

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-519

APRIL TERM, 2007

In re Clinton Bedell	}	APPEALED FROM:
	}	
	}	
	}	Washington Superior Court
	}	
	}	
	}	DOCKET NO. 438-7-06 Wncv
		Trial Judge: Mary Miles Teachout

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

Petitioner appeals the decision of the superior court denying his motion for sentence reconsideration. We affirm.

Petitioner was charged with sexual assault upon a minor under 13 V.S.A. § 3252(b)(2), after paternity tests revealed that he was the father of his minor daughter’s child. Petitioner ultimately pleaded guilty and received the agreed-upon sentence of six to thirty-five years. In deciding petitioner’s direct appeal, we noted that any attack on the merits of his conviction was foreclosed by his voluntary guilty plea. State v. Bedell, No. 99-115 (Vt. Nov. 24, 1999) (unreported mem.). We also rejected his claim that the statute under which he was charged was unconstitutional. Id., slip op. at 2. At oral argument in the appeal, petitioner asserted that his plea was not voluntary. We held that this issue would have to be raised in a motion for post-conviction relief (PCR). We declined to address a number of petitioner’s other arguments to the extent they were “so inadequately briefed and argued that review is, as a practical matter, foreclosed.” Id., slip op. at 1 (citing Brigham v. State, 166 Vt. 246, 269 (1997) (Court will not undertake search for error where claims are inadequately briefed and argued)).

Similarly, in this appeal from the denial of sentence reconsideration on summary judgment, petitioner’s briefing covers a range of topics but presents few discernable claims. More importantly, petitioner’s filing in the superior court was limited to three issues: his claim that (1) his sentence violated the rule established Apprendi and Provost; (2) the requirement that he participate in sex offender treatment programming violated Apprendi and Provost; and (3) the statute under which he was convicted represented an unconstitutional violation of privacy. Accordingly, we limit our consideration to these three issues.

First, petitioner asserts that the principles set forth in Apprendi v. New Jersey, 530 U.S. 466 (2000), and State v. Provost, 2005 VT 134, 179 Vt. 337, invalidate his sentence. The rule announced in Apprendi and Provost is patently inapplicable to the statute under which petitioner was sentenced. That rule provides that “ ‘any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.’ ” Provost, 2005 VT 134, ¶ 15 (emphasis added) (quoting Apprendi, 530 U.S. at 490). Here, defendant pleaded guilty to a violation of 13 V.S.A § 3252(b)(2). A violation of 13 V.S.A § 3252(b)(2) permits a court to impose a maximum sentence of thirty-five years. Thus, the rule established in Apprendi and Provost is simply not implicated in this case, where petitioner’s sentence did not exceed the statutory maximum.¹

In a related argument, petitioner contends that the requirement that he participate in sex offender treatment programs violates Apprendi and/or Provost. Defendant does not allege or demonstrate, however, that the programming increases the term of his sentence beyond the statutory maximum.

To the extent petitioner reiterates his claims that the statute under which he was convicted is unconstitutional, consideration of these arguments is precluded as they were addressed on direct appeal. See State v. Grega, 170 Vt. 573, 575 (1999) (mem.) (holding that defendant proceeding under V.R.Cr.P. 35 may not challenge sentence on same ground that had been previously litigated and determined).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice

¹ In a motion filed after the close of briefing in this matter, petitioner argued that the imposition of a sentence greater than the statutory maximum also violated his Sixth Amendment right to a jury trial. In light of the fact that the statutory maximum was not exceeded, this argument fails and the motion is denied.