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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-379

MARCH TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont
	}	Unit No. 2, Chittenden Circuit
	}	
David R. Holcomb	}	DOCKET NO. 3294-6-98 Cncr
		Trial Judge: Linda Levitt

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

Defendant appeals from the district court's denial of his request to amend his mittimus, which he claims should have specified that he was charged and convicted of burglarizing an unoccupied, as opposed to an occupied, building. We affirm.

By information, defendant was charged with entering a building, knowing that he was not licensed or privileged to enter, with the intent of committing a larceny, in violation of 13 V.S.A. § 1201. The information indicated a penalty of not more than fifteen years. At the jury trial, the State presented evidence that defendant and his companions were in the process of burglarizing a couple's residence when the couple arrived home and confronted them. Defendant was found guilty and sentenced to a term of ten-to-fifteen years. The mittimus, dated October 25, 1999, indicated that the crime was burglary, and that defendant's sentence was a minimum of ten years and a maximum of fifteen years. A three-justice panel of this Court affirmed the conviction in 2001. See State v. Holcomb, No. 2000-254 (Vt. June 20, 2001) (unreported mem.).

In June 2008, defendant filed a motion to amend his mittimus, claiming that it failed to reflect that he had been charged, convicted, and sentenced for the crime of burglarizing an unoccupied, rather than an occupied, building. Apparently, he bases this claim on the following: (1) the information indicated a maximum penalty of fifteen years; and (2) although the normal maximum penalty for burglary is fifteen years, that penalty may be increased to twenty-five years if the burglary was of an occupied residence. See 13 V.S.A. §§ 1201(a), (c). Defendant stated that the Department of Corrections was requiring his participation in a prison program, and he suggested, without explaining why, that his required participation in the program was based upon his having burglarized an occupied building. The district court denied the motion, stating that the mittimus was correct.

On appeal, defendant repeats his argument that the mittimus should be amended to reflect that he was charged, convicted, and sentenced for burglarizing an unoccupied building. We reject this argument because there is no requirement that the mittimus specify any particulars concerning the crime for which one has been convicted, other than the sentence imposed. As noted, defendant was charged, by information, with burglary in violation of 13 V.S.A. § 1201. The mittimus indicated that crime and the sentence imposed by the court. Nothing further was

required. This is not a situation where the mittimus contained a clerical mistake. See V.R.Cr.P. 36 (allowing for correction of clerical mistakes in orders or other parts of the record). If defendant has an issue with the Department's decision-making or programming, he must avail himself of the administrative review process for raising that issue.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice