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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-275

APRIL TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
v.	}	Criminal Division
	}	
	}	
Roberto Miranda	}	DOCKET NO. 90-2-15 Bncr
		Trial Judge: David A. Howard

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

Defendant appeals his convictions of sexual assault, aggravated domestic assault, and voyeurism, and his resulting sentences following a guilty plea. On appeal, defendant argues that his plea was not entered knowingly and voluntarily because the court failed to adequately explain the parameters of the plea and that the minimum sentence was an abuse of discretion. We affirm.

Defendant was charged with two counts of sexual assault, one count of aggravated sexual assault, one count of second-degree unlawful restraint, one count of domestic assault, one count of aggravated domestic assault, two counts of lewd and lascivious conduct, and fifteen counts of voyeurism. The affidavits in support of the charges related the following information. The complainant was previously in a relationship with defendant. In February 2015, when defendant was living with her but they were no longer in a relationship, she alleged that at night defendant came into her room, restrained her, and forcibly had sex with her. The complainant recorded the incident on her cell phone and she can be heard several times telling defendant to stop, get away, leave her alone, get off, and that he is hurting her. The complainant also alleged that two years earlier, defendant twisted a towel around her neck and choked her, and that he engaged in other nonconsensual sexual acts. The voyeurism charges were based on videos of complainant that defendant made from covert cameras in her bathroom.

Defendant entered a plea agreement with the State. Defendant agreed to plead guilty to one count of sexual assault, one count of first-degree aggravated domestic assault, and seven counts of voyeurism and in exchange the State agreed to dismiss the remaining charges. The written plea agreement which defendant signed t stated that the sentence was contested and explained that "Parties agree that sentence shall include no less than 3 years of incarceration. Parties may otherwise argue for any sentence." The court held a change-of-plea hearing at which defendant pled guilty. Following a separate hearing, the court sentenced defendant to ten years to life for the sexual assault, a concurrent sentence of four to six years for the aggravated domestic assault, and a concurrent sentence of ten-to-twelve months for the voyeurism counts. Defendant appeals.

Defendant first argues that his plea was not entered voluntarily because he did not understand the terms of the plea agreement. Defendant contends that the court's description of the plea agreement was unclear. He relies on the following statement made by the court at the change-of-plea hearing:

> And you understand your agreement here is that the State is free to argue for their sentence within the three years to life. You and Mr. Enzor can argue for a lesser sentence, either less time in jail, probation, split sentences, whatever. And the Court will decide what sentence to give.

According to defendant, this statement did not clearly explain to him that the State could argue for a minimum greater than three years or that he could not argue for less than a three-year minimum.

"Because a defendant waives important constitutional rights when he pleads guilty, the court, before accepting a guilty plea, must review with the defendant the circumstances surrounding the plea in order to satisfy itself that the plea is voluntary and made with an understanding of its consequences." In re Hall, 143 Vt. 590, 594 (1983). This Court considers "all the circumstances" in assessing whether a plea is entered voluntarily, including responses given during the colloquy, acquiescence to a finding of voluntariness, representation by counsel, and the defendant's own actions after the plea. In re Hemingway, 2014 VT 42, ¶ 15, 196 Vt. 384.

Here, there is a variety of evidence in the record regarding defendant's understanding of the plea agreement. The written agreement, signed by both defendant and his attorney, explained that the sentence was contested, that the parties had agreed on a minimum sentence of no less than three years, and that beyond that the parties were free to argue for any sentence. Further, the statements at the change-of-plea hearing demonstrate that defendant understood the terms of the plea. At the beginning of the hearing, the court explained the terms of the plea agreement as follows:

> [defendant] would plead to a sexual assault without consent charge, an aggravated domestic assault charge, and seven counts of voyeurism. The sentence is open to argument. The only agreement as to the sentence, which the Court would be bound by, would be that there has to be at least a three-year minimum to it of incarceration. But other than that, whether the minimum is any higher and what the maximum should be, such issues are open to argument, with the defense free to argue for anything it findsappropriate, and the State free to argue for what it feels a minimum and maximum should be.

This statement clearly explained that beyond the agreed-to threeyear minimum, the parties could argue for any sentence. Following this description, defendant agreed that those were the terms of the plea agreement. The court's statement made later in the hearing that defendant highlights does not indicate different terms. The court stated that the State could argue for any sentence "within the three years to life." Taken in context with the other explanation and the language of the plea agreement, this provided defendant with a sufficient explanation that the State could argue for any sentence over the agreed-on three-year minimum.

Moreover, other facts support that the plea was voluntary. Defendant was represented by counsel at the time. In addition, at the sentencing hearing, when the State argued for a fifteen-year

minimum, defendant made no objection on the ground that this was outside of the terms of the plea agreement. We conclude that the evidence as a whole demonstrates that defendant understood the agreement and that he entered it voluntarily.

Defendant next argues that the court abused its discretion in imposing a ten-year minimum for sexual assault and a four-year minimum for aggravated assault because the mitigating factors outweighed the aggravating factors. "The trial court has broad discretion at sentencing, and we will affirm a sentence on appeal if it falls within statutory limits and it was not derived from the court's reliance on improper or inaccurate information." State v. Allen, 2010 VT 47, ¶ 14, 188 Vt. 559 (mem.) (quotation omitted). The court's analysis is not a simple count of aggravating versus mitigating factors. The court weighs all of the relevant considerations, looking at purposes such as "punishment, prevention, rehabilitation, and deterrence." Id.

Here, the court based its decision on legitimate considerations and did not abuse its discretion. The court explained that the sentence included a strong punitive portion, stating that defendant's crimes were particularly serious offenses, and although defendant had expressed some remorse, the court was not convinced that defendant fully understood the consequences of his actions. The court also relied on a deterrent factor. In defendant's favor, the court noted that defendant had a limited prior record, some work history, and had expressed willingness to engage in some treatment. The court found that defendant had previously had a role as a father and husband and that his criminal acts were committed over the last couple of years. The court concluded, however, that the criminal acts "heavily outweigh that better period of time." The court further found that rehabilitation was important, but explained it could not control when that would be available through the Department of Corrections. Taking all of these factors into account, the court imposed a minimum sentence of ten years for the sexual assault and four years for the aggravated domestic assault. These minimums were within the statutory limits, supported by the court's consideration of several relevant factors, and within the court's discretion.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

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Karen R. Carroll, Superior Judge,
Specially Assigned