

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-403

APRIL TERM, 2003

In re Brandy Mitchell

}	APPEALED FROM:
}	
}	Chittenden Superior Court
}	
}	DOCKET NO. S1309-01 CnC
}	
}	Trial Judge: Mary Miles Teachout
}	
}	
}	

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

Brandy Mitchell (Petitioner) appeals the court's summary judgment dismissal of her petition for post-conviction relief. She argues that summary judgment is inappropriate because there is a genuine question of material fact whether she was under the influence of drugs at the time she entered her plea. We affirm.

Pursuant to a plea agreement, petitioner pled nolo contendere to possession of heroin and was sentenced to serve one to seven years. She filed a pro se petition for post-conviction relief, asserting that she had been "under the influence of drugs at the time of acceptance into the plea agreement" and that her attorney "knew or should have been aware" of her "incapacitated state of mind." Petitioner later filed an amended petition with the assistance of counsel, claiming that her plea had not been knowingly and voluntarily made because she had been under the influence of intoxicating and mind-altering drugs.

The State moved for summary judgment, arguing that petitioner could not produce any admissible evidence to support her claim. Petitioner maintained that summary judgment was inappropriate but offered no evidentiary support for her position other than an unsigned affidavit stating that she had taken "Chlonopin pills" before her appearance in court and did "not remember very much about that hearing" except that she had not been planning on pleading guilty when she went to court that day. The court granted summary judgment for the State, finding petitioner's own statement, unsubstantiated by any independent evidence, insufficient to defeat summary judgment.

We review a grant of summary judgment using the same standard as the trial court. Mellin v. Flood Brook Union Sch. Dist., 173 Vt. 202, 211 (2001). Summary judgment is appropriate if there are no genuine issues of material fact for trial and a party is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c). On summary judgment, the court must draw all reasonable inferences and resolve all doubts in the nonmoving party's favor, and must regard as true all of the opposing party's properly supported allegations. Mellin, 173 Vt. at 211.

In this case, petitioner failed to properly support her allegations because she filed an unsigned affidavit. A party opposing summary judgment may not rest on mere allegations or denials, but must set forth specific facts, by affidavits or otherwise, showing that there is a genuine issue for trial. V.R.C.P. 56(e); see also Pierce v. Riggs, 149 Vt. 136, 137 (1987). Although petitioner set forth specific facts, she cannot demonstrate that a genuine issue exists for trial based on an unsigned affidavit. Petitioner offered no other evidence to support her claim. Consequently, summary judgment was properly granted for the State.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned