

STATE OF VERMONT

SUPERIOR COURT

Rutland Unit

CIVIL DIVISION

Docket No. 475-8-15 Rdcv

IN RE ANTHONY BRIDGER,

Petitioner

DECISION

Petitioner's Motion for 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, Anthony Bridger. The petitioner is represented by Seth Lipschutz of the Prisoner's Rights Office, with law clerk Katherine Spindler assisting. Deputy State's Attorney John D. G. Waszak represents the State. The parties have submitted cross motions for summary judgment. For the reasons set forth below, the Court grants summary judgment in favor of the State and dismisses the petition.

The Petitioner pled guilty to multiple counts of burglary on February 12, 2010 and was sentenced to a term of imprisonment of six to twenty 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.

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 February 12, 2010. 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: Do you agree that the affidavit of the VSP troopers that were – the affidavit – numerous affidavits, provide a factual basis to establish each of the essential elements of each of the charges?

THE DEFENDANT: Yes.

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 burglary charges to which the Petitioner pled guilty are not factually complex offenses that require a careful clarification as to what specific facts satisfy specific necessary elements of each 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 the . . . affidavits provide a factual basis to establish each of the essential elements of each of the charges.” The Petitioner answered “yes.” He now asks this Court to interpret that “yes” as something less than an admission of the truth of the facts set forth in those affidavits.

However, Petitioner in this case specifically agreed that the affidavits provided a factual basis for each element of each of the charges.

This case is controlled by *Cleary*, 2003 VT 9 at ¶ 29, and *Morrisette*, 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 "yes" was a stipulation to the factual basis of the charges. As the State correctly notes, the plea court fully advised the Petitioner of the elements of the offense and reminded him of the name of each of his victims. The Petitioner entered his plea and then expressed his regret for the hurt he caused his victims. This was not the *Stocks* situation, in which the Petitioner only acknowledged that he understood the State's allegations of the factual basis.

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, and the petition is dismissed.

ORDER

For the reasons set forth above:

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

Dated at Rutland this 31st day of March, 2016.

Mary Miles Teachout
Superior Court Judge