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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-169

DECEMBER TERM, 2002

In re James W. Quinn, III	}	APPEALED FROM:
	}	Bennington Superior Court
	}	DOCKET NO. 212-6-01 Bncv
	}	Trial Judge: Richard W. Norton

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

Petitioner appeals the superior court' s dismissal of his petition for post-conviction relief (PCR), in which he claimed that he was coerced into pleading guilty to a sexual assault charge. We affirm.

In 1996, petitioner had twenty-eight charges pending against him pertaining to his sexual relationship with the victim, who was allegedly fifteen years old at the time the relationship began. The most serious charge was sexual assault on a minor. In November 1996, petitioner was arraigned on that charge, and a bail hearing was held. At the hearing, the victim testified that she was fifteen years old when petitioner first had sexual relations with her, and that petitioner had coerced her into making a videotape in which she stated that she falsely told police that her sexual relationship with petitioner began when she was fifteen years old. Petitioner was held without bail. After conferring with his counsel, he decided to accept a plea agreement under which he would plead guilty to the charges against him and the State would recommend a sentence that would allow him to be released immediately under a combination of furlough and probationary conditions. Before the State would make the offer, however, petitioner had to take part in a pre-sentence investigation and admit to having engaged in sexual intercourse with the victim when she was under the age of sixteen.

Petitioner did so, and a change-of-plea hearing was held in February 1997. At the hearing, the district court engaged petitioner in a V.R.Cr.P. 11 colloquy concerning first the lesser twenty-seven charges, and then the sexual assault charge. With respect to the lesser charges, defendant answered in the negative when the court asked him if anyone had made any threats or promises to make him enter into the plea agreement. With respect to the sexual assault charge, defendant agreed that in the summer of 1995, he had engaged in a sexual act with a person under the age of sixteen. The court then asked the following two questions in succession: " Anyone made any promises or threats to get you to plead to this charge today? And you' re doing that voluntarily?" Petitioner responded: " Yes, your honor." The colloquy continued with petitioner agreeing that he had had a full and fair opportunity to discuss the matter with his attorney, and that he was satisfied with his attorney' s advice. At that point, the court accepted his plea.

Petitioner eventually violated his probation, and the underlying sentence was imposed. On June 11, 2001, more than four years after the district court accepted his plea, petitioner filed his PCR petition, claiming, among other things, that he had been coerced into accepting the plea agreement. He noted that his attorney had warned him that the State had sufficient evidence to add an obstruction-of-justice charge but would not do so if he entered into the plea agreement. To prove that he was coerced, petitioner pointed to the change-of-plea colloquy cited above, claiming that he answered " yes" to the district court' s first question of whether anyone had made promises or threats to get him to enter his plea, not to the court' s second question of whether he was entering the plea voluntarily. At the PCR hearing, the superior court

did not find petitioner' s claim to be credible. Regarding the colloquy relied upon by petitioner, the superior court found it extremely unlikely that the trial judge, the prosecutor, and the defense attorney would fail to recognize that petitioner was indicating that he had been coerced into pleading guilty to the sexual assault charge. In the court' s view, the record strongly suggested that petitioner voluntarily entered into the plea agreement and pled guilty to the sexual assault charge so that he could be released from jail without serving any more time.

On appeal, petitioner argues that the record does not support the superior court' s conclusion that he failed to demonstrate coercion. He contends that, contrary to the superior court' s finding, his attorney did not testify that petitioner answered " yes" in response to the district court' s second question rather than its first question. According to petitioner, absent this erroneous finding, there is no affirmative showing in the record indicating that he was not coerced into pleading guilty to the sexual assault charge. We find no merit to these arguments. As the trial court found, petitioner' s attorney testified at the change-of-plea hearing that he would not have simply let it go if petitioner had responded yes to the court' s inquiry as to whether he had been coerced into pleading guilty to the sexual assault charge. Examining the totality of the circumstances in assessing petitioner' s state of mind " including the Rule 11 colloquy, the reaction of the participants to the colloquy, and petitioner' s failure to claim coercion until four years later after he had violated probation and was serving the underlying sentence " the superior court reasonably concluded that petitioner' s plea was voluntary, and that his affirmative answer was in response to the district court' s query as to whether his plea was voluntary. In short, the record amply supports the trial court' s determination that petitioner failed to demonstrate that his plea was coerced. See State v. Bristol, 159 Vt. 334, 337 (1992) (to obtain post-conviction relief, petitioner is required to demonstrate, by preponderance of evidence, that fundamental errors rendered his conviction defective).

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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Denise R. Johnson, Associate Justice