

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-210

MAY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windsor Circuit
	}	
Eric P. Daley	}	DOCKET NO. 696-6-03 Wrcr

Trial Judge: Mary Miles Teachout

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

Defendant appeals the district court's order denying his motion for sentence reconsideration. On appeal, defendant argues that the court abused its discretion in declining to reduce defendant's sentence. We affirm.

Following a high-speed chase in which defendant crashed his car violently, killing a law enforcement officer and then fleeing the scene, defendant pleaded guilty to seven criminal charges: grossly negligent operation-death resulting, involuntary manslaughter, leaving the scene of an accident-death resulting, attempting to elude, and possession of marijuana, LSD and ecstasy. Under the terms of the plea agreement, the grossly negligent operation, involuntary manslaughter and attempting-to-elude sentences ran concurrently and the sentences for drug possession all ran concurrently. The agreement did not address whether the leaving the scene of an accident sentence would run consecutively or concurrently with any other sentence. Defendant retained his right to seek sentence reduction under 13 V.S.A. § 7042 and V.R.Cr.P. 35.

After a three-day hearing in September 2004, the court sentenced defendant to twenty-six to thirty-three years to serve. Defendant appealed, and this Court affirmed. State v. Daley, 2006 VT 5, 179 Vt. 589. Defendant then filed a motion for sentence reconsideration with the district court. Among other things, defendant asked the court to lower his minimum sentence. Defendant explained that the possible good-time credit he could earn for compliant program participation over twenty-six years had the potential to reduce his maximum term to less than the twenty-six year minimum. Under the statute in effect at the time of defendant's sentencing,

however, good-time credit does not reduce an inmate's minimum sentence.* Defendant therefore argued that even if he gained such credit, he could not expect parole before the passage of his minimum term. Thus, defendant posited, that merger of the minimum and the maximum terms would not meet the court's stated goal at sentencing of giving defendant an incentive to continue self-improvement and participation in rehabilitative programming because, despite such action, defendant would nevertheless face twenty-six years to serve without parole.

In a written order, the court declined to change defendant's sentence. The court explained that under the statute in effect at the time of defendant's sentencing, defendant could earn enough good-time credits to merge his minimum and maximum sentences only if he earns the credit by participating in education or vocational training, an accomplishment which the court did not presuppose. The court noted that as of defendant's sentencing date, there was a gap of over two years that could be reduced only through these earned credits. The court concluded that "the gap [between the minimum and maximum sentences] was sufficient to fulfill the function intended by the court of creating incentive[s] to engage in constructive activities in prison to lead to release at the minimum." Defendant appeals.

On appeal, defendant argues that it was unreasonable for the court to decline to lower his minimum sentence because under the current sentence his minimum and maximum sentences will merge due to good-time credit and thus there is no incentive for defendant to do well in prison. Sentence reconsideration is a "limited remedy" in which the trial court has "wide discretion." State v. King, 2007 VT 124, ¶ 6. The purpose of sentence reconsideration under 13 V.S.A. § 7042 "is to permit the trial judge to reconsider the sentencing decision absent the heat of trial pressures and in calm reflection to determine that it is correct, fair, and serves the ends of justice." State v. Therrien, 140 Vt. 625, 627 (1982) (per curiam). "We review the denial of the motion for sentence reconsideration for abuse of discretion." King, 2007 VT 124, ¶ 6.

We conclude that the trial court did not abuse its discretion in denying defendant's request to reduce his minimum sentence. At the outset, we emphasize that the district court's sentence was consistent with both defendant's plea agreement and the statutory requirements. As we have previously explained, although a sentence may not have identical minimum and maximum terms, the sentencing judge is not required to prospectively take into account the effect of good-time credit. State v. Kimmick, 2007 VT 45, ¶¶ 14-16 (mem.). That defendant's minimum and maximum terms may merge in the future if defendant is successful at obtaining good-time credit does not destroy the trial court's stated goal of encouraging defendant to participate in training and rehabilitation programs. Nor is the fact that defendant's sentence can, even after the effect of good-time credit, amount to a twenty-six year sentence without parole inconsistent with the trial court's overall sentencing goals, which were "driven by defendant's

* Under the version of 28 V.S.A. § 811 in effect at the time of defendant's sentencing, good-time credit applied only to an inmate's maximum term. The statute specified: "In no case shall the reductions to an inmate's sentence as provided for in this section result in the inmate's maximum sentence being less than the inmate's minimum sentence." See 1999, No. 127 (Adj. Sess.), § 1.

recklessness, his risk to public safety, and the need for deterrence.” Daley, 2006 VT 5, ¶ 11.
The trial court was well within its discretion to deny defendant’s motion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice