IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JAMES HAROLD MORMON III, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13309 Trial Court No. 4DJ-17-00045 CR SUMMARY DISPOSITION No. 0174 — November 18, 2020

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Michael P. McConahy, Judge.

Appearances: Justin Racette, Assistant Public Defender, Fairbanks, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Hazel C. Blum, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Clyde "Ed" Sniffen Jr., Acting Attorney General, Juneau, for the Appellee.

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

James Harold Mormon III pleaded guilty, pursuant to a plea agreement, to second-degree weapons misconduct and two counts of third-degree assault after he repeatedly fired a rifle into a home occupied by a woman and her ten-year-old child.[1] The agreement left the length and terms of Mormon's sentence to the discretion of the trial court.

[1] AS 11.61.195(a)(3)(A) and AS 11.41.220(a)(1)(A), respectively.

As part of the agreement, Mormon stipulated to an aggravating factor: that his conduct was among the most serious included in the definition of the offenses.[2] At sentencing, the trial court also found that a mitigating factor applied to Mormon's weapons misconduct offense: Mormon committed the offense while suffering from a mental disease or defect that, while insufficient to constitute a complete defense, significantly affected his conduct.[3] The trial court ultimately imposed a composite sentence of 9 years' imprisonment with 4 years suspended (5 years to serve), as well as 5 years of probation.

On appeal, Mormon argues that the trial court committed three errors in imposing this sentence: (1) the trial court improperly credited the prosecutor's suggestion that Mormon had ingested LSD prior to the shooting; (2) the trial court erred in applying the mitigating factor only to the weapons misconduct offense and not to the assault convictions; and (3) the trial court imposed an excessive sentence.

The record refutes Mormon's first claim. The trial court expressly declared that it was "not taking into account reports that [Mormon] may have been taking LSD." Likewise, AS 12.55.155(d)(18) contradicts Mormon's second claim that the mitigating factor applied to his assault convictions. This factor's statutory language expressly precludes its application to offenses defined under AS 11.41 such as Mormon's assault convictions.[4] We thus reject Mormon's first two claims of error.

Finally, Mormon challenges his sentence as excessive. When we review an excessive sentence claim, we independently examine the record to determine whether

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[2] *See* AS 12.55.155(c)(10).

[3] *See* AS 12.55.155(d)(18).

[4] *Id.*; *see also* AS 11.41.220(a)(1)(A) (defining third-degree assault).

the sentence is clearly mistaken, *i.e.*, whether the sentence falls within a "permissible range of reasonable sentences."[5]

Here, the trial court found that, although Mormon may have suffered an adverse reaction to a prescription sleep aid prior to the shooting, Mormon nonetheless acted knowingly when he ignored a warning not to combine alcohol with his medication and subsequently fired multiple shots into a home occupied by a woman and a young child — events that caused significant and lasting harm to the victims. Because Mormon stipulated to an aggravating factor, the trial court was authorized to impose any sentence up to the 10-year statutory maximum on the weapons misconduct conviction and up to the 5-year statutory maximum on the assault convictions.[6] Having independently reviewed the record, we conclude that Mormon's composite sentence of 5 years to serve is not clearly mistaken.

The judgment of the superior court is AFFIRMED.

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[5] *See McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974); *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997).

[6] *See* AS 11.61.195(b) & AS 12.55.125(d) and AS 11.41.220(e) & AS 12.55.125(e), respectively; *Cleveland v. State*, 143 P.3d 977, 986 (Alaska App. 2006).