

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-505

MAY TERM, 2007

In re Joseph E. Stocker	}	APPEALED FROM:
	}	
	}	
	}	Rutland Superior Court
	}	
	}	
	}	DOCKET NO. 615-9-05 Rdcv
		Trial Judge: Nancy S. Corsones

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

Petitioner appeals the superior court’s decision denying post-conviction relief. We affirm.

Petitioner was convicted following a jury trial of sexual assault of a minor. Petitioner appealed his conviction, which we affirmed on direct appeal. Following our affirmance, petitioner alleges that he repeatedly asked his appointed attorney to file a motion for sentence reconsideration, but the attorney failed to do so. Defendant now seeks post-conviction relief, alleging ineffective assistance of counsel for the failure to file a motion for sentence reconsideration.

The State moved to dismiss the petition, asserting that it was a second or successive petition and therefore barred by 13 V.S.A § 7134, which provides that a court “is not required to entertain a second or successive motion for similar relief on behalf of the same prisoner.” Specifically, the State maintained that petitioner had previously raised the identical ineffective assistance claim in Docket No. 677-10-03 Rdcv. That earlier petition, filed in 2003, was dismissed after petitioner failed to file a statement of facts and arguments as ordered to by the superior court.

Before reaching a decision on the State’s motion to dismiss, the superior court addressed petitioner’s request for appointed counsel. Ultimately, because the Office of the Defender General claimed an ethical conflict, the court ordered the Defender General to file an Anders brief setting forth the basis of petitioner’s claim, any law or argument that might support, and whether the office believed the claim to be warranted. Petitioner then filed a response to the Anders brief, in which he did not deny that the petition was successive, but claimed that he failed to appeal the ruling on the prior petition due to his ignorance of the law. The superior court determined that the petition was successive and granted the motion to dismiss.

On appeal, petitioner addresses the merits of his petition (that is, whether his attorney provided ineffective assistance of counsel in allegedly failing to file a requested motion for sentence reconsideration). He does not address the basis for the superior court's decision to grant the motion to dismiss: namely, that this represents a second or successive petition and as such is barred by 13 V.S.A § 7134. The record supports the superior court's conclusion that the petition is barred.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice