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

ENTRY ORDER

SUPREME COURT DOCKET NO. 1999-008

NOVEMBER TERM, 2002

State of Vermont v. Keith J. Baker	}	APPEALED FROM: District Court of Vermont, Unit No. 2, Chittenden Circuit DOCKET NO. 792-2-98 Cncr Trial Judge: Howard VanBenthuysen

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

In June 1998, defendant Keith Baker entered a conditional guilty plea to driving under the influence of alcohol (DUI), third offense. The plea agreement allowed defendant to appeal the district court' s denial of his motion to strike a 1992 DUI conviction so it could not be used to enhance his sentence as 23 V.S.A. § 1210(d) authorizes. We find no error in the district' s disposition of defendant' s motion, and accordingly we affirm.

In 1992, defendant was convicted of DUI after entering a guilty plea. He was represented by counsel at the time. The State cited the 1992 conviction, and another 1997 DUI conviction, in its information on defendant' s 1998 DUI offense. Defendant moved to strike the 1992 conviction on grounds that the plea colloquy leading to the conviction was inadequate under V.R.Cr.P. 11. He attached the transcript of the 1992 change-of-plea hearing to his motion. Defendant did not claim that he entered his plea involuntarily, that he did not understand the consequences of the plea, that the plea lacked a factual predicate, or that he otherwise suffered prejudice as a result of the defective colloquy. At the hearing on defendant' s motion, defendant did not testify or produce any other evidence in addition to the transcript to demonstrate that his conviction was constitutionally invalid. Instead, defense counsel argued generally that the judge in the 1992 DUI case did not strictly adhere to the requirements of Rule 11 when he accepted defendant' s guilty plea, and therefore the conviction was constitutionally infirm.

In April 1998, the court denied defendant' s motion in a written order. In its decision, the court noted that defendant made no claim of prejudice or involuntariness with respect to his 1992 plea. It conceded that the transcript showed the colloquy between defendant and the court was minimal. The court explained, however, that the judge ensured a factual basis existed for the plea, defendant discussed his Rule 11 rights with his attorney, defendant signed a waiver-of-rights form, and defendant told the court that he understood the rights he was giving up by pleading guilty. Defendant challenges that decision in this appeal.

To withstand a constitutional challenge, a conviction based on a guilty plea must result from the defendant' s intelligent and voluntary decision to plead guilty. See Boykin v. Alabama, 395 U.S. 238, 242 (1969) (reversing a judgment of conviction because the court accepted guilty plea without a showing that the plea was made intelligently and voluntarily). Rule 11 of the Vermont Rules of Criminal Procedure embody the requirements of Boykin v. Alabama by requiring the court to engage the defendant in open court to make certain that the defendant' s plea is intelligent and

voluntary. State v. Delisle, 171 Vt. 128, 129 (2000); see V.R.Cr.P. 11. When challenging a prior conviction based on a guilty plea to prevent its use for sentence enhancement, the defendant has the burden to prove that his plea was invalid because the law presumes that the final judgment of conviction was lawfully obtained. Delisle, 171 Vt. at 131, 132-33. We examine the record for a practical application of Rule 11's requirements when a challenge to a plea-based conviction is grounded on an alleged violation of the Rule. State v. Morrissette, 170 Vt. 569, 571 (1999) (mem.).

We observe that the facts of the 1992 DUI conviction in this case are nearly indistinguishable from those in State v. Morrissette. In that case, we upheld the district court' s use of a prior DUI conviction for sentence enhancement purposes despite Morrissette' s claim of Rule 11 violations. Id. at 570-71. Like defendant here, Morrissette waived his Rule 11 rights in writing and, through his attorney, stipulated to the factual basis of the charge based on the police officer' s affidavit. Cf. id. at 570. Defendant responded affirmatively to the court when it asked him whether he discussed the waiver with his attorney, whether he understood the rights he was giving up by pleading guilty, and whether he signed the waiver-of-rights form. Cf. id. Like Morrissette, defendant entered his guilty plea to DUI and told the court he had no questions about the matter. Although the plea colloquy defendant challenges here was minimal, we are satisfied as we were in State v. Morrissette that the court substantially complied with Rule 11 and that defendant' s plea was voluntary and intelligent. That is particularly true in this case considering that defendant has not asserted the alleged errors in the 1992 proceeding caused him to enter his plea involuntarily or unintelligently. The court' s decision to let the 1992 DUI conviction stand was, therefore, appropriate.

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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James L. Morse, Associate Justice