

SUPREME COURT OF VERMONT

State v. Greene

172 Vt. 610 (2001) · Decided August 28, 2001

SUMMARY

The Vermont Supreme Court affirmed a mittimus directing the defendant to serve a twelve-to-forty-eight-month sentence through preapproved furlough in an intensive substance abuse program, with confinement in a correctional facility until an appropriate program placement became available. The court held that the mittimus did not impermissibly increase the sentence or conflict with the plea agreement, and that inconsistent boilerplate language in the original order constituted a clerical error. The court also rejected the defendant’s request to withdraw his plea.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	August 28, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a mittimus issued after a status conference that directed him to serve his sentence on preapproved furlough in an intensive substance abuse program, while commencing service in a correctional facility until an appropriate program placement became available.
STANDARD OF REVIEW	The court reviewed whether the mittimus impermissibly altered the sentence imposed under the plea agreement and whether defendant was entitled to withdraw his plea; the opinion does not state a separate formal standard of review.
PRECEDENTIAL VALUE	published
PARTIES	Greene v. State

TOPICS

- sentencing
- plea bargaining
- probation
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- plea bargaining

QUESTIONS PRESENTED

1. Whether the later mittimus impermissibly increased or changed the sentence imposed in the original sentencing order and plea agreement.
2. Whether directing defendant to begin serving the sentence in a correctional facility until an appropriate furlough-program placement became available entitled defendant to withdraw his guilty plea.
3. Whether the original sentencing order's reference to supervised community service controlled over the substantive furlough language incorporated from the plea agreement.

HOLDINGS

1. The later mittimus did not depart from or increase the original sentence because the plea agreement and the substantive portion of the original sentencing order required service through preapproved furlough in the intensive substance abuse program; the inconsistent supervised-community-sentence language was a clerical error.
2. A defendant sentenced to furlough accepts the possibility that the Department of Corrections may revoke or discontinue furlough and require incarceration without a parole-board hearing; directing defendant to begin service in a correctional facility pending a suitable program placement was within the department's statutory authority.
3. Defendant was not entitled to withdraw his plea because the sentence imposed by the later mittimus was the sentence contemplated by the plea agreement, and the record did not show that he sought withdrawal after the challenged mittimus.

KEY QUOTATIONS

“a clerical error must not be one of judgment or even of misidentification, but merely of recitation, or the sort that a clerk or amanuensis might commit, mechanical in nature.” (172 Vt. at 611)

“In other words, the degree of decisional control over a defendant by the corrections department is the same whether the defendant is on furlough or is incarcerated.” (172 Vt. at 612)

“We discern no cause that would require defendant be given leave to withdraw his plea.” (172 Vt. at 613)

FACTUAL BACKGROUND

Defendant pleaded guilty to two prescription-fraud counts under an agreement providing consecutive six-to-twenty-four-month sentences served on preapproved furlough in an intensive substance abuse program. The original sentencing order contained boilerplate language referring to a supervised community sentence, but its substantive language incorporated the furlough arrangement. After repeated stays, defendant failed to report to the Department of Corrections, and a suitable first-floor program placement became unavailable after defendant sought another continuance. The later mittimus directed that he begin serving the sentence in a correctional facility until a suitable intensive substance abuse program bed became available.

PROCEDURAL HISTORY

Defendant pleaded guilty to two prescription-fraud charges pursuant to an agreement providing for consecutive six-to-twenty-four-month sentences to be served through preapproved furlough in an intensive substance abuse program. After stays, failures to report, medical concerns, and the loss of a suitable program placement, the trial court issued a new mittimus specifying temporary incarceration pending placement. Defendant appealed, arguing that the mittimus increased his sentence and entitled him to withdraw his plea. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Guevremont, 829 F.2d 423, 426 (3d Cir. 1987)
- Conway v. Cumming, 161 Vt. 113, 116, 118-19, 636 A.2d 735, 737-38 (1993)
- State v. Belanus, 144 Vt. 166, 170, 475 A.2d 227, 229 (1984)
- United States v. Daddino, 5 F.3d 262, 266 (7th Cir. 1993)
- Lorrain v. Ryan, 160 Vt. 202, 207 n.1, 628 A.2d 543, 547 n.1 (1993)