

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-009

OCTOBER TERM, 2008

State of Vermont

v.

Joseph P. Gill

} APPEALED FROM:
}
}
} District Court of Vermont,
} Unit No. 2, Rutland Circuit
}
} DOCKET NO. 994-7-01 Rdcr

Trial Judge: William D. Cohen

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

Defendant appeals from a district court order denying a request for discharge from probation. He contends that, in denying the request, the court improperly considered the seriousness of the underlying offense, the length of the sentence, and other factors unrelated to defendant's compliance with the terms and conditions of probation. We affirm.

In May 2002, defendant pled guilty to a charge of DUI, death resulting. The accident resulted in the death of the passenger, a friend of defendant. Defendant was nineteen years old at the time. He was sentenced to four to twelve years, all suspended except for eighteen months, and numerous general and special conditions of probation, including 500 hours of community service, drug counseling and screening, and maintenance of full time employment or college attendance. Defendant served approximately twelve months of the sentence at a work camp before being released on probation in May 2003.

In August 2007, the Department of Corrections submitted a request for discharge from probation, indicating that defendant had complied with all of the conditions of probation, including the drug treatment and community service components. The Department also submitted several letters in support of the request, including a letter of recommendation from the President of Castleton State College stating that defendant had recently graduated cum laude, had attained the Dean's List every semester, and had earned the respect and admiration of the faculty and students; a letter from the principal of the Castleton Village School stating that defendant had coached the boys' seventh and eighth grade soccer teams for the last three years and performed admirably in this regard, earning the respect and affection of students and parents; and additional letters from the Academic Dean for Castleton State College and two faculty members of the Castleton Village School attesting to defendant's character and responsibility. In addition, defendant's probation officer, who had recently retired, submitted a letter indicating that

defendant had completed all of the terms and conditions of probation and was interested in joining the U.S. Navy, which was dependent upon his discharge from probation.

Defendant's current probation officer testified at the motion hearing, attesting to the fact that petitioner had completed all terms and conditions of probation and that supervision consisted of little more than a brief meeting every two months. The State took no position at the hearing, but had arranged for the decedent's parents to attend. The decedent's mother made a statement, describing the trauma of their son's death, the daily pain that it caused them, and their sense of injustice that defendant might "be allowed to start brand new." Defendant testified that he felt the loss of his friend every day and had "honor[ed] his memory" by doing the right thing in his own life. The court issued findings from the bench, acknowledging the evidence that defendant had "been an excellent probationer," had received an education, participated in community programs, established good relations, and been cited for no violations. Nevertheless, citing "the seriousness of the offense, the underlying sentence and the like" the court concluded that discharging defendant from probation was not in the best interests of the community or of justice, and accordingly denied the motion with leave to re-file in twelve months. This appeal followed.

Citing the rehabilitative purposes of probation, defendant contends that consideration of the seriousness of the offense, the length of the sentence, or indeed any factors other than a defendant's progress in relation to the conditions of probation and his or her need for continued rehabilitation is improper in ruling on a request for discharge. See State v. Nelson, 170 Vt. 125, 128 (1999) (noting that decision to suspend sentence and impose conditions of probation under 28 V.S.A. § 252 "represents an essential tool in the court's ability to shape a criminal sentence to the rehabilitative needs of the individual defendant"); State v. Hale, 137 Vt. 162, 164 (1979) (noting that "probation . . . has many times been categorized as rehabilitative").

What defendant overlooks, however, is that he is seeking an early discharge from probation. He was sentenced to a term of four to twelve years, all suspended except for eighteen months, the balance to be served on probation. The request for discharge from probation in 2007 was only five years into defendant's term and less than half the twelve year maximum. Thus, the request must meet the standards of 28 V.S.A. § 251, which provides that the court "may terminate the period of probation and discharge the person at any time if such termination is warranted by the conduct of the offender and the ends of justice." This section expressly recognizes that a discharge from probation prior to the expiration of the term must take account both the defendant's conduct and the "ends of justice," an admittedly broad term which in this context reasonably includes the factors that warranted the imposition of the four-to-twelve year sentence in the first place. Thus, the trial court here properly noted the seriousness of the offense and the lengthy sentence. Nor would it have been amiss for the trial court to have considered the impact on the community in general or the victims in particular in deciding whether early discharge from probation serves the interests of justice. Otherwise there would have been no point in affording the victims here the opportunity to address the court, a privilege which defendant has not challenged. See 13 V.S.A. § 5321(a)(1), (2) (providing that crime victim has the right to be given notice of any sentencing proceeding and an opportunity to express his or her views). Accordingly, we find no abuse of discretion and no basis on which to disturb the judgment. See State v. Daudelin, 151 Vt. 214, 217 (1989) (stating that decision to maintain defendant's probation status is entrusted to sound discretion of trial court, and it will not be

disturbed absent a showing that the court failed to exercise its discretion or exercised it for clearly untenable reasons).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice