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**ORDER OF THE SUPREME JUDICIAL
COURT FOR THE COMMONWEALTH
OF MASSACHUSETTS DENYING
FURTHER REVIEW
(MAY 12, 2022)**

**SUPREME JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS**

COMMONWEALTH

v.

WILLIAM TOPPI

Docket No. FAR-28780

**Middlesex Superior Court No. 1381CR01572
A.C. No. 2021-P-0332**

**NOTICE OF DENIAL OF APPLICATION FOR
FURTHER APPELLATE REVIEW**

Please take note that on May 12, 2022, the application for further appellate review was denied.

/s/ Francis V. Kenneally
Clerk

Dated: May 12, 2022

**MEMORANDUM AND ORDER
PURSUANT TO RULE 23.0
(MARCH 25, 2022)**

**COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT**

COMMONWEALTH

v.

WILLIAM TOPPI

No. 21-P-332

Before: SACKS, HAND & HERSHFANG, JJ.

The defendant, William Toppi, appeals from a Superior Court judge's denial of his motion for a new trial. On December 17, 2014, the defendant pleaded guilty to breaking and entering during the daytime with intent to commit a felony, pursuant to G. L. c. 266, § 18, and larceny over \$250, pursuant to G. L. c. 266, § 30. On July 16, 2020, the defendant, representing himself, filed a motion for a new trial, pursuant to Mass. R. Crim. P. 30, as appearing in 435 Mass. 1501 (2001), claiming that the judge (plea judge) accepted his guilty plea in violation of his Federal and State constitutional rights. The plea judge denied the motion without a hearing. In this appeal, the defendant argues that the plea judge should have allowed his motion because, among other things, plea counsel perpetrated a "fraud upon the court" and provided him ineffective assistance of counsel, and the defendant's absence

from a lobby conference held before he entered his plea was improper. We affirm.

Background.

The defendant admitted to the following facts in his plea colloquy. On August 23, 2013, the victim returned home to find her front door damaged, her home ransacked, and numerous items missing, estimated to be worth thousands of dollars. A neighbor stated that he saw two people, one of whom looked like the defendant and another person who looked like codefendant Elvis Ruiz, going in and out of the house while the victim was away. The defendant denied being involved with the crime but admitted to being with Ruiz that day. Ruiz pawned some of the stolen items. Ruiz would have testified, pursuant to a cooperation agreement with the Commonwealth, that he and the defendant entered the house and stole the missing items.

The plea judge sentenced the defendant to state prison for not more than two and a half years and not less than two years, and to two years of probation to be served from and after the state prison sentence. On September 27, 2017, a different judge (restitution judge) held a restitution hearing, and on October 19, 2017, the restitution judge ordered the defendant to pay \$1,000 to the victim. The defendant filed a pro se motion for a new trial almost three years after the restitution hearing, which the plea judge denied, and from which the defendant now appeals.

Legal standard.

A motion for a new trial may be granted “if it appears that justice may not have been done.” Mass.

App.4a

R. Crim. P. 30 (b). “We examine the granting or denial of a new trial motion ‘only to determine whether there has been a significant error of law or other abuse of discretion.’” *Commonwealth v. Lys*, 481 Mass. 1, 4 (2018), quoting *Commonwealth v. Lavrinenko*, 473 Mass. 42, 47 (2015). “A motion for [a] new trial is addressed to the sound discretion of the judge,” *Commonwealth v. Moore*, 408 Mass. 117, 125 (1990), and is “granted only in extraordinary circumstances.” *Commonwealth v. Comita*, 441 Mass. 86, 93 (2004). Where, as here, the “motion judge and the [plea] judge were one and the same, we extend special deference.” *Commonwealth v. DeJesus*, 71 Mass. App. Ct. 799, 811 (2008), citing *Commonwealth v. Grace*, 397 Mass. 303, 307 (1986).

Rule 30 requires a judge hearing a new trial motion to decide

“whether the defendant’s motion and affidavits present a ‘substantial issue.’ In making this determination, a motion judge need not accept statements in the defendant’s affidavits as true, even if the statements are undisputed. Instead, a motion judge should consider both the seriousness of the issue itself and the adequacy of the defendant’s showing on that issue. Although a defendant’s motion and affidavits need not prove the issue raised, to be adequate they must at least contain sufficient credible information to cast doubt on the issue.

“If a motion judge finds that the motion and affidavits do not present a substantial issue, then [t]he judge may rule on a motion for a new trial without an evidentiary hearing”

(citations and quotations omitted).

Lys, 481 Mass. at 5-6.

Discussion.

In his motion for a new trial, the defendant stated that "his plea was taken in violation of his rights secured under the Constitutions and laws of the United States and the Commonwealth of Massachusetts." With his motion, the defendant submitted affidavits claiming that he had "been denied the right to effective counsel"; "fraud was used to induce a guilty plea from [him]"; and his "conviction was a miscarriage of justice."

Since the defendant's motion and attached affidavits contained only conclusory declarations of constitutional violations, fraud, ineffective counsel, and a miscarriage of justice, but lacked sufficient credible information to cast doubt on the issues, the plea judge's conclusion that the defendant had not raised a "substantial issue" was well within his discretion. See *Lys*, 481 Mass. at 5. The plea judge specifically recalled "the facts of th[e] case and the plea in which [he] was convinced not to impose the Commonwealth's sentence recommendation," and did not abuse his discretion in ruling that the defendant's "factual disagreements and accusations leveled at those involved here . . . fail to provide rational support for the claims that plea counsel was ineffective, or that his plea was anything but knowing, intelligent and voluntary when made."

Were we to attempt to address the defendant's claims, our conclusion would be no different. Taking his first claim as an example, Toppi maintains that

his counsel was ineffective and perpetrated a “fraud upon the court.” We disagree. A successful claim for ineffective assistance of counsel requires the defendant to show that (1) counsel’s performance fell “measurably below that which might be expected from an ordinary fallible lawyer”; and (2) such conduct deprived him of “an otherwise available, substantial ground of defence.” *Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974); *see Strickland v. Washington*, 466 U.S. 668, 687 (1984). Having reviewed the transcripts of the lobby conference and plea hearing, as well as the submissions from plea counsel, we encountered nothing that rises to that level; indeed, plea counsel advocated forcefully for a lower sentence and endeavored to have the sentence attached to the lesser of the indictments. The plea judge carefully confirmed that the defendant knowingly, intelligently, and voluntarily waived his trial rights, and that he did so with access to advice from plea counsel. The defendant specifically affirmed that he had enough time to discuss the matter with his attorney, that she had fully explained to him all of his rights and options, and that he felt she had acted in his best interests. Asked, “Are you fully satisfied with all of the advice and representation that you’ve received from [plea counsel],” the defendant answered, “Yes, I am.”¹

¹ The defendant’s claim of fraud by plea counsel would fail for the same reasons. As to the claim about the lobby conference, the defendant concedes in his brief that his counsel “relayed [to him] what was said in the lobby.” The defendant’s absence from the lobby conference did “not affect the knowing or voluntary nature of [his] guilty plea; nor [was] it logically inconsistent with the establishment of the defendant’s guilt.” *Commonwealth v. Fanelli*, 412 Mass. 497, 501 (1992).

The remainder of the defendant's claims on appeal are similarly flawed, including his claims of torture, improper participation by a nonparty at the sentencing hearing, excessive bail, irregularities in the procedure for setting the amount of restitution, and bias on the part of the plea judge. To the extent that they rise to the level of appellate argument, we reject these claims, substantially for the reasons stated in the Commonwealth's brief.

Without more than factually and legally unsupported accusations from the defendant, it was not error to deny the defendant's motion.

Order denying motion for new trial affirmed.

By the Court (Sacks, Hand & Hershfang, JJ.²)

/s/ Joseph F. Stanton
Clerk

Entered: March 25, 2022

² The Panelists are listed in order of seniority

**ORDER OF THE LOWELL SUPERIOR COURT
(JULY 16, 2020)**

COMMONWEALTH OF MASSACHUSETTS
LOWELL SUPERIOR COURT
MIDDLESEX SS.

COMMONWEALTH

v.

WILLIAM S. TOPPI

No. MICR2013-1572

DENIED.

Without hearing. After review of the submissions and attached exhibits, I find that the defendant has failed to raise a substantial issue warranting further hearing. A motion for a new trial will be allowed "if it appears that justice may not have been done." Mass. R. Crim. P. Rule 30(b). Despite the passage of almost six years, I recall the facts of this case and the plea in which I was convinced not to impose the Commonwealth's sentence recommendation. Mr. Toppi's factual disagreements and accusations leveled at those involved here, though protracted, fail to provide rational support for the claims that plea counsel was ineffective, or that his plea was anything but knowing, intelligent and voluntary when made. Accordingly, I cannot conclude that justice was not done

**Additional material
from this filing is
available in the
Clerk's Office.**