

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-172

APRIL TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Washington Circuit
	}	
Kim A. Willis	}	DOCKET NO. 426-4-01 Wncr

Trial Judge: M. Patricia Zimmerman

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

Defendant appeals from a district court order denying his motion for reconsideration of sentence. Defendant contends that, in declining to reconsider the sentence based on defendant's proffer of testimony accepting responsibility for the offenses, the trial court abused its discretion and improperly penalized him for previously exercising his constitutional right against self-incrimination. We affirm.

Defendant was convicted of one count of sexual assault on a minor and two counts of lewd and lascivious conduct with a child. The crimes were perpetrated against two developmentally disabled children while defendant worked as a part-time care provider with the Vermont Crisis Intervention Network. Defendant received a cumulative sentence of twenty to twenty-five years. This court affirmed the judgment on appeal. State v. Willis, 2006 VT 128, 181 Vt. 170.

In February 2007, defendant moved for reconsideration of sentence pursuant to 13 V.S.A. § 7042 and V.R.Cr.P. 35(b). In support of the motion, defendant cited the fact that the sentence imposed was higher than that recommended in the pre-sentence investigation report (PSI), that the sentencing followed an emotional trial involving two child witnesses, and that he wished to put on the record certain admissions accepting responsibility for the offenses in order to qualify for sex offender treatment programs. Following a hearing, the court denied the motion, noting that the original sentencing had taken place more than six months after the "heat" and "passion" of the trial had subsided; that the court had previously considered all of the relevant sentencing goals and factors; that the sentence imposed was within the range set forth in the PSI; that defendant's post-incarceration remorse or acceptance of responsibility was not a valid basis for sentence reconsideration; and that, after further reflection, it had determined that there was no

basis to reconsider the sentence based on all of the facts and circumstances existing at the time of sentencing. This appeal followed.

Defendant contends the trial court improperly declined to consider defendant's professed desire to accept responsibility for the crimes and become eligible for sex offender treatment programs. We review the denial of a motion for sentence reconsideration for abuse of discretion. State v. Oscarson, 2006 VT 30, ¶ 7, 179 Vt. 442. The purpose of sentence reconsideration is to "give the district court an opportunity to consider anew the circumstances and factors present at the time of the original sentencing," State v. Sodaro, 2005 VT 67, ¶ 9, 178 Vt. 602 (quotations and citation omitted), "absent the heat of trial pressures and in calm reflection." State v. Hance, 157 Vt. 222, 226 (1991) (citation omitted). The proceeding is not intended as a forum to review post-incarceration circumstances or events. Sodaro, 2005 VT 67, ¶ 9.

Considered in light of these principles, defendant's claim plainly lacks merit. Apart from the fact, noted by the State, that defendant did not raise this precise argument below, the claim finds no support in the law or facts. First, defendant's new-found remorse or desire to admit the offenses represents precisely the sort of post-incarceration circumstances or events that fall outside the scope of sentence reconsideration. Id. Nor can defendant persuasively claim that to deny him the opportunity to admit the offenses at this stage is to effectively penalize him for declining to incriminate himself at the original sentencing. At that time, defendant asserts, the case was not final and such statements might have been used against him in the event of a retrial. As we held in State v. Loveland, 165 Vt. 418, 427 (1996), however, admissions by a sex offender at sentencing in order to become eligible for sex offender treatment may be immunized from use in subsequent criminal proceedings. Indeed, the court at the original sentencing in this case expressly noted that defendant had expressed no remorse or interest in seeking immunity in return for accepting responsibility for the crimes. Accordingly, we find no basis to disturb the court's ruling in this case.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice