(37)

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

AT BOSTON, July 13, 2000

IN THE CASE NO. SJC-08126

MICHAEL ELBERY

vs.

COMMONWEALTH

pending in the Supreme Judicial Court for the County of Suffolk No. SJ-1998-0308

ORDERED, that the following entry be made in the docket; viz., --

Judgment affirmed.

BY THE COURT,

Asst
Lenn M. Wong, CLERK.

July 13, 2000

(37)

SJC-08126

MICHAEL ELBERY vs. COMMONWEALTH.

July 13, 2000.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Michael Elbery, appeals from a judgment of a single justice of this court denying, without a hearing, his petition for relief under G. L. c. 211, § 3, which sought relief from an order of a Superior Court judge that limited to sixty pages the length of the memorandum and supporting materials that the petitioner would initially be allowed to submit in support of his motion for a new trial in a criminal case. We affirm.

We have repeatedly held that relief under G. L. c. 211, § 3, is properly denied where there are other routes by which a petitioning party may adequately seek relief. See, e.g., Kraytsberg v. Kraytsberg, 427 Mass. 1008, 1009 (1998); Matthews v. D'Arcy, 425 Mass. 1021, 1022 (1997). Here, the petitioner has another available remedy. He can appeal from the judge's ruling pursuant to Mass. R. Crim. P. 30 (c) (8), as appearing in 420 Mass. 1502 (1995), following the entry of a final order on his motion for a new trial, if his motion for a new trial is denied. Having failed to demonstrate that this traditional appeal remedy would not provide full and effective relief, the petitioner is not entitled to invoke the extraordinary relief set forth in G. L. c. 211, § 3.[1]

Judgment affirmed.

Michael Elbery, pro se.

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[1] We express no view on whether the judge in this case erred in limiting the petitioner's submissions. We note, however, that the order only limited the petitioner's "initial submissions." The order did not absolutely foreclose the possibility that the petitioner would be allowed to file additional pages. Presumably the judge was open to reconsideration of this limit if the petitioner's initial submissions suggested meritorious issues that required additional pages.

of demonstrating entitlement to relief). Additionally, there is no indication that the petitioner sought an order vacating the execution in the trial court.

Judgment affirmed.

432 Mass. 1007

|1007 **Michael ELBERY**

v.

COMMONWEALTH.

Supreme Judicial Court of Massachusetts.

July 13, 2000.

Criminal defendant filed petition for relief from order of a Superior Court judge limiting to 60 pages the length of memorandum and supporting materials the defendant could initially submit in support of his motion for new trial. Single justice of the Supreme Judicial Court denied petition, and defendant appealed. The Supreme Judicial Court held that defendant had another available remedy and, thus, was not entitled to extraordinary relief.

Affirmed.

Courts ⇐207.1

Criminal defendant was not entitled, under statute granting Supreme Judicial Court power to issue writs and process, to extraordinary relief from order of a Superior Court judge limiting to 60 pages the length of memorandum and supporting materials the defendant could initially submit in support of his motion for new trial, as defendant had another available remedy through a traditional appeal under rule of criminal procedure governing postconviction relief. M.G.L.A. c. 211, § 3; Rules Crim.Proc., Rule 30(c)(8), 43C M.G.L.A.

Michael Elbery, pro se.

RESCRIPT.

The petitioner, Michael Elbery, appeals from a judgment of a single justice of this court denying, without a hearing, his petition for relief under G.L. c. 211, § 3, which sought relief from an order of a Superior Court judge that limited to sixty pages the length of the memorandum and supporting materials that the petitioner would initially be allowed to submit in support of his motion for a new trial in a criminal case. We affirm.

We have repeatedly held that relief under G.L. c. 211, § 3, is properly denied where there are other routes by which a petitioning party may adequately seek relief. See, e.g., *Kraytsberg v. Kraytsberg*, 427 Mass. 1008, 1009, 696 N.E.2d 124 (1998); *Matthews v. D'Arcy*, 425 Mass. 1021, 1022, 681 N.E.2d 815 (1997). Here, the |1008petitioner has another available remedy. He can appeal from the judge's ruling pursuant to Mass. R.Crim. P. 30(c)(8), as appearing in 420 Mass. 1502 (1995), following the entry of a final order on his motion for a new trial, if his motion for a new trial is denied. Having failed to demonstrate that this traditional appeal remedy would not provide full and effective relief, the petitioner is not entitled to invoke the extraordinary relief set forth in G.L. c. 211, § 3.[1]

Judgment affirmed.

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432 Mass. 1

|132 **Laurien ENOS**

v.

SECRETARY OF ENV AFFAIRS

Supreme Judicial Court o Plymouth

Argued May 4,

Decided July 14

Property owners sou judgment invalidating a c by Secretary of Enviro that found town's final su ronmental impact report posed sewage treatment compliance with Massach mental Policy Act. The Su partment, Plymouth Cou Brady, J., allowed motion ers appealed. The Appeals 48 Mass.App.Ct. 239, 7 Granting application for f review, the Supreme Judi ney, J., held that owners to maintain present action.

Judgment of Superior

Abrams, J., filed a co

1. Declaratory Judgment

A party has standing tory judgment when it can within the area of concern regulatory scheme under ous action has occurre 231A, § 1 et seq.

missions." The order did close the possibility that th be allowed to file addition ably the judge was open to this limit if the petitioner's suggested meritorious issu ditional pages.