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

AMENDED ENTRY ORDER

SUPREME COURT DOCKET NO. 2000-386

NOVEMBER TERM, 2002

State of Vermont	}	APPEALED FROM:
v.	}	District Court of Vermont, Unit No. 3, Washington Circuit
Robert R. Durand	}	DOCKET NO 405-3-00 Wncr
	}	Trial Judge: Mark J. Keller

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

The State appeals from a district court order granting defendant's motion to dismiss a DUI felony enhancement charge based on its finding that two of defendant's prior DUI convictions had been obtained in violation of V.R.Cr.P. 11(f) (court shall not accept guilty plea unless satisfied there is factual basis for the plea). The State contends the court erred in finding that the record failed to establish an adequate factual basis for the plea. We agree, and therefore reverse.

In March 2000, defendant was charged with DUI fifth offense. The State alleged four prior convictions, one dating from 1987, another from 1989, and two entered in 1993. Defendant moved to strike the DUI felony enhancement, asserting that the plea hearings underlying the earlier convictions had failed to comply with the requirements of V.R.Cr.P. 11(f), which requires an adequate factual basis for the plea. At the hearing on the motion, defendant produced the transcripts of the prior proceedings, and the State conceded the 1987 plea was inadequate. At the conclusion of the hearing, the court concluded that the two 1993 convictions were invalid, as well, finding that the record failed to demonstrate an adequate factual basis for the plea. Accordingly, the court granted the motion to dismiss. This appeal followed.

The purpose of Rule 11 is to ensure that a plea is knowingly and voluntarily made. State v. Riefenstahl, 172 Vt. 597, 599 (2001) (mem.). As we explained in State v. Yates, 169 Vt. 20, 26 (1999), the requirement of an accurate factual basis for a plea "goes to the defendant's understanding of the relationship between the law and the facts, which ultimately goes to voluntariness." To ensure the goals of Rule 11, however, we require only a practical application of the rule, rather than a technical formula to be followed. Riefenstahl, 172 Vt. at 599." The precise form of the V.R.Cr.P. 11 colloquy may vary from case to case, depending on factors such as the competence of the defendant and the complexity of the legal issues." State v. Morrissette, 170 Vt. 569, 571 (1999). In such inquiries, " ' [m]atters of reality, and not mere ritual, should be controlling.' " Id. (quoting Kennedy v. United States, 397 F.2d 16, 17 (6th Cir. 1968)).

The transcript of the 1993 plea hearing reveals that the court initially noted defendant's two prior DUI convictions from 1987 and 1989, and discussed at some length the proposed plea agreement with defense counsel and the State' s attorney. The court then proceeded to explain to defendant the nature of the two DUI charges, stating that defendant was charged with operating a motor vehicle on a public highway while under the influence of intoxicating liquor on December 4, 1992, and January 8, 1993. Defendant indicated that he understood the nature of the charges. The court then informed defendant of the minimum and maximum penalties, and reviewed each of the rights that he would be waiving with the plea. Defendant indicated that he understood these rights, that he had consulted with his attorney, and that he wished to enter a guilty plea. The court then inquired of defendant whether he "admit[ted] on December 4th that you were operating a motor vehicle on a public highway while under the influence," to which defendant responded, "Yes," and further inquired as to whether he " admit[ted] that on January 8th you were doing the same thing," to which

defendant again responded, " Yes." Defendant acknowledged that he was pleading guilty voluntarily, and the court accepted the pleas, noting that the affidavits provided a further factual basis to each of the charges.

The foregoing was sufficient to satisfy the requirements of Rule 11(f). As noted, there is no technical formula to be followed in a Rule 11 inquiry. The colloquy may vary from case to case depending on the competence of the defendant and the complexity of the issues. Morrissette, 170 Vt. at 571. Here, the record shows that the court addressed defendant personally in explaining the nature of the DUI charges and the basic facts alleged, and defendant readily acknowledged that he understood the charges. The elements of the charged offenses were readily understandable, to wit, that defendant was operating a motor vehicle on a public highway while under the influence of intoxicating liquor on the two dates in question, and defendant personally and freely admitted that he had committed the charges as alleged on the dates as alleged. Moreover, as we observed in similar circumstances in State v. Whitney, 156 Vt. 301, 303 (1991), " defendant was not a stranger to the DUI law. It was his [fourth] conviction." Thus, viewed in light of the relatively simple and straightforward nature of the charges, and defendant's experience, we have no difficulty concluding that the court adduced a sufficient basis on the record to assure that the facts were accurate and the plea was voluntary.

Reversed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice