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. 2017-356

OCTOBER TERM, 2018

In re Cody L. Morrill (State of Vermont*)	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 588-11-16 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 petitioner did not admit to the facts and therefore there was an insufficient 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. 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 April 2015, petitioner was charged with driving under the influence of drugs (DUI), cruelty to children under the age of ten, and resisting arrest. The supporting affidavit alleged that petitioner drove with his infant son in the back seat while under the influence of assorted drugs, caused a crash, and then attempted to flee during his transport to a correctional facility. Petitioner entered a plea agreement with the State in which he pleaded guilty to DUI and resisting arrest in exchange for a sentence of fifteen days to one year to be served consecutively to time petitioner was serving on other charges. Petitioner signed a written waiver-of-rights form.

The trial court had the following exchanges with petitioner at the change-of-plea hearing. The trial court described the charges against petitioner:

> THE COURT: The charge in Count I is that, on April 3rd, you were operating a motor vehicle on a public highway, and, at the time, you were under the influence of intoxicating liquor. The maximum punishment is a term of imprisonment of two years, a fine of $750, or both. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Count III, resisting arrest, alleges that, on April 3rd, you intentionally attempted to prevent a lawful arrest on yourself which was being effected by a law enforcement officer when it reasonably appeared that it was an officer that was attempting to arrest you. The maximum punishment is one year or $500 or both. Do you understand that?

THE DEFENDANT: Yes.

The trial court further questioned defendant as follows:

THE COURT: Do you agree the affidavit of Officer Wynn provides facts to establish those charges?

THE DEFENDANT: Yes.

. . . .

THE COURT: And so you understand that, by entering your plea, you are acknowledging that the affidavit does establish facts from which a jury could—a factfinder could find beyond a reasonable doubt that on April 3rd you were operating a motor vehicle or attempting to operate—or in actual physical control—it was on a public highway, and at the time, you were under the influence of a drug other than alcohol, or under the combined influence of alcohol and drugs?

THE DEFENDANT: Yes.

The trial court found that the pleas were made knowingly and voluntarily and that there was a factual basis for the pleas.

Based on this record, the PCR court concluded that there was a wholesale failure to establish a factual basis for the plea and granted petitioner summary judgment. The State appeals.

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 In re Bridger, 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." In re Barber, 2018 VT 78, ¶ 2.

On appeal, the State contends that prior to this Court's decision in Bridger, 2017 VT 79, the standard for Rule 11(f) was substantial compliance; that Bridger 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 Bridger, 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. 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 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 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").

As explained in Barber, Bridger's holding rejecting the substantial-compliance standard does not apply to this collateral proceeding. We conclude, however, that under the pre-Bridger 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. Barber, 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 Bridger. Id. ¶ 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:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice