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SJC-13730

RAYMOND J. WHITE vs. COMMONWEALTH.

June 12, 2025.

Supreme Judicial Court, Superintendence of inferior courts.  
Homicide. Practice, Criminal, Execution of sentence, Stay  
of proceedings.

The petitioner, Raymond J. White, appeals from a judgment of a single justice of the county court denying his petition for relief pursuant to G. L. c. 211, § 3. We affirm.

Background. White and a codefendant, James Hall, were each convicted of two counts of murder in the first degree, as well as armed robbery, in 1972. See White v. Commonwealth, 479 Mass. 1023 (2018). Although Hall's convictions were affirmed after a direct appeal, White's direct appeal was never properly perfected. See id. at 1023. In 2014, White filed a petition pursuant to G. L. c. 211, § 3, seeking to reinstate that direct appeal. See White, supra. The court ultimately denied the petition but concluded that White was "free to proceed in the Superior Court with a motion for a new trial pursuant to Mass. R. Crim. P. 30 (b)." Id. at 1027. In so doing, the court "impose[d] certain protections" for White's benefit, such that, essentially, White would have an "unfettered" right to appeal from any denial of a motion for a new trial, i.e., that he would not have to obtain leave to appeal from a single justice pursuant to the gatekeeper provision of G. L. c. 278, § 33E. White, supra at 1026. Additionally, any such appeal, which will come directly to this court, "will . . . receive the benefit of our plenary review . . . pursuant to G. L. c. 278, § 33E, just as [it] would have on a direct appeal." Id. at 1027.

White eventually filed a motion for a new trial in the Superior Court, in July 2023. In January 2024, with that motion still pending, he also filed, in the trial court, a motion for a stay of further execution of his sentence. After a hearing, a judge denied the motion, in November 2024. White then filed his petition in the county court, seeking relief from the denial of the motion to stay, which a single justice denied. After White's appeal from the single justice's judgment was entered in this court, the trial court denied the motion for a new trial, in March 2025. White has timely filed a notice of appeal from that judgment.<sup>1</sup>

Discussion. The single justice had the authority to review the trial court judge's denial of the motion to stay for an abuse of discretion or to consider the matter de novo. See Commonwealth v. Nash, 486 Mass. 394, 410 (2020). She chose to review the decision for an abuse of discretion and found none, concluding that the judge did not abuse his discretion in denying the motion to stay on the basis that White failed to show that the new trial motion offered a reasonable possibility of success. We, in turn, review the single justice's ruling under the same standard, that is, for error of law or abuse of

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<sup>1</sup> After the judge ruled on the motion for a new trial, White submitted a letter to the court stating that the ruling does not render his appeal from the single justice's judgment regarding the underlying motion to stay moot. We invited the parties each to submit a memorandum on the mootness issue. White thereafter filed a memorandum in which he argued that his appeal is not moot because, essentially, the underlying motion for a stay remains live pending the appeal from the denial of his motion for a new trial. In the unique circumstances of this case, we will consider the appeal.

As noted above, White's appeal from the denial of the motion for a new trial will be treated in this court essentially as a direct appeal. See White, 479 Mass. at 1027. The fact that the trial court has now denied the motion for a new trial does not alter the relevant underlying considerations on the motion to stay. See Commonwealth v. Charles, 466 Mass. 63, 77 (2013). "[T]he factors that shall be evaluated in deciding whether to allow a defendant's motion for a stay of the execution of his sentence pending the disposition of a new trial motion are the same as those relating to a stay of execution of sentence pending appeal." Id.

discretion, see id. at 412, and, similarly, find none.

A judge considering a defendant's motion for a stay of execution of a sentence pending appeal must evaluate two factors: the defendant's likelihood of success on appeal and whether the defendant's release would pose a security risk. See, e.g., Nash, 486 Mass. at 403-405. Here, the judge concluded that White does not pose a security risk, a point that the Commonwealth does not dispute. We turn, therefore, to the issue of White's likelihood of success on appeal.

In concluding that White did not have a likelihood of success on appeal, the judge focused on the three issues that White himself highlighted in his motion to stay: that the Commonwealth deliberately failed to disclose that it had made a deal with a codefendant, L.C. Clayton, in exchange for Clayton's testimony at trial; that the jury instruction on reasonable doubt was constitutionally infirm; and that White, along with Hall, was seated in a "prisoner's dock" for trial.

As to the first issue, the judge noted that Clayton's testimony largely concerned Hall, and that Clayton "had little to say" that incriminated White. To the extent that Clayton testified, for example, that Clayton saw White and Hall at White's sister's apartment after the murder, the police themselves saw White there too. Moreover, the judge observed that Clayton's testimony was largely consistent with White's own testimony. While it may be true that White's defense counsel would have cross-examined Clayton more extensively had he known about Clayton's deal with the Commonwealth, the effect of Clayton's testimony, while damaging to Hall, was ultimately not damaging to White. In the judge's reasoned view, then, even if the Commonwealth did improperly fail to disclose evidence of the Commonwealth's deal with Clayton, it was not prejudicial to White. The judge did not abuse his discretion in concluding that White thus did not have a likelihood of success on appeal on this issue.

As to the two other issues that the judge highlighted -- whether the reasonable doubt instruction was constitutionally infirm and whether seating White in a prisoner's dock violated his right to due process -- the judge noted that because both issues were relevant to Hall's direct appeal, this court would have necessarily considered them in the course of its G. L. c. 278, § 33E, plenary review of Hall's convictions. That the court found no error as to either issue with respect to Hall applies with equal force, in the judge's view here, as to White.

White argues, however, that the judge cannot simply rely on Hall's direct appeal and that, in any event, the judge failed to account for any changes in the law since the time of Hall's direct appeal. The Commonwealth, in turn, argues that the judge was considering the issues pursuant to the law as it existed only up to a fixed point in time. White escaped from custody in 1980 and was not returned to custody until 1988. During that time, White's then-pending motion for a new trial was dismissed with prejudice on the basis that White had abandoned the motion when he escaped. Therefore, the Commonwealth suggests, only changes in the law up to the time of White's escape, in 1980, would even be potentially applicable.

As the judge noted, regarding the reasonable doubt instruction, White did not object to the instruction at trial and any review is therefore only to determine whether the instruction, if erroneous, created a substantial likelihood of a miscarriage of justice. White does not appear to be arguing that the law changed in any relevant way, during the relevant time period, and where this court would have considered the issue in connection with Hall's appeal, the judge did not abuse his discretion in concluding that the issue was not a meritorious one with a reasonable likelihood of success.

As to the issue of the prisoner's dock, White is correct that the law did change, in 1979. In Commonwealth v. Moore, 379 Mass. 106 (1979), this court held that a defendant's request to sit with counsel should be allowed unless valid reasons of security, delineated in the record, required otherwise. See id. at 111. Although it appears that White is entitled to the benefit of the change in the law (because at the time he had a validly pending motion for a new trial, prior to his 1980 escape from custody), he does not argue that he requested to sit with counsel. Even if seating White in a prisoner's dock violated his due process rights, we cannot say that, again in the context of this case where the evidence against White was strong, the error would have created a substantial likelihood of a miscarriage of justice. The issue, in short, is not one that suggests a likelihood of success on appeal, for purposes of the motion to stay.

Conclusion. For all these reasons, the single justice did not err or abuse her discretion in denying relief pursuant to G. L. c. 211, § 3, on the basis that the trial court judge did not abuse his discretion in denying White's motion for a stay of further execution of his sentence.

Judgment affirmed.

The case was submitted on briefs.

Cathryn A. Neaves for the petitioner.

Kyle Siconolfi, Assistant District Attorney, for the  
Commonwealth.