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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-325

APRIL TERM, 2004

In re Cash Rich	APPEALED FROM: Chittenden Superior Court DOCKET NO. S0892-02 Cnc Trial Judge: Matthew I. Katz

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

Petitioner appeals the superior court= s order denying his motion for summary judgment and dismissing his petition for post-conviction relief (PCR). We affirm.

On March 6, 2002, petitioner pled no contest to one count of driving while under the influence (DWI), seventh offense, and one count of driving with a suspended license (DSL). Pursuant to the plea agreement, petitioner was given consecutive sentences of two-to-five years for the DWI conviction and zero-to-two years for the DSL conviction. The combined two-to-seven-year sentence was made consecutive to other sentences petitioner was serving at the time.

In July 2002, petitioner filed his PCR petition, arguing that his no-contest pleas were involuntary because they were based on a material misunderstanding as to how the Department of Corrections (DOC) would be calculating automatic and earned reduction time with respect to his new sentences. According to petitioner, DOC assured him that because his new sentences were consecutive to existing ones, his good-time credit would be calculated under the old rules B which gave inmates ten days of good time per month automatically as long as they did not engage in misconduct and allowed them to earn an additional five days per month B rather than the new rules B which gave inmates five days per month automatically and allowed them to earn an additional ten days. The parties filed cross-motions for summary judgment. Petitioner= s motion included an affidavit from his trial attorney stating that (1) at the time of his plea, petitioner was A under the impression@ that DOC would apply the old good-time rules; (2) he called petitioner= s DOC caseworker, who confirmed petitioner= s impression; (3) petitioner entered his plea understanding that the old good-time rules would apply to his sentence; and (4) petitioner= s PCR counsel indicated that DOC had reversed itself and was applying the new rules to petitioner= s sentence.

The superior court denied petitioner= s motion for summary judgment and granted the State= s motion, ruling that, because petitioner fully understood that his plea agreement made no promises with respect to the DOC= s good-time practices, petitioner could not show that he entered his plea while reasonably relying upon a material misunderstanding that prejudiced him. On appeal, petitioner argues that the superior court should have vacated his pleas because he reasonably relied upon a material misstatement of fact regarding the actual length of his maximum sentence.

A plea is not rendered involuntary merely because the defendant was not advised of collateral consequences of the plea, including parole eligibility; however, A misinformation regarding parole eligibility may provide a basis for a successful attack on the voluntariness of a plea.@ In re Moulton, 158 Vt. 580, 584 (1992). In a PCR proceeding, A petitioner has the burden of demonstrating that he entered his plea while reasonably relying on a material misunderstanding regarding his parole eligibility, and that such misunderstanding worked to his prejudice.@ Id. Further, A the misunderstanding

must be more than a > subjective mistake absent some objective evidence reasonably justifying the mistake.= @ Id. (quoting In re Stevens, 144 Vt. 250, 255 (1984)). Finally, A [p]etitioner must refer to specific circumstances and persons to support his testimony regarding the alleged misunderstanding.@ Id.

Here, petitioner claims that DOC misinformed him about the good-time policy that would be applied to his sentence; however, the statements in his petition and the accompanying affidavit are vague with respect to the specific circumstances surrounding his claim. In his petition, he states that both he and his attorney A inquired in person with the Department of Corrections,@ and that petitioner A was assured by DOC@ that the old good-time rules would apply to his sentence. On the other hand, the affidavit states that (1) petitioner A was under the impression@ that the old rules would apply; and (2) the attorney called petitioner= s A DOC caseworker, who confirmed [petitioner= s] impression.@

Notably, petitioner= s sole argument on appeal is that the superior court erred by not vacating his sentences. Petitioner does not contend, in the alternative, that the matter should be remanded for an evidentiary hearing should this Court determine that he is not entitled to summary judgment. A transcript of petitioner= s March 6, 2002 plea hearing was part of the record before the superior court. In that hearing, petitioner acknowledged his understanding that neither the district court nor the parties= plea agreement made any promises regarding parole eligibility. Further, he acknowledged that no promises had been made to him outside the terms of the agreement. Rather, he conceded that he was accepting the State= s plea offer to avoid the risk of receiving a longer sentence in the event he went to trial and was convicted. Given the record before us and petitioner= s limited argument on appeal, we uphold the superior= s court= s determination that petitioner failed, as a matter of law, to meet his burden of demonstrating that he relied upon a material misunderstanding that prejudiced him. Nothing in the record suggests that the alleged misunderstanding was material to his decision to enter into the plea agreement. To the contrary, the record indicates that petitioner entered into the agreement to avoid trial, with the understanding that any benefits derived from the agreement were limited to its specific terms. The out-of-state case that petitioner relies on B Lungren v. State, 581 So. 2d 206, 207 (Fla. Dist. Ct. App. 1991) B is distinguishable in several respects, including that it involved a motion to withdraw a plea before sentencing A for good cause shown.@

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice