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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-454

JULY TERM, 2010

In re Kenneth Bailey, Sr.	}	APPEALED FROM:
	}	
	}	
	}	Franklin Superior Court
	}	
	}	
	}	DOCKET NO. S-419-05 Fc
		Trial Judge: Ben W. Joseph

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

Petitioner appeals from the denial of his request for postconviction relief (PCR). On appeal, he argues that the trial court did not address all of the issues he raised and abused its discretion in dismissing his claims. We affirm.

On May 27, 2004, petitioner pleaded guilty to charges of sexual assault and domestic assault. According to the parties, in accordance with the terms of the plea agreement, defendant was sentenced to three-to-eighteen years to serve, all suspended except three-to-six years.[1]

Petitioner filed this pro se PCR petition on September 27, 2005. He claimed that his three-to-eighteen year sentence had been altered by the Department of Corrections into a six-to-eighteen-year sentence based on the unsuspended term of his sentence. Petitioner claimed that this was done to conform with the language of 28 V.S.A. § 811(h). At the time of petitioner's plea bargain, § 811 was titled "Reduction of term for good behavior." It provided the details for reducing the minimum and maximum terms of confinement, and subsection 811(h) read:

> Where the sentence is the unsuspended portion of a sentence imposed under subsection 205(a) of this title, it shall be treated as the minimum term of the entire sentence for the purposes of this section.

Petitioner claimed that altering his minimum term from three years to six years would change his eligibility for parole. He therefore sought to nullify the plea agreement.

Petitioner moved for summary judgment, arguing: (1) the district court lacked jurisdiction to impose the sentence that it did because the court's imposed sentence was inconsistent with

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[1] Neither party in this appeal has provided this Court with a copy of the plea agreement. We take as true the facts set forth in petitioner's statement of undisputed facts, filed in the trial court on March 7, 2007, and undisputed by the State.

§ 811(h); (2) his plea agreement was void as a matter of law due to the district court's lack of jurisdiction; and (3) his counsel was ineffective for not realizing that the sentence violated § 811 and in allowing the court to impose this sentence. The State did not contest petitioner's statement of undisputed facts.

The trial court held a hearing on petitioner's motion for summary judgment. The court concluded that the motion, especially regarding the ineffective-assistance claim, raised questions of fact and set the matter for a merits hearing. This hearing was held on October 8, 2007. Following the hearing, the court issued a written order. The court concluded that while petitioner had raised several claims in his motion, he argued only one at the final hearing—that Vermont law required the unsuspended portion of a sentence to be treated as the minimum term for his entire sentence and this improperly altered petitioner's eligibility for parole. The court found no merit to petitioner's claims because the court concluded that § 811(h) relates solely to the computation of good-time credit and has no effect on petitioner's eligibility for parole. Therefore, the court granted the State summary judgment, and denied petitioner's PCR request. Petitioner appeals.[2]

We review a grant of summary judgment using the same standard as the trial court. Mellin v. Flood Brook Union Sch. Dist., 173 Vt. 202, 211 (2001). Summary judgment is appropriate if there are no genuine issues of material fact for trial and a party is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c). In reviewing a request for summary judgment, the court must draw all reasonable inferences and resolve all doubts in the nonmoving party's favor, and must regard as true all of the opposing party's properly supported allegations. Mellin, 173 Vt. at 211. "In a post-conviction relief proceeding, the petitioner bears the burden of proving by a preponderance of the evidence that fundamental errors rendered the conviction or sentence defective." In re Shaimas, 2008 VT 82, ¶ 8, 184 Vt. 580 (mem.). In this case, because the State failed to respond to petitioner's motion for summary judgment and attached statement of undisputed facts, we take as true the facts therein.

On appeal, petitioner claims that the superior court erred in failing to address all of his claims and in denying his motion for summary judgment. We first address petitioner's argument that he properly raised several claims in his motion and at the hearing, but the court failed to address them all. Even accepting petitioner's assertion that he properly raised his arguments at the hearing, we conclude that there was no error because petitioner's arguments all rested on the threshold question of the statute's proper meaning, which was addressed by the court. Having resolved this question in the State's favor, the court was not obligated to further analyze petitioner's claims.

Thus, we turn to the statutory language. When interpreting a statute, we aim to effectuate the intent of the Legislature by first looking at the plain, ordinary meaning of the statute's words. State v. Baron, 2004 VT 20, ¶ 6, 176 Vt. 314. All of petitioner's claims rely on his interpretation of § 811(h). Petitioner contends that pursuant to this subsection, his minimum term was altered from three years to six years, affecting his eligibility for parole. We agree with the trial court that 28 V.S.A. § 811(h) by its plain language pertains solely to petitioner's minimum term for

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[2] Pursuant to petitioner's request, counsel was appointed to represent him on appeal. In August 2008, petitioner's appointed counsel moved to withdraw. This motion was heard by the full Court and granted in December 2009. See In re Bailey, 2009 VT 122, 186 Vt. ___. Petitioner then proceeded with this appeal pro se.

purposes of calculating good-time credit and does not affect petitioner's eligibility for parole. The subsection explains simply that the unsuspended portion of a sentence is treated as the minimum term for calculating reductions in petitioner's term of sentence. 28 V.S.A. § 811(h) (explaining that the unsuspended portion shall be treated as the minimum term "for the purposes of this section"). Subsection 811(h) does not affect petitioner's minimum term for the purposes of parole eligibility. See 28 V.S.A. § 501. Because we conclude that § 811(h) did not impermissibly alter petitioner's minimum sentence, we conclude there is no merit to his argument that the superior court lacked jurisdiction to impose the sentence that it did, nor is there any merit to petitioner's arguments that his plea agreement is invalid and that his counsel rendered ineffective assistance. Thus, we conclude the trial court did not err in denying petitioner's motion for summary judgment and in entering judgment for the State.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Brian L. Burgess, Associate Justice