

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-216

FEBRUARY TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
Ricky N. Wilkinson	}	
	}	DOCKET NO. 1475-11-01 Bncr

Trial Judge: David T. Suntag

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 2003, defendant was convicted of aggravated domestic assault. At the sentencing hearing, the court considered the recommendation in the pre sentence investigation report (PSI) that defendant be allowed to participate in in house programming addressing issues of alcohol abuse and violenceCprogramming available to defendant only if his sentence fell within a certain range. But the court also considered testimony that defendant

was unlikely to be able to remain in such programming given his failure to take any responsibility for his crime or his related problems with alcohol and violence. In deciding on the length of defendant=s sentence, the court questioned whether a shorter sentence would be effective in light of defendant=s history of violence and his unwillingness to acknowledge the harm caused to his family members by his behavior. The court ultimately sentenced defendant to serve ten to fifteen yearsCa sentence that made in house programming unavailable to him.

Defendant appealed, and we affirmed his conviction and sentence. Defendant then filed a timely motion for sentence reconsideration in the trial court pursuant to 13 V.S.A. ' 7042. In his motion, defendant argued that his sentence should be reduced so that he could participate in the alcohol and violence programming that had been recommended in the PSI. Defendant argued that his alcohol abuseCa circumstance present at the time of the original sentencingCprevented him from recognizing and taking responsibility for his own behavior. The district court denied the motion, concluding that even though defendant may have developed remorse for his acts in the time since the sentencing hearing, these changed circumstances were irrelevant to the question of whether the sentencing decision was correct at the time it was issued. See State v. LaPine, 148 Vt. 14, 15 (1987) (per curiam) (sentence reconsideration is limited to Acircumstances and factors present at the time of the original sentencing, rather than defendant=s behavior since sentencing.@).

We will reverse the district court=s decision on sentence reconsideration only if defendant can demonstrate Athat the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable.@ State v. Patch, 145 Vt. 344, 353 (1985).

Alt is well established that sentence reconsideration pursuant to 13 V.S.A. ' 7042 is not intended to address post-incarceration matters.@ State v. Sodaro, 2005 VT 67, & 9, 178 Vt. 602 (citing LaPine). Here, the district court was aware of defendant=s problems with alcohol at the time of sentencing. Cf. Sodaro, 2005 VT 67 at & 9 (district court did not err in denying sentence reconsideration where court knew about defendant=s brain disorder and medical history at the time of sentencing). Defendant=s recognition of his problem and change of attitude toward his actions represent circumstances that have changed since the

sentencing hearing. Cf. LaPine, 148 Vt. at 14 (defendant=s post-sentencing completion of sex offender program and visits to a psychiatrist constituted changed circumstances outside the scope of relief under 13 V.S.A. ' 7042). The district court reconsidered the original sentencing decision in light of the undisputed factors presented at the sentencing hearingCnamely the minimal likelihood that defendant would benefit from in house programming, his history of violence, and his lack of any remorse for his actionsCand it concluded that the sentence imposed was appropriate and warranted and denied defendant=s motion. Cf. Sodaro, 2005 VT 67 at & 9 (affirming denial of sentence reconsideration where original sentence reflected defendant=s long criminal record and danger he posed to community). Defendant has not demonstrated an abuse of discretion.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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