

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2002-244 & 2003-047

APRIL TERM, 2003

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont, Unit No. 3,
	}	Washington Circuit and Bennington
Clinton R. Bedell, Jr.	}	Superior Court
	}	
Clinton R. Bedell, Jr.	}	
	}	DOCKET Nos. 1297-12-97 Wncr & 200-5-
v.	}	02 Bncv
	}	
State of Vermont, John Gorczyk,	}	Trial Judge: Alan W. Cheever & John P.
VT House Representative,	}	Wesley
Washington District Court, et al.	}	

In the above-entitled cause, the Clerk will enter:

In these consolidated appeals, defendant appeals from a district court order denying his motion for reconsideration of sentence (Docket No. 2002-244), and a Bennington Superior Court order dismissing a habeas corpus petition (Docket No. 2003-047). We affirm.

Docket No. 2002-244

In February 1999, defendant pled guilty, pursuant to a negotiated plea agreement, to one count of sexual assault upon a minor, and received the agreed-upon sentence of six to thirty-five years. Defendant appealed, asserting, among other claims, that the conduct for which he was convicted arose out of his religious beliefs and therefore the conviction violated his constitutional rights to the free exercise of religion, due process, and equal protection; that he could not be convicted because he had somehow married the victim, his daughter; and that the sexual assault statute is invalid. We affirmed. See State v. Bedell, No. 99-115 (Nov. 24, 1999) (three-justice mem.).

Defendant filed a pro se motion for reconsideration of sentence in March 2000, which the court denied the following December. About a year and a half later, in May 2002, defendant filed a second pro se motion for reconsideration, which the court denied the same month. This appeal followed.

Defendant's appellate briefing appears to raise numerous claims, including prosecutorial misconduct, ineffective assistance of counsel, and violation of a number of constitutional rights. These claims were not raised in the trial court, however, and therefore were not preserved for review on appeal. State v. Kinney, 171 Vt. 239, 255 (2000). As to the two claims that were raised below " that the plea was not voluntary and was based upon illegally obtained evidence " we conclude that the motion for reconsideration is untimely under 13 V.S.A. § 7042(a), which provides that a court may modify a sentence " within 90 days" of the imposition of sentence or a decision of the supreme court upholding a judgment of conviction. The motion is also untimely under V.R.Cr.P. 35(a), which similarly provides that a motion to correct a sentence " imposed in an illegal manner" must be filed within ninety days of the judgment or supreme court decision upholding the judgment. Defendant's motion was filed in May 2002, more than two years after the judgment of conviction was affirmed on appeal. While a court " may correct an illegal sentence at any time" under V.R.Cr.P. 35(a),

defendant' s claims that his plea was involuntary and was based on illegally obtained evidence would not " even assuming that there were a factual basis " establish that he received an " illegal sentence." See, e.g., United States v. Dougherty, 106 F.3d 1514, 1515 (10th Cir. 1997) (illegal sentence is " one which is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize" (quoting United States v. Wainwright, 938 F.2d 1096, 1098 (10th Cir. 1991)); State v. Murray, 744 A.2d 131, 134-35 (N.J. 2000) (to qualify for extended limitations period to establish " illegal sentence," defendant must show that sentence was in excess of that authorized by statute, or otherwise violated sentencing guidelines).

Accordingly, we discern no basis to disturb the court' s judgment denying the motion for reconsideration¹. Defendant' s motions for " de novo review of sentence reconsideration" and for " a brief addition" of issues presented are denied for failure to comply with V.R.A.P. 27(a) (motion " shall state with particularity the grounds on which it is based") and on the merits.

Docket No. 2003-047

In May 2002, defendant filed a habeas corpus petition with the Bennington Superior Court. Although it is difficult to identify all of the precise claims in defendant' s rambling pro se petition, a number appeared to attack the validity of the underlying sexual-assault conviction². The state moved to dismiss the petition on the ground, among others, that under 13 V.S.A. § 7131 a petition for post-conviction relief shall be filed in " the superior court of the county where the sentence was imposed," which in defendant' s case is the Washington Superior Court. In October, the court issued an entry order, granting the motion to dismiss on the grounds that venue was improper under the statute, that the petition was successive (petitioner having filed several prior petitions in the Washington Superior Court) and failed to state any basis for relief. This appeal followed.

Defendant' s briefing on appeal fails to address the court' s decision to dismiss for improper venue, which was clearly correct. Accordingly, we discern no basis to disturb the judgment of dismissal.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned

Footnotes

1. We note that although this is defendant' s second motion for reconsideration of sentence, and that we have disallowed successive motions, State v. Grega, 170 Vt. 573, 574 (1999) (mem.), the record is unclear whether the petitions are based on the same allegations.

2. Other claims appeared to concern the conditions of defendant's confinement, although these claims are not renewed in defendant's brief on appeal, and therefore are deemed waived.