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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-221

DECEMBER TERM, 2001

John S. Vanness	}	
	}	APPEALED FROM:
v.	}	
	}	Bennington Superior Court
State of Vermont	}	
	}	DOCKET NO. 262-8-00
	}	Bncv
	}	
	}	Trial Judge: John Wesley
	}	

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

Defendant appeals from a superior court order denying his petition for post-conviction relief. Defendant contends the court erred in directing a verdict for the State under V.R.C.P. 50, and failing to make adequate findings. We affirm.

In October 1998, defendant was charged with aggravated sexual assault, burglary, grand larceny, carrying a dangerous weapon, and possession of marijuana. At a change of plea hearing in June 1999, defendant - pursuant to a plea agreement - entered a plea of guilty to aggravated sexual assault, burglary and possession of marijuana. The State agreed, in return, to dismiss the other charges and recommend a sentence of twenty to fifty years, while defendant retained the right to argue for a sentence of twelve to thirty years. In October 1999, the court sentenced defendant to serve twenty to forty years.

In August 2000, defendant filed a pro se petition for post-conviction relief. Counsel was assigned, and an evidentiary hearing was held in April 2001. Defendant testified that he was thirty-two years old at the time of the change of plea hearing, had the equivalent of a high school education, and had extensive prior experience with the criminal justice system. He acknowledged that he had discussed the plea agreement with counsel, who appeared with him at the change of plea hearing, and further acknowledged that the court reviewed the nature of the charges, the minimum and maximum penalties, and the rights he was foregoing, as required under V.R.Cr.P. 11(c). He testified, however, that he did not have a good general understanding of the law, was confused about the range of sentences available, and thought that he would get a minimum of twelve years. Defendant's trial counsel also testified, stating that he had explained the plea agreement to defendant, and specifically reviewed the possible range of sentences.

At the conclusion of defendant's case, the State moved to dismiss, and the court indicated that it would review the motion under V.R.C.P. 50. The court then reviewed the testimony in detail and concluded that the evidence was legally and factually insufficient to state a claim, noting that it consisted solely of defendant's vague allegations that he was under a mistaken subjective belief as to the terms of the agreement. Accordingly, the court dismissed the petition. This appeal followed.

Defendant asserts, and the State concedes, that the court mistakenly referred to V.R.C.P. 50, which deals with directed verdicts, or judgments as a matter law, in jury trials, rather than V.R.C.P. 41(b)(2), which concerns involuntary dismissals in nonjury actions. See New England Educ. Training Serv., Inc. v. Silver St. P'ship., 156 Vt. 604, 611 (1991). The misstatement, however, resulted in no prejudice to defendant because the court applied essentially the same standard in reviewing the evidence, regardless of the procedural label it applied to the motion.

Defendant also asserts the court failed to make adequate findings. See id. (in ruling on motion to dismiss, court must make findings in accordance with V.R.C.P. 52(a)). More specifically, defendant contends the court erroneously failed to find that defendant's plea was knowing and voluntary. A review of the record reveals, however, that the court found that defendant's vague allegation of a mistaken subjective belief concerning the minimum sentence was inadequate to establish a claim of involuntary waiver, particularly when viewed in light of the extensive and complete Rule 11 colloquy in which defendant engaged at the change of plea hearing. The court's ruling was supported by the record evidence, and the law. See In re Moulton, 158 Vt. 580, 584 (1992) (at post-conviction hearing to withdraw plea, defendant must show that alleged misunderstanding was more than a "subjective mistake absent some objective evidence reasonably justifying the mistake") (quoting In re Stevens, 144 Vt. 250, 255 (1984)); In re Kivela, 145 Vt. 454, 456-57 (1985) (rejecting post-conviction relief claim based on alleged misunderstanding of minimum sentence where sole evidence was testimony concerning defendant's mistaken subjective belief unsupported by objective record evidence). Accordingly, we find no error.

Affirmed.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice