

Supreme Court

No. 2007-235-C.A.
(P1/03-196A)

State :
v. :
Jack Ruffner. :

ORDER

The defendant, Jack Ruffner (defendant), appeals from a Superior Court order denying his sentence-reduction motion. This case came before the Supreme Court for oral argument on September 30, 2008, pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not summarily be decided. After hearing the arguments of counsel and examining the memoranda filed by the parties, we are of the opinion that this appeal may be decided at this time without further briefing or argument. For the reasons hereinafter set forth, we vacate the motion justice's order and remand this case to the Superior Court for a hearing and reconsideration of the motion.

A jury convicted defendant of second-degree murder on June 1, 2004. The trial justice subsequently sentenced him to a term of life imprisonment. This Court affirmed defendant's conviction in State v. Ruffner, 911 A.2d 680 (R.I. 2006). Thereafter, defendant filed a petition for reargument and reconsideration, which this Court denied on January 10, 2007.

On March 19, 2007, defendant filed a timely motion to reduce his sentence in the Superior Court pursuant to Rule 35 of the Superior Court Rules of Criminal Procedure. The defendant subsequently filed a memorandum setting forth several grounds in support of his Rule 35 motion. At argument before this Court, defendant explained that it had been his

understanding that a hearing would be held in the Superior Court after submission of his memorandum. The state indicated that it shared defendant's understanding. Without conducting a hearing, the motion justice issued an order denying defendant's Rule 35 motion on June 22, 2007. The defendant is before this Court on appeal of the motion justice's order.

This Court recently held that a hearing should be provided for Rule 35 motions "absent truly exceptional circumstances." State v. Chase, No. 2007-234-C.A., slip op. at 3 (R.I., filed Oct. 14, 2008) (mem.) (quoting State v. Brown, 865 A.2d 334, 334 n.2 (R.I. 2005) (mem.)). In Chase, we vacated an order denying a Rule 35 motion and remanded the case for a hearing because the motion justice had failed to conduct a hearing prior to ruling on the motion and had failed to articulate truly exceptional considerations for doing so. Chase, slip op. at 4. Similarly, in the case at hand, the motion justice did not articulate any exceptional considerations excusing his failure to provide the defendant with a hearing before ruling on his Rule 35 motion.

For the foregoing reasons, we vacate the motion justice's order denying the defendant's Rule 35 motion and remand the case to the Superior Court for a hearing and reconsideration of the motion.

Entered as an Order of this Court this 15th day of October, 2008.

By Order,

s/s

Clerk