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. 2017-354

OCTOBER TERM, 2018

In re John A. Haskins*	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 134-5-17 Bncv
		Trial Judge: John W. Valente

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

Petitioner appeals an order granting the State partial summary judgment on his petition for post-conviction relief (PCR). Petitioner argues that the trial court in the underlying criminal proceeding failed to properly ascertain a factual basis for his guilty pleas as required by Vermont Rule of Criminal Procedure 11(f), and therefore the PCR court erred in denying him summary judgment. We affirm.

On appeal from a summary-judgment decision, this Court applies the same standard as the trial court. In re Carroll, 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. In re Hemingway, 2014 VT 42, ¶ 7, 196 Vt. 384.

The facts when so viewed are as follows. In October 2013, petitioner entered a plea agreement with the State to resolve charges pending in three criminal dockets. The State agreed to dismiss an aggravated-domestic-assault charge and amended an arson charge to misdemeanor unlawful mischief. In exchange, petitioner agreed to plead guilty to: one count of domestic assault in the first docket; one count of unlawful mischief, six counts of violating an abuse-prevention order (VAPO), and six counts of violating his conditions of release (VCR) in the second docket; and two VAPO counts and two VCR counts in the third docket.* All counts petitioner pled guilty to were misdemeanors.

At the change-of-plea hearing, the court explained the following as to the VCR counts in the second docket:

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* The PCR court concluded that the plea colloquy was insufficient as to the domestic-assault and unlawful-mischief charges and vacated those convictions, but concluded it was sufficient as to the VAPO and VCR charges. Because this appeal involves solely petitioner's challenge to the PCR court's conclusion that the plea colloquy was satisfactory as to the VAPO and VCR counts, this decision recites the colloquy only as related to those charges.

> I'm going to read you a series of similar charges, and the distinction will be the different offense dates, if you will. [The counts] all allege the same illegal conduct, that is it's alleged that you violated your release conditions that had been issued by the court, specifically violating an order that you not contact . . . [the complainant].

The court delineated the dates, times, and places for the six VCR counts alleged in that docket, and stated that the "allegations are that you violated your release conditions that the Court had issued under 13 V.S.A. § 7554 and that that is a violation of 13 V.S.A. § 7559(e)." The court then explained that the remaining six charges in that docket "all allege what we call a VAPO, a violation of an abuse prevention order," each of which occurred in different places and times, and set forth the following details:

> Count III alleged that at Bennington on or about August 6th of 2013 you committed an act prohibited by a court or you failed to perform an act ordered by a court in violation of an abuse-prevention order issued under Chapter 21 of Title 15, . . . and that after you were served with a notice of the contents of the order that you violated the order on or about 8:08 p.m. on August 6th at Bennington.

The court recited the other dates, times, and locations for each of the VAPO charges in that docket.

As to the counts in the final docket, the court explained

> Count I of [that docket number] is also a VAPO charge; same statutory violation, same potential maximum possible penalty. It's alleged that you violated the court order on or about . . . August 23, 2013 and September 18 of 2013, again, violating an abuse-prevention order that the court had issued after you were served with notice of the contents of the order, that is by writing a letter.
>
> Count II also alleged to be a VAPO, also alleged to have occurred between August 23 and September 18 of 2013, again, writing a letter.
>
> Counts III and IV of this docket number go back to the allegation that you violated your release conditions by violating the no-contact provisions. Again Count III is alleged that you violated your release provisions, which prohibited contact by writing that same letter . . . between August 23 and September 18. And Count IV is a violation of conditions of release writing a second letter sometime between August 23, 2013 and September 18 of 2013.

The following exchange took place later at the change-of-plea hearing:

> THE COURT: As to the misdemeanors, you agree there is a factual basis for each and every misdemeanor [defendant] is pleading to?
>
> THE DEFENDANT: I do.
>
> THE COURT: All right. I do find a factual basis. Anything from counsel before I take his plea?

. . . .

> [Prosecutor]: Yes. I just want to note that in the letters, for as far as the factual basis, they were to his sister, but they had specific messages—
>
> THE COURT: To tell [the complainant] this—
>
> [Prosecutor]:—to [the complainant].

In May 2017, petitioner filed a PCR petition alleging that the plea colloquy was insufficient because the trial court did not establish a factual basis for the pleas. Both the State and petitioner filed cross motions for summary judgment. The PCR court concluded that there was substantial compliance with Rule 11(f) on the VAPO and VCR charges because the trial court had provided a recitation of all factual elements for the charges and defendant had agreed that there was a factual basis.

Prior to accepting a guilty plea, the trial court must make an inquiry to "satisfy it that there is a factual basis for the plea." V.R.Cr.P. 11(f). In In re Bridger, 2017 VT 79, this Court examined the Rule 11(f) standard and 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." In re Barber, 2018 VT 78, ¶ 2. Following Bridger, we addressed the question of its applicability to pending cases and concluded that it established new rules when it held that stipulations cannot substitute for a defendant's personal admission and that substantial compliance standard did not apply. Barber, 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 Bridger did not establish a new rule as to its first holding because existing law required a defendant to personally admit to the facts supporting the charge. See id. ¶ 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."); State v. Yates, 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").

Because direct review was completed in this case at the time Bridger was decided, the new rules announced therein do not apply to this collateral change to petitioner's convictions. Therefore, we consider whether there was substantial compliance with the requirement that the trial court inquire into petitioner's understanding of "the facts as they relate to the law for all elements of the charge or charges to which the defendant has pleaded." Yates, 169 Vt. at 24.

Petitioner argues that the colloquy was insufficient because the court did not delineate the exact conduct that violated his conditions of release and what exactly he had written in the letters that violated the conditions. He also claims that the trial court erred when it failed to ask him to describe the facts in his own words and did not ask him if he personally admitted those facts.

We conclude that the colloquy satisfied Rule 11(f) under a pre-Bridger standard. There is no merit to petitioner's claim that the colloquy was incomplete because the trial court did not ask petitioner or the State to recite the facts underlying each charge. "We do not require a particular formula for determining that there is a factual basis for the plea." In re Stocks, 2014 VT 27, ¶ 15, 196 Vt. 160. Here, the trial court recited each element of the charges, and the underlying facts. To be sure, the facts were not detailed, but there were enough facts to support each element of the VAPO and VCR charges. The court explained that all the VCRs alleged that petitioner the court

had issued conditions of release, and that petitioner had violated the no-contact condition by having contact with the complainant at specific times and places. Further, the court stated the elements of a VAPO charge, provided the facts related to the abuse-prevention order, and recited the dates that he was alleged to have violated the order. In relation to the counts relying on defendant's contact through the letters, the court did not need to recite the exact language of the letter to provide evidence of each element of the charge.

We also reject petitioner's argument that the colloquy was inadequate because defendant did not state during the colloquy that the facts recited were true. Following the court's recitation of the facts, the trial court did not directly ask petitioner if he admitted those facts were true. However, later in the plea colloquy, when asked, defendant personally stated that he agreed there was a factual basis for the charges. This is different from situations where at the change-of-plea hearing the court asks if the affidavit provides a factual basis or if an affidavit could support a guilty verdict. Here, the trial court asked if petitioner agreed that there was indeed a factual basis and he replied in the affirmative. We conclude that the court's recitation of the facts for each element of the charges combined with defendant's agreement as to the factual basis complied with the requirements for Rule 11(f) under a pre-Bridger standard because defendant essentially stipulated to a factual basis. Barber, 2018 VT 78, ¶ 31 (concluding that defendant's attorney's stipulation as to factual basis satisfied Rule 11(f) under pre-Bridger standard).

Petitioner's final argument is that the colloquy was insufficient because he alleges some facts recited by the trial court during the colloquy were not true, including that he signed the final relief-from-abuse order and was served with the order. Petitioner did not raise this argument in the PCR proceeding and it was therefore not preserved for appeal. State v. Yoh, 2006 VT 49A, ¶ 36, 180 Vt. 317 ("Our rules require a party to raise and preserve all objections at trial, and we do not ordinarily consider issues not raised below.").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice