

STATE OF NEW HAMPSHIRE

COOS, SS.

SUPERIOR COURT

State of New Hampshire

v.

Dustin Duren

214-2024-CR-28

DEFENDANT'S MOTION TO VACATE PRE-SENTENCE INVESTIGATION ORDER

Now comes the Defendant, Dustin Duren, through counsel, and requests that the Court vacate its October 28, 2025 order that the New Hampshire Department of Corrections (DOC) conduct a pre-sentence investigation (PSI), and that the defendant must present himself to be interviewed. The defendant relies upon his right to due process and right against self-incrimination under the State and Federal Constitutions and the published opinions in State v. Cote, 129 N.H. 358 (1987) and State v. Tufts, 136 N.H. 517 (1992). In support, the defendant states:

1. Immediately after a verdict was announced in this case, the Court ordered that a PSI be completed. The Court's written order states, "The New Hampshire Department of Corrections is requested to conduct a presentence investigation pursuant to RSA 651:4, and to file a written report with the Court at least ten (10) days before the sentencing date. The defendant shall present himself to be interviewed for the pre-sentence investigation at the date, time, and place determined by the Department of Corrections."

Granted. Paragraph 2 of the Court's Order issued October 28, 2025, is VACATED. So Ordered.



Honorable Jonathan S. Frizzell
November 10, 2025

Clerk's Notice of Decision
Document Sent to Parties
on 11/12/2025

2. Neither the State nor the Defendant was heard on whether a PSI is appropriate in this case prior to the Court's order, and defense counsel had no opportunity to consult with Mr. Duren regarding a PSI prior to the Court's order.
3. Mr. Duren moves that the Court vacate its order regarding a PSI.
4. A PSI is not required in this case. RSA 651:4 outlines when a PSI is required. The statute states, "upon the recommendation of the prosecution, the court shall order a presentence investigation report where the felony or misdemeanor was violent and the court has reason to believe that the defendant committed a similar act within the past year." RSA 651:4, I. That circumstance does not apply in this case. Because of that, a PSI is optional, at the discretion of the court.
5. Mr. Duren has two primary concerns about a PSI. The first is that the PSI will rely on information which cannot properly be considered by the Court. Discovery in this case is rife with unfounded accusations against Mr. Duren. In the process of conducting the PSI, the DOC may take those accusations into consideration when making its recommendation, or may interview witnesses who are the sources of those accusations. Those accusations cannot properly be considered by the court, and should not form a part of any sentencing recommendation.
6. The Supreme Court has explained that, "[w]e have held that judges in sentencing should not rely upon allegations of other crimes by the defendant when such allegations are unsubstantiated, resolved by acquittals, or the product of speculation." State v. Tufts, 136 N.H. 517, 519 (1992). "Our concern is that sentencing courts should not consider conclusory statements of criminal conduct lacking a factual basis, i.e., 'evidence [that] does not carry suspicion to the point

of probability.” Id. “What is at issue here is the quality and veracity of the information used in the process of judging and the ability of the defendant to have a meaningful opportunity to point to its deficiencies.” Id. at 520. “Under our law, the sentencing judge may rely on information supplied in the presentence report ... so long as the information is unchallenged or substantiated and not the product of speculation.” Id. The allegations referenced in the discovery are unsubstantiated and the product of speculation. They should not be used to inform sentencing recommendations.

7. In the past, the DOC has improperly used unsubstantiated allegations, and even conduct of which defendants were acquitted, in writing the PSI and making its sentencing recommendations. While on some occasions the DOC is explicit about its use of such improper information, on other occasions the DOC’s recommendations may be impacted by improper allegations, even when the PSI does not expressly explain that that is the case. The Defendant will not necessarily be able to discern the full extent to which those accusations inform the DOC’s sentencing recommendation, and therefore will be limited in his ability to challenge the DOC’s use of improper information. The more prudent course of action is to avoid conducting a PSI at all.
8. Mr. Duren’s second concern is that ordering a PSI places him in a catch-22: either participate in the PSI, thus potentially waiving his rights under the Fifth Amendment to the United States Constitution and Part One, Article 15 of the New Hampshire Constitution, or remain silent during the PSI, therefore resulting in a one-sided and incomplete report and recommendation.

9. For the above reasons, Mr. Duren asks that the Court strike its order relating to a PSI.

10. The State takes no position on the relief requested.

THEREFORE, Mr. Duren respectfully prays the Court:

- A) STRIKE its order relating to a pre-sentence investigation; or
- B) HOLD a hearing on the motion; and
- C) GRANT any other fair and just relief.

Respectfully submitted,

/s/ Margaret Kettles
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CERTIFICATE OF SERVICE

I certify that a copy of this has been forwarded to Bethany Durand, Esq. and Joshua Speicher, Esq. of the NH Attorney General's Office on November 7, 2025.

/s/ Margaret Kettles

Margaret Kettles, Esq.