

*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. 2018-245

OCTOBER TERM, 2019

State of Vermont v. Jack P. Dickson*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 566-5-17 Rdcr
		Trial Judge: Thomas A. Zonay

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

Defendant, who pled guilty to assault and robbery with a dangerous weapon and providing false information to a police officer, appeals the sentence imposed on him. We affirm.

The charges arose from an incident in which defendant robbed a Chinese restaurant during business hours while wearing a Halloween mask and brandishing and waving a large, serrated knife. When he was apprehended shortly after the robbery, he initially provided the officers with a false name. At the time of the incident, defendant was on probation for two offenses—violation of an abuse prevention order and possession of narcotics. After the charges were filed, defendant entered into a plea agreement under which he pled guilty to the two charges and admitted the two probation violations. The State agreed to not seek a term of incarceration greater than six to twelve years. The assault and robbery charge carried a maximum of up to fifteen years. See 13 V.S.A. § 608(b).

At the sentencing hearing, the State asked the court to impose a sentence of five to twelve years, while defendant asked the court to impose a fifteen-month minimum sentence and a maximum sentence at its discretion. Before passing sentence, the court reviewed the presentence investigation report and listened to a witness statement by the restaurant owner’s daughter, arguments by the State and defendant’s attorney, and allocution by defendant. The court then imposed a controlling sentence of five to twelve years for the two charges and two probation violations. Defendant appeals the sentence, arguing that the court abused its discretion: (1) by treating defendant’s prior successful completion of a drug treatment program as an aggravating factor; and (2) by basing its sentence on the need for specific and general deterrence absent any evidence or findings that the sentence served those goals.

“Sentencing is solely the function of the trial judge, and we review an imposed sentence for abuse of discretion.” State v. Lumumba, 2014 VT 85, ¶ 22, 197 Vt. 315 (citation omitted); see State v. Sullivan, 2018 VT 112, ¶ 8 (“In keeping with the court’s

role in fashioning an appropriate, individualized sentence, the court's discretion in sentencing is broad."). "In determining what sentence to impose, the trial court must consider the 'nature and circumstances of the crime, the history and character of the defendant, the need for treatment, and the risk to self, others, and the community at large presented by the defendant.'" State v. Herring, 2019 Vt. 33, ¶ 27 (quoting 13 V.S.A. § 7030(a)). "Where a court has followed these directives, its decision will stand so long as the sentence is within the statutory limits and was not based on improper or inaccurate information." Id. (quotation omitted).

Defendant first argues that the court abused its discretion by relying on his successful 2013 graduation from drug treatment court following prior charges as an aggravating factor justifying a harsher sentence. According to defendant, drug relapses are expected and should not be considered an aggravating factor in sentencing. This argument mischaracterizes the court's reasoning and is without merit. The court considered the serious nature of the crimes; defendant's prior criminal record and his conduct in prison during the previous year; the fact that the offenses for which he pled guilty were the direct result of his longstanding battle with drug addiction; his acceptance of responsibility for his actions; and his genuine remorse and better understanding of the importance of remaining sober. In discussing defendant's past criminal history, the court found, among other things, that in 2013 defendant had a number of criminal charges dismissed after graduating from a drug treatment court program; that he had "been afforded multiple opportunities to alter his behavior"; that he had "also been on ample notice that he has a significant drug issue, and that if he engaged in any behaviors, that it may result in severe consequences"; and that "he knew from his [drug] treatment court experience that he needed to get help before allowing his situation to spiral as it did." These findings, which are supported by the record, do not demonstrate that the court considered defendant's prior successful completion of a drug treatment program overseen through a court treatment docket to be an aggravating factor to consider in imposing its sentence. On the contrary, the court accurately stated that defendant's prior experiences in criminal court, including a drug treatment docket, made him aware of the need to seek help if he relapsed and of the potential consequences if he did not. It was not defendant's relapse that informed the court's sentencing decision, but rather defendant's decision to commit assault and robbery with a dangerous weapon instead of seeking help. Indeed, the court explicitly recognized defendant's drug addiction as a mitigating factor, but stated that his actions in response to circumstances caused by his drug addiction "fell well short of what is to be reasonably expected of a citizen who is facing such issues," particularly considering his past experience in the judicial system.

We also find unavailing defendant's argument that the court abused its discretion by relying on the need for specific and general deterrence, absent any support in the record demonstrating that a longer term of incarceration would achieve the desired deterrent effects. This Court has long recognized that "legitimate goals of criminal justice[] includ[e] such purposes as punishment, prevention, rehabilitation, and deterrence." Herring, 2019 VT 33, ¶ 27 (quotation omitted); see State v. Saari, 152 Vt. 510, 516 (1989) (stating that mandatory minimum penalties for drunken driving and assault on police officers addressed "legitimate penological objectives of deterrence and isolation" (quotation omitted)). In this case, the court made findings indicating that defendant's behavior that led to his most recent offenses represented a significant increase in the level of violence and danger to the community, notwithstanding defendant's previous probated

sentences and dismissed charges resulting from his prior criminal behavior. Given the circumstances of this case and defendant's criminal history, the court acted within its discretion in citing the need for general and specific deterrence among the factors it considered in imposing a sentence significantly below the statutory maximum.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice