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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-329

JANUARY TERM, 2003

In re Jeffrey Castonguay	}	APPEALED FROM:
	}	Chittenden Superior Court
	}	DOCKET NO. S0760-01 CnC
	}	Trial Judge: Mary Miles Teachout

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

Petitioner in this post-conviction relief proceeding appeals from a summary judgment in favor

of the State. Petitioner contends the court erred in concluding that he had failed to demonstrate his guilty plea was obtained in violation of V.R.Cr.P. 11. We affirm.

In May 2001, petitioner pled guilty under a plea agreement to second degree aggravated domestic assault, having admitted a prior domestic assault conviction. See 13 V.S.A. § 1044(a)(2). In June, he filed a pro se petition for post-conviction relief, and in December " having been appointed counsel " filed an amended petition claiming that, in accepting the plea, the district court had failed to adequately explain the nature of the charge or inquire into the factual basis of the plea, as required under V.R.Cr.P. 11. The sole basis of the claim was that the court, in explaining to defendant the nature of the charge that he " willfully or recklessly" caused bodily injury to a family member, see 13 V.S.A. § 1042, inaccurately stated that " you didn' t necessarily intend to cause bodily injury, but at the very least you acted very, very carelessly." Noting that the element of recklessness generally requires a " conscious disregard" of a substantial risk, see State v. Brooks, 163 Vt. 245, 251 (1995), petitioner argued that the court' s description was inaccurate and rendered the plea involuntary.

The parties filed cross-motions for summary judgment. Thereafter, the court issued a written decision, granting the state' s motion, denying petitioner' s motion, and dismissing the petition. In so ruling, the court noted that the transcript of the change-of-plea hearing revealed that the district court had carefully reviewed defendant' s rights and the nature of the charges with defendant, discussed the underlying facts " including defendant' s acknowledgment that he had shoved the victim in the chest with sufficient force to cause pain " and elicited an admission that defendant had been convicted of a prior offense of domestic assault. The superior court thus found that the record did not show, nor indeed did petitioner even allege, that petitioner had been misled by the court' s explanation of the charge, or that such misunderstanding was the cause of his entering the guilty plea. This appeal followed.

We have repeatedly held that the plea colloquy must substantially comply with Rule 11, not as a technical formula, but to ensure that defendant made a knowing and voluntary plea. In re Thompson, 166 Vt. 471, 474-75 (1997). Thus, petitioner here must show that as a result of any alleged error he was unaware of the nature of the charges and consequences of the plea, and that his lack of understanding caused him to plead guilty. Id. at 475. As the court here correctly found, petitioner neither pled, nor demonstrated, that he was misled by the court' s description of the charge. He does not claim, nor does anything in the record suggest, that there was any question or misunderstanding about the requisite mental element. Indeed, petitioner essentially conceded that he had willfully shoved the victim with sufficient force to cause pain. The difference between carelessness and recklessness was thus immaterial. Absent any showing of

prejudice, therefore, the petition was properly dismissed.

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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Marilyn S. Skoglund, Associate Justice