

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-054

NOVEMBER TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 2,
	}	Addison Circuit
v.	}	
	}	DOCKET NO. 252-5-97 Ancr
Thomas Allen Brown	}	
	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

In July 1997, defendant was sentenced to an effective prison term of twenty-to-forty years pursuant to a plea agreement on charges of sexual assault on a minor under the age of sixteen. He appeals the district court's denial of his motion to correct the sentence. We affirm, but on different grounds.

In July 2002, defendant moved to correct his sentence, claiming that he agreed to a ten-to-twenty year sentence only. The State objected on grounds that the court lacked jurisdiction to entertain the motion under 13 V.S.A. § 7042(a). Without addressing the question of its jurisdiction, the court rejected defendant's motion because it concluded that the plea agreement was clear and the sentence imposed was correct. The court denied similar subsequent motions defendant filed, and this appeal followed.

We conclude that the court lacked jurisdiction to entertain defendant's motion because it was filed long after the time limit set forth in 13 V.S.A. § 7042(a). Section 7042(a) allows the district court to alter a sentence within ninety days of its imposition or within ninety days after a decision on appeal to this Court. State v. Priest, 170 Vt. 576, 577 (1999) (mem.). Because defendant's motion was out of time, the district court did not err by refusing to alter defendant's sentence. We note that defendant's claim may be appropriate for adjudication in superior court through a post-conviction relief proceeding, see 13 V.S.A. § 7131, assuming he has not already pursued the claim in that forum.

Affirmed.

BY THE COURT:

\_\_\_\_\_  
Jeffrey L. Amestoy, Chief Justice

\_\_\_\_\_  
Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice