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STATE OF VERMONT  
Office of State's Attorney  
Essex County

April 3, 2020

Angel Desilets, Clerk  
Vermont Superior Court  
Essex Unit, Criminal Division  
P O Box 75  
Guildhall, VT 05905

Re: State v Jason Fournier;  
Dkt No.: 77-12-19; 78-12-19, 59-9-19 Excr

Re: State v Biarchy Mayberry  
Dkt No.: 15-3-19 Excr

Re: State v Patrick Lowery  
Dkt No.: 79-12-19 Excr  
Dkt No.: 697-12-18 and 629-11-19 Cacr

Dear Angel:

Enclosed for filing with the Court in the above mentioned is *the State's Supplemental Motion Objecting to Chief Judge's "Consolidation Order" Transferring bail Review Motions to Judge Pacht with attachments.*

If you have any question, please contact my office.

Thank you.

A handwritten signature in blue ink that reads "Vince Illuzzi".

Vince Illuzzi  
Attorney for State

Enclosures

cc: Laura Wilson, Esq.  
Thomas Paul, Esq.  
Allen Franklin, Esq.  
Sam Swope, Esq.

STATE OF VERMONT

SUPERIOR COURT  
ESSEX/CALEDONIA COUNTY

CRIMINAL DIVISION  
DOCKET NO.:77-12-19 EXCR  
78-12-19 EXCR  
59-9-19 EXCR

STATE OF VERMONT

V.

JASON FOURNIER, DEFENDANT

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STATE OF VERMONT

DOCKET NO.: 79-12-19 EXCR  
697-12-18 Cacr  
629-11-19 Cacr

V.

PATRICK LOWERY, DEFENDANT

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STATE OF VERMONT

DOCKET NO.:15-3-19 EXCR

V.

BIARCHY MAYBERRY, DEFENDANT

**State's Supplemental Motion Objecting To Chief Judge's "Consolidation Order"**  
**Transferring Bail Review Motions to Judge Pacht**

NOW COMES the State of Vermont, by and through counsel, and hereby supplements its motion of April 1, 2020 by specifically objection to the chief judge's "consolidation order."

The State submits its Memorandum of Law in support of its position and in opposition to consolidating the cases in the Chittenden Unit.

Already, there have been two orders entered by the Chittenden Unit without input from the victims. The amended mittimuses were not entered by the sentencing judge. See attached amended mittimuses.

The original contested sentencings were conducted by the Orleans Unit (Bent, J.) and Judge Pacht was not privy to the evidence from those hearings.

### **Memorandum Of Law**

JURISDICTION OVER THESE MATTERS (AND PLACE OF PROSECUTION) SHOULD REMAIN IN THE ESSEX UNIT OF VERMONT SUPERIOR COURT

1. V.R.Cr.P. 18(a) provides that “[e]xcept as otherwise permitted by statute or by these rules, the prosecution must be had in the unit in which the offense was committed; provided, however, that when a defendant is charged with offenses in other units that could be joined for trial if committed in the same unit, the court may order, upon motion, that prosecution may be held in any of the units where such offenses are charged.”

V.R.Cr.P. 18(b) provides exceptions, including: “(1) [i]nitial appearance and arraignment under Rules 5 and 10; (2) [a] preliminary hearing under Rule 32.1(a)(1); [or] (3) [a] hearing to review bail or conditions of release after arrest upon a warrant for failure to appear in another unit.”

2. Under the present circumstances, none of the exceptions are applicable to the present bail review in this matter. The interest in judicial economy must be carefully balanced against the court of original jurisdiction having familiarity with the case and role as an ongoing participant in the local criminal justice system. The rationale of the Chief

Superior Judge in directing consolidation, including situations like this case where an evidentiary hearing may need to be held, is not transparent to this office, the public, or victim associated with this case.

3. In this situation, the Essex Unit, Criminal Division, of the Vermont Superior Court remains operational, has repeatedly conducted prompt and timely hearings as authorized under A.O. 49, has phone and video teleconferencing capability (in St. Johnsbury) to enable remote participation of the Defendant and parties, and has a sufficiently open schedule to address this matter in a timely fashion.

4. The assertion of emergency authority and application of V.R.Cr.P. 57 is not proper in this situation. Here, procedure is “specifically prescribed” under V.R.Cr.P. 18(a), and the court does not have a clear grant of authority under A.O. 49 to circumvent or suspend the Rules of Criminal Procedure to remove this action to a different judicial unit and before a specially assigned judge with no prior knowledge of the case or procedural history. Such action would only seem warranted if the Essex Unit was, itself, incapable of taking up the bail review.

### CONCLUSION

The Vermont Rules Of Criminal Procedure specifically provide a procedure and venue to address bail review and sentencing considerations. In fact, the Criminal Division already has conducted a number of hearings in a timely and orderly fashion.

WHEREFORE, the State respectfully requests that the Court continue the Defendants’ bail status, i. e., no bail or cash bail, made following evidentiary hearings in the Essex Unit.

Further, the State requests that as a threshold matter, these cases for bail review be returned to the Essex Unit, Criminal Division of the Vermont Superior Court.

DATED: April 3, 2020



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Vincent Illuzzi, Esq.  
State's Attorney

cc: Laura Wilson, Esq.  
Thomas Paul, Esq.,  
Alan Franklin, Esq.  
Sam Swope, Esq.

AMENDED MITTIMUS TO COMMISSIONER OF CORRECTIONS

Attachment  
A

Vermont Superior Court  
Orleans Criminal Division

Re: Sheddrick, Kenneth  
Date of Order: 03/27/20  
Date of Birth: 08/05/1965  
Pros: Michael A. Cricchi  
Atty: Jill E. Jourdan

372-6-18 Oscr

TO ANY LAW ENFORCEMENT OFFICER OF THE STATE OF VERMONT

You are ordered to commit the above-named defendant to the Commissioner of Corrections or an authorized representative who is ordered to receive the defendant in accordance with the following sentence(s):

372-6-18 Oscr Ct. 1: Title 13 VSA 1028(1)  
ASSAULT-SIMPLE-ATTEMPTED BY MENACE LE OFFICER  
Minimum: 12 Mos Maximum: 24 Mos All susp. but 87 Days  
Credit for time served according to law  
Sentence to commence 01/08/20

By Order of the Court: John L. Pacht Judge John L. Pacht

OFFICER'S RETURN

By Authority of this mittimus, I committed the above named defendant to  
the \_\_\_\_\_ AM/PM  
Location/Corr. Facility Date Time

and left the Supervising Officer of the facility a copy of this Mittimus with my return.

\_\_\_\_\_  
Officer's Signature Title

A M E N D E D P R O B A T I O N O R D E R

Vermont Superior Court  
Orleans Criminal Division

Re: Sheddrick, Kenneth

Date of Order: 03/27/20

TO THE COMMISSIONER OF CORRECTIONS: The above named defendant was convicted and sentenced as follows:

	Minimum	Maximum	All Suspended
372-6-18 Oscr 1 Title 13 VSA 1028(1)	12 MO	24 MO	But 87 DAYS
ASSAULT-SIMPLE-ATTEMPTED BY MENACE LE OFFICER			
Term Expires: January 7, 2022			

The execution of the sentence is partially suspended and the defendant is placed on probation in the care and custody of the Commissioner of Corrections for the term(s) as shown above under the following conditions:

STANDARD CONDITIONS OF PROBATION

- A. You shall not be convicted of another crime or engage in criminal behavior.
- B. You shall give your probation officer your home address, mailing address, telephone number, and email address. If any of those change, you must notify your probation officer within 24 hours.
- C. You shall notify your probation officer within 72 hours if you are arrested or given a citation.
- D. You must meet with your probation officer at reasonable times as directed by a judge or your probation officer. Upon request, you must allow your probation officer to visit you at reasonable times wherever you are staying.
- E. Your probation officer may restrict or prohibit travel to any state as required by the Interstate Compact For Adult Offender Supervision.
- F. You shall provide your probation officer with the location of your job and employment status. If you change or lose your job, you must notify your probation officer within 72 hours.

OTHER CONDITIONS:

2. You shall not drink alcoholic beverages to the extent they interfere with your employment or the welfare of your family, yourself or any other person.
6. You shall submit to breath-alcohol testing upon request of your probation officer.
10. You shall submit to a warrantless search of your person, belongings, residence or vehicle if your probation officer has a reasonable suspicion that you possess alcohol, drugs or contraband in violation of these conditions.

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11. You shall comply with the requirements of electronic monitoring (e.g. GPS or SCRAM), as directed by your probation officer.
13. You must have a screening for the issues that are marked below. You must complete the screening by the date established by your probation officer. If the screening recommends that counseling or treatment is needed, including residential treatment, you must complete the counseling or treatment as directed by your probation officer. You must attend and comply with the counseling or treatment requirements and satisfy those requirements.
  - (a) Alcohol
  - (c) Mental Health
14. You must sign any required waivers or releases and allow any treatment or counseling provider to tell your probation officer and the court about your attendance and participation in the counseling or treatment, and about the results of any substance abuse or alcohol urinalyses taken by you in connection with the counseling or treatment.
20. You shall not have contact with KS, which includes all forms of written, oral, electronic, social media, or other direct contact and all forms of indirect contact through third parties, except .
21. Your probation officer may limit or prohibit contact with KS during the term of probation based upon the person's request.
22. You shall not abuse or harass Karen Sherman. Such conduct includes actions directed at a specific person, or a member of the person's family that would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury or death, including but not limited to verbal threats, written, telephonic or other electronically communicated threats, vandalism, or physical contact without consent. It also includes multiple attempts to communicate with the person after the person has informed the probationer that such contact is not welcome.

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Probation Order for Sheddrick, Kenneth

Date of Order: 03/27/20

- 23. You shall not engage in violent or threatening behavior. Violent behavior includes physical contact with another without consent, unlawful restraint of another, or physical contact by mutual affray. Threatening behavior is conduct that would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.
- 28. You must complete 50 hours of community service at the direction and to the satisfaction of your probation officer.
- 34. Standard conditions: A-D

By Order of the Court: *John L. Pacht*  
 Judge John L. Pacht

I received a copy of this Probation Order.

\_\_\_\_\_  
 Defendant's Signature      Date

I understand these conditions and I agree to follow them. I understand that if I do not follow these conditions, the court may require me to serve my full sentence in jail.

\_\_\_\_\_  
 Probation Officer      Date      Defendant      Date

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CRIMINAL DIVISION  
Docket No. 372-6-18 Oscr

State vs. Sheddrick, Kenneth

**ENTRY REGARDING MOTION**

Count 1, ASSAULT-SIMPLE-ATTEMPTED BY MENACE LE OFFICER (372-6-18 Oscr)  
Count 2, DISORDERLY CONDUCT-OBSTRUCTING VEHICLE OR PEDESTRIAN TRAFFIC (372-6-18 Oscr)  
Count 3, RESISTING ARREST #1 (372-6-18 Oscr)

Title: Motion to Reconsider Sentence (Motion 1)  
Filer: Prisoner's Rights Office  
Attorney: Emily B. Tredeau  
Filed Date: March 23, 2020

No response filed

Defendant has moved for reconsideration of his sentence pursuant to V.R.Cr.P. 35(b). Mr. Sheddrick was sentenced pursuant to a plea agreement to 12 to 24 months all suspended except 90 days to serve on a misdemeanor conviction for simple assault—attempt to menace a law enforcement officer. Apparently, the incarceration term is due to be completed on March 30, 2020. He argues that he is receiving no programming and that the COVID 19 pandemic and the extraordinary strain it will put on the correctional system puts inmates who are unable to social distance at significant risk. The state responds that it is ordinarily inappropriate to reconsider sentences that are subject to a negotiated plea and that DOC is imposed with the responsibility to administer medical care pursuant to 28 VSA § 801 et seq.


The court agrees that under ordinary circumstances, a negotiated plea agreement would not be subject to reconsideration. But these are hardly ordinary times. The court fully acknowledges that DOC is charged with administering medical care and presumes they will make reasonable efforts to seek to provide that care. However, it is equally clear that emergency orders have been issued by the Governor and the Supreme Court recognizing that even small groups meeting together are not only increasing risks of those who meet to contract the highly contagious COVID 19 virus but also spreading the virus to others they meet. The Governor has closed all schools through the end of the school year as well as all nonessential businesses seeking to limit social contact and thus the spread of the virus. Clearly, a prison, which is unable to practice social distancing as suggested, and has many people gathered in relatively confined areas, would benefit from having its population safely reduced.

The incarceration portion of the sentence here was done for punitive purposes. Defendant is due to get out shortly; he is not subject to any programming. He is essentially serving "dead time." He has already been incarcerated for most of the unsuspended term, so a punitive response has been served. There is no magic need to the remaining few days to be served. Against this, is the risk to all staff and inmates posed by incarcerating individuals where unnecessary for public safety.

Given the extraordinary circumstances that exist, the court grants the motion to reconsider. The sentence shall be 12 to 24 months, all suspended except for the time Mr. Sheddric has served. It appears that is 87 days if the filing is correct. The amended mittimus shall be promptly prepared and sent to facility at which Mr. Sheddric is housed. Mr. Sheddric shall contact his probation officer by the end of business, March 30,2020.

So ordered.

Electronically signed on March 27, 2020 at 02:39 PM pursuant to V.R.E.F. 7(d).



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John L. Pacht  
Superior Court Judge

Notifications:

Jill E. Jourdan (ERN 4502), Attorney for Defendant Kenneth Sheddric

Michael A. Cricchi (ERN 9935), Attorney for Plaintiff State

Emily B. Tredeau (ERN 4582), Attorney for party 1 Prisoner's Rights Office

Attachment  
B

AMENDED MITTIMUS TO COMMISSIONER OF CORRECTIONS

Vermont Superior Court  
Orleans Criminal Division

Re: Sylvester, Keith Jr.  
Date of Order: 03/27/20  
Date of Birth: 03/18/1989  
Pros: Michael A. Cricchi  
Atty: Gertrude Miller

645-10-18 Oscr

TO ANY LAW ENFORCEMENT OFFICER OF THE STATE OF VERMONT

You are ordered to commit the above-named defendant to the Commissioner of Corrections or an authorized representative who is ordered to receive the defendant in accordance with the following sentence(s):

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645-10-18 Oscr Ct. 3: Title 13 VSA 1201(c)(1)  
BURGLARY  
Minimum: 16 Mos Maximum: 2 Yrs All susp. but 70 Days  
Credit for time served according to law  
Sentence to commence 01/14/20

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By Order of the Court: John L. Pacht Judge John L. Pacht

OFFICER'S RETURN

By Authority of this mittimus, I committed the above named defendant to  
the \_\_\_\_\_ AM/PM  
Location/Corr. Facility Date Time

and left the Supervising Officer of the facility a copy of this Mittimus  
with my return.

\_\_\_\_\_  
Officer's Signature Title

M O D I F I E D P R O B A T I O N O R D E R

Vermont Superior Court  
Orleans Criminal Division

Re: Sylvester, Keith Jr.

Date of Order: 03/27/20

TO THE COMMISSIONER OF CORRECTIONS: The above named defendant was convicted and sentenced as follows:

	Minimum	Maximum	All Suspended
645-10-18 Oscr 3 Title 13 VSA 1201(c)(1)	16 MO	2 YR	But 70 DAYS

BURGLARY  
Term Expires: January 13, 2023

The execution of the sentence is partially suspended and the defendant is placed on probation in the care and custody of the Commissioner of Corrections for the term(s) as shown above under the following conditions:

STANDARD CONDITIONS OF PROBATION

- A. You shall not be convicted of another crime or engage in criminal behavior.
- B. You shall give your probation officer your home address, mailing address, telephone number, and email address. If any of those change, you must notify your probation officer within 24 hours.
- C. You shall notify your probation officer within 72 hours if you are arrested or given a citation.
- D. You must meet with your probation officer at reasonable times as directed by a judge or your probation officer. Upon request, you must allow your probation officer to visit you at reasonable times wherever you are staying.
- E. Your probation officer may restrict or prohibit travel to any state as required by the Interstate Compact For Adult Offender Supervision.
- F. You shall provide your probation officer with the location of your job and employment status. If you change or lose your job, you must notify your probation officer within 72 hours.

OTHER CONDITIONS:

3. You shall not purchase, possess or consume any alcohol.
6. You shall submit to breath-alcohol testing upon request of your probation officer.
11. You shall comply with the requirements of electronic monitoring (e.g. GPS or SCRAM), as directed by your probation officer.

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13. You must have a screening for the issues that are marked below. You must complete the screening by the date established by your probation officer. If the screening recommends that counseling or treatment is needed, including residential treatment, you must complete the counseling or treatment as directed by your probation officer. You must attend and comply with the counseling or treatment requirements and satisfy those requirements.

(b) Substance Abuse

14. You must sign any required waivers or releases and allow any treatment or counseling provider to tell your probation officer and the court about your attendance and participation in the counseling or treatment, and about the results of any substance abuse or alcohol urinalyses taken by you in connection with the counseling or treatment.

26. Your probation officer may restrict those with whom you associate.

27. You shall not buy, have or use any firearms, muzzleloaders or other deadly weapons, regardless of whether they are operational or loaded. Other deadly weapons include any other weapon, device, instrument, material or substance, whether animate or inanimate, that, in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.

34. Standard conditions: A-F

By Order of the Court: 151 Hon. John Pacht  
Judge John L. Pacht

I received a copy of this Probation Order.

\_\_\_\_\_  
Defendant's Signature      Date

I understand these conditions and I agree to follow them. I understand that if I do not follow these conditions, the court may require me to serve my full sentence in jail.

\_\_\_\_\_  
Probation Officer      Date      Defendant      Date

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CRIMINAL DIVISION  
Docket No. 645-10-18 Oscr

State vs. Sylvester, Keith Jr.

**ENTRY REGARDING MOTION**

Count 1, UNLAWFUL MISCHIEF \$250 OR LESS (645-10-18 Oscr)

Count 2, RESISTING ARREST #1 (645-10-18 Oscr)

Count 3, BURGLARY (645-10-18 Oscr)

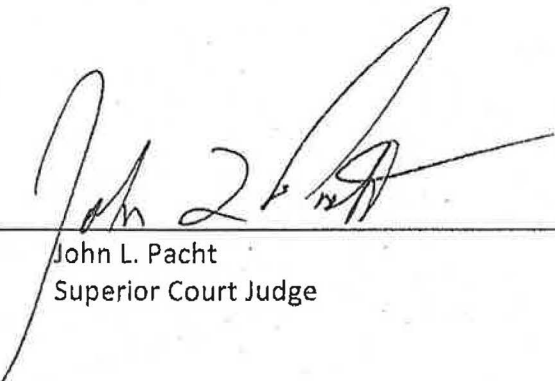
Title: Motion to Reconsider Sentence (Motion 1)  
Filer: Prisoner's Rights Office  
Attorney: Emily B. Tredeau  
Filed Date: March 23, 2020

No response filed

The motion is GRANTED. For the reasons justifying the motion to reconsider the sentence, please see order issued on this date in State v. Sheddrick, 372-6-18 Oscr. In addition to the reasons stated therein, the court notes that this too was largely a punitive sentence only. As the state remarked in its memorandum in opposition, Mr. Sylvester has made real strides in his recovery in the over 15 months that the case was pending prior to sentencing. Under the present sentence, he was to serve 90 days on a split sentence. He has an apartment that apparently is already lined up. The court does not find that legitimate goals of sentencing will be diminished through a reduction of the sentence. Accordingly, the court shall modify the sentence of burglary--court three of the docket-- to 16 months to 2 years all suspended but 70 days to serve. An amended mittimus shall be promptly prepared and sent to the correctional facility housing Mr. Sylvester. Mr. Sylvester shall contact his probation officer by end of business March 30, 2020.

So ordered.

Electronically signed on March 27, 2020 at 03:11 PM pursuant to V.R.E.F. 7(d).



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John L. Pacht  
Superior Court Judge

Notifications:

Michael A. Cricchi (ERN 9935), Attorney for Plaintiff State

Gertrude Miller (ERN 4512), Attorney for Defendant Keith Sylvester

Emily B. Tredeau (ERN 4582), Attorney for party 1 Prisoner's Rights Office