

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-166

NOVEMBER TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 2,
	}	Addison Circuit
v.	}	
	}	DOCKET NO. 650-10-00 Ancr
Bryan Lafayette	}	
	}	Trial Judge: Dean B. Pineles
	}	
	}	

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

Defendant appeals from a district court order denying his motion for modification of sentence. Defendant contends the court abused its discretion in denying the motion without a hearing. We affirm.

Defendant was charged with the first-degree murder of his friend, who had become intimately involved with the woman defendant had planned to marry. In December 1999, defendant entered a plea of guilty to second degree murder pursuant to a plea agreement which contained no sentence recommendation. Following a hearing, the court imposed a sentence of twenty-five years to life, explaining that it was imposing a higher minimum than the presumptive sentence of twenty years because the aggravating outweighed the mitigating factors. The court found three mitigating factors, including the fact that defendant was emotionally distraught about the victim= s affair with defendant= s fiancée, that defendant= s plea had spared the victim= s family the ordeal of the trial process, and that defendant had expressed remorse. The court found five aggravating factors: (1) the victim was particularly vulnerable; (2) defendant was a convicted felon who had served five years in jail on an arson charge; (3) defendant had a history of assaultive behavior; (4) the murder was calculated; and (5) at the time of the offense, defendant was on probation with a special condition prohibiting the consumption of drugs or alcohol, and was aware that these substances fueled his aggressive tendencies, yet consumed them anyway immediately prior to the murder.

On appeal, defendant challenged only the fifth factor, claiming that it was improper to count his probationary status as an aggravating factor. This Court affirmed. State v. Lafayette, No. 2000-138 (May 10, 2001) (unpublished three-Justice mem.).

In July 2001, defendant filed a pro se motion for reconsideration of sentence. In September, the court appointed counsel, who thereafter filed a supplemental motion. The supplemental motion argued for modification on five grounds: (1) the court improperly relied on defendant= s state of mind (i.e., the murder was calculated rather than an act of passion) as an aggravating factor; (2) the court should not have relied on defendant= s prior conviction as an aggravating factor because it did not involve violence to the person; (3) defendant= s drug use should have been seen as a mitigating rather than an aggravating factor; (4) the court should not have relied on the vulnerability of the victim as an aggravating factor because the victim lacked any particular disability such as age or physical incapacity; and (5) defendant= s depressed mental state should have been considered a mitigating factor. The supplemental motion closed with a request for a hearing.

Without holding a hearing, the court denied the motion in a brief entry order which stated:

The court conducted a full sentencing hearing and gave careful consideration to all information

and arguments presented. The court continues to believe that its analysis of the aggravating factors was correct. Indeed, only one of the factors was challenged on direct appeal. The court is unpersuaded by the arguments presented in defendant's pro se motion or in counsel's supplemental motion. A further hearing would not be helpful.

Defendant contends the court abused its discretion in denying the motion without holding a hearing. We find no error. Our criminal rules provide that the court may dispose of a motion without argument, @ V.R.Cr.P. 47(b)(2), and the Reporter's Notes to Rule 47 explain that hearings are unnecessary absent a real dispute [over] one or more relevant facts. @ Thus, the court may, in his or her sound judgment, conclude that there is no real dispute as to any relevant fact and dispose of a motion without a hearing. @ State v. Allen, 145 Vt. 393, 395 (1985).

Although defendant requested a hearing, the supplemental motion did not assert that a hearing was necessary to adduce any new material facts or to resolve any factual disputes or factual discrepancies underlying the court's original sentencing decision. The motion presented, instead, a legal argument. It claimed that the court had misapplied the law to the existing factual record, by mischaracterizing certain evidence as aggravating rather than mitigating, or by failing to consider certain evidence to be mitigating in nature. In denying the motion, the court noted that it had carefully considered all of the record evidence at the sentencing hearing, and reconfirmed its analysis of the aggravating and mitigating factors. We discern no abuse of discretion in the court's decision to deny the motion without a hearing.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice