For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JAHZEEL FENTON, Appellant/Defendant, v. **PEOPLE OF THE VIRGIN ISLANDS** Appellee/Plaintiff.	)	**S. Ct. Crim. No. 2017-0068** Re: Super. Ct. Crim. No. 347/2010 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Honorable Douglas A. Brady

Argued: June 12, 2018
Filed: November 16, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Yohana M. Manning, Esq.
St. Croix, U.S.V.I.
Attorney for Appellant,

Andrea Gosine, Esq.
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Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

Jahzeel Fenton appeals his conviction for assault in the first degree (domestic violence). He avers that he did not enter his no contest plea knowingly, voluntarily, and intelligently. Moreover, he has called upon us to review whether former Superior Court Rule 126 required the

Superior Court to inform him that it intended to deviate from the sentence recommendation embodied in a plea agreement he entered with the People and allow him an opportunity to withdraw his plea in light of the court's deviation—an issue of first impression in this Court. We affirm.

I. BACKGROUND

On March 19, 2010—while responding to a domestic violence dispute in Estate Two Williams in St. Croix—police officers witnessed Fenton standing over and looking down upon J.L. and shouting at her as she lay on her apartment floor, with gunshot wounds to her back and stomach. Authorities removed J.L.'s minor children, who were in the apartment when the incident occurred, from the home. Because of the gunshot wounds, J.L. sustained damage to her "stomach, pancreas, liver, small intestines and her vena cava artery," lost a kidney, and had her left leg amputated, which resulted in medical bills totaling over $100,000.

The People charged Fenton with ten counts related to murder, assault, unauthorized possession of a firearm, mayhem, and child abuse. Initially, Fenton plead "not guilty" to all counts. At a change of plea hearing held on August 8, 2016, Fenton notified the court of a plea agreement between him and the People, which provided that Fenton would plead guilty to Count II: assault in the first degree/domestic violence under 14 V.I.C. § 295(1) and 16 V.I.C. § 91(b)(1) and (2). In exchange for the guilty plea, the People agreed to move to dismiss the remaining counts with prejudice and recommend a prison sentence of 10 years. During the hearing, Fenton's counsel argued that the holding of *Heywood v. People*, 63 V.I. 846, 852 (V.I. 2015) was applicable to the case, to which the Superior Court stated:

> [T]he plea hearing binds both sides, and the [c]ourt must either follow the agreement of both sides or if the Court is inclined to impose pursuant to something outside the agreement of the parties, then the defendant has the right to withdraw the plea. So I am not sure how *Heywood* fit[s].

(J.A. 93-94). Fenton's counsel then requested that the court begin the plea colloquy, and the court did so. As required, the Superior Court notified Fenton that he might be at risk for receiving the maximum penalty for the offense. Unsure of the maximum number of years for the charge, in advising the defendant, the Superior Court relied on Fenton's counsel's assertion that the maximum penalty was 15 years. The court also stated:

> Apart from any term of imprisonment there would be a possibility -- at sentencing there could be part or all of the sentence to include probationary period. If there were a probationary period that were to be applied there may be a supervision fee in the amount of five hundred dollars ($500). There could be other conditions attached to that, which include restitution for any losses or bills that were incurred as a result of any activity on your part.

(J.A. 98.) The court then continued with standard allocution of rights advice to the defendant regarding entry of a guilty plea, such as being subject to additional conditions imposed by the court and the risk of losing the right to vote and to serve on a jury. When asked the routine question of whether he understood the consequences of entering a guilty plea, Fenton responded, "In light of the [holding in] *Heywood,* yes." (J.A. 99.) The court asked Fenton if he understands the "indirect and direct" consequences and "everything else . . . about the maximums." And, Fenton responded, "Yes." Thereafter, Fenton's counsel informed the court that the defendant was instead entering a plea of no contest; the defendant concurred, and the People had no objection to a no contest plea. The court asked Fenton whether he is pleading no contest because he personally wants to do so, and Fenton responded, "Yes." As a result, the Superior Court found that Fenton's plea was knowing and voluntary.

At a later hearing, Fenton's counsel acknowledged that she was incorrect about the maximum sentence to which she advised the Superior Court during the plea colloquy and that the

correct maximum was 20 years instead of 15 years. Consequently, the Superior Court corrected its misstatement, advising Fenton that he risked a maximum sentence of 20 years, and clarified that:

> In that session where you changed your plea to no contest, you were advised that I'm not bound by the plea agreement and that you were asked specifically whether you wanted to maintain that change of plea to no contest rather than have a jury trial . . . . But in light of what [Fenton's counsel] has to say, and just to make sure that you do understand, I'll tell you again that I'm not bound by the recommendation of the People that's in the plea agreement and you need to understand that you are subject, at sentencing on that change of plea, to the maximum amount under the law, which is 20 years.

(J.A. 48.) The Superior Court then stated that it would "rewind" the case, so that Fenton could decide whether he still wants to enter a no contest plea, renegotiate the plea agreement, or go to trial, and whether he wants his current attorney to continue representing him. The court then postponed sentencing.

At the reconvened sentencing hearing held on July 26, 2017—giving Fenton the opportunity to withdraw his plea because of the maximum sentence error—the Superior Court again advised Fenton that the court did not have to accept the plea agreement or the sentencing recommendation embodied in the plea agreement, and that, if he did not withdraw his plea, he faced a maximum sentence of 20 years, rather than 15 years. Fenton responded, "[A]long with the fact that I already plead no contest, I'm going along with the plea agreement." (J.A. 60.) After allocution, the Superior Court sentenced Fenton to the 20-year maximum sentence. The court also awarded restitution to the victim, under which Fenton would pay the Texas Prosthetics Center $162,390.56, the Houston Northwest Medical Center $1,535.00, Fresenius Prescription $60.07, and the Methodist Transplant Specialist $14.80 on behalf of the victim. An appropriate judgment

and commitment order followed on July 28, 2017. On August 7, 2017, Fenton timely appealed to this Court.[1] *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

This court has jurisdiction "over all appeals arising from final judgments, final decrees or final orders of the Superior Court[.]" 4 V.I.C. § 32(a); 48 U.S.C. § 1613a(d). Because the Superior Court's July 28, 2017 judgment and commitment is a final judgment, we have jurisdiction over Fenton's appeal. *See Prince v. People,* 57 V.I. 399, 404 (V.I. 2012). We exercise plenary review over constitutional challenges. *Browne v. People*, 56 V.I. 207, 217 (V.I. 2012). We also review the Superior Court's application of law *de novo* and review its findings of fact for clear error. *See Blyden v. People*, 53 V.I. 637, 646 (V.I. 2010). Finally, while "[t]his Court ordinarily reviews a sentence only for abuse of discretion," when "the Superior Court bases its decision on application of legal precepts," we exercise plenary review. *Heywood*, 63 V.I. at 852.

B. Voluntariness of the Plea

Fenton asserts that his plea of no contest was not knowing, voluntary, and intelligent because the Superior Court gave him a sentence to which he did not acquiesce. We disagree.

It is settled law that "a defendant must knowingly, voluntarily, and intelligently enter a guilty plea, which includes being advised of the minimum and maximum sentence that may be imposed for the offense," including monetary penalties, such as restitution. *Hightree v. People,* 60 V.I. 514, 530 (V.I. 2014); *Ward v. People*, 58 V.I. 277, 288 (V.I. 2013) (providing sentencing includes restitution); *see also Bryan v. Gov't of the V.I.,* 56 V.I. 451, 458 (V.I. 2012) ("As part of

[1] Fenton filed an amended notice of appeal the next day, on August 8, 2017.

the knowing requirement, the defendant must be advised of and understand the direct consequences of a plea.") (citation and internal quotation marks omitted). For instance, in *Heywood*, we held that a plea agreement was involuntary because neither the plea agreement nor the Superior Court advised the defendant that the court could include community service in his sentence. 63 V.I. at 860. We held that, as a result, the involuntary plea "automatically satisfie[d] the elements of the plain error test." *Id.*

Here, the Superior Court advised Fenton that the maximum sentence was 20 years. Although the Superior Court inadvertently stated that the maximum sentence was 15 years during the plea colloquy at the change of plea hearing, the Superior Court later remedied the mistake by advising Fenton that:

> In that session where you changed your plea to contest, you were advised that I'm not bound by the plea agreement and that you were asked specifically whether you wanted to maintain that change of plea to no context rather than have a jury trial . . . . But in light of what [Appellant's counsel] has to say, and you just make sure that you do understand, I'll tell you again that I'm not bound by the recommendations of the People that's in the plea agreement and you need to understand that you are subject, at sentencing on that change of plea, to the maximum amount under the law, which is 20 years.

(J.A. 47–48). The Superior Court also gave Fenton the opportunity to withdraw his plea due to the mistake, but Fenton refused. The exchange was as follows:

> THE COURT: If you seek permission to withdraw from the plea agreement, then I would consider your request to withdraw from the plea agreement but – and if you need to take time to talk to [Fenton's counsel] about it you can do that.
> FENTON: No. We already spoke about this and on the whole context of the North Carolina thing. And along with the fact that I already plead no contest, I'm going along with the plea agreements.
> THE COURT: Okay, with the understanding that notwithstanding the substance of the plea agreement and the recommendation of the People that you're exposed to being sentenced to a maximum of 20 years in prison. Do you understand that.
> FENTON: Yes, I understand.

(J.A. 60). Further, the Superior Court informed Fenton that:

> Apart from any term of imprisonment there would be a possibility -- at sentencing there could be part or all of the sentence to include probationary period. If there were a probationary period that were to be applied there may be a supervision fee in the amount of five hundred dollars ($500). There could be other conditions attached to that, which include restitution for any losses or bills that were incurred as a result of any activity on your part.

(J.A. 98.) Then, after allocution, the Superior Court sentenced Fenton to 20 years' imprisonment and imposed restitution obligations upon him.

Because the Superior Court adequately advised Fenton that his sentence might be up to 20 years and that his sentence could include restitution, Fenton was aware of the direct consequences of his plea. And the record indicates that Fenton understood those consequences. *See, e.g.*, *Bruno v. People*, 59 V.I. 748, 765 (V.I. 2013) (holding defendant's claim that he did not understand the consequences of his plea failed because the Superior Court explained those consequences to him). He appeared to have a strong understanding of the proceeding and the effect of his no contest plea. At the change of plea hearing, when the Superior Court asked Fenton whether he understood the consequences of entering a guilty plea, Fenton responded, "In light of . . . *Heywood*, yes." (J.A. 99.) Then, at the sentencing hearing when the court gave him the opportunity to withdraw his plea due to its misstatement of the maximum sentence, Fenton told the court "[w]e already spoke about this . . . along with the fact that I already plead no contest, I'm going along with the plea agreements."[2] (J.A. 60.) Thus, we conclude that Fenton knowingly, voluntarily, and intelligently entered the no contest plea. *See, e.g.*, *Brathwaite v. People*, 67 V.I. 609, 614-619 (V.I. 2017) (holding the Superior Court adequately advised the defendant of the ramifications of his plea and

[2] The fact that Fenton stated he was pleading based on *Heywood*, and then later stated that he was sticking to his plea, did not result in a conditional plea. The Superior Court explained to Fenton that *Heywood* did not apply. And the court explained to him that he may be sentenced for up to 20 years and be required to pay restitution. Fenton responded that he understood everything the Court explained to him. Thus, there was no conditional plea.

the defendant understood those consequences because, among other things, defendant's responses to the court during the change of plea hearing were coherent); *Bruno*, 59 V.I. at 765.

C. The Plea Agreement

Fenton argues that the Superior Court violated former Superior Court Rule 126[3] because the court accepted his change in plea and was therefore bound by the sentencing terms of the plea agreement under the rule.[4] Fenton's assertion is incorrect. The plain and unambiguous language of a court rule controls. *In re Reynolds*, 60 V.I. 330, 334 (V.I. 2013) ("The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed."); *see also Corraspe v. People*, 53 V.I. 470, 480-481 (V.I. 2010) (applying the cannons of statutory interpretation to a procedural court rule). And we "give effect to every provision" in the rule, "so that no one part makes any other portion ineffective." *In Re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015); *Duggins v. People*, 56 V.I. 295, 302 (V.I. 2012).

Former Superior Court Rule 126, applicable here, provided:

> A defendant may plead guilty, not guilty or nolo contendere to any complaint or information . . . . In no case shall the court accept a plea of guilty without first determining if the defendant understands the nature of the charge against him, and that the plea is voluntarily made. The defendant shall be entitled to change a plea of not guilty to guilty at any time before the findings . . . . Where a plea of guilty is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence, and after such hearing, may, in its discretion, refuse to accept the plea.

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[3] Former Superior Court Rule 126 is applicable to this case because the case arose prior to the adoption of the Virgin Islands Rules of Criminal Procedure. *See Mills-Williams v. Mapp*, 67 V.I. 574, 586 (V.I. 2017) (noting we "apply the procedural rules as they existed at the time the matter was pending in the Superior Court"); *In re Adoption of V.I. R. of Crim. Proc.*, Promulgation No. 2017-0010, 2017 WL 7361204 (V.I. Dec. 19, 2017).

[4] Because Fenton did not raise this argument below, we can consider his argument waived; nonetheless, we will address the argument since Fenton's liberty is at stake and his fundamental rights are at issue. *See* V.I. R. App. P. 22(m).

The rule is devoid of any language that requires the Superior Court to sentence a defendant in accordance with a plea agreement or the People's sentencing recommendation when the court accepts a defendant's plea. *See id.* As the plain language of the rule controls, this argument fails.[5] SUPER. CT. R. 126; *Reynolds*, 60 V.I. at 334.

Fenton further argues that, because the Superior Court deviated from the plea agreement, the court should have given him (1) notice of its intention and (2) a chance to withdraw the plea,[6] relying on *dicta* in *Heywood*. We disagree.

In *Heywood*, considering that a more obvious breach existed, we declined to address whether a court must give a defendant an opportunity to withdraw her plea should the court decide, in its discretion, to deviate from the sentencing recommendations made in a plea agreement. 63 V.I. at 854. But we stated:

> Superior Court Rule 126 is completely silent on the matter. Other jurisdictions have interpreted silence in similar court rules as requiring that a trial judge must nevertheless respect the sentencing recommendation that has been agreed upon by the parties as part of a plea agreement, even if that recommendation is presented to the court as being non-binding. These jurisdictions have held that a court, after it accepts a plea agreement calling for a sentencing recommendation, must either impose the recommended sentence or—if it chooses not to do so—must provide the defendant with an opportunity, as of right, to withdraw the guilty plea.

[5] Superior Court Rule 126 the rule requires only that the Superior Court determine whether a defendant "understands the nature of the charge against [her], and [ensure] that the plea is voluntarily made." *See* SUPER. CT. R. 126. The rule also gives the defendant a chance to change her plea before the Superior Court's findings. *See Id.* Here, the Superior Court in fact determined whether Fenton understood the charges against him and whether he voluntarily changed the plea. In addition, Fenton declined to withdraw his plea prior to the court's findings.

[6] Fenton did not raise this argument below and addresses the issue in a perfunctory manner on appeal. Thus, we can deem his argument waived. *See* V.I. R. App. P. 22(m). However, we will address the argument. As mentioned, Fenton's liberty is at stake and his fundamental rights are at issue. *See id.*

Id. at 852-54 (citations and footnotes omitted). We also recognized that those courts "rejected arguments by the prosecution that advising the defendant of the non-binding nature of the recommendation permits the judge to deviate from the prosecutor's recommended sentence[.]" *Id.* at 854 n.4. The rationales for those courts' rejection of such arguments are "the importance of the constitutional rights waived by the defendant when [s]he agrees to plead guilty, as well as concerns that treating a sentencing recommendation as completely non-binding may send conflicting messages to the defendant." *Id.* Essentially, those courts rely on principles of fairness. *See, e.g.*, *People v. Killebrew*, 330 N.W.2d 834, 842–43 (Mich. 1982) ("Principles of fairness require that the defendant be given the opportunity to withdraw his guilty plea."); *Nelson v. State*, 866 So.2d 594, 598 (Ala. Crim. App. 2002).

Other jurisdictions take a different approach, however. These jurisdictions view "nonbinding" plea agreements as an assumption of the risk scenario, in which—so long as the court advises the defendant of the risk—the defendant assumes the risk that a court may not follow the prosecution's recommendation. *See State v. Olson*, 317 P.3d 159, 266 (Mont. 2014) (holding because a plea agreement and an announcement showed that the agreement was nonbinding, the trial court could stray from the agreement); *State v. Allman*, 765 S.E.2d 591, 594 (W. Va. 2014) (opining defendant accepted the risk that the court may not accept the prosecution's recommendation); *State v. Pieri*, 207 P.3d 1132 (N.M. 2009) ("We hold that a court is not required to afford a defendant the opportunity to withdraw his or her plea when it rejects a sentencing recommendation or a defendant's unopposed sentencing request, so long as the defendant has been informed that the sentencing recommendation or request is not binding upon the court."), *overruled in part by State v. Miller*, 314 P.3d 655, 663 (N.M. 2013); *cf. State v. Farrell*, 606 N.W.2d 524 (N.D. 2000) (holding where the court did not inform the defendant of the effect of a nonbinding

plea, "withdrawal of [the] . . . guilty plea [was] necessary to correct a manifest injustice"); *State v. Hampton*, 683 N.W.2d 14, 14 (Wis. 2004) (deciding where the court neither advised the defendant that the plea agreement did not bind it nor asked the defendant if he understood that the agreement did not bind it, the court had to hear the defendant's motion to withdraw his plea). The United States Court of Appeals for the Sixth Circuit has upheld this approach as constitutional, because, according to the circuit court—if the defendant was not "'misled' into thinking that the judge would be bound by the prosecutor's recommendation"—due process does not require a court to allow a defendant to withdraw her plea when the court decides not to follow the prosecution's recommendation. *Carwile v. Smith*, 874 F.2d 382, 385 (6th Cir. 1989) (examining Kentucky's approach).

We agree that the assumption of the risk analysis is the appropriate approach and hold that, when a judge deviates from a plea agreement, advising a defendant of the non-binding nature of a plea agreement is sufficient and the judge need not inform the defendant that she will deviate from the People's recommendation. We recognize that a defendant waives important constitutional rights when agreeing to plead guilty or no contest in exchange for a sentencing recommendation by the prosecution,[7] and "treating a sentencing recommendation as completely non-binding may send conflicting messages to the defendant,"[8] especially with regard to unsophisticated defendants. *See Puckett v. United States*, 556 U.S. 129, 137 (2009) ("[P]lea bargains are essentially

[7] *See, e.g., McCarthy v. United States*, 394 U.S. 459, 466 (1969) ("A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers.").
[8] *Heywood*, 63 V.I. 854 n.4; *see also Harrison v. State*, 903 S.W.2d 206, 209 (Mo. Ct. App. 1995) ("Although the defendant, who was not represented by counsel, indicated that he understood [the prosecution's recommendation was solely that], one can only wonder about his actual degree of understanding in view of the conflict between the agreement described by the prosecutor and the agreement described by the court.").

contracts."); Daniel P. Blank, *Plea Bargain Waivers Reconsidered: a Legal Pragmatist's Guide to Loss, Abandonment and Alienation,* 68 FORDHAM L. REV. 2011, 2016 (2000) (noting that one of the criticisms of plea bargaining is that "the inequality of relative bargaining strength between the government and the defendant renders the plea bargaining process inaccurate and unfair, especially to poor and unsophisticated defendants"). However, as we have said, the "united front" in a plea agreement is the defendant's benefit of the bargain. *See Heywood*, 63 V.I. 857 (quoting *United States v. Camarillo–Tello,* 236 F.3d 1024, 1028 (9th Cir. 2001)); *accord Bercheny v. Johnson,* 633 F.2d 473, 476 (6th Cir.1980) ("[T]he law does not permit a criminal defendant to bargain away his constitutional rights without receiving in return . . . the benefit of his bargain. . . .").

We acknowledge that a defendant often relies on a plea agreement in hopes of receiving the exchange she bargained for, or even just a more lenient sentence, and that a defendant may decide to enter into a non-binding plea agreement when she is innocent because she fears that the justice system may not work. *See Defense counsel's role*, 10 TENN. PRAC. CRIM. PRAC. & PROCEDURE § 22:29 (noting that plea deals may be attractive to innocent defendants because, "[a]fter all, even innocent defendants—rare as they may be—are sometimes convicted, [and] [o]nce a case goes before a jury the result is unpredictable. And defendants, like prosecutors, often prefer certainty—even if it means the certainty of a short sentence.") (quoting ALAN DERSHOWITZ, THE BEST DEFENSE 132 (Random House, 1982)). But that is the risk a defendant assumes when entering into a plea agreement. *See Heywood*, 63 V.I. 857 (quoting *Camarillo–Tello,* 236 F.3d at 1028). Nothing in former Superior Court Rule 126 required the Superior Court to accept the People's recommendation. And the Superior Court has significant discretion to sentence a defendant in accordance with the sentencing range outlined for each offense in the

Virgin Islands Code. *See, e.g., Brown v. People,* 56 V.I. 695, 708 (V.I. 2012) ("Most importantly, the approach utilized by many courts in jurisdictions, similar to the Virgin Islands, where there are no comprehensive sentencing guidelines is as follows: sentences that fall within the legislatively prescribed range are not reviewable absent a showing of illegality or improper procedure that amounts to abuse of discretion."); *see also Apprendi v. New Jersey*, 530 U.S. 466, 481 (2000) (acknowledging that judges have discretion to impose sentences that fall within statutory limits). We thus hold that, under former Superior Court Rule 126, the Superior Court had neither an obligation to advise a defendant that it would not honor the People's recommendation, nor an obligation to give the defendant the opportunity to withdraw her plea should it intend to deviate from the People's recommendation, so long as the court makes clear to the defendant that the court, in accepting the plea, is not bound by the terms of the plea agreement with respect to sentencing. We are not convinced that principles of fairness, alone, are enough to hold otherwise.[9]

Here, the Superior Court informed Fenton that he risked receiving the maximum penalty

[9] In any event, it is highly unlikely that this precise issue—the binding or non-binding nature of plea agreements under former Superior Court Rule 126—would resurface in the future. On December 19, 2017, the Virgin Islands Rules of Criminal Procedure took effect. *See In re Adoption of V.I. R. of Crim. Proc.*, Promulgation No. 2017-0010, 2017 WL 7361204 (V.I. Dec. 19, 2017). Virgin Islands Rule of Criminal Procedure 11 distinguishes between binding and non-binding plea agreements. An agreement by the People to "recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate" under V.I. R. CRIM. P. 11(c)(1)(B) is not binding on the Superior Court. In contrast, V.I. R. CRIM. P. 11(c)(1)(C) provides that if the People and a defendant enter into a plea agreement in which the parties "agree that a specific sentence or sentencing range which the defendant and defendant's counsel agree to have imposed is the appropriate disposition of the case[,] []such a recommendation or request binds the court once the court accepts the plea agreement[]." Lastly, V.I. R. CRIM. P. 11(c)(4) states that "[i]f the [Superior Court] accepts [a] plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1) . . . (C), the agreed disposition will be included in the judgment."

of 20 years in accordance with the Virgin Islands Code. *See* 14 V.I.C. § 295 (providing a person who commits assault in the first degree with intent to commit murder "in an act of domestic violence as defined in [16 V.I.C. § 91(b)] shall be sentenced to not less than 2 years and not more than 20 years and shall be fined not less than $1,000.") (emphasis added). Superior Court Rule 126 did not require the court to inform Fenton that it would not honor the People's sentencing recommendation or give Fenton the opportunity to withdraw his plea in light of its deviation. Therefore, we conclude that the Superior Court properly sentenced Fenton. *See* 14 V.I.C. § 295; SUPER. CT. R. 126.

III. CONCLUSION

Fenton's plea was knowing, voluntary, and intelligent. The Superior Court adequately advised him that it could sentence him to a maximum of 20 years' imprisonment as well as require him to pay restitution, and Fenton understood those consequences. Moreover, in this case of first impression, we find that under former Superior Court Rule 126, the Superior Court did not have to inform Fenton of its intention to deviate from the plea agreement or allow him the opportunity to withdraw his plea due to its deviation. The Superior Court's judgment and commitment is affirmed.

Dated this 16th day of November, 2018.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court