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. 2019-203

MARCH TERM, 2020

State of Vermont v. Kandeh Kebbie*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 976-8-16 Rdcr
		Trial Judge: Thomas A. Zonay

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

Defendant appeals from the denial of his motion for sentence reconsideration. He argues that the court erred in denying his motion without a hearing. We affirm.

Defendant was convicted by jury of four counts of misdemeanor domestic assault, two counts of felony aggravated domestic assault, and one count of felony aggravated assault. All counts had the same victim and took place at various times over the spring and summer of 2016. At the sentencing hearing, a presentence investigation report (PSI) was submitted without objection. The probation officer who prepared the PSI testified, as did the victim. Defendant did not offer any witness testimony but submitted letters from various individuals in support of his good character. The court considered this evidence in reaching its decision, including the positive descriptions of defendant provided by his ex-girlfriend and daughter. The court found "no doubt that the defendant [had] family support and a number of positive qualities, most notably how good a father he [was]." Nonetheless, it found that his conduct with the victim was "markedly different than the positive aspects of his life highlighted by others." For reasons articulated on the record, the court imposed an aggregate to-serve sentence of thirteen to twenty-five years. This Court affirmed defendant's convictions on appeal. See State v. Kebbie, No. 2018-064, 2018 WL 6173595 (Vt. Nov. 21, 2018) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo18-064.pdf [https://perma.cc/BA55-8FJA].

Defendant then moved for sentence reconsideration. See 13 V.S.A. § 7042(a) (allowing court to reduce sentence within certain time period "upon its own initiative or motion of the defendant"); see also State v. Therrien, 140 Vt. 625, 627 (1982) (explaining that § 7042 process allows court to evaluate sentence "absent the heat of trial pressures and in calm reflection to determine that it is correct, fair, and serves the ends of justice"); State v. Lertola, 140 Vt. 623, 624 (1982) (noting that statute allows modification of sentence "which, upon reflection and in the presence of unchanged circumstances, might be shown to be unwise or unjust"). As relevant here, defendant indicated that he sought to present evidence from witnesses, including his ex-girlfriend and child, regarding his good character. He acknowledged that there had been written summaries and statements submitted on his behalf at the sentencing hearing, but he maintained that it "could

be more beneficial" to present such testimony live. He requested a hearing "sufficient to cover the issues" identified in his memorandum.

The court denied defendant's request for a hearing and found no basis to reduce his sentence. The court explained that defendant had notice and opportunity to present all necessary evidence at the original sentencing hearing. He chose to submit letters from friends and family. He had not identified any error in the sentencing proceeding or any newly discovered evidence that could not have been previously presented. He was not entitled to a second hearing simply because he now wanted to present live testimony about his good character. In any event, the court explained that it had reviewed its initial sentence and concluded that it was correct, fair, and served the ends of justice. It thus denied defendant's motion. This appeal followed.

Defendant suggests that, because the court did not hold a hearing, it effectively accepted as true his assertion that live testimony "could be" more beneficial than written testimony. He further contends that he is entitled to a hearing because his sentence is lengthy.

We find no error. As defendant acknowledges, the court is not required to hold a hearing in every case where reconsideration is sought; there is no exception to this rule for lengthy sentences. See State v. Allen, 145 Vt. 393, 395-96 (1985) (holding that court may deny sentence reconsideration without hearing where sentence was within range of legal sentences and sentencing court conducted lengthy sentencing hearing). Sentence reconsideration is designed "to give the [trial] court an opportunity to consider anew the circumstances and factors present at the time of the original sentencing." State v. King, 2007 VT 124, ¶ 6, 183 Vt. 539 (quotation omitted). The court did so here. It reviewed its sentence and concluded that it was just. Even accepting that live testimony "could be" more effective than written testimony, it was defendant who chose the latter at the sentencing hearing. His change of heart did not entitle him to a second hearing. In any event, imposing its sentence, the court considered the assertions by defendant's friends and family members regarding his good character and effectively accepted them as true. It contrasted these positive attributes with his treatment of the victim here. Defendant fails to show that he was entitled to a second hearing to present the same evidence through live witnesses and he fails to show any abuse of discretion.

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

Harold E. Eaton, Jr., Associate Justice

_____

William D. Cohen, Associate Justice