

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-118

SEPTEMBER TERM, 2004

In re Richard J. Laws

}	APPEALED FROM:
}	
}	Washington Superior Court
}	
}	DOCKET NO. 393-7-00 Wncv
}	
}	Trial Judge: Alan W. Cook
}	
}	
}	
}	

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

Defendant appeals from a summary judgment rejecting defendant' s collateral attack on his conviction and sentence for kidnapping, aggravated sexual assault, and aggravated assault. Defendant argues that he was unaware that by pleading guilty he waived any claim based on double jeopardy grounds. We affirm because defendant' s claim is barred by his guilty plea under United States v. Broce, 488 U.S. 563 (1989).

On February 26, 1993, defendant pled guilty to one count of kidnapping, aggravated sexual assault, and aggravated assault. The crimes occurred in the late evening of June 19, 1992. While driving from Mad Mountain Tavern in Waitsfield that evening, the victim' s tires went flat; the evidence suggested that defendant himself had punctured her tires. Defendant pulled up to her stopped vehicle and offered her a ride, which the victim accepted. Rather than bring her home, however, defendant drove the victim to the Granville Gulf area where he raped her. After raping her, defendant drove the victim to a more remote location and beat her severely with a blunt instrument. The victim left behind a large deposit of blood with head hair that the police later discovered during their investigation. The victim' s injuries were life threatening and included a fractured skull.

In July 2000, defendant petitioned the Washington Superior Court for habeas corpus relief. Defendant asserted that his guilty plea violated his rights under the double jeopardy clause of the United States Constitution. The State moved for summary judgment, arguing that defendant waived any double jeopardy claim when he pled guilty. The court agreed, and entered summary judgment for the State. This appeal followed.

In 1989, the United States Supreme Court held that a guilty plea waives a defendant' s rights under the double jeopardy clause. United States v. Broce, 488 U.S. 563, 565, 574 (1989). The Supreme Court explained that when accepting a plea of guilty, the trial court does not have to ensure that the defendant made a conscious waiver of all potential defenses to the crimes charged. Id. at 573. A guilty plea necessarily means that the defendant has confessed to the facts underlying the charge as well as the fact that he committed the crimes for which he is entering a guilty plea. Id. at 569. In other words, by pleading guilty, defendant has agreed that he committed two distinct offenses for which separate sentences may be imposed. In this case, therefore, the court properly entered summary judgment for the State in light of the holding in Broce.

Defendant also argues that we must reverse the superior court because, if we viewed a videotape of the plea hearing, we would see that he was denied his rights under Rule 11 of the criminal rules of procedure¹. Rule 11 sets forth the requirements that must be met before the court may accept a plea of guilty. V.R.Cr.P. 11. The Rule seeks to ensure that guilty pleas are voluntary and are made with knowledge of the plea' s consequences. V.R.Cr.P. 11; see In re Andres

Torres, 2004 VT 66, § 9 (explaining that guilty pleas must be knowing and voluntary). Defendant did not argue any Rule 11 defect before the superior court, however. We will not address arguments that were not raised and decided by the superior court in the first instance. State v. Jones, 160 Vt. 440, 448 (1993).

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned

Footnote

¹ Defendant moved this Court to view the videotape of his plea colloquy. The State did not oppose the motion. For the reasons stated in this entry order, we deny defendant's motion as moot