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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-156

JUNE TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
Eejipp Ala a/k/a Kevin Shea	}	
	}	DOCKET NO. 184/185-3-04 FrCr

Trial Judge: Mark J. Keller

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

Defendant appeals his convictions of aggravated assault and possession of cocaine, arguing that the trial court denied him his constitutional right to proceed pro se and failed to ascertain that his pleas to the charges were voluntarily entered. We affirm.

In March 2004, defendant was charged with possession of marijuana, possession of cocaine, and attempted second-degree murder based on an incident in which he shot at a police officer who had entered his

home pursuant to a search warrant. After ordering a competence evaluation, the district court determined that defendant was competent to stand trial. In January 2005, defendant filed a pro se motion asking the court to dismiss the case for lack of a speedy trial. Because defendant also asked the court to recognize his constitutional right to represent himself, his attorney filed a motion to withdraw, along with a motion for another competence evaluation. The attorney noted in the motion his concern that defendant was not competent to waive his right to counsel. The court ordered another evaluation, but again found defendant to be competent. At a hearing on March 15, 2005, defendant expressed a desire to represent himself but eventually negotiated a plea agreement with the aid of his attorney. Pursuant to the plea agreement, the district court sentenced defendant to ten to fifteen years for aggravated assault, and five to ten years, all suspended with conditions of probation, for possession of cocaine. Defendant later filed a motion to withdraw the plea, which was denied.

On appeal, defendant first argues that the district court denied him his constitutional right to represent himself without determining whether his decision to proceed pro se was made knowingly and intelligently. We find this argument unavailing because the record confirms that, notwithstanding his initial request at the March 15 hearing to proceed pro se, defendant consulted with his attorney and entered into a plea agreement after informing the court that he wanted to negotiate the charges.

The transcript of the hearing reveals the following. The court advised defendant that he would lose his case if he proceeded on his own because he did know the rules of criminal procedure and would be up against an experienced prosecutor. The court explained that often defendants become frustrated with attorneys who encourage them to negotiate a settlement with the prosecution, but that attorneys have been trained to analyze the merits of a case. The court stated that if defendant were provided backup counsel, he would still have to examine witnesses, which would be very foolish of him. The court then proceeded to ask defendant=s attorney when he would be available for trial. After settling on the trial dates, the court asked defendant if he wanted to negotiate a settlement of the case or go to trial. Defendant responded that he was guilty of shooting at the police officer and of possessing cocaine. When the court related to defendant an incident concerning a former client who had refused to negotiate, defendant stated that he had not heard back after responding to an earlier offer from the State. When the court emphasized that the trial was scheduled to take place in two weeks, defendant told the court that he wanted to start negotiating. He also responded A[a]ll right@ when the court

asked him if he wanted to talk to his attorney before negotiating with the State. Following a recess, defendant acknowledged that the parties had reached a plea agreement.

The above facts demonstrate that while defendant initially expressed an interest in representing himself, he became convinced that he should negotiate his sentence and enter into a plea agreement rather than go to trial and face likely convictions on very serious charges. Not only did defendant tell the court that he wanted to start negotiating, but he agreed to confer with his attorney and have his attorney be part of the negotiating process. Further, at no time during the colloquy with the court after he entered into a plea agreement did defendant indicate that he still wanted to represent himself. On appeal, defendant argues that the court refused to let him represent himself, but does not contend that the court coerced him into entering into plea negotiations with the aid of counsel. Cf. Faretta v. California, 422 U.S. 806, 835-36 (1975) (holding that court could not force state-appointed counsel on a defendant who had Aclearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel@). Under these circumstances, defendant cannot now claim that the district court denied him his right to represent himself at trial.

Defendant argues, however, that at the March 15 hearing the district court failed to make a sufficient inquiry into whether he was entering his pleas voluntarily, as required by Vermont Rule of Criminal Procedure 11(d), and that the court therefore failed to make a record demonstrating the voluntariness of the pleas, as required by Rule 11(g). Rule 11(d) provides that, before accepting a guilty or no-contest plea, the court shall, Aby addressing the defendant personally in open court, determin[e] that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement.@ V.R.Cr.P. 11(d). The rule provides further that A[t]he court shall also inquire as to whether the defendant=s willingness to plead guilty or nolo contendere result[ed] from prior discussions between the prosecuting attorney and the defendant or his attorney.@ Id. Rule 11(g) requires a verbatim record of Rule 11 colloquies, including Athe inquiry into the voluntariness of the plea.@ V.R.Cr.P. 11(g). According to defendant, his convictions must be reversed because the district court did not specifically ask defendant: (1) whether his decision to plead was the result of force, threats, or promises outside the plea agreement; and (2) whether his willingness to plead was the result of discussions between his attorney and the State. Upon review of the record, we find no basis for overturning defendant=s

convictions.

The record reflects that: (1) defendant told the court that he wanted to start negotiating; (2) the court explained to defendant that he could confer with his attorney, who would speak to the prosecutor; (3) defendant agreed to that procedure; (4) there was an immediate recess, after which defendant confirmed he had reached a plea agreement with the State; (5) defendant acknowledged that, by entering into the agreement, he was waiving his right to a jury trial, wherein the State would have had the burden of proving the charges against him, and he would have had the opportunity to present his defense; (6) defendant acknowledged factual bases for the charges; and (7) defendant entered his pleas after acknowledging the maximum sentences that could be imposed if he were convicted of the charges following trial. At the end of its colloquy with defendant, the court stated that it was finding that defendant had entered his pleas voluntarily with knowledge of the consequences. Defendant did not contest or contradict this statement.

This record unequivocally demonstrates that defendant entered his pleas voluntarily after consulting with counsel. Accordingly, we find no violation of Rule 11(d) or 11(g). Cf. In re Hall, 143 Vt. 590, 596 (1983) (defendant=s assertion that trial court failed to determine whether he had entered his plea voluntarily was belied by colloquy in which defendant acknowledged his right to proceed to trial but nonetheless expressed his desire to plead guilty).

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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Brian L. Burgess, Associate Justice