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SJC-13448

LUIS E. ORTIZ vs. COMMONWEALTH.

September 14, 2023.

Supreme Judicial Court, Superintendence of inferior courts.
Deoxyribonucleic Acid. Evidence, Buccal swab. Practice,
Criminal, Contempt.

Luis E. Ortiz (petitioner) appeals from a judgment of the county court denying, without a hearing, his petition for extraordinary relief under G. L. c. 211, § 3. We affirm.

The petitioner and his brother, Luis M. Ortiz (Luis M.), have been indicted for aggravated rape of a child, and Luis M. has also been indicted for indecent assault and battery of a child under fourteen.¹ On the Commonwealth's motion, a judge in the Superior Court ordered the petitioner to provide a buccal swab sample of his deoxyribonucleic acid (DNA) for use in the prosecution of Luis M. The petitioner refused to comply with that order and was held in contempt by the same judge. He then filed his G. L. c. 211, § 3, petition seeking relief from the order that he provide a DNA sample.

The petitioner has filed a memorandum and appendix pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires him 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." The petitioner has not done so. The petitioner has an adequate alternative remedy, namely, an appeal to the Appeals

¹ Both the petitioner and Luis M. filed motions to sever their indictments from each other. As yet, it does not appear that those motions have been decided.

Court from the order of contempt.² See Lenardis v. Commonwealth, 452 Mass. 1001, 1001-1002 (2008), citing Commonwealth v. Caceres, 63 Mass. App. Ct. 747, 747-748 (2005). The single justice neither erred nor abused his discretion by denying relief under G. L. c. 211, § 3.

Judgment affirmed.

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

Christopher DeMayo for the petitioner.

² As the order holding the petitioner in contempt was issued in October 2022, it is not too late for the petitioner to move in the Appeals Court for an enlargement of time to file a notice of appeal. See Mass. R. A. P. 14 (b), as appearing in 481 Mass. 1626 (2019) (enlargement of time to file notice of appeal limited to "[one] year from the date of entry of the . . . order sought to be reviewed").