

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-207

NOVEMBER TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
Anthony D. LaFlamme	}	
	}	DOCKET NO. 1123-9-03 BnCr

Trial Judge: David Suntag

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

Defendant appeals the district court=s order denying his motion for sentence reconsideration. We affirm.

In November 2003, a jury found defendant guilty of aggravated domestic assault, violation of an abuse prevention order, felony unlawful trespass, and disorderly conduct by telephone. In imposing defendant=s sentence, the district court took into account that defendant had not accepted responsibility for his actions. Shortly after a panel of this Court affirmed the jury convictions, see State v. LaFlamme, No. 2004-129 (Vt. Jan. 13, 2005) (unreported mem.), defendant filed a motion for sentence reconsideration under 13 V.S.A. ' 7042, stating that he had now taken responsibility for his conduct that led to the convictions. By motion reaction form, the district court indicated that defendant had stated insufficient grounds for sentence reconsideration under the case law. See State v. Richardson, 161 Vt. 613, 613 (1994) (mem.) (A[O]nly circumstances and factors present at the time the sentence was originally imposed, not defendant=s conduct and behavior after sentencing, are relevant in a sentence reconsideration proceeding pursuant to 13 V.S.A. ' 7042.@). Nevertheless, the court gave defendant an opportunity to file a supplemental memorandum. Defendant did so, arguing that accepting responsibility for one=s actions is not a change in conduct or behavior, but rather an examination of a state of mind. The court rejected this argument, ruling that defendant=s subsequent acceptance of responsibility amounted to a change in conduct or behavior, which the court could not consider in determining whether to reduce his sentence.

On appeal, defendant argues that the district court abused its discretion by determining that, as a matter of law, it could not consider the grounds he presented for sentence reconsideration. Defendant now contends that his motion does not rely on changed circumstances at all and thus is not controlled by State v. LaPine, 148 Vt. 14, 15 (1987) and its progeny, wherein we held that the district court may consider only Acircumstances and factors present at the time of the original sentencing,@ and not Adefendant=s conduct and behavior since sentencing.@ His position is that the trial judge was prevented from knowing his true state of mind at the time of sentencing because his constitutional right against self-incrimination was still active while his appeal was pending. According to defendant, in his motion for sentence reconsideration, he was not asking the district court to consider changed circumstances following the sentencing hearing. Rather, he wanted the court to consider his acceptance of responsibility following his appeal only as an indication of his actual state of mind at the time of the sentencing hearing.

Apart from the fact that defendant=s novel reasoning would require the district court to read his mind, and would provide an automatic second turn at sentencing, the affidavit defendant submitted with his motion for sentence

reconsideration emphatically undercuts his argument on appeal. His affidavit in support of his motion for reconsideration states as follows:

1. At the time of my conviction and well into my appeal, I refused to take responsibility for my actions.
2. While incarcerated I have had time to think about these matters and have come to the conclusion that I was solely responsible for what happened. It was my actions that brought about the situation.
3. I wish to apologize to the victim and to the Court for my failure to understand the dynamics of the situation and the role that I actually played.

These statements are completely inconsistent with defendant=s argument on appeal that he did not take responsibility for his actions because he wanted to maintain his right against self-incrimination while his appeal was pending. Defendant plainly stated in his affidavit that he had had a change of heart since sentencing and had accepted responsibility for his actions. This change in defendant=s behavior since sentencing is foreclosed as a ground for sentence consideration under our case law.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice