STATE OF VERMONT

SUPERIOR COURT
Rutland Unit

CIVIL DIVISION
Docket No. 231-4-15 Rdcv

In re ROBERT VANDRIEL,
Petitioner

DECISION
Petitioner's Motion for Partial Summary Judgment
State's Cross Motion for Summary Judgment

This matter is a petition for post-conviction relief pursuant to 13 V.S.A. §§ 7131-37 filed by the incarcerated petitioner, Robert Vandriel. The Petitioner is represented by Attorney Mark E. Furlan. Deputy State's Attorney John D. G. Waszak represents the State. The Petitioner moves for partial summary judgment, and the State opposes and moves for summary judgment. For the reasons set forth below, the Court grants partial summary judgment in favor the State.

The Petitioner pled guilty to assault and robbery with a weapon on November 18, 2014 and was sentenced to a term of imprisonment of four to six years. The Petitioner now alleges that his guilty plea should be vacated because the plea colloquy conducted by the Court that accepted his guilty plea did not include material sufficient to establish a factual basis for the plea. The Petitioner presently requests summary judgment solely on the issue of the sufficiency of the factual basis for the plea in the plea colloquy, and reserves the other issues raised in his petition.

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). Here, the parties do not dispute any of the material facts, all of which relate to the content of the plea colloquy conducted by the Honorable Thomas A. Zonay in the Criminal Division of the Rutland Unit of the Superior Court on November 18, 2014. The sole question presented by the petition is the legal sufficiency of the plea colloquy.

The plea colloquy proceeded, in relevant part, as follows:

> THE COURT: To the charge of assault nd robbery with a weapon, what plea do you enter? Guilty or not guilty?
>
> THE DEFENDANT: Guilty.
>
> THE COURT: Do you agree that Officer Sorrell's affidavit provides facts to establish the elements?
>
> THE DEFENDANT: I do.

THE COURT: The Court will find that there is a factual basis.

The Defendant now contends that this plea colloquy was insufficient under V.R.Cr.P. 11(f). V.R.Cr.P. 11(f) provides that "[n]otwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea." A violation of Rule 11(f), even without a showing of prejudice, would be sufficient for the court to grant the petitioner relief. *In re Stocks*, 2014 VT 27, ¶ 21 (citing *In re Miller*, 2009 VT 36, ¶ 9).

There is no per se rule as to how a trial court must ascertain the factual basis for a plea because the inquiry will necessarily vary from case to case. *State v. Whitney*, 156 Vt. 301, 302 (1991). The record must, however, "affirmatively show sufficient facts to satisfy each element of an offense." *Stocks*, 2014 VT 27 at ¶ 21 (quoting *In re Miller*, 2009 VT 36, ¶ 11). The trial court must also directly inquire into the factual basis of the plea, and the defendant must "admit to and possess an understanding of the facts as they relate to the law for all elements of the charge or charges to which the defendant has pleaded." *Stocks*, 2014 VT 27 at ¶ 18 (quoting *State v. Yates*, 169 Vt. 20, 27 (1999)).

Substantial compliance with the rule is sufficient. *State v. Cleary*, 2003 VT 9, ¶ 15, 175 Vt. 142. A colloquy with a defendant who stipulates to the factual basis of the plea substantially complies with Rule 11(f). *Id.* at ¶ 29 (citing *State v. Morrissette*, 170 Vt. 569, 571 (1999) (mem.)). The complexity of the charged offense and the factual circumstances are factors to consider in determining whether a plea colloquy substantially complied with Rule 11(f). *See Whitney*, 156 Vt. at 303.

The assault and robbery charge to which the Petitioner pled guilty is not a factually complex offense that requires careful clarification as to what specific facts satisfy specific necessary element of the offense. This is in contrast to the cases where the Vermont Supreme Court has found a Rule 11(f) violation. *See Yates*, 169 Vt. at 24 (finding Rule 11(f) violation where court failed to make any inquiry into the facts of an aggravated domestic assault charge); *State v. Dunham*, 144 Vt. 444, 448 (1984) (finding Rule 11(f) violation where court failed to make any inquiry into the facts relating to the willfulness element of a second degree murder charge).

The Petitioner relies heavily on *Stocks*, 2014 VT 27 at ¶ 20, in which the Supreme Court held that it is insufficient for a plea court merely to elicit acknowledgment from a criminal defendant that he understands the State's factual allegations relating to the charged offenses. Under *Stocks*, *id.*, mere understanding does not equate to admission, and V.R.Cr.P. 11(f) requires an admission from the defendant of the truth of the State's allegations.

But in contrast to the criminal defendant in *Stocks*, who was only asked if he understood the factual basis of the charges, the Petitioner here was asked by the plea court whether he "agree[d] that Officer Sorrell's affidavit provides facts to establish the elements." The Petitioner

answered "I do." He now asks this Court to interpret that "I do" as something less than an admission of the truth of the facts set forth in the affidavit. The Court sees no basis to do so.

The Petitioner also relies heavily on *In re Manosh*, 2014 VT 95 , ¶¶ 22-24, in which the Supreme Court held that it was error for a plea court to rely on a written waiver of rights from a criminal defendant to establish a factual basis for a plea, in place of personally addressing the defendant in open court. But here, the plea court did in fact personally address the Petitioner in open court, and the Petitioner affirmatively agreed in open court that the law enforcement affidavit provided facts to establish the elements of the charged offense. *Manosh* is inapposite.

The Petitioner argues that the plea court failed to establish that he had even read the affidavit of probable cause to which he assented. However, the State points to a written plea agreement signed by the Petitioner that was submitted to the plea court. That plea agreement provides that the Petitioner "has read and understands the affidavit(s) of probable cause supporting the charge(s) to which he/she is pleading" and "agrees that the affidavit(s) provide(s) a factual basis for his/her plea(s)." Certainly, it would have been impermissible under *Manosh*, 2014 VT 95 at ¶¶ 22-24, for the plea court to rely solely on the plea agreement to establish a factual basis for the plea without conducting a personal colloquy. However, the plea court was entitled to rely upon the written agreement to conclude that the Petitioner had in fact read the affidavit.

This case is controlled by *Cleary*, 2003 VT 9 at ¶ 29, and *Morrissette*, 170 Vt. at 571, which establish that a defendant's stipulation to the factual basis of the charge is sufficient substantial compliance with Rule 11(f). It is clear here from the language of the plea colloquy and the context of the Petitioner's words that the Petitioner's "I do" was a stipulation to the factual basis of the charges.

The plea court substantially complied with Rule 11(f) and made sufficient inquiry into the factual basis for the plea. Accordingly, summary judgment is granted in favor of the State.

ORDER

For the reasons set forth above:

1. The Petitioner's Motion for Partial Summary Judgment is *denied*,
2. The State's Motion for Summary Judgment is *granted,* and
3. The petition is *dismissed.*

Dated at Rutland this 12th day of April, 2016.

Mary Miles Teachout

Mary Miles Teachout
Superior Court Judge