

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2009-283

AUGUST TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
John Winn	}	DOCKET NO. 688-6-07 Frcr

Trial Judge: Michael S. Kupersmith

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

Defendant appeals the district court’s imposition of two consecutive ten-to-fifteen-year sentences based on his pleas to two counts of manslaughter. We affirm.

In June 2007, defendant was charged with two counts of second-degree murder based on an incident in which he fired gunshots that killed two individuals. Shortly thereafter, the State amended one count to aggravated murder. In February 2009, the defendant and the State entered into a plea agreement in which defendant agreed to plead no contest to a charge of voluntary manslaughter with respect to one of the individuals and guilty to a charge of involuntary manslaughter with respect to the other individual. The agreement capped the potential sentence to two ten-to-fifteen-year terms to run consecutively but allowed defendant to argue for lesser sentences. Following a sentencing hearing, which was held over three days in February and May 2009, the district court imposed the maximum sentence allowed under the plea agreement. On appeal, defendant argues that the sentencing court abused its discretion by wrongly assuming that he had acted out of anger rather than fear, by failing to consider his lack of a propensity for violence, and by suggesting concurrent sentences earlier but then ultimately imposing consecutive sentences based on the unchanged fact that two people had died.

“The district court has broad discretion when imposing a sentence.” State v. Ingerson, 2004 VT 36, ¶ 10, 176 Vt. 428. Indeed, “[a]bsent exceptional circumstances, we will defer to the court’s judgment so long as the sentence is within the statutory limits and was not based on improper or inaccurate information.” State v. Daley, 2006 VT 5, ¶ 6, 179 Vt. 589 (mem.). In imposing sentence, the district court may consider not only statutory factors but also traditional common law factors such as punishment, deterrence, or rehabilitation. State v. Corliss, 168 Vt. 333, 342 (1998). Given our limited and deferential role in reviewing criminal sentences, defendant’s arguments provide no basis for us to overturn the sentences in this case.

Citing the court’s statement at sentencing that it is not okay to go get your gun when you are angry with your neighbor, defendant argues that the evidence demonstrates that he acted out of fear rather than anger and that one of the victims was the aggressor. This argument is unavailing. In the statement cited by defendant, the court was speaking in general terms. In fact, the court acknowledged that one of the victims had engaged in very provocative behavior before

the shooting occurred and that defendant may have felt very threatened by that person. But the court concluded that, at the critical juncture, defendant chose to reach for his gun rather than a telephone to call police. The court expressly rejected defendant's claim that he did not have time to call police, noting that defendant had time to get his gun and load it before firing multiple shots that killed not only the provocative neighbor but an innocent bystander as well. The court also concluded that defendant had chosen to use lethal force when such force was unnecessary to protect himself from any threat of imminent bodily harm. The evidence at the sentencing hearing fully supports these conclusions.

Defendant also states that when the court encouraged the parties to settle at an earlier status conference, it suggested that it would accept concurrent sentences based on manslaughter charges. Defendant further states that, later, in imposing consecutive sentences, the court noted that two lives had been lost. According to defendant, because the fact that two lives had been lost had not changed during the course of the court proceedings, the court abused its discretion in imposing consecutive sentences. We find no merit to this argument. The court's earlier comments were made only to encourage the parties to talk about settling the case. By making these comments, the court did not somehow impose limitations on how it could sentence defendant. The State and defendant did in fact engage in settlement negotiations and arrived at an agreement that allowed the State to argue for a maximum of two ten-to-fifteen-year consecutive sentences. During the plea conference, defendant acknowledged the potential for him serving such a sentence. Following three days of testimony at the sentencing hearing, the court imposed a sentence within the terms of the plea agreement. We find no abuse of discretion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice