



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

OCTOBER TERM, 2026

State of Vermont v. Edward Skinner*	}	APPEALED FROM:
	}	Superior Court, Orleans Unit,
	}	Criminal Division
	}	CASE NO. 22-CR-12116
		Trial Judge: Rory T. Thibault

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

Defendant appeals a criminal division order denying his motion to reconsider the revocation of his probation under Vermont Rule of Criminal Procedure 35(b). We affirm.

The record reveals the following. In late 2022, the State charged defendant with two counts of second-degree aggravated domestic assault and one count of first-degree aggravated domestic assault. All three carried a habitual-offender enhancement due to defendant's prior felony convictions. The charging affidavit alleged that defendant punched and headbutted his romantic partner, causing a bump on her forehead, and on a separate occasion punched her in the eye and placed his hands around her throat. Defendant pleaded guilty to two of the counts and several counts of violating his conditions of release, and the State dismissed one count of second-degree aggravated domestic assault and the habitual-offender enhancements. As part of the plea, defendant agreed that on one occasion he punched his partner in the left eye and left side of her face and squeezed her throat, and on another occasion, he punched his romantic partner in the stomach and headbutted her.

The court held a contested sentencing hearing. The State advocated for a sentence of zero-to-five years to serve given defendant's criminal history and the need for domestic-violence treatment. Defendant requested one-to-five years, all suspended with probation and one year to serve with credit for time served, arguing that he would receive better treatment in the community.

The court imposed a sentence of thirty months to five years to serve, all suspended with five years of probation except for sixteen months to serve. The court explained that a probated sentence would allow for incarcerative programming if defendant violated his probation. Defendant was subsequently charged with violations of probation for consuming or possessing alcohol and tampering with his electronic-monitoring device. The court found one probation

violation for consuming alcohol and imposed an additional thirty days of the suspended portion of defendant's sentence. The court found no evidence that defendant's drinking had contributed to any criminal activity, although it recognized that there was a risk of that. The court warned that further violations might result in revocation because "to not revoke would depreciate the seriousness of the violations or the pattern of violations."

The State then filed a fourth probation violation, alleging that defendant consumed alcohol daily and engaged in violent or threatening behavior towards his neighbors, a couple with children who lived in the same duplex. At the hearing on the violation, the wife testified that defendant was angry about the couple's dog's excrement on the lawn. She stated that defendant was intoxicated almost every day. She testified that defendant watched her from his house and she was frightened and stopped bringing her dogs into the yard. She described one day when defendant was in his yard and an argument ensued about the dog excrement. The argument escalated and defendant stated that he would kill the neighbors. She was frightened and feared for her life. The husband testified similarly, stating that defendant screamed that he was going to kill him, called him a "punk bitch," and told him he was going to "kick [his] ass." Defendant went back into his home and neighbors alerted the police. Eventually neighbors moved to a different home because they were concerned for their safety. Defendant testified. He denied drinking or threatening the neighbors. He stated that he simply wanted neighbors to clean up after their dogs. The court credited the neighbors' account of the incident with defendant and found that defendant violated the probation condition prohibiting threatening behavior.

Prior to making its decision on how to sentence defendant for the probation violation, the court heard testimony from defendant's probation officer. The probation officer stated that defendant had not been regularly attending the programming in the community for domestic violence, and that the Department of Corrections (DOC) was seeking revocation of probation because the DOC was unable to adequately supervise defendant in the community. The probation officer also testified that the domestic-violence accountability program defendant was attending in the community was not available in an incarcerative setting, but defendant would be referred for risk-reduction programming that was not offered in the community. The probation officer explained that this program provided a broader spectrum of tools including how to manage emotions and life skills.

The court made findings on the record. The court explained that defendant had previously violated his probation and had displayed difficulty complying with conditions. In the context of this violation, the court found that defendant engaged in poor judgment and demonstrated an inability to regulate his emotions. The court noted that defendant's underlying conviction for aggravated domestic assault also demonstrated a tendency to lash out with violence. The court found that revocation was appropriate because defendant needed treatment that could most effectively be provided if confined. In particular, the court found that defendant would benefit from risk-reduction programming, which was not available in the community.

Defendant subsequently moved for sentence reduction under Rule 35, arguing among other things that he did not engage in threatening behavior and he was receiving adequate programming in the community. The State responded that defendant's motion was untimely because probation revocation did not amount to imposition of a sentence as used in 13 V.S.A.

§ 7042(a) and Rule 35(b).¹ The State also argued that the motion should be denied on the merits because the court acted within its discretion in revoking probation.

The criminal division rejected the State’s argument regarding untimeliness. It concluded that although defendant’s request to reconsider the underlying sentence was untimely, it could reconsider whether to reduce or eliminate the unsuspended portion of defendant’s sentence. As to the merits, the court was not persuaded that any change to the sentence was warranted. The court found that the revocation of probation was largely based on the need for programming that could be provided while incarcerated and the DOC’s representation that defendant could not be adequately supervised in the community. Defendant appeals.

Rule 35(b) allows the court to “reduce a sentence within 90 days after the sentence is imposed,” and to “reduce a sentence upon revocation of probation as provided by law.” V.R.Cr.P. 35(b); see 13 V.S.A. § 7042 (providing trial court with authority to reduce sentence). This Court reviews the denial of a motion for sentence reconsideration for an abuse of discretion. See State v. Oscarson, 2006 VT 30, ¶ 7, 179 Vt. 442. “The trial court has broad discretion in deciding what factors to rely on during sentence reconsideration.” State v. Smith, 2026 VT 22, ¶ 19.

On appeal, defendant argues that the underlying probation-revocation decision was based on two unsupported findings regarding the availability of treatment in the community and defendant’s attendance at community programming for domestic violence and that the court erred in relying on these findings to deny reconsideration. Defendant points out that at the probation-revocation hearing, the court found that defendant required risk-reduction programming, which could be provided only while incarcerated, as opposed to the domestic-violence programming he was receiving in the community. Defendant asserts that the criminal division lacked sufficient information regarding the programming he was receiving in the community and how it compared to the risk-reduction programming provided by the DOC to make these findings.

Defendant’s contentions amount to a challenge to the sufficiency of the sentencing evidence, which is beyond the scope of sentence reconsideration. See State v. King, 2007 VT 124, ¶ 7 n.*, 183 Vt. 539 (mem.) (declining to reach several arguments, including adequacy of findings from sentencing, because they were beyond scope of sentence-reconsideration hearing). This is not a direct appeal from the probation-revocation decision. Sentence reconsideration is a narrow remedy that allows a judge to “reconsider the sentencing decision absent the heat of trial

¹ On appeal, the State reiterates its view that Rule 35 does not provide those who violate their probation with an additional ninety days to request a reduction in the modified sentence. In State v. Therrien, 140 Vt. 625, 627 (1982) (per curiam), this Court held that after the defendant’s probation was revoked, the defendant could not file a motion to reduce the original sentence under Rule 35 because this would “unnecessarily burden the revocation proceeding and unjustifiably give the defendant yet another chance to attack his original sentence.” Therrien did not address the question of whether a defendant could seek reconsideration under Rule 35 of the court’s sentence on the probation revocation—as opposed to the original sentence. We need not reach this question because we conclude that, assuming Rule 35 applies, the trial court did not abuse its discretion in denying defendant’s motion to reconsider the sentence imposed for his probation violation.

pressures and in calm reflection to determine that it is correct, fair, and serves the ends of justice.” Therrien, 140 Vt. at 627.²

The court here did not abuse its discretion in denying the motion for sentence reconsideration. Pursuant to statute, probation may be revoked if the court finds that confinement is necessary to protect the community, the defendant is “in need of correctional treatment which can most effectively be provided if he or she is confined,” or “it would unduly depreciate the seriousness of the violation if probation were not revoked.” 28 V.S.A. § 303(b). The court based its probation-revocation decision on its determination that defendant required treatment that could be most effectively provided while incarcerated. On reconsideration, the court examined the original basis for revocation of defendant’s probation, including defendant’s past violation of probation, the DOC’s representation that it could not adequately supervise defendant, and defendant’s need for risk-reduction programming that was not available in the community. Upon reflection, the court concluded that there was no basis to disturb the prior decision to revoke probation. Because the court adequately reconsidered the factors supporting its original revocation decision, there are no grounds for reversal.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice

² Moreover, defendant’s motion for sentence reconsideration did not challenge the sufficiency of the evidence regarding the availability of programming in the community or while incarcerated—only the trial court’s comparison of the two—and this argument is therefore not preserved for appeal. Defendant instead alleged that probation revocation was too severe because he was not criminally charged with the conduct that the court found was threatening, this was his first violation for threatening behavior, his conviction was for domestic assault and the violation was against a nonfamily member, and the neighbor lied on the witness stand.