

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DYLAN J. WRIGHT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-13699 &
A- 13700

Trial Court Nos. 3UN-99-00180 CR &
3AN-07-14636 CR

MEMORANDUM OPINION

No. 7075 — October 19, 2023

Appeal from the Superior Court, Third Judicial District, Kenai,
Jennifer K. Wells, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Daniel L. Strigle, Assistant District Attorney, Kenai, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Wollenberg, Harbison, and Terrell, Judges.

Judge HARBISON.

Dylan J. Wright was on probation in two Alaska cases when he pleaded guilty to a new felony offense in Colorado. The superior court revoked Wright's probation in both Alaska cases and imposed 6 years of suspended time in each case. The court ordered that the jail terms would be served consecutively.

Wright appeals, arguing that his sentence is excessive. He contends that the superior court discounted his potential for rehabilitation and imposed a sentence that was greater than necessary to achieve the court's stated sentencing goals. We have independently reviewed the record and, for the reasons explained below, conclude that the sentence imposed is not clearly mistaken.

Background facts and procedural history

In 1999, Wright violently assaulted a taxicab driver in Unalaska. After Wright hailed a cab, he beat the driver's head and face with a handgun until she lost consciousness, causing extensive injuries. For this conduct, Wright pleaded no contest to first-degree robbery and first-degree assault, and was sentenced to a composite term of 20 years with 6 years suspended (14 years to serve).¹

In 2007, Wright was released on discretionary parole and on probation. Three months later, Wright participated in a violent home invasion in Anchorage. Wright and three co-defendants broke into a house, where Wright pointed a handgun at a man's head, struck him in the head with the gun, and stole \$6,000 in cash. Wright ultimately pleaded guilty to one consolidated count of first-degree robbery and was sentenced to 20 years with 12 years suspended (8 years to serve). Wright also admitted that he violated the conditions of probation in his Unalaska case, but none of his suspended time was imposed in that case.²

¹ AS 11.41.500(a)(1) and AS 11.41.200(a)(1), respectively. This Court affirmed Wright's sentence on appeal. *Wright v. State*, 46 P.3d 395, 397-98 (Alaska App. 2002).

² Wright also admitted that he violated his parole, and the parole board imposed all of Wright's outstanding parole time.

As soon as Wright completed service of the sentence in his Anchorage case on June 25, 2014, Wright was extradited to Colorado to serve a Colorado sentence.³ Wright was released on parole in Colorado on February 21, 2017. After he repeatedly violated the terms of his parole (including failing to provide urine samples, providing samples that tested positive for drugs, violating curfew, and failing to maintain a proper battery level in his ankle monitor), his parole was revoked. Wright was re-paroled in Colorado in January 2018, and he started the process to transfer his Alaska probation to Colorado. But his request was denied due to his failure, twice, to timely report to the Colorado probation office.⁴ Additionally, Wright immediately continued his pattern of frequent violations.

In July 2018, Wright committed a new criminal offense in Colorado. While he was driving a motorbike, Wright ran a red light and then attempted to evade apprehension by driving against traffic and jumping a curb. When Wright was arrested, the officer noted that Wright was “out of it,” thirsty, and had a needle in his pocket, which led the officer to believe he was “high on drugs.” Wright pleaded guilty to vehicular eluding and was sentenced to 3 years to serve.

³ While serving his Alaska sentence, Wright pleaded guilty in Colorado to contraband introduction. The date of the offense was January 20, 2011 and he was sentenced on November 3, 2011. He was sentenced to 6 years, consecutive to his Alaska sentence. He therefore was never released from his Alaska sentence before serving his new sentence in Colorado.

⁴ An Alaska probation officer worked with Wright’s Colorado parole officer to transfer his Alaska probation to Colorado. But he failed to report to the Colorado probation office on July 11, 2018 and was over two hours late on July 13, 2018. Colorado accordingly declined to accept him for probation supervision. An Alaska probation officer then attempted to contact Wright to tell him that he had to report to Alaska for probation supervision, but the officer was unable to contact him before he was arrested on new charges on July 26, 2018.

Following this Colorado conviction, the State of Alaska petitioned to revoke Wright's probation in his Unalaska and Anchorage cases, alleging: (A) that Wright failed to report to the probation office in Colorado on July 11, 2018; (B) that Wright failed to report to the probation office in Colorado on July 13, 2018; and (C) that Wright committed new criminal conduct in Colorado (*i.e.*, the vehicular eluding).⁵ The superior court ultimately found that allegations (A) and (C) were proven in both cases, and it scheduled a joint disposition hearing.⁶ Wright was transferred from Colorado to Alaska prior to the April 2020 disposition hearing.

The superior court revoked Wright's probation in both cases and imposed a composite sentence of 12 years (6 years in each case). This appeal followed.

Why we conclude that Wright's sentence is not clearly mistaken

Wright appeals his composite sentence as excessive. At the time he was sentenced, Wright had 6 years of suspended time remaining in his Unalaska case (involving the robbery and assault of a taxicab driver) and 12 years of suspended time remaining in his Anchorage case (involving the home invasion and theft). The trial court thus had the authority to impose up to 18 years of incarceration as a result of Wright's probation violations.

⁵ The State also filed a second petition to revoke probation alleging, *inter alia*, that Wright had been convicted of a second felony (aggravated motor vehicle theft), as a result of a separate incident that also occurred in July 2018. Wright's Colorado parole officer later testified that he had been convicted of this offense. But it does not appear that the superior court made a finding with regard to this allegation.

⁶ Wright admitted to allegation (C) (the new law violation), but contested allegations (A) and (B) (the failure to report violations). The superior court heard evidence on these contested allegations, and ultimately found that Wright committed allegation (A), but not allegation (B) because it was unclear whether Wright had sufficient notice that he was required to report.

When imposing a sentence, the trial court must consider the following criteria: the seriousness of the offense compared to other offenses, the defendant’s criminal history and likelihood of rehabilitation, the need to protect the public by confining the defendant, the harm to the victim and public safety from the circumstances of the offense, the need to deter the defendant and the public, the need for community condemnation of the offense, and restoration of the victim and community.⁷

In the present case, Wright contends that the superior court placed insufficient emphasis on his potential for rehabilitation and imposed a greater sentence than was necessary to further the court’s sentencing goals — isolation and specific deterrence.⁸ But the sentencing judge bears the primary responsibility for determining what priority to give the various sentencing objectives in a given case.⁹

Here, the court grounded its analysis in the relevant sentencing criteria and emphasized its finding that Wright posed a significant danger to the public. In considering the need to incarcerate Wright in order to protect the public, the court focused on the “extraordinarily high level of violence” in the underlying Anchorage offense and the seriousness of the Unalaska offense, as well as the “high level of indifference to human life” that Wright exhibited while eluding the police in Colorado.

⁷ *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970); AS 12.55.005.

⁸ Wright also briefly argues that the superior court improperly considered the two sentences separately, as opposed to considering the overall length of the combined sentences. *See Malemute v. State*, 791 P.2d 624, 626 (Alaska App. 1990) (holding that the court must consider whether the composite term is justified when determining the “propriety of the consecutive sentences”). But the record shows that the court sentenced Wright for both cases in a single proceeding and did not make separate sentencing remarks for the separate offenses.

⁹ *Galindo v. State*, 481 P.3d 686, 689 (Alaska App. 2021).

The court also noted that, while drug addiction is not uncommon, it had rarely seen addiction “that has combined with it this level of risk to other people.”

When the court evaluated Wright’s rehabilitative potential, it observed that Wright, who was thirty-eight years old, had spent most of his adult life incarcerated. The court found that Wright had a history of “dramatically” failing supervised release, committing felonies “pretty quickly after release,” and squandering treatment opportunities.

At the same time, the superior court credited Wright’s strong family support and insightful allocution. The court expressed reluctance to give up on rehabilitating Wright altogether, stressing that Wright should “avail himself of any treatment option that’s offered.” The court therefore revoked all of Wright’s remaining suspended jail time in the Unalaska case but revoked only half of the remaining time in his Anchorage case.

When we review an excessive sentence claim, we independently examine the record to determine whether the sentence is clearly mistaken.¹⁰ This standard recognizes that there is a “permissible range of reasonable sentences” that could be imposed in any given case, and that a reviewing court will modify a sentence only if it falls outside of that range.¹¹

In the superior court’s sentencing remarks, the court considered relevant circumstances, including Wright’s underlying conduct in his Unalaska and Anchorage cases and his conduct on probation.¹² The court’s extensive factual findings are well-

¹⁰ *Smith v. State*, 349 P.3d 1087, 1091 (Alaska App. 2015).

¹¹ *Id.* (quoting *State v. Korkow*, 314 P.3d 560, 562 (Alaska 2013)); *McClain v. State*, 519 P.2d 811, 813 (Alaska 1974).

¹² *See Harris v. State*, 980 P.2d 482, 487-88 (Alaska App. 1999) (holding that where the court “considered the relevant circumstances of [the defendant’s] case in light of the *Chaney* factors,” its decision to impose all of the defendant’s remaining suspended time was not clearly mistaken).

supported by the record and provide a reasoned basis for its sentencing decision. We accordingly conclude that Wright's composite sentence is not clearly mistaken.

Conclusion

The judgment of the superior court is AFFIRMED.