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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-419

JANUARY TERM, 2003

State of Vermont v. Laird H. Stanard	}	APPEALED FROM: District Court of Vermont, Unit No. 1, Windsor Circuit DOCKET NO. 1930-12-99 Wrcr Trial Judge: Paul F. Hudson

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

Defendant pled nolo contendere to the murder of his mother and the attempted murder of his father. He appeals his conviction, seeking to withdraw his pleas to both crimes, on the grounds that the court did not give him an opportunity to withdraw his plea on the attempted murder charge before the court sentenced him. We conclude that defendant has waived his claim here, and we affirm the convictions and corresponding sentences.

On January 12, 2001, defendant reached a plea agreement with the State on charges of murder and attempted murder following an incident at his family' s home in December 1999. The agreement called for defendant to plead nolo contendere to both crimes, with recommended concurrent sentences of twenty years to life. The court convened a sentencing hearing on July 25, 2001. At the conclusion of the hearing, the court indicated that it would accept the plea on the attempted murder charge, but believed the recommended sentence on the murder of defendant' s mother was too lenient. The court informed defendant that it intended to impose a sentence of twenty-five years to life on the murder charge, and asked defendant to consult with his lawyers about whether to withdraw his plea to that charge.

Defendant consulted with his attorneys, and returned to court reporting that he would like to proceed with sentencing. The court imposed a sentence of twenty years to life for the attempted murder, and twenty-five years to life for the murder. The court later issued a written decision on the sentences.

On August 2, 2001, defendant filed a motion to reconsider his sentence for the murder, arguing that the court erred in its consideration of defendant' s state of mind at the time of the murder. Defendant asked the court to modify the sentence to reflect the original plea agreement. In its response to defendant' s motion, the State stated that it believed the court may not have satisfied the requirements of V.R.Cr.P. 11 when it accepted the plea and sentence for attempted murder while rejecting the agreed-upon sentence for the murder of defendant' s mother. Defendant subsequently filed a supplemental memorandum supporting its motion for reconsideration. The supplemental memorandum was silent on the issue the State raised in its response. The court denied defendant' s motion on September 6, 2001.

The following day, defendant filed another motion to reconsider. This time, defendant argued that he had obtained new information related to mitigating circumstances surrounding the commission of the crimes. Again, defendant did not alert the trial court that he believed the court' s treatment of the plea agreement was error. On December 20, 2001, defendant filed another motion for reconsideration alleging that his conduct was the product of a psychological disorder resulting from his mother' s alcohol and cocaine use while she was pregnant with defendant. This motion also did not mention any problem with the court' s treatment of the plea agreement. The court denied the motion. This appeal followed.

Defendant claims that the court erred by accepting only part of the parties' plea agreement without giving defendant an opportunity to withdraw both pleas. It is well established that failure to raise a claim before the trial court results in waiver of that claim on appeal before this Court. State v. White, 172 Vt. 493, 499 (2001); State v. Hayes, 172 Vt. 613, 615 (2001) (mem.). Defendant, who was represented by counsel, had ample opportunity to make his alleged claim of error known to the trial court. He could have raised it at the sentencing hearing and in each motion for reconsideration he filed below. By failing to do so, however, he has waived his claim on appeal. Moreover, defendant does not argue here that the court committed plain error. He has therefore waived our review under the plain error standard. White, 172 Vt. at 499.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice