

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BONNIE LEA DEGENSTEIN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12750
Trial Court No. 3AN-13-12932 CR

SUMMARY DISPOSITION

No. 0056 — July 31, 2019

Appeal from the Superior Court, Third Judicial District,
Anchorage, Kevin M. Saxby, Judge.

Appearances: Mary Fleming Burnell, Assistant Public
Defender, and Quinlan Steiner, Public Defender, Anchorage, for
the Appellant. Jason Gist, Assistant District Attorney,
Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for
the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior
Judge.*

Bonnie Lea Degenstein was convicted, based on her guilty plea, of
manslaughter, a class A felony.¹ She was sentenced to 19 years with 5 years suspended

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska
Constitution and Administrative Rule 23(a).

¹ AS 11.41.120(a)(1), (b).

(14 years to serve). She now appeals, arguing that her sentence is excessive and that the superior court erred in making certain legal determinations affecting the length of her sentence.

In 2013, Degenstein was charged with second-degree murder for shooting her boyfriend. At the time of the shooting, Degenstein and her boyfriend were both highly intoxicated. According to Degenstein, she and her boyfriend had been drinking and “playing with guns” that evening. Degenstein reported that she pulled the trigger of a gun when the gun was pressed against her boyfriend’s forehead, but she thought the gun was unloaded.

Degenstein and the State entered into a plea agreement. Under the plea agreement, Degenstein would plead guilty to manslaughter, and sentencing would be open. As part of the plea agreement, Degenstein agreed that two aggravating factors applied — use of a dangerous instrument, and most serious conduct.² The State also notified Degenstein that it intended to prove a third aggravator — that the victim was particularly vulnerable.³ Degenstein contested this aggravator, but waived her right to have a jury decide the issue. The superior court accepted the plea agreement, and Degenstein’s guilty plea.

Because manslaughter is a class A felony, Degenstein was subject to a maximum term of 20 years.⁴ She faced a presumptive term of 5 to 9 years.⁵

At sentencing, the superior court found, by clear and convincing evidence, that the State had proven the “particularly vulnerable victim” aggravator. The State

² AS 12.55.155(c)(4) and AS 12.55.155(c)(10), respectively.

³ AS 12.55.155(c)(5).

⁴ AS 12.55.125(c).

⁵ AS 12.55.125(c)(2).

recommended a term of 19 years with 5 years suspended (14 years to serve). Degenstein’s attorney recommended a term of 10 years with 5 suspended (5 years to serve), noting that this term was in line with the recommendation in the presentence report.

After analyzing the *Chaney* criteria,⁶ the superior court sentenced Degenstein to 19 years with 5 years suspended (14 years to serve).

On appeal, Degenstein first claims that the superior court applied the wrong standard when it found that the State had proven the “particularly vulnerable victim” aggravator by clear and convincing evidence. Degenstein contends that the State was required to prove this aggravator under the “beyond a reasonable doubt” standard. But under the provisions of AS 12.55.155(f) and (h), once any aggravator “is established,” the superior court is allowed to increase the term of imprisonment up to the maximum term. Additionally, once the superior court finds that one of the aggravating factors in AS 12.55.155(c) has been established, the court may then find by clear and convincing evidence *any* additional aggravating factor, “including an aggravating factor that the jury has found not to have been established beyond a reasonable doubt.”⁷ We therefore conclude that the superior court did not err when it used the clear and convincing standard when deciding whether the State had established the “particularly vulnerable victim” aggravator. (Degenstein does not separately argue that the State did not meet the clear and convincing standard.)

Degenstein next claims that the superior court erred because it considered an impermissible sentencing goal — retribution. In the present case, when discussing

⁶ See *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970); AS 12.55.005 (codifying the *Chaney* criteria).

⁷ AS 12.55.155(h).

two of the *Chaney* criteria — community condemnation and the reaffirmation of societal goals — the superior court noted that it was making a statement about “what a human life is worth in light of the [circumstances of Degenstein’s case].”

We have instructed that sentencing courts should not engage in an analysis that one person’s life is “more worthy of protection than the life of another.”⁸ But here, the record shows that the superior court was not weighing the value of the victim’s life, but was instead weighing Degenstein’s actions in this case, and recognizing the extreme recklessness of her conduct when she fired the handgun. And the superior court was not just concerned with Degenstein’s conduct in this incident, but was also concerned about Degenstein’s admitted history of recklessly handling loaded firearms while intoxicated.

Lastly, Degenstein claims that the sentence imposed is excessive, because the superior court unreasonably weighed the various sentencing criteria. In particular, she contends that the court placed too much weight on community condemnation and general deterrence, and not enough on her potential for rehabilitation.

Here, the superior court addressed all of the *Chaney* criteria. And though the court found that Degenstein had “excellent” or “significant” prospects for rehabilitation, the court also found that there was a need to “express the community’s condemnation and to try to achieve general deterrence.” The superior court also found that Degenstein’s conduct was so reckless that it bordered on intentional. And the court noted that it was not convinced by Degenstein’s explanation of what had occurred that evening.

We review a claim that a sentence is excessive under the “clearly mistaken” standard.⁹ This is a standard of review that gives considerable leeway to individual

⁸ See *Clemans v. State*, 680 P.2d 1179, 1187-88 (Alaska App. 1984).

⁹ See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

sentencing judges. In any individual case, the sentencing judge bears primary responsibility for determining the priority and relationship of the various sentencing goals under the facts of that case.¹⁰ Having independently reviewed the record, we conclude that the sentencing decision was not clearly mistaken.

The judgment of the superior court is AFFIRMED.

¹⁰ See *Asitonia v. State*, 508 P.2d 1023, 1026 (Alaska 1973); *Pickard v. State*, 965 P.2d 755, 760 (Alaska App. 1998).