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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-367

SEPTEMBER TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont, Unit No. 2, Rutland Circuit
	}	
Aaron B. Congdon	}	DOCKET NO. 678-5-07 Rdcr
		Trial Judge: William D. Cohen

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

Defendant challenges the trial court's sentencing order following his guilty plea to second-degree murder. He argues that the court erred by disregarding substantial mitigating evidence. We affirm.

In May 2007, defendant, then age sixteen, was charged with first-degree murder after shooting his father in the face. Defendant also killed two family dogs. Following the murder, defendant took his father's wallet and car, and he disposed of the guns used in the shooting. Defendant told police that the shooting was premeditated. In April 2008, defendant entered into a plea agreement with the State. Pursuant to the agreement, defendant pled guilty to second-degree murder. The State was capped at arguing for a sentence of twenty-two years to life, while defendant could argue for any lawful sentence. Following a hearing, the court sentenced defendant to twenty-two years to life. This appeal followed.

Defendant argues on appeal that the court failed to give sufficient weight to his evidence in determining an appropriate sentence. Specifically, he points to the testimony offered by his expert witness, Dr. Philip J. Kinsler, which he asserts the trial court ignored. Dr. Kinsler, a clinical and forensic psychologist, testified that defendant suffered from a variety of mental illnesses at the time of the murder, including major depressive disorder and depersonalization disorder. He also noted defendant's young age, and asserted that defendant was not as culpable as an adult who commits the same crime. Dr. Kinsler suggested that an appropriate sentence for defendant would be three to five years in jail, followed by three to five years of supervised treatment.

The trial court did not ignore this evidence; it specifically found the testimony unpersuasive. The court explained that defendant had planned the murder and he killed his father in a cold and deliberate manner. Defendant loaded the gun, walked down the hall, and shot once at his father. The gun did not go off, and defendant tried again. He spoke to his father as he shot and killed him. As noted above, defendant then shot two dogs, and took his father's

wallet and car. Defendant expressed no remorse for his actions while talking to police following the crime. Defendant did not have a breakdown at the scene. Instead, he seemed completely unaffected by the event itself. In that way, the court explained, Dr. Kinsler's opinions as to what occurred and his minimization of defendant's responsibility carried little weight in its analysis. It is exclusively the province of the trial court to weigh the evidence and assess the credibility of witnesses, and we will not disturb the court's assessment on appeal. State v. Hagen, 151 Vt. 64, 65 (1989).

The trial court concluded that this case required punishment and that the circumstances demanded unqualified accountability. See 13 V.S.A. § 7030 (in determining the appropriate sentence, the court must consider the nature and circumstances of the crime, the history and character of the defendant, the need for treatment, and the risk to self, others and the community at large presented by the defendant). Accordingly, the court concluded that a sentence of life imprisonment with the minimum of twenty-two years to serve was appropriate. The court acted well within its discretion in reaching this conclusion. See State v. White, 172 Vt. 493, 502 (2001) ("Absent a showing that the trial court failed to exercise discretion at all, or exercised it for purposes which are clearly untenable, or to a degree which is unreasonable, we will uphold the court's decision." (quotation omitted)); see also State v. Cyr, 141 Vt. 355, 358 (1982) ("In sentencing we defer to the lower court and will not review sentences within the statutory limits absent exceptional circumstances.").

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice