IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOHN O. DECKARD, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12863 Trial Court No. 3PA-16-02050 CR SUMMARY DISPOSITION No. 0072 — September 18, 2019

Appeal from the Superior Court, Third Judicial District, Palmer, Gregory L. Heath, Judge.

Appearances: Rachel Cella, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Brittany L. Dunlop, Assistant District Attorney, Palmer, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court Justice,[*] and Andrews, Senior Superior Court Judge.[*]

John O. Deckard pleaded guilty, pursuant to a plea agreement, to one count of second-degree weapons misconduct[1] and a consolidated count of third-degree assault[2]

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

[1] AS 11.61.195(a)(3)(B).

[2] AS 11.41.220(a)(1)(A).

after Deckard pointed a gun at a passing vehicle and later fired shots from outside his residence in the presence of several Alaska State Troopers. As part of the plea agreement, Deckard stipulated to two aggravating factors: AS 12.55.155(c)(9) — that he knew the offense involved more than one victim, and AS 12.55.155(c)(13) — that he knowingly directed his conduct at law enforcement officers during or because of the exercise of their official duties.

As a first felony offender, Deckard was subject to a presumptive range of 0 to 2 years on the weapons misconduct charge[3] and probation with a suspended term of imprisonment of 0 to 18 months on the assault charge.[4] But in light of the stipulated aggravating factors, Deckard was subject to a sentence of up to 10 years on the weapons misconduct charge[5] and up to 5 years on the assault charge.[6]

At sentencing, the superior court imposed a sentence of 10 years with 6 years suspended (4 years to serve) on the weapons charge, and 3 years with 1 year suspended (2 years to serve) on the assault charge. The sentences were to run concurrently, for a composite active term of imprisonment of 4 years to serve.

Deckard now appeals his sentence as excessive. When we review an excessive sentence claim, we independently examine the record to determine whether the sentence is clearly mistaken.[7] The "clearly mistaken" standard of review is deferential and contemplates that different reasonable judges, confronted with identical facts, can

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[3] Former AS 12.55.125(d)(1) (2016).

[4] Former AS 12.55.125(e)(1) (2016).

[5] AS 12.55.125(d).

[6] AS 12.55.125(e).

[7] *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

and will differ on what constitutes an appropriate sentence, and that a reviewing court will not modify a sentence that falls within a permissible range of reasonable sentences.[8]

We have independently reviewed the sentencing record in this case. Given Deckard's underlying conduct and the stipulated aggravating factors found by the court, we conclude that the composite sentence imposed here was not clearly mistaken.

Deckard also argues that the court erred in imposing certain conditions of probation relating to marijuana use and in imposing a condition of probation requiring him to take any medications prescribed by a licensed medical practitioner and as directed by his probation officer. Because Deckard did not contest these conditions below, we review for plain error.[9]

With respect to the conditions of probation relating to marijuana use, there was evidence in the record suggesting that Deckard regularly consumed both marijuana and alcohol. We therefore hold that the court's decision to impose conditions of probation restricting Deckard's marijuana use was not plain error.

With respect to the conditions requiring Deckard to take medication, however, we hold that a remand is necessary. The sentencing in this case occurred in March 2017. In the time since, we have released a series of published opinions — *Kozevnikoff v. State*,[10] *Love v. State*,[11] and *Clifton v. State*[12] — explaining that probation conditions requiring a probationer to take medications prescribed by a doctor are subject to special scrutiny. We have reviewed the court's sentencing remarks in this case and

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[8] *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997).

[9] *State v. Ranstead*, 421 P.3d 15, 23 (Alaska 2018).

[10] *Kozevnikoff v. State*, 433 P.3d 546, 547-48 (Alaska App. 2018).

[11] *Love v. State*, 436 P.3d 1058, 1060-61 (Alaska App. 2018).

[12] *Clifton v. State*, 440 P.3d 300, 303 (Alaska App. 2019).

it does not appear that the sentencing court applied special scrutiny before imposing the condition.

We therefore VACATE the special condition of probation requiring Deckard to take medication and REMAND for further proceedings in accordance with our opinions in *Kozevnikoff*, *Love*, and *Clifton*. In all other respects we AFFIRM the judgment of the superior court.