

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-143

MARCH TERM, 2006

State of Vermont

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APPEALED FROM:

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v.

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District Court of Vermont,

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Unit No.2, Bennington Circuit

Todd R. Merrow

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DOCKET NO. 1395-11-03 BnCr

Trial Judge: David Suntag

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

Following a conditional plea of guilty, defendant appeals his escape conviction on the grounds that the facility from which he escaped had not been designated as a local lockup under 28 V.S.A. ' 1004 and therefore did not satisfy the criteria of the escape statute, 13 V.S.A. ' 1501(a)(1). We affirm.

Section 1501(a)(1) of Title 13 makes it a criminal offense for a person in lawful custody Ato escape from . . . a local lockup.@ Section 1004(a) of Title 28 provides that A[a]ll lockups must meet the standards

established by the commissioner of corrections. Lockups failing to meet minimum standards must close within thirty days after notice of noncompliance from the commissioner or face a possible injunction against continued use. Id. ' 1004(b).

In this case, defendant broke a lock and escaped from a lockup in the basement of the Bennington Police Department. According to a letter signed by the commissioner, the Bennington Police Department was not on a list of local police departments in Vermont that maintain lock-ups.

We find unavailing defendant's argument that his escape conviction must be reversed because the commissioner never formally designated the Bennington Police Department's lockup as a local lockup. Nothing in ' 1501(a)(1) requires any such designation as an element of an escape charge. Moreover, ' 1004 cannot be construed to impose such a requirement. Section 1004 empowers the commissioner to establish standards for and regulate local facilities to be used by the department of corrections under certain circumstances, but does not define what is to be considered a local lockup for purposes of escape prosecutions. In short, neither ' 1501(a)(1) nor ' 1004 suggest that one cannot be found guilty of escape from a lockup that has not been designated as having met the commissioner's standards. As for defendant's reliance on Town of Stowe v. County of Lamoille, 134 Vt. 402, 409-10 (1976), that case is inapposite, addressing only the question of what government entity should bear the cost of running a local lockup.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice

* The State produced evidence, however, indicating that (1) before building its new headquarters in 1999, the Bennington Police Department requested and received from the Department of Corrections a document relating to the standards for local lockups; (2) the police department used those standards as a guide in constructing its lockup; and (3) the Department of Corrections never provided the police department any notice that the lockup was not in compliance with those standards.