NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DARREN SILAS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13619 Trial Court No. 3KN-10-01789 CR SUMMARY DISPOSITION No. 0195 — June 9, 2021

Appeal from the Superior Court, Third Judicial District, Kenai, Lance Joanis, Judge.

Appearances: David A. Case, Assistant Public Defender, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Mackenzie C. Olson, Assistant District Attorney, Anchorage, and Clyde "Ed" Sniffen Jr., Acting Attorney General, Juneau, for the Appellee.

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

In 2006, Darren Silas was charged with five counts of first-degree sexual abuse of a minor for digitally penetrating and performing cunnilingus on eight-year-old K.B., a child that Silas was babysitting. Silas ultimately pleaded guilty, pursuant to a plea agreement, to one count of second-degree sexual abuse of a minor. The trial court found two aggravating factors — AS 12.55.155(c)(1) (the defendant caused physical injury) and AS 12.55.155(c)(10) (the defendant's conduct was the most serious in its class) — and the court sentenced Silas to 24 years with 12 years suspended (12 years to

serve) and 10 years' probation. Special probation condition number 6 required Silas to actively participate in and successfully complete a sex offender treatment program on probation and prohibited him from discontinuing such treatment without the approval of his probation/parole officer and treatment provider.

Silas was released on parole and probation in October 2018 and began sex offender treatment a month later. Silas was unsuccessful at sex offender treatment. Among other problems, he violated a behavioral contract, engaged in risky sexual behavior, and did not complete homework assignments. Silas was discharged from sex offender treatment for program non-compliance in August 2019. Silas's probation officer filed a petition to revoke Silas's probation based on his non-compliance with the sex offender treatment program. Silas had received approximately nine informal sanctions prior to the filing of the petition to revoke his probation.

After a contested adjudication hearing, the superior court found that Silas had violated his probation and the court found good cause to revoke his probation. The court then imposed 18 months of Silas's suspended time.

Silas appealed his sentence to this Court and moved for expedited consideration. We granted expedited consideration, and remanded Silas's case to the superior court for clarification of the reasons for the sentence and, if appropriate, resentencing. We noted, in particular, that the superior court's comments at the disposition hearing were "very brief" and that they "included comments that suggested that the court may not have conducted its own independent evaluation under *Chaney*."[1]

On remand, the superior court issued new oral findings, carefully explaining its reasons for imposing the 18 months of suspended time and clarifying its

[1] *See State v. Chaney*, 477 P.2d 441, 443 (1970); AS 12.55.005.

earlier ambiguous statements. Silas now appeals those findings, raising four claims of error.

First, Silas argues that the superior court erred when it issued its findings on the record without the parties present. We disagree. Our remand order made clear that the superior court had the discretion to hold a new sentencing hearing with the parties if it believed it necessary. But the superior court also had the discretion to simply clarify its reasons for imposing the original 18-month sentence if it did not believe that resentencing was necessary. We note that Silas never objected to the superior court issuing its findings without the parties present and instead is trying to raise this issue for the first time on appeal. Accordingly, we find no merit to this claim of error.

Second, Silas argues that the superior court failed to adequately justify the "substantial" sentence imposed. We, again, disagree. When a trial court evaluates how much — if any — of a defendant's suspended time to impose for a probation violation, the court considers the defendant's conduct "in the context of evaluating the seriousness of the defendant's original offense, the defendant's background, the nature of the defendant's entire conduct while on probation, and the seriousness of the violations that led the court to revoke the defendant's probation."[2] Here, the superior court noted the seriousness of the underlying sexual abuse conduct and the danger that an untreated sex offender like Silas poses to the community. The superior court also noted Silas's significant failures at sex offender treatment, and the need to ensure that he takes his sex offender treatment seriously in the future. After carefully analyzing the *Chaney* criteria, the superior court ultimately concluded that less than 18 months of time to serve would not be sufficient to meet the goals of protecting the public and deterrence.

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[2] *Jeter v. State*, 393 P.3d 438, 441 (Alaska App. 2017).

Third, Silas argues that the superior court placed undue weight on the probation officer's recommendation. We disagree. In the original sentencing, the superior court referred vaguely to probation officers having "special knowledge of the probationer" and "special training," and the court made statements that suggested that the court might have simply deferred to the probation officer's recommendation and not conducted an independent *Chaney* analysis. But, on remand, the court clarified its statements and made clear that it was not simply deferring to the probation officer's recommendation. The court also clarified that it was not relying on some unspecified "special knowledge" of the probation officer, but was instead properly assessing the probation officer's testimony regarding Silas's behavior on probation and the probation officer's stated reasons for her recommendation.

Lastly, Silas argues that the 18-month sentence was excessive. We review a claim of excessiveness under the clearly mistaken standard of review.[3] The clearly mistaken standard requires this Court to make its own independent review of the record.[4] But it also rests on the assumption that there is "a permissible range of reasonable sentences which a reviewing court, after an independent review of the record, will not modify."[5] Having independently reviewed the record in this case, we conclude that the sentence is well-justified and not clearly mistaken.

The judgment of the superior court is AFFIRMED.

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

[4] *See id.*

[5] *Id.*