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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-121

JUNE TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Peter Chicoine	}	
	}	DOCKET NO. 3324-7-05 Cncr
		Trial Judge: Linda Levitt

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

Defendant appeals the district court's denial of his motion for sentence reconsideration. We affirm.

In July 2005, defendant was charged with three counts of selling less than two-and-a-half grams of cocaine, in violation of 18 V.S.A. § 4231(b)(1). In November 2005, after the informations were amended to provide that he was subject to an enhanced penalty of life imprisonment as a habitual offender under 13 V.S.A. § 11, defendant agreed to plead guilty to two of the drug charges in exchange for the State agreeing to drop the remaining drug charge and the habitual offender enhancement. Under the agreement, the State would not argue for a sentence in excess of three-to-six years, and defendant could argue for less. After accepting defendant's guilty pleas, the district court ordered a pre-sentence-investigation report. At the February 3, 2006 sentencing hearing, the court noted that defendant had many drug convictions and that the PSI report recommended a sentence of three-to-six years. In response to the court's inquiry, defendant's attorney acknowledged that defendant had previously served a sentence of twenty-six months to five years. After hearing from defendant, his counsel, and the State, the court sentenced defendant to concurrent terms of three-to-six years.

On February 23, 2006, while still represented by private counsel, defendant filed a pro se motion for sentence reconsideration in which he stated that (1) his sentence was unfair because it exceeded the maximum allowed for the charged offenses and because he should have been placed in a long-term drug program, and (2) his attorney spoke to him about his case only for a few minutes and talked him into accepting the plea agreement. In his cover letter, defendant stated that he would require appointed counsel. On March 3, 2006, the district court denied the motion without holding a hearing, stating that defendant had agreed to the three-to-six-year cap and failed to present a reason for sentence reconsideration. A March 17, 2006 docket entry indicated the withdrawal of

defendant's attorney. On appeal, defendant argues that the court should not have denied his motion without appointing him counsel and holding a hearing.

We find no basis for reversing the district court's denial of defendant's motion for sentence reconsideration. With respect to his request for appointed counsel, the record indicates that defendant was represented at the time he filed his pro se motion for sentence reconsideration, and that there was no pending motion to withdraw from his counsel. See V.R.Cr.P. 44.2(c) ("An attorney who has entered an appearance shall remain as counsel until granted leave to withdraw by the court."). As for the merits of the motion, the sentences defendant received for the offenses to which he pled guilty were consistent with his plea bargain and not in excess of the maximum allowed by law. Further, his complaints about his attorney's lack of effectiveness were not a proper subject for his motion for sentence reconsideration. Rather, defendant may raise these claims in the post-conviction-relief petitions he has pending before the superior court.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice