

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Tyree v. Commonwealth

469 Mass. 1013 (2014) · No. SJC-11633 · Decided October 1, 2014

SUMMARY

The Supreme Judicial Court of Massachusetts affirmed the denial of William M. Tyree’s petition under G. L. c. 211, § 3, arising from a 1979 ex parte proceeding and its alleged effect on his ability to present a third-party culprit defense. The court held that Tyree had not shown the absence of another adequate route for relief and declined to consider issues not raised in the county court.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
JURISDICTION	Massachusetts
DECIDED	October 1, 2014
DOCKET	SJC-11633
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a single justice's denial of a petition under G. L. c. 211, § 3, seeking extraordinary relief and permission to pursue further appellate or postconviction proceedings.
STANDARD OF REVIEW	Whether the single justice erred or abused her discretion in denying extraordinary relief under G. L. c. 211, § 3; relief is unavailable where another adequate route exists.
PRECEDENTIAL VALUE	Published opinion
PARTIES	William M. Tyree v. Commonwealth

TOPICS

- post-conviction relief
- appellate procedure
- criminal procedure
- appellate jurisdiction
- evidence

PRACTICE AREAS

- Criminal procedure
- Postconviction relief
- Appellate procedure
- Capital litigation
- Evidence

QUESTIONS PRESENTED

1. Whether the single justice properly treated Tyree's filing as a petition under G. L. c. 211, § 3, rather than an application under G. L. c. 278, § 33E.
2. Whether Tyree was entitled to extraordinary relief under G. L. c. 211, § 3, based on alleged defects in the 1979 ex parte proceeding and resulting limitations on his third-party culprit defense.
3. Whether issues not raised in the county court could be considered on appeal.

HOLDINGS

1. The single justice properly treated Tyree's filing as a petition under G. L. c. 211, § 3, rather than an application under G. L. c. 278, § 33E, because Tyree was not seeking appellate review of a trial court ruling on a postconviction motion.
2. Tyree was not entitled to extraordinary relief because he failed to demonstrate that there was no other adequate route by which he could seek relief.
3. The court need not consider issues that Tyree raised for the first time on appeal from the single justice's decision.

FACTUAL BACKGROUND

Tyree was convicted of first-degree murder in 1980. His claims concerned a 1979 Commonwealth petition under G. L. c. 211, § 3, which challenged a trial judge's order arising from a probable cause hearing and resulted in the voiding of complaints against a witness whom Tyree claimed committed the murder. Tyree asserted that the petition hearing was ex parte and that the resulting ruling, together with an in limine order, prevented him from presenting a third-party culprit defense. The court noted that Tyree could have raised these issues on direct appeal or in prior postconviction proceedings.

PROCEDURAL HISTORY

Tyree was convicted of murder in the first degree in 1980, and the Supreme Judicial Court affirmed the conviction. After numerous postconviction motions and county court petitions, Tyree filed a multifaceted motion seeking permission for a second direct appeal, a successive new trial motion, or nunc pro tunc appellate relief. The single justice treated the filing as a petition under G. L. c. 211, § 3, rather than an application under G. L. c. 278, § 33E, and denied it. The Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Tyree, 387 Mass. 191 (1982)
- Lykus v. Commonwealth, 432 Mass. 160, 161-162 (2000)
- Carvalho v. Commonwealth, 460 Mass. 1014 (2011)

OPINION

PER CURIAM.

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557- 1030; SJCReporter@sjc.state.ma.us SJC-11633 WILLIAM M. TYREE vs. COMMONWEALTH.

October 1, 2014. Supreme Judicial Court, Superintendence of inferior courts. Homicide. Practice, Criminal, Capital case. Evidence, Third-party culprit. The petitioner, William M. Tyree, was convicted of murder in the first degree in 1980. This court affirmed the conviction. See *Commonwealth v. Tyree*, 387 Mass. 191 (1982), cert. denied, 459 U.S. 1175 (1983).

Since then, Tyree has filed numerous postconviction motions in the trial court, including several motions for a new trial, as well as petitions in the county court pursuant to G. L. c. 278, § 33E, and G. L. c. 211, § 3. Most recently he filed, in the county court, "Appellant's Motion Seeking Permission to File a Second Direct Appeal, or in the Alternative, Appellant's Motion Seeking Permission to File a Successive Rule 30 New Trial Motion, or in the Alternative, Appellant's Motion Seeking Permission to File a Nunc Pro Tunc Appeal of the G. L. c. 211, § 3 Petition Held Ex Parte that Denied Exculpatory Evidence to the Appellant in a Capital Case."

A single justice treated the filing as a G. L. c. 211, § 3, petition, and denied it.¹ Tyree appeals, and we affirm. ¹ Although William M. Tyree raises issues related to his conviction of murder in the first degree, the single justice properly treated his filing in the county court as a G. L. c. 211, § 3, petition, rather than as an application pursuant to G. L. c. 278, § 33E, because Tyree is not seeking appellate review of any trial court ruling on a postconviction motion.

² Tyree's claims stem, in essence, from a hearing and decision on a G. L. c. 211, § 3, petition that the Commonwealth filed in 1979, during the course of prosecuting Tyree for murder. In the petition, the Commonwealth sought relief from a trial judge's order, issued after a probable cause hearing, that, among other things, caused several complaints to be issued against a witness at the hearing who Tyree claims committed the murder.

A single justice of this court allowed the petition and voided the complaints that had issued against the witness. Three decades later, Tyree now complains that the hearing on the petition was held ex parte, and that, as a result, the single justice did not have the full picture of the relevant events.

The single justice's ruling also, according to Tyree, had the ultimate effect of precluding any reference at trial to the probable cause hearing and decision, including the subsequently voided complaints, because the Commonwealth successfully moved in limine to prohibit any reference to those events.

In Tyree's view, this, in turn, prevented him from raising a third-party culprit defense. Why this would be so is not clear -- even without referring to the probable cause hearing and the voided complaints Tyree could still raise a third-party culprit defense -- but, in any event, Tyree has offered no reason why he could not have raised these issues, and any of the related issues raised in his filings in this court, in his direct appeal, or in one of his many postconviction motions.

He has not, in other words, demonstrated that there was not another route by which he could seek adequate relief. See, e.g., *Lykus v. Commonwealth*, 432 Mass. 160, 161-162 (2000). Additionally, to the extent that Tyree raises issues in this court that he did not raise in the county court, we need not consider them. See *Carvalho v. Commonwealth*, 460 Mass. 1014 (2011), and cases cited.

The single justice did not err or abuse her discretion in concluding that Tyree is not entitled to extraordinary relief pursuant to G. L. c. 211, § 3. Judgment affirmed. The case was submitted on briefs. William M. Tyree, pro se.