

STATE OF VERMONT

**SUPERIOR COURT
Rutland Unit**

**CIVIL DIVISION
Docket No. 83-2-15 Rdev**

**In re THEODORE SMITH,
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, Theodore Smith. The petitioner is represented by Dawn Matthews of the Prisoners' Rights Office. 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 the State and dismisses the petition.

The Petitioner pled guilty to aggravated assault on September 17, 2010 and was sentenced to a term of imprisonment of two to ten 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 Theresa DiMauro in the Criminal Division of the Rutland Unit of the Superior Court on September 17, 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: Okay. So do you admit that on January 23rd of 2010 at Rutland, you knowingly caused bodily injury to another, that being Dillon Owens, with a deadly weapon?

THE DEFENDANT: Yes.

THE COURT: And what is your plea to that charge?

THE DEFENDANT: Guilty.

THE COURT: The Court is satisfied the plea is voluntary. It's made with acknowledgement of the consequences and a knowing waiver of your constitutional rights, has a factual basis for it. The Court accepts it, enters a judgment of guilty.

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 aggravated assault 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 elements of the offense. This is in contrast to 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

“admit[ted] that on January 23rd of 2010 at Rutland, [he] knowingly caused bodily injury to another, that being Dillon Owens, with a deadly weapon.” The Petitioner answered “yes.” The Petitioner’s contention that he “was never asked to admit the truth of his actions,” Motion for Summary Judgment, 2, is difficult to reconcile with these undisputed facts.

The plea colloquy was manifestly sufficient under Rule 11(f). The plea court directly asked the Petitioner whether he in fact performed the charged criminal act, and the Defendant answered in the affirmative. There is little more that the plea court could have done to satisfy itself that there was a 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 12th day of April, 2016.

Mary Miles Teachout
Superior Court Judge