

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 99-2-18 Wncv

---

RICKY L. CURTIS, JR.,  
Petitioner,

v.

LISA MENARD, Commissioner,  
Vermont Department of Corrections,  
Respondent.

---

RULING ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

In March 2012, Petitioner Ricky L. Curtis, Jr., entered a plea of guilty to lewd and lascivious conduct with a 2-year-old child in the criminal case docketed at No. 1086-9-09 Wncr. Pursuant to a plea agreement, he was sentenced to 3–14 years to serve and remains incarcerated. In this postconviction relief case, he claims that his conviction should be vacated so he can withdraw his plea for two wholly separate reasons: (1) the imposition of a mandatory \$140 surcharge breached the terms of the plea agreement; and (2) the criminal court was constitutionally required, prior to accepting his plea, to ensure that he understood that he would be required to register with the State as a sex offender, and it did not.<sup>1</sup> The parties have filed cross-motions for partial summary judgment addressing these issues.

*The surcharge*

Mr. Curtis’s argument that the surcharge breached the plea agreement is one essentially of contract law. “It is axiomatic that plea agreements ‘are contractual in nature and are interpreted according to contract law.’” *State v. Careau*, 2016 VT 18, ¶ 11, 201 Vt. 322.

Mr. Curtis’s agreement with the State is handwritten onto an official court form in use at the time entitled “Notice of Plea Agreement.” In appropriate places, “guilty” is circled, the agreed 3–14 year sentence is indicated, and “Suspended with Probation” is marked “No”; it is a fully “to serve” sentence. The form has a blank space where a fine may be indicated and another blank space where a surcharge may be indicated. No fine was to be assessed, and the corresponding line was left blank.<sup>2</sup> The line corresponding to the

---

<sup>1</sup> By agreement of the parties, Mr. Curtis’s ineffective assistance of counsel claims are not now at issue. To the extent the parties’ briefing touches on those claims, the court disregards it for purposes of this decision.

<sup>2</sup> Mr. Curtis repeatedly represents in argument that a both a fine and a surcharge were assessed, but there is no evidence that any fine ever was assessed.

surcharge also was left blank. Once the court sentenced Mr. Curtis, a line in the docket sheet indicates the entry of the surcharge, \$140 total. Mr. Curtis argues that the text of the plea agreement plainly provides for no surcharge or, if it is ambiguous in that regard, then the ambiguity should be interpreted in his favor. Other than pointing to the face of the form, he does not allege that the parties actually negotiated and agreed that there would be no surcharge.

The surcharge and its amount are mandatory. See 13 V.S.A. § 7282(a), (c). Neither the court nor the parties had any authority to waive the surcharge or any discretion as to its amount. See 13 V.S.A. § 7282(b) (“The surcharges imposed by this section shall not be waived by the court.”).

In the plea agreement, the parties did not indicate that the surcharge was waived or indicate that its amount is zero. They simply left the line for its amount blank. In the context of the mandatory, unwaivable nature of the surcharge, leaving the surcharge line blank on the form is insufficient to create any ambiguity as to whether the parties intended to waive the surcharge. They did not. They merely left its ministerial calculation to the court clerk. The State is entitled to summary judgment on this issue.

#### *Voluntariness and Rule 11(d)*

Mr. Curtis argues that the criminal court was constitutionally required to ensure, before accepting his plea, that he was aware that he would be required to register with the State as a sex offender.<sup>3</sup> His plea would be involuntary under Rule 11(d) otherwise, he argues. There is no such constitutional requirement, however, and Rule 11(d) does not require it otherwise.<sup>4</sup>

As the Vermont Supreme Court has explained, “The Rule 11 colloquy requires that the defendant know and understand the ‘direct consequences’ of his plea in order to ensure that his waiver of constitutional rights is voluntary.” *State v. Mutwale*, 2013 VT 61, ¶ 11, 194 Vt. 258. “[I]n the context of plea hearings, ‘direct consequences’ include only those which the court itself can impose.” *Id.* ¶ 12. In other words, unless expressly listed in Rule 11, the Rule 11 colloquy does not require the criminal court to determine knowledge and understanding of *collateral* consequences. See *State v. Pilette*, 160 Vt. 509, 512 (1993).

Sex offender registration is a *collateral* consequence of a relevant conviction, not a *direct* consequence. A direct consequence generally is something punitive that the sentencing court may impose. Sex offender registration is not punitive, and the sentencing court has no discretion to waive it. See 13 V.S.A. §§ 5401–5416; *State v. Thompson*, 174 Vt. 172, 176 n.3 (2002) (“Moreover, we note that a majority of the states that have construed the sex offender registry statutes in their jurisdictions have found the statutes regulatory, rather than penal, in purpose, and collateral to the conviction.”); see also *State v. Trotter*, 330 P.3d 1267, 1269 (Utah 2014) (“We hold that the requirement to register on the state’s

---

<sup>3</sup> Mr. Curtis does not allege that he was unaware of the requirement, only that the sentencing court failed to ensure itself that he was aware of the requirement.

<sup>4</sup> Rule 11(c)(8), requiring notice “that there may be collateral consequences to the conviction,” did not exist when Mr. Curtis was sentenced.

sex offender registry is properly classified as a collateral consequence of a defendant's guilty plea. Therefore, . . . the trial court is [not] constitutionally compelled to inform a defendant of the registration requirement before a guilty plea may be accepted as knowing and voluntary."); *Ward v. State*, 315 S.W.3d 461 (Tenn. 2010) ("We agree with the majority of states that the registration requirements imposed by the sex offender registration act are nonpunitive and that they are therefore a collateral consequence of a guilty plea."); Bryan R. Means, *Postconviction Remedies* § 44:2 n.10 (sex offender registration not punitive in nature).

The State is entitled to summary judgment on this issue on this basis. It is unnecessary to address the other issues raised by the parties.

Order

For the foregoing reasons, the State's motion for partial summary judgment is granted, and Mr. Curtis's is denied.

SO ORDERED this 11<sup>th</sup> day of April, 2022.



---

Robert A. Mello  
Superior Judge