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2026 VT 54

No. 26-AP-029

State of Vermont

v.

Jesse A. Stevens

Supreme Court

On Appeal from
Superior Court, Bennington Unit,
Criminal Division

September Term, 2026

Kerry Ann McDonald-Cady, J.

Evan P. Meenan, Deputy State's Attorney, Montpelier, for Plaintiff-Appellee.

Sarah Star, Middlebury, and Briana Hauser, Appellate Defender, Montpelier, for Defendant-Appellant.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **REIBER, C.J.** Defendant Jesse Stevens appeals the trial court's order denying his motion for sentence reconsideration. On appeal, he argues the trial court erred by considering alleged post-sentencing conduct in its denial without a hearing. Because the trial court did not abuse its discretion by relying on defendant's sentencing conduct, we affirm.

¶ 2. The record establishes the following facts. Following a jury trial, defendant was convicted of first-degree aggravated domestic assault, domestic assault, first-degree unlawful restraint, and kidnapping for multiple violent acts toward the victim, his then-wife. During the trial the court admonished defendant for "turning around" and "purposefully looking over and watching" the victim while the court made its findings on defendant's motion for judgment of

acquittal. The court reminded defendant that existing conditions of release prevented him from abusing or harassing the victim and were "still . . . in play here in the courtroom," and that "prolonged staring" would violate those conditions. Several months later, at the contested sentencing hearing, defendant apologized for his conduct and indicated that he had taken responsibility for his actions. The State argued for a sentence of ten-to-twenty years to serve and defendant sought a sentence of two-to-four years all suspended with probation, except for a split sentence of his time already served.

¶ 3. In its sentencing decision, the court provided a detailed analysis of the sentencing factors. Among other things, the court considered the nature and circumstances of defendant's crimes, defendant's history and background, defendant's family circumstances, defendant's need for treatment, and the risk defendant presented to others. It noted the extremely violent nature of defendant's actions, the fact that he blamed the victim for his anger and violence, and the need to keep the victim safe. The court considered that defendant was found high risk on the Domestic Violence Screening Tool and moderate risk on the Ohio Risk Assessment System Prisoner Intake Tool, and found that he presented an imminent risk of physical violence to future intimate partners. It also considered defendant's statements at trial in which he blamed the victim and denied any culpability, finding that his explanations lacked "all credibility" and were inconsistent with the evidence. The court further found that despite defendant's allocution at sentencing, he lacked "insight about the significance of the harm he caused [the victim] and the danger that his violence placed her in." The court sentenced defendant to eight-to-nineteen years to serve, finding that this would meet the sentencing goals of deterrence, punishment, and rehabilitation.

¶ 4. Defendant appealed his conviction, and this Court affirmed. State v. Stevens, No. 24-AP-318, 2025 WL 2829529 (Vt. Oct. 3, 2025) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/eo24-318.pdf.

¶ 5. Defendant then moved for sentence reconsideration. Defendant indicated that the facts supporting the motion were already established at sentencing and requested a hearing to determine the merits of his motion. The State opposed defendant's motion and asserted that it should be denied without a hearing because defendant did not seek to present new evidence and relied on the existing record.

¶ 6. Because defendant did not seek to submit new evidence, the court determined that a hearing was unnecessary to resolve the motion. The court observed that defendant had not identified any errors made in the initial sentencing decision and so it reexamined the sentencing factors. See 13 V.S.A. § 7030(a) (providing factors including "the nature and circumstances of the crime," defendant's "history and character," "family circumstances and relationships," defendant's "need for treatment," defendant's compliance with court orders, and defendant's "risk to self, others, and the community at large").

¶ 7. The court weighed the "extremely violent nature" of defendant's crimes and the fact that the victim's resulting injuries were "significant factor[s] for sentencing in this case." The court expressed concern with defendant's high score on the Domestic Violence Screening Tool in assessing the risk defendant presented to the victim. The court found that despite defendant's apology at sentencing, he did not have "current insight about the harm he caused" the victim and the danger his violence posed for several reasons. At trial, defendant blamed the victim and "claimed he and [the victim] had rough, consensual sex," which lacked credibility and was inconsistent with the trial evidence. The court further referenced defendant's conduct at sentencing,[*] stating that while it "was imposing its sentence, [defendant] began to move his head

[*] At oral argument defendant asserted that this conduct did not occur at sentencing. In support, he points to the trial transcript that reflects identical behavior during trial and claims the trial court incorrectly attributed his trial conduct to the sentencing hearing. The trial transcript does contain references to defendant's conduct while the sentencing hearing transcript does not. As explained more fully below, we need not decide whether the conduct occurred at trial or during the sentencing hearing to resolve this appeal.

right to left appearing to visibly disagree" with the court, and defendant "then turned around to stare at [the victim] . . . until the court officer instructed him to stop and look forward." Finally, the court highlighted the critical need for punishment and deterrence in this case. The court concluded its original sentence was proper given the nature and circumstances of the crimes, the risk of harm to the public, especially the victim, and defendant's need for rehabilitation. Defendant appeals.

¶ 8. A defendant may request a sentencing court reduce their sentence under Vermont Rule of Criminal Procedure 35(b). See 13 V.S.A. § 7042(a) (stating same). Sentence reconsideration is "a limited remedy"; its purpose is to provide the 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, 944 A.2d 224 (mem.) (emphasis added) (quotation omitted), and "reconsider the sentencing decision absent the heat of trial pressures and in calm reflection," State v. Therrien, 140 Vt. 625, 627, 442 A.2d 1299, 1301 (1982). The court considers factors "present at the time of the original sentencing, rather than defendant's conduct and behavior since sentencing." State v. LaPine, 148 Vt. 14, 15, 527 A.2d 1150, 1150 (1987). Reconsideration is not "a forum to review post-incarceration circumstances or events." King, 2007 VT 124, ¶ 6.

¶ 9. A trial court has broad discretion in determining which factors it considers for a motion for sentence reconsideration. Id. The trial court is not required to address every sentencing factor when deciding a motion for sentence reconsideration. State v. Smith, 2026 VT 22, ¶¶ 19-20, __ Vt. __, 363 A.3d 928; see also State v. Stearns, 2022 VT 54, ¶ 12, 217 Vt. 276, 288 A.3d 173 ("Although in some cases sentencing reconsideration may entail revisiting all of the [sentencing] factors, we cannot say that a wholesale review will be required in all or most cases."). We review a trial court's denial of a motion for sentence reconsideration for an abuse of discretion. State v. Oscarson, 2006 VT 30, ¶ 7, 179 Vt. 442, 898 A.2d 123. A court abuses its discretion if it "withheld discretion or exercised it on grounds clearly untenable or unreasonable." Id.

¶ 10. Defendant argues the court either erred by considering new evidence that occurred since sentencing without providing him a hearing or erred in its recollection that this occurred at sentencing at all. On the one hand, defendant asserts that his conduct of moving his head from left to right and staring at the victim did not happen at the sentencing hearing and instead happened at trial. Defendant relies on the fact that the sentencing transcript does not contain his exchange with a court officer where he was told to stop staring at the victim. The State responds that this conduct happened at sentencing while the trial court was imposing its sentence, and in any event, if defendant believed the transcript was incomplete in not identifying that, he should have attempted to correct or modify the record. See V.R.A.P. 10(f) ("If any difference arises about whether the record truly discloses what occurred in the superior court, the difference must be submitted to and settled by that court and the record conformed accordingly."). Alternatively, defendant argues that if his conduct did take place as the trial court recited, his conduct was post-sentencing and it was therefore error for the trial court to consider it in resolving his motion for sentence reconsideration. See Stearns, 2022 VT 54, ¶ 10 (explaining court cannot consider post-sentencing conduct in sentence reconsideration because purpose is for court to reflect on sentencing decision at time of sentencing "absent the heat of trial pressures").

¶ 11. We do not need to resolve the parties' differing accounts of the record to resolve this issue. To the extent that defendant's conduct occurred at trial as defendant claims, the court did not abuse its discretion in considering that conduct. A sentencing court may consider conduct and demeanor at trial without providing advance notice to a defendant. State v. Charland, 2011 VT 107, ¶¶ 21-22, 190 Vt. 389, 35 A.3d 124 (observing that prior decisions had established that "the court could take into account observations during the trial in determining the sentence to impose" without advance notice to defendant); see V.R.Cr.P. 32(a)(1)(C) (affording defendant opportunity to give allocution); State v. Saari, 152 Vt. 510, 520, 568 A.2d 344, 350-51 (1989) (observing allocution gives defendant "opportunity to address the bench prior to sentencing" and

"primary purpose of the right" is "to affect the court's decision"). Because conduct and demeanor observed during trial and sentencing can be considered during sentence imposition, these are relevant factors "present at the time of the original sentencing." LaPine, 148 Vt. at 15, 527 A.2d at 1150. Thus, a sentencing court is authorized to account for these during sentence reconsideration. Id.

¶ 12. Alternatively, if defendant's conduct occurred at sentencing as the trial court recounted, there would still be no error because it happened contemporaneously with the court's pronouncement of defendant's sentence. See State v. Hinton, 2020 VT 68, ¶¶ 12-15, 213 Vt. 1, 239 A.3d 246 (citing first United States v. Cruz-Rivera, 954 F.3d 410, 413 (1st Cir. 2020); and then State v. Heide, 822 P.2d 59, 64 (Kan. 1991)) (comparing case law from other jurisdictions to analyze when sentence is imposed by trial court); Heide, 822 P.2d at 64 ("Sentence is imposed . . . when pronounced by the trial judge."). The court observed defendant's conduct before it had completed imposing his sentence. It did not abuse its discretion in considering defendant's sentencing hearing conduct during sentence reconsideration. See Oscarson, 2006 VT 30, ¶ 7 (stating court abuses discretion by withholding discretion or by exercising it on grounds clearly untenable or unreasonable).

¶ 13. Moreover, even if defendant's conduct came after imposition of the sentence, any error in considering it without providing defendant a hearing was harmless. V.R.Cr.P. 52(a) ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). This Court has applied the harmless-error doctrine to sentencing proceedings, State v. Bacon, 169 Vt. 268, 273, 733 A.2d 50, 54 (1999), including sentence reconsideration, King, 2007 VT 124, ¶ 9. Here, defendant claims he was "severely prejudiced" by the court's consideration of his conduct at sentencing, but he fails to explain how this prejudiced him. See State v. Baldwin, 140 Vt. 501, 514, 438 A.2d 1135, 1142 (1981) ("The burden to show prejudice is on the party claiming it," and if there is error, it is defendant's responsibility to "convince[] [the

Court] that he has been prejudiced"). The sentence was within the statutory limits and defendant does not challenge it as being based on "improper or inaccurate information." State v. Lumumba, 2014 VT 85, ¶ 22, 197 Vt. 315, 104 A.3d 627 ("Absent exceptional circumstances, we will defer to the court's judgment so long as the sentence is within the statutory limits and was not based on improper or inaccurate information." (quotation omitted)).

¶ 14. Further, the court did not err by determining no hearing was necessary in light of the record and defendant's motion. Defendant's motion relied on the existing record. Evidence was not necessary to dispose of the motion; there was no real dispute as to any relevant fact. Reporter's Notes—1982 Amendment, V.R.Cr.P. 47 (recognizing court can refuse to grant hearing where evidence is unnecessary to dispose of motion for reconsideration); State v. Allen, 145 Vt. 393, 396, 488 A.2d 775, 777 (1985) (holding court will not abuse its discretion if it denies motion for reconsideration without evidentiary hearing when that court gave "obvious consideration . . . after lengthy and detailed proceedings"). Defendant was not entitled to advance notice that his behavior at sentencing would be considered during reconsideration because he was aware of his conduct at sentencing; as such his conduct was a factor "present at the time of the original sentencing." LaPine, 148 Vt. at 15, 527 A.2d at 1150.

¶ 15. The court carefully considered the most relevant sentencing factors and explained why the original sentence was consistent with the goals of deterrence, punishment, and rehabilitation. It detailed its reasons for maintaining the original sentence based on its analysis of the nature and circumstances of the crimes, the risk of harm defendant presented, especially to the victim, and the need for defendant's rehabilitation. The court's discussion of defendant's behavior in the courtroom was a small part of the court's determination that defendant lacked insight into the harm he caused. Because the court's decision was supported by the remainder of its analysis, any improper consideration of defendant's behavior in the courtroom during trial or sentencing

was harmless. See Bacon, 169 Vt. at 273, 733 A.2d at 54 (holding where other appropriate factors "provided an independent basis" to support sentencing decision, any error was harmless).

Affirmed.

FOR THE COURT:

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Chief Justice