

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

WILBURN D. JACKSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13505  
Trial Court No. 1SI-09-00084 CR

SUMMARY DISPOSITION

No. 0209 — August 11, 2021

Appeal from the Superior Court, First Judicial District, Sitka,  
Trevor N. Stephens, Judge.

Appearances: Robert Curran, Assistant Public Defender, and  
Samantha Cherot, Public Defender, Anchorage, for the  
Appellant. Michal Stryszak, Assistant Attorney General, Office  
of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney  
General, Juneau, for the Appellee.

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

Wilburn D. Jackson appeals the disposition on his second petition to revoke  
probation. For the reasons explained here, we affirm the superior court's judgment.<sup>1</sup>

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<sup>1</sup> We note that Jackson did not move to expedite his appeal, and briefing in this case was not complete until July 27, 2021. However, on July 23, 2021, the State filed a notice informing this Court that Jackson was due to be released on August 24, 2021. In response to this notice, this Court has *sua sponte* expedited its consideration of Jackson's appeal.

Following the reversal of his first-degree sexual assault conviction in *Jackson v. State*,<sup>2</sup> Jackson pleaded guilty, pursuant to a plea agreement, to second-degree sexual assault.<sup>3</sup> As part of the plea agreement, he received an agreed-upon sentence of 11 years with 6 years suspended (5 years to serve).

Jackson was then released on supervised felony probation for time served. One of the conditions of his probation required him to “participate and cooperate in sex offender [treatment].” Another probation condition required him to “submit to periodic polygraph examinations as directed by a probation officer of the Department of Corrections for therapeutic purposes only.” In October 2018, Jackson violated his probation by failing to attend his sex offender programming and failing to submit to the requested polygraph examination. Jackson was also “disruptive” and “hostile” during treatment, and he engaged in “a lot of intimidation tactics.” The State filed a petition to revoke his probation, and the trial court subsequently revoked his probation and sentenced him to 300 days of his suspended time to serve.

Because Jackson had already served this amount of time during the pendency of his direct appeal, Jackson was re-released to felony probation with the same probation conditions. After being re-admitted to sex offender treatment, Jackson initially improved in his behavior although he continued to be argumentative and was generally disruptive. In March 2019, Jackson admitted to his treatment provider that he had “gotten into . . . some DV [domestic violence]” with his partner. A police report was generated from the domestic violence incident, although no charges were filed. Based on the allegations in the police report and his own admissions, Jackson was discharged from sex offender treatment.

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<sup>2</sup> *Jackson v. State*, 342 P.3d 1254 (Alaska App. 2014).

<sup>3</sup> AS 11.41.420(a)(1).

Based on these events, the State filed a second petition to revoke probation. Jackson failed to appear for his court hearing on this petition and a warrant was issued. When Jackson was finally brought to court on the warrant, he was “very aggressive” and required additional officers to help escort him.

At the adjudication hearing, the superior court found that Jackson had willfully violated his probation by engaging in acts of domestic violence that led to his discharge from sex offender treatment. A disposition hearing was scheduled.

At the disposition hearing, the State requested that the court impose the remainder of Jackson’s suspended time. The State noted that fashioning a deterrent disposition for Jackson was complicated by the fact that Jackson had already served a significant portion of time in connection with his later-reversed first-degree sexual assault conviction and was entitled to have that time credited against any future probation revocation sentence. The probation officer agreed with the State’s request, asserting that Jackson “takes no accountability for his actions” and that he “continues to be a threat to the community.”

Jackson’s attorney argued that Jackson’s probation should not be revoked, and that Jackson should instead be re-admitted to sex offender treatment with modified conditions. Jackson told the court that he was willing to do treatment.

The superior court began its sentencing remarks with a review of Jackson’s original presentence report and the seriousness of the underlying offense.<sup>4</sup> The court then reviewed Jackson’s criminal history, which included multiple prior domestic

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<sup>4</sup> The presentence report was written following Jackson’s trial in which he was convicted of first-degree sexual assault. That conviction was subsequently reversed by this Court and Jackson later pleaded guilty to second-degree sexual assault. *See Jackson*, 342 P.3d at 1261. However, the presentence report was not modified and there were no objections to the original presentence report being used at the disposition hearing.

violence assault convictions. The court noted Jackson’s “significant anger issues” and reports of his “misogynistic world view.” The court made clear that it considered the domestic violence incident that led to his discharge from sex offender treatment as quite serious, even though it had not resulted in additional criminal charges.

Ultimately, the court concluded that it had “little confidence” that further probation would be of any benefit, and it therefore found that isolation and community condemnation were the most important sentencing considerations. Based on its entire review of the case, including the seriousness of the original offense which had also included domestic violence, the court imposed the remainder of Jackson’s suspended time.

Jackson now appeals this ruling, arguing that the superior court erred when it imposed the remainder of his suspended time.

This Court reviews an excessive sentence claim under the “clearly mistaken” standard of review.<sup>5</sup> The clearly mistaken standard requires this Court to conduct its own independent review of the record.<sup>6</sup> 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.”<sup>7</sup> Here, the record shows that the superior court did not automatically impose the remaining suspended time without proper consideration of the *Chaney* criteria.<sup>8</sup> Instead, the court carefully evaluated all the available sentencing evidence, which included information concerning the

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<sup>5</sup> *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

<sup>6</sup> *Id.* at 813.

<sup>7</sup> *Id.*

<sup>8</sup> *See Chaney v. State*, 477 P.2d 441, 443-44 (Alaska 1970); *see also Toney v. State*, 785 P.2d 902, 903 (Alaska App. 1990).

seriousness of the original offense, the unique circumstances of Jackson's case, and the seriousness of the violations that led to his revocation, and the court determined that imposition of the remainder of the suspended time was required.<sup>9</sup> Having independently reviewed the record, we conclude that this decision was not clearly mistaken.

The judgment of the superior court is AFFIRMED.

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<sup>9</sup> See *Toney*, 785 P.2d at 903-04.