

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2018-267

APRIL TERM, 2019

State of Vermont v. Shane T. Goodrich*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 494-4-16 Rdcr
		Trial Judge: Cortland Corsones

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

Defendant was convicted of negligent operation and he appeals from the trial court’s imposition of a seven-month-to-one-year sentence. He argues that the court based its sentence on improper and inaccurate considerations and information. We affirm.

Defendant was charged with grossly negligent operation, death resulting, including a habitual offender enhancement, following a predawn collision with a motorcyclist.\* The motorcyclist was traveling southbound on Route 7 while defendant was traveling northbound. Defendant crossed the center line of the road and the accident occurred in the southbound lane, essentially head-on with some damage to the left front and side of defendant’s vehicle. The State emphasized at trial that defendant erroneously stated multiple times, including to police right after the accident, that the accident occurred in the northbound lane. The state police crash reconstruction team determined that the point of the crash was in the middle of the southbound lane, a fact that defendant acknowledged at trial. A witness testified that he saw the motorcyclist just before the crash and the motorcyclist was in his own lane and was not speeding.

Defendant testified at trial that he saw a headlight in his lane and that he, defendant, swerved to the left into the southbound lane to avoid a collision. He presented testimony from a crash reconstruction expert in support of his position. This expert opined that the motorcycle was traveling close to 80 m.p.h. prior to the accident. The expert relied on defendant’s version of events—that defendant quickly swerved to the left to avoid a collision—in reaching his conclusion. As noted, the jury convicted defendant of the lesser included offense of negligent operation.

The court held a sentencing hearing in July 2018. The State argued that punishment was the most relevant sentencing goal to be served in this case. See generally United States v. Giraldo, 822 F.2d 205, 210 (2d Cir. 1987) (“The proper purposes of the sentencing of criminal offenders are generally thought to encompass punishment, prevention, restraint, rehabilitation, deterrence, education, and retribution.”). The State highlighted defendant’s lengthy criminal record, which

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\* Defendant was also charged with providing false information to a police officer, but he was acquitted of this charge.

dated back to 2006 and continued through this case via multiple new counts of violating his conditions of release. The State asked the court to impose a 364-to-365-day to-serve sentence.

Defendant agreed with the State that the goals of deterrence and rehabilitation were not at issue because the conviction involved negligent behavior. With respect to the appropriate punishment, defendant cited to short sentences imposed in other negligent operation cases where death resulted.

After considering the factors set forth by statute, the court sentenced defendant to seven-to-twelve months to serve. See 13 V.S.A. § 7030(a) (stating that in determining appropriate sentence, “the court shall 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”). The court recognized that defendant had been convicted of negligent operation and acquitted of the more serious crime of grossly negligent operation of a motor vehicle with death resulting. It then stated:

So what we know about the nature and the circumstances of the crime as found by the jury is that the defendant crossed the center line in his automobile causing a collision with [the decedent]’s motorcycle in [the decedent]’s lane of travel. And the accident directly resulted in the death of [the decedent]. We don’t know why the accident happened, but the jury determined it was the defendant’s negligence in crossing the center line which caused the accident to occur as opposed to any faults on the part of [the decedent].

The court recited defendant’s extensive criminal history, including twenty-one criminal convictions, three of which were felonies. The court agreed that this case did not call for rehabilitation, observing that:

Over the course of his twenty-one convictions [defendant] has had all the sentencing, all the rehabilitation, all the counseling options made available to him. He’s had sentences to serve. He’s had a parole for low types of sentences. He’s had probationary sentences. And it’s also the type of crime where rehabilitation is not the primary goal when it’s a negligence type of case.

The court also found that the goal of deterrence was not at issue with the exception of some limited degree of specific deterrence given defendant’s significant criminal record. It focused on the goal of punishment, mindful of defendant’s significant criminal history and the horrific consequences of his negligence on the day in question. The court acknowledged the sentences imposed in the two cases cited by defendant. It stated that it “did not have access to that information specifically but it strongly suspected that those defendants did not have prior records that in any way resembled defendant’s prior records.” Considering the relevant factors as reflected above, the court imposed a sentence of seven-to-twelve months to serve, consecutive to another sentence in a separate case for having violated conditions of release. This appeal followed.

Defendant argues that his sentence should be vacated because the court based its sentencing decision on improper and inaccurate considerations and information. Specifically, he argues that the court erred in stating that “the jury determined it was the defendant’s negligence in crossing the center line which caused the accident to occur as opposed any faults on the part of [the

decendent].” He argues that there is no way to know from the verdict what the jury determined regarding the decedent’s actions. Defendant also complains that the court considered his extensive criminal record in determining an appropriate sentence. He maintains that negligent operation is not the type of case in which prior criminal behavior should bear on sentencing. Additionally, defendant asserts that the court erred in stating that “[o]ver the course of his twenty-one convictions [defendant] has had all the sentencing, all the rehabilitation, all the counseling options made available to him.” Finally, defendant argues that the court should not have stated that it “strongly suspect[ed]” that the defendants in the other negligent-operation cases cited by defendant “did not have prior records that in any way resembled [defendant]’s prior records.”

As defendant acknowledges, “[o]ur review of sentencing matters is limited, and absent exceptional circumstances, we will defer to the court’s judgment so long as the sentence is within the statutory limits and was not based on improper or inaccurate information.” State v. Hughs, 2018 VT 74, ¶ 11 (quotation and brackets omitted). “Although a sentence that is based on improper information may be vacated on appeal, it must be recognized that the [trial court] may properly consider more than the facts of the particular crime at issue when sentencing a defendant.” State v. Ingerson, 2004 VT 36, ¶ 10, 176 Vt. 428 (citation omitted). As we have explained, “[a] sentencing court necessarily has broad discretion over what information may be considered in fashioning a just and fair sentence and may consider a wide range of factors, including the propensity and nature of the offender, the particular acts by which the crime was committed, . . . [and] the circumstances of the offense . . . to arrive at a sentence that is both appropriate to the crime and consistent with the purposes of sentencing.” State v. Scott, 2013 VT 103, ¶ 20, 195 Vt. 330.

It is true that negligent operation, unlike grossly negligent operation with death resulting, does not include a causation element. See 23 V.S.A. § 1091(a)(2) (“The standard for a conviction for negligent operation . . . shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care.”). A sentencing court may nonetheless consider “evidence showing that [a] defendant’s negligence substantially caused a death.” Scott, 2013 VT 103, ¶ 22 (“The fact that causation is not an essential element of negligent operation does not mean evidence showing that defendant’s negligence substantially caused a death is irrelevant or improperly considered under a preponderance of the evidence standard at sentencing.”). As we stated in Scott, a “jury’s decision to acquit [a] defendant of grossly negligent operation and convict him of negligent operation d[oes] not, as a matter of law, resolve the issue of causation, and therefore [cannot] preclude the court from doing so.” Id. ¶ 21.

In Scott, as here, the defendant was acquitted of grossly negligent operation with death resulting and convicted of negligent operation. At sentencing, the court found that the defendant’s negligence was a proximate cause of the accident and the decedent’s death. We concluded that “[t]he court did not exceed its broad discretion in considering the reasons for the accident and the relative contributions of defendant and the decedent to the tragedy that ensued.” Id. ¶ 22. “These facts,” we explained, “all relevant to the determination of an appropriate sentence, were balanced by the court on the record and resulted in a sentence to serve well within sentencing guidelines.” Id. (citation omitted).

In the instant case, the court erroneously stated that: “We don’t know why the accident happened, but the jury determined it was the defendant’s negligence in crossing the center line which caused the accident to occur as opposed to any faults on the part of [the decedent].” While the jury did not explicitly make such a finding, it implicitly did so given the evidence in this case. In finding defendant negligent, the jury necessarily rejected defendant’s argument that he was in the southbound lane only because he was trying to avoid the decedent who was in his lane. Having

rejected that argument, it is fair to conclude that the jury found the decedent not at fault. Because the court’s statement is grounded in the evidence, its error in attributing this finding to the jury is harmless. We note, moreover, that any negligence on the decedent’s part would be irrelevant in this context as it would not absolve or mitigate defendant’s negligence.

We reject defendant’s remaining arguments as well. The court did not err in considering defendant’s lengthy criminal history. Pursuant to 13 V.S.A. § 7030(a), it was required to consider defendant’s “history” and “character,” which obviously encompasses his prior criminal convictions. The court similarly did not err in observing that, by virtue of his criminal history, defendant had already been provided with “all the sentencing, all the rehabilitation, all the counseling options... available.” Given that both parties and the court agreed that rehabilitation was not at issue here, this statement—regardless of whether the State provided the full sentencing details of defendant’s twenty-one criminal convictions—is immaterial. We reject defendant’s final argument as well. Defendant argued below that the court should consider the sentences imposed in two other negligent-operation cases. It was a statement of fact, and not an error, for the court to indicate that it had no information concerning the prior criminal history of the other defendants and finding them unpersuasive for that reason. See *State v. Lumumba*, 2014 VT 85, ¶ 23, 197 Vt. 315 (“[S]entences are imposed with regard to the situation and nature of the offender as well as according to the crime charged.” (quotation omitted)).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice