeal to proceed in the full court if it presents a "new and substantial question which ought to be determined by the full court." Commonwealth v. DiBenedetto, 475 Mass. 429, 431 n.7 (2016). See Commonwealth v. Gunter, 459 Mass. 480, 487, cert. denied, 565 U.S. 868 (2011). If the single justice decides the appeal does not meet that standard and denies the application, as the single justice did

¹ The Commonwealth has moved to vacate the entry of the appeal on the ground that the "decision of the gatekeeper is final and unreviewable." Commonwealth v. Colon, 479 Mass. 1032, 1032 (2018). It is our practice to dismiss such appeals, and we do so here.

here, the decision "is final and unreviewable." Commonwealth v. Gunter, 456 Mass. 1017, 1017 (2010). "A 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. "The special function of the single justice mandated by the statute would be futile and meaningless if his or her rulings were subject to appeal before the full court." Leaster v. Commonwealth, 385 Mass. 547, 548 (1982).

Ferreira's attempt to appeal from the single justice's denial of his application, pursuant to G. L. c. 278, § 33E, must be dismissed.

Appeal dismissed.

Antonio M. Ferreira, pro se.
Hallie White Speight, Assistant District Attorney, for the Commonwealth.