Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-198

OCTOBER TERM, 2018

In re Randy M. Webster (State of Vermont*)	}	APPEALED FROM:
	}	Superior Court, Rutland Unit, Civil Division
	}	DOCKET NO. 772-12-14 Rdcv
		Trial Judge: Helen M. Toor

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

Petitioner filed a post-conviction relief (PCR) petition, arguing that the trial court failed to comply with Vermont Rule of Criminal Procedure 11(f) and did not establish a factual basis for his guilty plea. The PCR court granted petitioner summary judgment, concluding that the trial court had not established a factual basis for the plea. The State appeals, arguing that there was substantial compliance with Rule 11(f). We affirm.

On appeal from a summary judgment decision, this Court applies the same standard as the trial court. <u>In re Carroll</u>, 2007 VT 73, ¶ 8, 182 Vt. 571 (mem.). Summary judgment will be granted when there are no issues of material fact and the moving party "is entitled to judgment as a matter of law." V.R.C.P. 56(a). In assessing the motion, we view the facts in the light most favorable to the nonmoving party. <u>In re Hemingway</u>, 2014 VT 42, ¶ 7, 196 Vt. 384.

The facts, when so viewed, are as follows. In October 2008, petitioner was charged with possession of stolen property, possession of marijuana, and driving with a suspended license. He entered a plea agreement with the State, agreeing to plead guilty to all three charges. At the change-of-plea hearing, the trial court described the elements of each charge and petitioner agreed that he understood the charges. Later in the hearing, the court had the following exchange with petitioner:

THE COURT: Do you agree the affidavit of the officer that's attached to the information provides a factual basis for each of the charges?

THE DEFENDANT: Absolutely.

The court did not further inquire about the facts supporting the charges. Petitioner filed a post-conviction relief petition in December 2014. The State and petitioner cross-moved for summary judgment. The PCR court granted petitioner summary judgment, concluding that the trial court did not comply with Rule 11(f) because there was no recitation of the facts supporting the charges and no agreement by petitioner that he admitted those facts. The State filed this appeal.

Rule 11(f) requires that prior to accepting a plea, the court must make an inquiry to "satisfy it that there is a factual basis for the plea." In <u>In re Bridger</u>, 2017 VT 79, this Court held that "Rule 11(f) requires a plea colloquy to include the defendant's personal admission of the facts underlying the offense, that oral or written stipulations cannot satisfy the requirement, and that substantial compliance does not apply in determining whether the colloquy was satisfactory." <u>In re Barber</u>, 2018 VT 78, \P 2.

On appeal, the State contends that prior to this Court's decision in <u>Bridger</u>, 2017 VT 79, the standard for Rule 11(f) was substantial compliance; that <u>Bridger</u> does not apply to this case; and that the written waiver combined with petitioner's admissions during the plea colloquy met the substantial-compliance standard. Following <u>Bridger</u>, we addressed the question of its applicability and concluded that it established new rules when it held that stipulations cannot substitute for defendant's personal admission and that substantial compliance did not apply. <u>Barber</u>, 2018 VT 78, ¶¶ 12-13. We concluded that these new rules did not apply to proceedings where direct review was concluded, but collateral proceedings were pending. We held that it did not establish a new rule as to its first holding because the existing law required a defendant to personally admit to the facts supporting the charge. See <u>id</u>. ¶ 11 ("Existing precedent interpreting Rule 11(f) required a recitation of the facts underlying the charges and some admission or acknowledgement by defendant of those facts."); <u>State v. Yates</u>, 169 Vt. 20, 24 (1999) (stating that "the factual basis for the plea may consist only of facts that defendant has admitted during the proceedings at which the plea is entered").

As explained in <u>Barber</u>, <u>Bridger</u>'s holding rejecting the substantial-compliance standard does not apply to this collateral proceeding. We conclude, however, that under the pre-<u>Bridger</u> standard the plea colloquy was insufficient in this case. Petitioner acknowledged that the affidavit supported the charge but made no admission that he agreed with the facts recited in the affidavit. Even under a substantial-compliance standard, this is required. <u>Barber</u>, 2018 VT 78, ¶ 36 (concluding colloquy was insufficient where petitioner acknowledged facts could support guilty verdict, but did not admit to facts). Further, petitioner's admission in the written waiver was not sufficient to comply with Rule 11(f) even prior to <u>Bridger</u>. <u>Id</u>. ¶ 24 n.6 (explaining that signing waiver-of-rights form is not relevant to determining if Rule 11(f) was satisfied). Therefore, Rule 11(f) was not satisfied, and the PCR court properly granted petitioner relief.

Affirmed.

BY THE COURT:
Paul L. Reiber, Chief Justice
Marilyn S. Skoglund, Associate Justice
Warryn 5. 5kogiund, Associate Justice
Beth Robinson, Associate Justice