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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-266

DECEMBER TERM, 2003

State of Vermont	}	APPEALED FROM:
v.	}	District Court of Vermont, Unit No. 2, Chittenden Circuit
Andrew Child	}	DOCKET NO 3534-6-02 CnCr
	}	Trial Judge: Ben Joseph

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

Defendant Andrew Child appeals from his sentence imposed pursuant to his plea of guilty to lewd and lascivious behavior with a child, domestic assault, fourth degree arson, and unlawful trespass. He argues that the trial court erred by failing to inform him of his right to withdraw his guilty pleas before it imposed a sentence that exceeded the State= s recommendation at the sentencing hearing. We affirm.

The charges against defendant, twenty-two years old, stem from his sexual relationship with D.B., fifteen years old. Defendant was arraigned on the charge of sexual assault with a child and released on the condition that he not engage in criminal behavior and have no further contact with D.B. Shortly thereafter, defendant attempted to force his way into an apartment where D.B. was staying and pushed her to the floor in the process. While at the apartment, defendant tried unsuccessfully to light an alcohol-filled bottle stuffed with a rag. Additional criminal charges against defendant followed.

In January 2003, defendant entered into a plea agreement with the State. In exchange for his guilty pleas to a reduced charge of lewd and lascivious conduct with a child, domestic assault, fourth degree arson, and unlawful trespass, the State agreed to a sentencing cap of three to eight years, all suspended except three years to serve, with defendant free to argue for less. Judge James Crucitti presided over defendant= s change of plea and accepted the parties= plea agreement. Judge Crucitti also ordered a pre-sentence investigation report (PSI).

At the sentencing hearing in May 2003, with Judge Ben Joseph presiding, the State indicated its agreement with the PSI recommendation of a sentence of one to two years, split to serve one year, for the convictions of domestic assault, unlawful trespass, and fourth degree arson, consecutive to a fully suspended sentence of three to eight years on the lewd and lascivious conduct conviction. The court noted without objection that A the plea agreement called for a cap at three to eight to serve.@ Finding the PSI recommendation inadequate to punish defendant for his behavior, the court sentenced defendant to one to two years, all suspended, but split to serve one year, on the arson conviction, eleven months to one year on the domestic assault conviction, and zero to one year for the unlawful trespass conviction. These sentences were to run concurrent to each other but consecutive to the sentence of one to five years, all suspended but one year, for the lewd and lascivious conduct conviction. The court stated that the A aggregate here then is that there= ll be two years to serve inside and then he= ll be released on an indefinite period of probation with the special conditions . . . .@ Defendant appealed.

Defendant argues that the court erred by failing to advise him of his right to withdraw his guilty pleas pursuant to V.R.Cr.P. 11(e)(4) prior to imposing a sentence that exceeded the State= s recommendation at the sentencing hearing. This argument lacks merit. Rule 11(e)(4) provides:

> If the court rejects the plea agreement or defers decision upon it, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is or may not be bound by the plea agreement, pursuant to Rule 32(d) afford a defendant who has already pleaded the opportunity to then withdraw his plea, and advise the defendant that if he persists in his plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Rule 11(e)(4) is not implicated in this case because the court accepted the parties= plea agreement and sentenced defendant to a term of imprisonment consistent with its terms.

Contrary to defendant= s assertion, the State= s recommendation of a lesser sentence at the sentencing hearing did not change the terms of the parties= plea agreement. A Plea agreements are contractual in nature and are interpreted according to contract law.@ State v. Coleman, 160 Vt. 638, 640 (1993) (mem.). A If the defendant is provided with satisfaction of the bargain he accepted, no unfairness will result.@ In re Meunier, 145 Vt. 414, 422 (1985). In exchange for his guilty pleas, the State agreed to a sentencing cap of three to eight years split to serve three years with defendant free to argue for less. The court accepted the parties= plea agreement and imposed a sentence consistent with its terms. This case is unlike In re Berrio, 145 Vt. 6 (1984), on which defendant relies, where we found plain error in the trial court= s failure to afford a defendant the opportunity to withdraw his guilty plea after the court rejected the parties= plea agreement. Unlike the instant case, the parties in Berrio filed a stipulation with the court at the sentencing hearing to amend the terms of their agreement. Id. at 7-8. It was the court= s rejection of this amended agreement without offering defendant the opportunity to withdraw his guilty plea that constituted plain error. As we noted in State v. Currier, 171 Vt. 181 (2000), defendant here finds himself in the awkward position of invoking V.R.Cr.P. 11(e)(4) when the court accepted the plea agreement and imposed a sentence agreed to by the parties. Id. at 186. We find no error.

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