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. 2018-381

AUGUST TERM, 2019

Victor G. Hall* v. Lisa Menard, Commissioner	}	APPEALED FROM:
	}	
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 1139-12-17 Cncv
		Trial Judge: Robert A. Mello

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

Petitioner appeals pro se from the denial of his third request for post-conviction relief (PCR). We affirm.

In May 2006, petitioner was charged with, among other things, two counts of aggravated sexual assault of his minor stepdaughter. See State v. Hall, No. 2008-086, 2008 WL 4906948, at *1 (Vt. Nov. 1, 2008) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo08-086.pdf [https://perma.cc/9ZJR-7EEC]. He eventually pled guilty to the two aggravated-sexual-assault charges pursuant to a plea agreement. "The trial court accepted the plea following a [Vermont Rule of Criminal Procedure] 11 hearing in which the prosecutor described the offenses and noted that, to date, [petitioner] had admitted the charges at least three times . . . ." Id. Petitioner "acknowledged that he had committed the offenses as described," and the court accepted his plea as voluntary. Id. Before sentencing, petitioner moved to withdraw his plea, which the court denied, finding it "part of a calculated effort by [petitioner] to indirectly obtain a continuance of trial that he had previously been denied." Id. at *2. Petitioner renewed his motion at sentencing, which the court again denied. We affirmed the court's denial of petitioner's motion to withdraw on appeal. Id. at *3. We found "ample evidence to support the [trial] court's finding that [petitioner's] motion was . . . not brought in good faith," but rather as "part of a larger scheme to delay his trial." Id. at *2.

In December 2009, petitioner filed his first PCR request, which the court denied. This PCR request included petitioner's claim that his plea was involuntary and that his trial counsel unreasonably failed to challenge errors made by the court in denying his plea-withdrawal motion. The court concluded that any errors by counsel were harmless given this Court's ruling above. We affirmed this decision on appeal. See In re Hall, No. 2013-062, 2013 WL 9055937 (Vt. Dec. 1, 2013) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo13-062.pdf [https://perma.cc/YMP2-55AF].

Petitioner filed a second PCR petition in February 2016, again alleging that his trial counsel was ineffective in connection with his plea-withdrawal request. The court granted the State's motion to dismiss the petition. It held, among other things, that petitioner's ineffective-assistance claim was barred by 13 V.S.A. § 7134 because it had been previously raised and decided in petitioner's first PCR action. We affirmed the court's decision on appeal. See In re Hall, No. 2017-260, 2018 WL 3485668 (Vt. July 16, 2018), https://www.vermontjudiciary.org/sites/default/files/documents/eo17-260.pdf [https://perma.cc/6MGR-N27T].

This brings us to the petition at issue here. In December 2017, petitioner filed a "Petition for Writ of Habeas." He asserted that his guilty plea did not comply with Vermont Rule of Criminal Procedure 11(f), thereby resulting in his unlawful incarceration. According to petitioner, the court failed to ask him if he committed the crime at issue, and thus it failed to establish a factual basis for his guilty plea.

The court construed the petition as a PCR petition and granted the State's request to dismiss it as successive and barred. The court found that petitioner had raised claims related to his plea, and those claims had been decided on the merits several times. It cited petitioner's 2008 appeal, 2018 appeal, and the 2012 trial-court decision that rejected petitioner's argument that the court failed to elicit an unambiguous admission of guilt from him. The court concluded that the instant petition sought similar relief as petitioner's previously reviewed requests for relief. Petitioner moved for reconsideration, which the court denied. In addition to reiterating that the petition was successive, the court found that the transcript of the plea colloquy showed that the requirements of Rule 11(f) were satisfied. It also cited this Court's ruling in 2008, finding no basis to disturb the trial court's denial of petitioner's motion to withdraw "[i]n light of [his] multiple prior admissions of guilt." Hall, 2008 WL 4906948, at *2. Under these circumstances and given this Court's prior consideration of the lawfulness of petitioner's guilty plea, the court determined that it was not required to reconsider petitioner's present claim for relief. Petitioner now appeals.

Petitioner states that he filed his request as a habeas corpus petition because the State was likely to argue that any successive PCR was barred. He argues that the Court should consider the merits of his argument and not whether it is a successive PCR. He maintains that if there is a prior ruling addressing the validity of his guilty plea, that ruling is wrong.

We find no error in the court's treatment of petitioner's habeas petition as a PCR and its dismissal of that petition as successive and barred. See 13 V.S.A. § 7134 ("The court is not required to entertain a second or successive motion for similar relief on behalf of the same prisoner."). Petitioner cannot file successive petitions seeking the same relief, regardless of how he labels his filing. See In re Laws, 2007 VT 54, ¶ 4 n.1, 182 Vt. 66 (noting that "federal case law on which we rely makes no distinction between previous petitions brought in accordance with PCR statutes and general habeas corpus petitions when considering successive petitions").

The court's finding that the argument fails on the merits is also supported by the evidence. Petitioner cites In re Bridger, 2017 VT 79, 205 Vt. 380, but the novel holdings in that case do not apply retroactively to petitioner's collateral challenge. See generally In re Barber, 2018 VT 78, ¶ 24. We apply the law as it existed at the time of petitioner's Rule 11 colloquy. The trial transcript shows that the prosecutor described the basis of the charges, explaining in detail what the State alleged had occurred. The court then asked petitioner if he had listened to what the prosecutor had described and if he agreed with what she said happened. He replied that he did agree and that there was nothing he needed to correct. This satisfied Rule 11(f). See Barber, 2018 VT 78, ¶¶ 11-12

(recognizing that at time Court decided Bridger, 2017 VT 79, "[e]xisting precedent interpreting Rule 11(f) required a recitation of the facts underlying the charges and some admission or acknowledgment by defendant of those facts," and that under existing case law at that time, "a defendant's oral or written stipulation to the facts could support compliance with Rule 11(f)").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice