

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-507

SEPTEMBER TERM, 2002

In re Perry Comeau

}	APPEALED FROM:
}	
}	Essex Superior Court
}	
}	DOCKET NO. 50-9-00 Excv
}	
}	Trial Judge: Dennis R. Pearson
}	
}	
}	

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

Petitioner appeals the denial of his request for post-conviction relief, in which he sought to withdraw his plea of nolo contendere to two counts of simple assault on a police officer, driving under the influence of intoxicating liquor (DUI), and driving with a suspended license. We affirm.

On April 7, 1999, petitioner, who was represented by counsel, entered a plea of nolo contendere to two counts of simple assault on a police officer, DUI, and driving while his license was suspended. At the time of the incident giving rise to the charges, petitioner was on probation for a prior homicide conviction in Florida. He was charged with violation of probation (VOP) in Florida as a result of the new charges in Vermont.

Prior to the April 7 hearing, which was originally scheduled to be a jury draw, petitioner spoke several times about his case with an investigator who worked for petitioner's court-appointed attorney, David Williams. Almost all of the discussions, including his discussion with Williams on April 7, concerned a possible plea agreement and how it might relate to the pending Florida VOP complaint. On April 7, Williams spoke with a representative of the Vermont Department of Corrections (DOC) who told him that DOC would try to send petitioner back to Florida if possible to address the VOP charge, but made no promise to that effect. Williams was able to negotiate an agreement with the State for a term of imprisonment of eighteen months to six years if petitioner pled nolo contendere to the pending Vermont charges; petitioner was otherwise facing nine years of imprisonment. Petitioner completed Williams' standard five-page guilty/nolo contendere plea form in which he acknowledged that he had been advised of all his pertinent rights. Petitioner also signed the written plea agreement with the State.

After the parties completed the agreement, the court held a plea hearing. The court engaged in the required V.R.Cr.P. 11 colloquy with petitioner. Petitioner indicated that he understood his rights and the effect of his waiver of those rights, and admitted that a factual basis existed to support the charges. He did not have any unanswered questions about the agreement or the proposed resolution of the case. At the outset of the hearing, Williams informed the court that based on his conversation with the DOC representative, he and petitioner understood that Florida was seeking petitioner's return to that state, and that Vermont would probably send petitioner back to Florida to deal with the VOP charge there. Williams emphasized that there were no promises to that effect, however. The court accepted the plea and sentenced petitioner in accordance with the agreement.

Subsequent to his conviction, the authorities in Florida determined that they were not going to pursue petitioner's return

to Florida to address the VOP charge until after petitioner served his Vermont sentence. Accordingly, Florida filed a so-called detainer against petitioner to ensure his return immediately following his release from Vermont. For reasons the court was unable to determine, petitioner has served past his minimum release date in Vermont, and DOC has apparently decided that he will have to serve a substantial portion of his maximum sentence before he will be able to face the VOP complaint in Florida.

Petitioner filed a pro se complaint for post-conviction relief after learning that he would not be sent to Florida until after he served most of his Vermont sentence. His principal claim was that Williams allegedly misrepresented to him that Florida had already filed the detainer at the time he entered the plea agreement. After hearing testimony, including testimony from petitioner and Williams, the court denied petitioner's request. The court found no credible evidence that Williams told petitioner that Florida's detainer had been filed at the time of the plea agreement, and noted that there was nothing Williams could do to resolve the Florida VOP charges because it was up to Florida officials to decide whether and on what basis to resolve them. Petitioner timely appealed the decision to this Court.

Petitioner's main argument before the trial court, which he repeats here on appeal, is that his plea was not voluntary because his lawyer misrepresented to him the status of the Florida detainer. He entered the nolo contendere plea because he thought he would be returned to Florida right away so he could timely resolve the pending VOP charge. He argues that the trial court erred by misunderstanding the nature of his claim. Petitioner's argument is without merit.

To be relieved from his plea, petitioner must show that a material misunderstanding led to his plea and that the misunderstanding was prejudicial to him. In re Moulton, 158 Vt. 580, 584 (1992). The misunderstanding " must be more than a > subjective mistake absent some objective evidence reasonably justifying the mistake." Id. (quoting In re Stevens, 144 Vt. 250, 255 (1984)). Here, the court explicitly rejected the very premise upon which petitioner's claim is grounded " that Williams represented to him that Florida had filed a detainer at the time petitioner entered his plea. The court found no credible evidence supported petitioner's claim. The court's finding demonstrates that it well understood petitioner's claim, but found no evidentiary support for it. Petitioner therefore failed to meet his burden below, and the record supports the court's finding.

Moreover, even if petitioner's allegation is true, he cannot show that he was prejudiced by his mistaken belief that the detainer had been filed when he entered his plea. Whether the detainer was filed before or after petitioner's plea, there was no guarantee that he would be returned to Florida unless the Florida officials requested his return to the state or petitioner asked for final disposition of the VOP charge under the Interstate Agreement on Detainers (IAD). See 28 V.S.A. § 1504 (setting forth procedure for state issuing detainer to request temporary custody of prisoner to resolve pending charges); id. § 1503 (setting forth procedure for prisoner's request for final disposition of pending charges subject to detainer); State v. Crawford, 169 Vt. 371, 373 (1999) (explaining that the purpose of the IAD is to establish " procedures for the prompt disposition of criminal charges filed in one state against a prisoner in another state"). Nowhere has petitioner alleged that his lawyer, or anyone else, told him that Florida also requested his return pursuant to the IAD in addition to filing a detainer. In any event, petitioner may still obtain timely resolution of his Florida VOP charge by filing a request for final disposition with the prosecuting authority in Florida, which gives Florida 180 days to bring him to trial. 28 V.S.A. § 1503(a); Crawford, 169 Vt. at 373. Given the relief available to petitioner under the IAD, we fail to see how his alleged misunderstanding worked to his prejudice.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice