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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2002-509 and 2003-048

FEBRUARY TERM, 2004

State of Vermont	APPEALED FROM:
v.	District Court of Vermont, Unit No. 2, Chittenden Circuit
Wayne A. Hutchins	DOCKET NO. 5322-8-00 Cncr
	Trial Judge: Matthew I. Katz

State of Vermont	APPEALED FROM:
v.	District Court of Vermont, Unit No. 2, Addison Circuit
Wayne A. Hutchins	DOCKET NO. 914-12-00 Ancr
	Trial Judge: Matthew I. Katz

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

Defendant appeals from a sentence based on a guilty plea to charges of furnishing alcohol to a minor, and the commission of a prohibited act of lewdness, as well as his admission to a violation of probation. Defendant contends the sentence was based upon materially inaccurate information. We affirm.

In December 2000, defendant was charged in Addison County with sexual assault, in violation of 13 V.S.A. §3252(a)(1)(A), and furnishing alcohol to a minor, in violation of 7 V.S.A. ' 658. The charges were based on allegations that defendant, who was then about forty years old, had furnished alcohol to A.S., who was fifteen or sixteen years old, at a party. Defendant later left the party with A.S. and allegedly forced her to consume more alcohol, which caused her to pass out. When she awoke in her car, A.S. alleged that she was naked and that defendant was sexually assaulting her.

About a year after the Addison County incident, defendant was convicted in Chittenden County on separate charges of DUI and DLS, and sentenced to probation and community work crew.

On August 21, 2002, the day that trial in Addison County was scheduled to commence, the State " pursuant to a plea agreement " amended the charge of sexual assault to allege instead the commission of a prohibited act of lewdness, specifically the making of " inappropriate sexual overtures," in violation of 13 V.S.A. §2632(8). The court accepted defendant' s guilty plea to the amended charge and the furnishing-of-alcohol charge, and defendant admitted a violation of probation based on a search of his home that had revealed alcohol and marijuana. There was no agreement on sentencing. The court ordered a PSI report and scheduled a sentencing hearing in October.

The PSI report was completed in September, and copies were sent to the parties. At the commencement of the October 15 sentencing hearing, defendant objected to an " addendum" to the PSI which counsel had received only that morning, but otherwise raised no objection to the contents of the PSI. Defendant called three witnesses, a friend, his daughter, and the probation officer who had prepared the PSI. The probation officer noted that defendant continued to deny that he had engaged in any sexual misconduct, and recommended a sentence of 9 months to one year, all suspended but 30 days to serve on the prohibited-act charge, consecutive to a sentence of one to two years, all suspended, on the furnishing-of-alcohol charge. The State, noting that the incident had exerted a traumatic impact on the victim, and that the amended charge was " simply an accommodation" to the victim' s desire to forego trial, argued for a lengthier sentence.

Defense counsel argued, in response, that defendant was not " here for a sentencing on the sexual assault," and that there was no evidence to support a finding that defendant had sexually assaulted the victim. The trial court then explained that while it intended to impose a sentence within the terms allowed by the charges on which defendant had been convicted, it remained free to base the sentence " upon whatever facts are made known to the Court in this sentencing proceeding which includes the presentence investigation . . . and includes the evidence as presented today." The court then articulated an extensive set of findings, including findings that defendant had, in fact, sexually assaulted the victim, that he presented substantial risk to re-offend, and that probation had been notably unsuccessful in stemming defendant' s drug and alcohol abuse. Accordingly, the court revoked defendant' s probation from the Chittenden offenses and imposed the underlying sentence of four to 12 months to serve, consecutive to a sentence of 23 to 24 months to serve on the furnishing-of-alcohol charge, consecutive to a sentence of 10 to 12 months, all suspended with probation, on the prohibited-act charge. This appeal followed.

Defendant contends the court erroneously sentenced him based on materially inaccurate information because its finding that defendant had sexually assaulted the victim lacked a reliable factual basis. At the outset, we note that it is proper for the court, at sentencing, to consider a " wide range" of information, including " the nature and propensities of the offender, the particular acts by which the crime was committed, [and] the circumstances of the offense," State v. Thompson, 150 Vt. 640, 645 (1989), so long as the information is reliable and disclosed sufficiently in advance of sentencing to allow rebuttal. State v. Ramsey, 146 Vt. 70, 81 (1985). These principles are codified in V.R.Cr.P. 32(c)(2), (3) and (4), which authorize the preparation of a PSI report containing such wide-ranging information, require that it be sent to the defendant at least two weeks prior to sentencing, and afford the defendant an opportunity to comment or object in writing in advance of the hearing, and to submit evidence on any disputed issues. Failure to follow the procedures for raising an objection to the reliability or accuracy of information in the PSI, however, results in a waiver of the claim on appeal. State v. Roy, 169 Vt. 611, 612 (1999) (mem.).

Thus, the trial court here was correct in observing that it was free to consider all of the circumstances of the offense, and to find that, notwithstanding defendant' s plea to a lesser charge, he had actually raped the victim. The PSI here contained the victim' s statement graphically describing the sexual assault perpetrated by defendant, as well as a statement by the victim' s mother describing the assault' s traumatic impact on her daughter. This information was more than sufficient to support the court' s finding, and any claim as to its reliability was waived by defendant' s failure to raise an objection under the Rule. Id. Merely complaining that defendant was not " here for a sentencing on sexual assault" did not rise to the level of an objection sufficient to preserve a claim of unreliability. See id. (merely observing that there are two sides to every story, without filing written objections in advance of trial, insufficient to preserve objection to statements in PSI). Accordingly, we discern no basis to disturb the sentence.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice