VERMONT SUPREME COURT
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Case No. 2021-101

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

NOVEMBER TERM, 2021

In re Clinton Bedell*

} APPEALED FROM:
} Superior Court, Washington Unit,
} Civil Division
} CASE NO. 585-9-15 Wncv
Trial Judge: Robert R. Bent

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

Petitioner appeals the grant of judgment to the State in response to his post-conviction relief (PCR) petition. We affirm.

In 1997, the State brought several charges against petitioner based on allegations that he engaged in sexual acts with his minor daughter. The information did not contain specifics relating to the charges but was supported by an affidavit of probable cause which stated that petitioner had impregnated his minor daughter. The affidavit also recited admissions made by petitioner regarding oral-to-vaginal, penis-to-mouth, and penis-to-vaginal contact with his daughter.

Petitioner was represented by an experienced defense attorney, who was aware that petitioner had previously ingested a toxin that made him sick, and that petitioner had mental-health issues. In February 1999, the case was scheduled for a change of plea, but petitioner had consumed narcotics and sleep medicine and was nodding off during the court proceeding. The court ordered petitioner to the Vermont State Hospital overnight so that he would be substance-free for the court proceedings the next day. The following day, petitioner returned to court for the change-of-plea hearing and indicated he did not want to plead guilty. The case was set for trial for the following Monday. The parties continued to negotiate throughout the day, and by the afternoon, there was an agreement on a plea. Following a colloquy, appellant entered a plea of guilty to one count of sexual assault on a child with an agreed sentence of six to thirty-five years.

In September 2015, petitioner filed this PCR petition. In December 2016, the court dismissed several claims, including that the charges were invalid because petitioner was married to his daughter and had a constitutional right to a sexual relationship with her. Following that

dismissal and amendment of the complaint, the remaining PCR claims were that appellant's plea was involuntarily entered because he was not competent when he pled guilty and that the plea colloquy did not meet several requirements of Vermont Rule of Criminal Procedure 11. There were cross motions for summary judgment on the Rule 11 claims. In a written order in November 2020, the court granted partial summary judgment to the State on some of petitioner's arguments related to Rule 11. Following an evidentiary hearing, the court concluded that counsel's admission of a factual basis satisfied the requirements of Rule 11(f) under the applicable standard at the time and that petitioner was competent at the time of the plea change. Therefore, the court entered judgment for the State.

Petitioner is self-represented in this appeal. His appellate brief is handwritten, and the arguments are difficult to decipher and understand. Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (explaining that Court will not address contentions so inadequately briefed as to fail to minimally meet standards of Vermont Rule of Appellate Procedure 28(a)). To the extent that we can construe them, his arguments appear to be the following: petitioner did not have the capacity to enter a voluntary and knowing plea; the plea colloquy did not meet the Rule 11(f) standard; and the charges violated his rights.

A PCR proceeding provides "a limited remedy, intended to correct fundamental errors in the judicial process." In re Kirby, 2012 VT 72, ¶ 9, 192 Vt. 640 (mem.). A petitioner has the burden of proving "by a preponderance of the evidence, that fundamental errors rendered his conviction defective." In re Combs, 2011 VT 75, ¶ 9, 190 Vt. 559 (mem.) (quotation omitted).

Petitioner first contends that the plea colloquy did not comply with Rule 11(f), which provides that "the court should not enter a judgment upon [a guilty] plea without making such inquiry as shall satisfy it that there is a factual basis for the plea." V.R.Cr.P. 11(f). Under the law applicable at the time of petitioner's change-of-plea colloquy, Rule 11(f) was satisfied if there was substantial compliance with its requirements, and the substantial-compliance standard was met if a defendant or a defendant's attorney stipulated to the factual basis. See In re Barber, 2018 VT 78, ¶ 31, 208 Vt. 77 (explaining that stipulation of defense attorney satisfied Rule 11(f) requirement); State v. Cleary, 2003 VT 9, ¶ 29, 175 Vt. 142, overruled on other grounds by In re Bridger, 2017 VT 79. Although the criminal court in this case did not recite the factual basis or recite the statutory charge, the PCR court found that petitioner did not express any confusion regarding the charge. Moreover, both petitioner and his counsel affirmatively indicated that there was a factual basis for the charge. Therefore, there was a factual basis for the charge and there was no Rule 11(f) violation.

Next, petitioner claims that his plea was not entered knowingly and voluntarily because he was not competent at the time. "In assessing voluntariness of the plea, we consider all the circumstances." In re Hemingway, 2014 VT 42, ¶ 15, 196 Vt. 384. Petitioner appears to assert that he was not competent to plead guilty because he was having a mental-health crisis or was under the influence of drugs. The PCR court did not credit these claims, finding that although petitioner had consumed narcotics and sleep aids the day before and had a history of mental-health issues, he was competent at the time of the plea change. In a PCR proceeding, "[w]e will not disturb the findings if they are supported by any credible evidence, and even when the evidence is conflicting, we defer to the trial court's judgment." Combs, 2011 VT 75, ¶ 9. Here, the court's findings regarding petitioner's competence are supported by the evidence submitted in the PCR proceeding, including: that petitioner was alert during the colloquy and engaged, asking questions concerning his sentence; that petitioner's counsel was aware of petitioner's

mental-health challenges and considered him capable of proceeding with the plea change; that petitioner's counsel had spent time with petitioner during the previous several days and was capable of discerning if petitioner seemed impaired; and that neither petitioner nor his counsel contradicted the PCR court's assessment that the plea was entered knowingly and voluntarily. See Hemingway, 2014 VT 42, ¶ 15 (explaining that, among other factors, indicia of voluntariness include "petitioner's affirmative responses during the colloquy, his acquiescence to the court's expressed finding of voluntariness, [and] his representation by counsel throughout the proceedings").

Petitioner's remaining arguments relate to the claims the PCR court dismissed in December 2016.* Petitioner argues that the sexual-assault charge was invalid because the sexual contact was consensual either because he was married to his daughter or because he had a right to engage in sexual acts with his daughter. As explained above, a PCR proceeding provides a limited remedy "to challenge the legality of [prisoners'] confinement" and is not "a vehicle for addressing the petitioner's guilt or innocence" or substitute for a direct appeal. In re Laws, 2007 VT 54, ¶ 9, 182 Vt. 66. These arguments could have been brought on direct appeal, and petitioner has failed to demonstrate that he did not deliberately bypass them. See In re Hart, 167 Vt. 630, 631 (1998) (mem.) (holding that to raise issue in PCR that could have been brought on direct appeal "petitioner must demonstrate that he did not deliberately bypass issues which could have been raised on direct appeal"). Therefore, they are not properly raised in this PCR appeal.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

* The State contends that petitioner cannot appeal the court's orders dismissing these claims because he did not appeal in December 2016. The court's partial dismissal order was interlocutory and not a final judgment and therefore petitioner is not time-barred from challenging those orders.