IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ASIAGIN DANA AHMAOGAK, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13960 Trial Court No. 2BA-18-00459 CR MEMORANDUM OPINION No. 7076 — October 25, 2023

Appeal from the Superior Court, Second Judicial District, Utqiagvik, Nelson Traverso, Judge.

Appearances: William R. Satterberg Jr., The Law Offices of William R. Satterberg Jr., Fairbanks, for the Appellant. Madeline M. Magnuson, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Judge TERRELL.

Asiagin Dana Ahmaogak pleaded guilty, pursuant to a plea agreement, to manslaughter and first-degree assault.[1] He received a composite sentence of 30 years

[1] AS 11.41.120(a)(1) and AS 11.41.200(a)(1), respectively.

with 3 years suspended (27 years to serve). On appeal, he challenges multiple aspects of his sentence. We agree with Ahmaogak that there were errors in his sentencing, including an error not noticed by the parties — that the parties and sentencing judge were operating under a mistaken assumption as to the applicable presumptive ranges for the offenses. This error renders his assault sentence illegal and may have affected the manslaughter sentence, and thus requires resentencing. And because Ahmaogak must be resentenced, we address the pertinent errors that the superior court made in fashioning his sentence.

Background facts and proceedings

On the morning of October 28, 2018, Ahmaogak and a few other people, including Elizabeth Bordeaux, were at the home of Victoria Koonaloak in Utqiagvik celebrating Ahmaogak's birthday. At one point, Ahmaogak brandished a gun, so Victoria Koonaloak directed him to leave the house.

Approximately one hour later, Ahmaogak returned and knocked on the door. Somewhere close in time to Ahmaogak's return, Edmond Siologa and Masteredseed Vondincklage passed by Koonaloak's house and were summoned inside. Ahmaogak, who had unsuccessfully sought reentry, kept knocking and Siologa suggested that they let Ahmaogak into the arctic entry so that he would not freeze outside in the cold. As a condition of entry, Siologa suggested that they make Ahmaogak hand over the gun or the clip. Siologa then opened the door and told Ahmaogak that they would not let him in unless he handed over the gun or the clip.

Ahmaogak shot Siologa, who was in the arctic entry with him, and then shot Vondincklage and Bordeaux, who were in the main room of the house. Siologa was shot in the head and died soon after. Vondincklage and Bordeaux were shot in the arm and abdomen, respectively, and both lived.

What, if anything, prompted this shooting was a point of contention throughout the case. The grand jury testimony conflicted regarding whether Ahmaogak

fired two or three bullets. Koonaloak testified before the grand jury that she could not remember how many shots were fired. Vondincklage testified that Ahmaogak fired three times — first at Siologa, then at him, and then at Bordeaux. But police only found two shell casings at the scene. Siologa and Bordeaux each had a bullet lodged in their wounds, and Vondincklage received a pass-through wound. This suggested that Ahmaogak may have only fired twice — once at Siologa and once at Vondincklage, with the bullet passing through and hitting Bordeaux.

Ahmaogak was indicted on one count of first-degree murder, two counts of second-degree murder based on separate legal theories, and two counts of first-degree assault.[2] Prior to trial, the State suggested that it was having problems with some of its witnesses who were avoiding subpoenas and would likely require material witness warrants. During jury selection, the State and Ahmaogak reached a plea agreement.

Ahmaogak agreed to plead guilty to one count of manslaughter and one count of first-degree assault in exchange for dismissal of the remaining charges.[3] He agreed that a presumptive range of 7 to 11 years applied to the assault charge (because he was a first felony offender and "possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense").[4] For his manslaughter conviction, he agreed to the aggravating factor that "the conduct constituting the offense was among the most serious conduct included in the definition of the offense."[5] He agreed that he could be sentenced "anywhere from the minimum of 7 up to 20" years for the manslaughter conviction. Otherwise, sentencing was left to the discretion of the court.

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[2] AS 11.41.100(a)(1)(A), AS 11.41.110(a)(1) and (a)(2), and AS 11.41.200(a)(1).

[3] AS 11.41.120(a)(1) and AS 11.41.200(a)(1), respectively.

[4] AS 12.55.125(c)(2)(A).

[5] AS 12.55.155(c)(10).

Ahmaogak argued in his sentencing memorandum and at sentencing that he would have a credible self-defense argument to the homicide charge, and alternatively, that the facts were more akin to manslaughter or criminally negligent homicide than to the original charges of first- and second-degree murder.

In its sentencing remarks, the superior court rejected Ahmaogak's arguments that he shot Siologa in self-defense and that the facts only showed that he committed criminally negligent homicide. The court also did not expressly find that his crime should be viewed as being more serious than manslaughter.

The court sentenced Ahmaogak to 20 years to serve for the manslaughter and a consecutive 10 years with 3 years suspended (7 years to serve) for the first-degree assault, for a composite sentence of 30 years with 3 years suspended (27 years to serve).

Why we remand for resentencing

On appeal, Ahmaogak raises several challenges to the way the superior court arrived at his sentence. We agree that the superior court made errors when determining Ahmaogak's sentence. But we must first address an issue not raised by the parties — their mistake regarding the applicable presumptive sentencing ranges.

Manslaughter and first-degree assault are both class A felonies.[6] Both parties and the superior court proceeded under the assumption that the applicable presumptive sentencing range was 7 to 11 years for both charges. But Ahmaogak committed the offenses on October 28, 2018. At that time, the applicable presumptive range for these offenses was 5 to 9 years.[7] The presumptive range for those offenses

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[6] AS 11.41.120(b); AS 11.41.200(b).

[7] *See* former AS 12.55.125(c)(2)(A) (2018) (providing a 5- to 9-year presumptive range for first felony offenders convicted of a class A felony who "possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense").

was raised to 7 to 11 years in 2019 in House Bill 49 for "sentences imposed on or after the effective date . . . for conduct occurring on or after the [July 9, 2019] effective date."[8] Thus, Ahmaogak's offenses were subject to a lower sentencing range. This makes Ahmaogak's assault sentence illegal, because although the active time to serve (7 years) was within the presumptive range, the total sentence length (10 years) was above the top end of the presumptive range and no aggravating factor applied to the assault conviction. The illegality of the assault sentence requires resentencing.

Sentencing courts are required to consider the composite sentence when sentencing a defendant for two or more convictions.[9] Indeed, in such situations, courts often focus on the appropriate composite, and their view of the proper composite may or may not be driven by the specifics of the individual sentences, so we cannot conclusively say that the error regarding the sentencing range for the assault would have affected the manslaughter sentence. But because there is a reasonable possibility that this error affected the judge's decision regarding the manslaughter sentence, and because the rulings that Ahmaogak challenges also affect the composite sentence, we must also address Ahmaogak's primary contentions regarding sentencing.

First, the superior court stated that it was required by AS 12.55.127 to run the sentences for the two crimes entirely consecutively. But, as the State correctly concedes, AS 12.55.127(c)(2)(F) only required that "some additional term of imprisonment for each additional crime" (meaning at least 1 day) be consecutive.[10] So

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[8] *See* FSSLA 2019, ch. 4, §§ 70, 142(b), 150. The foregoing reflects that the legislature set an effective date of July 1, 2019 for the bulk of the provisions in the bill. However, the governor did not sign House Bill 49 until July 8, 2019. *See* 2019 House Journal 1239. Pursuant to AS 01.10.070(d), if the governor signs a bill after its effective date, the bill takes effect the day after the governor signs it.

[9] *See Phelps v. State*, 236 P.3d 381, 385-87 (Alaska App. 2010).

[10] *See Augustine v. State*, 355 P.3d 573, 591 (Alaska App. 2015) (explaining that "only one day of these two sentences had to be consecutive" under AS 12.55.127(c)(2)(F) (citing *Scholes v. State*, 274 P.3d 496, 500 (Alaska App. 2012))); *Marks v. State*, 496 P.2d 66,

the court was not required to run the sentences entirely consecutively, and rather should have focused on setting a composite sentence length that adequately addressed the *Chaney* criteria.[11]

Second, the superior court imposed an active composite sentence of 27 years, which was above the maximum sentence of 20 years for manslaughter. But the court did not find, either explicitly or implicitly, that this was necessary to protect the public or further any other of the *Chaney* criteria. The *Neal-Mutschler* rule, as clarified in *Phelps v. State*, requires a court imposing a composite active sentence greater than the maximum sentence for the defendant's single most serious offense to justify doing so based on either the protection of the public or another sentencing goal.[12] The State correctly concedes that resentencing is required due to lack of findings on this point.[13]

Third, the superior court sentenced Ahmaogak to the maximum sentence of 20 years for his manslaughter conviction without finding, either explicitly or implicitly, that Ahmaogak was a worst offender. The State acknowledges that the superior court failed to make a worst offender finding and that it would ordinarily be error to impose a maximum sentence without making a worst offender finding.[14] But the State notes that we have concluded that the failure to make a worst offender finding was moot in cases where there were multiple counts, the court did not impose a

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67-68 (Alaska 1972) (requiring an appellate court to independently evaluate any concession of error by the State in a criminal case).

[11] *See State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970), *codified in* AS 12.55.005.

[12] *Phelps*, 236 P.3d at 393.

[13] *See Marks*, 496 P.2d at 67-68.

[14] *See State v. Wortham*, 537 P.2d 1117, 1120 (Alaska 1975); *Napayonak v. State*, 793 P.2d 1059, 1062 (Alaska App. 1990).

maximum sentence on all counts, and the record reflected that the court had focused on imposing an appropriate composite sentence, rather than on the appropriateness of each individual sentence.[15] However, because the record in this case suggests that the court improperly focused on each individual sentence, rather than on the composite sentence, remand is appropriate on this issue as well.

Fourth, the superior court made an unclear reference to good-time credit when discussing the parties' sentencing arguments, stating that "good time is always an element here."[16] Based on this remark, Ahmaogak argues that the court violated the prohibition in *Jackson v. State* (the rule that in fashioning a sentence, the court should not assume that the defendant will be released early and should not impose a sentence longer than it would have otherwise imposed to account for parole eligibility).[17]

The State argues that this is not what the court did and that it merely mentioned good-time credit. The State also notes that we need not resolve this issue because remand is necessary on other issues, and the court will be able to clarify the meaning of its comment on remand. We have followed this procedure in similar

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[15] *See, e.g.*, *Hout v. State*, 2015 WL 5000552, at *7-8 (Alaska App. Aug. 19, 2015) (unpublished).

[16] Inmates serving time for offenses eligible for good-time credit receive credits equal to one-third of their sentence. AS 33.20.010(a). The inmate is released from prison "at the expiration of the term of sentence less the time deducted for good conduct." AS 33.20.030. If the sentence of incarceration is two years or greater, the inmate is released on mandatory parole until the expiration of the sentence. AS 33.20.040.

[17] *Jackson v. State*, 616 P.2d 23, 24-25 (Alaska 1980).

circumstances and accept the State's suggestion.[18] On remand, the court should clarify its comment regarding good-time credit.[19]

In addition to challenging how the court arrived at the sentence it imposed, Ahmaogak argues that his sentence is excessive.[20] The State disagrees, arguing that his sentence is appropriate. We decline to decide whether the sentence is excessive because we are remanding for other reasons. We note, however, that the court's remarks appeared at points to be inconsistent regarding Ahmaogak's culpability and did not compare Ahmaogak's sentence to sentences in other similar cases.[21] The court should consider these issues on remand.

For these reasons, we remand this case to the superior court with directions to resentence Ahmaogak.

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[18] *See Roath v. State*, 874 P.2d 312, 314 (Alaska App. 1994) (remanding for clarification where the sentencing court noted that a 300-day sentence would, with good-time credit, equate to 200 days to actually serve).

[19] We note that Alaska law requires sentencing judges to explain, in basic terms, whether the defendant is eligible for discretionary or mandatory parole and the amount of their sentence that will have to be served to reach any applicable parole eligibility dates. *See* AS 12.55.025(a)(3)(A)-(B). It should not be inferred or assumed that a judge's compliance with this law and mention of discretionary or mandatory parole automatically suggests that the judge is running afoul of *Jackson*.

[20] We note that Ahmaogak appears to argue on appeal only that the sentence imposed for the manslaughter conviction was excessive. However, we review composite sentences for excessiveness, not individual components of a composite sentence. *See Comegys v. State*, 747 P.2d 554, 558-59 (Alaska App. 1987).

[21] *See Williams v. State*, 480 P.3d 95, 103 (Alaska App. 2021) ("We have previously recognized the importance of a sentencing court's consideration of comparable cases when imposing a sentence to ensure against unjustified sentencing disparity.").

Conclusion

We VACATE Ahmaogak's sentence and remand for resentencing consistent with this opinion.