

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions 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

TIMOTHY BURDICK,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12907  
Trial Court No. 1JU-98-00299 CR

SUMMARY DISPOSITION

No. 0176 — November 25, 2020

Appeal from the Superior Court, First Judicial District, Juneau,  
Louis James Menendez, Judge.

Appearances: Michael L. Barber, Barber Legal Services,  
Anchorage, under contract with the Office of Public Advocacy,  
for the Appellant. Eric A. Ringsmuth, Assistant Attorney  
General, Office of Criminal Appeals, Anchorage, and Kevin G.  
Clarkson, Attorney General, Juneau, for the Appellee.

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

In 1998, Timothy Burdick pleaded guilty to manslaughter after he caused a three-car collision that killed another motorist.<sup>1</sup> Burdick admitted drinking five beers on the day of the collision, despite being on probation from an earlier felony driving under the influence conviction. He was sentenced to 18 years' imprisonment with 6

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<sup>1</sup> AS 11.41.120(a).

years suspended (12 years to serve) and 10 years of probation. Burdick's probation conditions prohibited him from consuming drugs or alcohol or operating a motor vehicle.

After serving the active portion of his sentence, Burdick was released on probation in September 2006. He was remanded for a driving-related probation violation in March 2007, but then did not violate his probation conditions again for nearly nine years. In January 2016, he again violated the prohibition on driving, and he also consumed cocaine and alcohol.

Two months later, Burdick violated his probation conditions a third time by consuming cocaine and methamphetamine. Following these violations, Burdick entered the PACE program — a program designed to respond to probation violations with “swift, certain and short terms of incarceration.”<sup>2</sup>

Over the next seven months, the State filed an additional sixteen petitions to revoke Burdick's probation. After the nineteenth petition to revoke probation, which alleged that Burdick had driven three times over the course of a month when he was actively using methamphetamine, the trial court concluded that attempts at rehabilitation had failed. Accordingly, the court revoked the remainder of Burdick's suspended time.

On appeal, Burdick argues that the trial court erroneously based its decision to revoke the remainder of his suspended time on unsupported speculation that Burdick had driven under the influence of methamphetamine. We do not interpret the trial court's findings in this manner. In explaining its decision to revoke the remainder of Burdick's time, the trial court emphasized that, nearly twenty years after his original manslaughter

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<sup>2</sup> See Alaska Department of Corrections, *What Is PACE?*, <https://doc.alaska.gov/blog/alaskapace/2010/08/04/what-is-pace/> (“PACE identifies probationers who are likely to violate their conditions of probation; notifies them that violations will have consequences; requires frequent randomized drug and/or alcohol tests; and responds to violations with swift, certain and short terms of incarceration.”).

conviction, Burdick continued to engage in the same behaviors — driving and uncontrolled substance abuse — that led to his underlying conviction.

It was the repeated nature of Burdick’s driving violations over a period of time when he was regularly using methamphetamine — rather than the confluence of driving and methamphetamine use at any particular moment — that led the trial court to conclude that Burdick “ha[d] not been rehabilitated in any meaningful sense,” and as a result, it was “unlikely that any continued period of probation would serve any purpose whatsoever.” Burdick has not established that these findings were clearly erroneous.<sup>3</sup>

Burdick characterizes the revocation of his remaining suspended time as “illegal.” But Burdick’s sentence is not illegal; he received a sentence fully authorized by his judgment of conviction.<sup>4</sup> Although Burdick uses the term “illegal sentence,” the essence of his claim is that his sentence is excessive.<sup>5</sup> We have independently reviewed the sentencing record, and we conclude that the trial court’s decision to revoke Burdick’s remaining suspended time following his nineteenth probation violation was not clearly mistaken.<sup>6</sup>

The judgment of the superior court is AFFIRMED.

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<sup>3</sup> See *Meyer v. State*, 368 P.3d 613, 615 (Alaska App. 2016) (“[An appellate court] must accept the facts as found by the lower court unless, based on the record, [it is] left ‘with a definite and firm conviction . . . that a mistake has been made.’” (quoting *Geczy v. LaChappelle*, 636 P.2d 604, 606 n.6 (Alaska 1981))).

<sup>4</sup> See *Bishop v. Anchorage*, 685 P.2d 103, 105 (Alaska App. 1984) (defining the term “illegal sentence” narrowly to apply “only to sentences which the judgment of conviction did not authorize” (citing *United States v. Morgan*, 346 U.S. 502, 506 (1954))).

<sup>5</sup> See *Esmailka v. State*, 2008 WL 5192405, at \*1-2 (Alaska App. Dec. 10, 2008) (unpublished) (holding that an excessiveness claim does not “raise the issue of the legality of the sentence imposed”).

<sup>6</sup> See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).