

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-410

JUNE TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windsor Circuit
Jessica Johnston	}	
	}	DOCKET NO. 1130-8-04 WrCr

Trial Judge: Harold E. Eaton, Jr.

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

Defendant Jessica Johnston appeals from the trial court=s imposition of a sentence of six months to serve based on her plea of nolo contendere to misdemeanor careless and negligent driving. She argues that: (1) the trial court committed clear error in appearing to conclude without the benefit of evidence that she was inattentive for more than a second or two before the accident; and (2) the court=s findings do not support the sentence it imposed. We affirm.

The record shows that in May 2004, defendant killed two people when she crossed the center line of the highway and crashed into their motorcycle. She was originally charged with two felony counts of grossly negligent operation in violation of 23 V.S.A. ' 1091(b). The State agreed to reduce the charges, and defendant agreed to plead guilty to an amended charge of misdemeanor negligent operation in violation of 23 V.S.A. ' 1091(a). After a contested sentencing hearing, the court ordered defendant to serve six months in jail. Defendant appealed.

As noted above, defendant challenges the trial court=s sentencing decision. We find no error. See State v. Cyr, 141 Vt. 355, 358 (1982) (AIn sentencing we defer to the lower court and will not review sentences within the statutory limits absent exceptional circumstances.@). The record presents nothing extraordinary in the sentencing. Defendant did not contest that she caused the deaths of two people by driving in a criminally negligent manner. Without calculating speed and time, the trial court simply observed that the motorcycle=s forty-one feet of skid marks to the point of collision indicated that the decedent driver had time to see and react to defendant driving in the wrong lane, while defendant left no skid marks. The court=s inference that defendant did not see or react, and so Afailed to pay proper attention,@ was reasonable. The court also noted that defendant elected to drive that day without insurance. The sentence defendant received was consistent with the terms of the plea agreement and with the statutory penalty for a violation of 23 V.S.A. ' 1091(a). See id. ' 1091(a)(3) (a person who violates ' 1091(a) Ashall be imprisoned not more than one year or fined not more than \$1,000.00, or both@). Defendant=s claims of error are without merit.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice