

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-220

FEBRUARY TERM, 2002

In re Richard L. James

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APPEALED FROM:

Bennington Superior Court

DOCKET NO. 323-9-00 Bncv

Trial Judge: John P. Wesley

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

Petitioner appeals from the superior court's order dismissing his petition for post-conviction relief (PCR). We affirm.

At the PCR hearing, petitioner testified that he entered into a plea agreement because his trial counsel assured him that he would be out of prison within a year. When petitioner rested after testifying, the State orally moved for dismissal. The court granted the State's motion, stating that it did not credit petitioner's testimony, and that petitioner had failed to sustain his burden of demonstrating that his decision to enter into the plea agreement was involuntary. The court indicated that it was considering the State's motion under V.R.C.P. 50.

On appeal, petitioner argues that it was reversible error for the court to dismiss his petition under V.R.C.P. 50, which applies only to jury trials, rather than V.R.C.P. 41(b)(2).<sup>(1)</sup> We find no merit to this argument. Petitioner correctly concludes that the superior court was mistaken in relying on Rule 50. See Schnabel v. Nordic Toyota, Inc., 168 Vt. 354, 361 n.2 (1998) (Rule 50 applies in jury cases only; Rule 41(b)(2) is applicable rule in nonjury cases); New England Educ. Training Serv. v. Silver St. P'ship, 156 Vt. 604, 611 (1991) (Rule 41(b)(2) motion for involuntary dismissal serves function of Rule 50 directed verdict motion in jury cases). A court considering a motion under Rule 41(b)(2) (or its replacement, V.R.C.P. 52(c)), however, need not take the evidence in the light most favorable to the nonmoving party, as it would when considering a motion under Rule 50. Silver St. P'ship, 156 Vt. at 611. In short, while petitioner is technically correct that the court cited the wrong rule in dismissing his petition, we see no prejudice resulting from the mistake. See State v. Bristol, 143 Vt. 245, 249-50 (1983) (no prejudice where most that can be said is that trial court reached right result for right reason but cited wrong rule).

Affirmed.

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

1. We note that the Vermont Rules of Civil Procedure have been amended such that involuntary dismissals in nonjury cases should proceed under V.R.C.P. 52(c), which replaced the language in V.R.C.P. 41(b)(2) allowing for such.