

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1552

COMMONWEALTH

vs.

VINCENT MICHAEL MARINO.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Vincent Michael Marino, was convicted in 1984 of malicious injury to personal property, possession of a dangerous weapon, and possession of burglarious tools. He appeals from an order denying his motion for new trial² filed in 2017.³ Due to critical defects in the record, we affirm.

Background. The defendant's motion for new trial and accompanying affidavit read as a blanket denial that he received

¹ Also known as Vincent M. Portalla.

² The defendant's original motion was titled "WRIT OF ERROR CORAM NOBIS/RULE 30(b)/MOTION TO DISMISS CHARGES." The judge treated the request as a motion for new trial; we do as well.

³ In 1999, the defendant was convicted of a number of racketeering-related offenses in Federal court; he is currently serving a thirty-five year sentence in Federal prison for those offenses. His motion asserts that the 1984 convictions increased his Federal sentence by five years and required him to be placed in a "Threat Assessment Group" while incarcerated.

any due process over the course of the 1984 proceedings.⁴ In support of his motion, he provided only his own affidavit that essentially repeated his complained-of allegations. The Commonwealth supplemented the record with the defendant's original docket cards and his Court Activity Record Information report. As best we can discern no transcript or further record of any of the underlying proceedings exists.⁵ The defendant's motion for new trial was denied without comment via margin endorsement by the District Court judge. The defendant timely appealed.⁶

Discussion. When, as here, a defendant waits,⁷ in this case thirty-three years, to challenge a prior conviction by guilty

⁴ The defendant alleges that he was not represented by, nor did he waive his right to, counsel; was not afforded discovery; was not informed of the elements of the charges leveled against him; was not notified of any potential defenses; was given an improper colloquy; and was not warned about the ramifications of pleading guilty.

⁵ The defendant avers that he pleaded guilty. Nonetheless, we are unable upon this record to ascertain whether the defendant pleaded guilty or was found guilty after trial. The docket cards provided are indeterminate on this point, and the Commonwealth states that no transcripts exist and the remainder of the case files were lawfully destroyed.

⁶ The defendant filed a motion pursuant to G. L. c. 211, § 3, seeking a review of the denial by the Supreme Judicial Court. That motion was denied by a single justice of that court, and the case was docketed here.

⁷ Due to the nature of the defendant's complaints regarding due process, he had reason to know of his grievances long before 2017.

plea for such a period of time that the records of the proceedings are no longer available, the defendant carries the burden to establish "by sufficient credible and reliable evidence to rebut a presumption that the prior conviction was valid." Commonwealth v. Lopez, 426 Mass. 657, 665 (1998). Unfortunately, in the instant matter, the defendant's failure to provide an adequate record for review is fatal, as it prevents any meaningful assessment of his claims. "[I]t is the appellant's responsibility to ensure that the record is adequate for appellate review." Commonwealth v. Woody, 429 Mass. 95, 97 (1999). Pro se litigants "are held to the same standards as practicing members of the bar." Commonwealth v. Jackson, 419 Mass. 716, 719 (1995). Here, we have no basis to determine whether the issues presented in the defendant's new trial motion were adequately raised and preserved in the District Court. See Mass. R. A. P. 18 (a) (1) (A), as appearing in 481 Mass. 1637 (2019). See also Cameron v. Carelli, 39 Mass. App. Ct. 81, 83-84 (1995) (insufficient record to review whether plaintiff met

burden of proof to support motion for directed verdict).⁸

Order dated January 22, 2018,
denying motion for new
trial affirmed.

Order dated February 2, 2018,
denying motion to recuse
affirmed.

By the Court (Desmond,
Wendlandt &
McDonough, JJ.⁹),

Joseph F. Stanton

Clerk

Entered: February 24, 2020.

⁸ To the extent that the defendant appeals from the order denying his motion to recuse, he has not addressed that issue in his brief and, therefore, the issue is waived. See Barkan v. Zoning Bd. of Appeals, 95 Mass. App. Ct. 378, 389 (2019).

⁹ The panelists are listed in order of seniority.