IN THE COURT OF APPEALS OF THE STATE OF ALASKA

NATHAN A. BLOCK,	)	
	)	Court of Appeals No. A-11215
Appellant,	)	Trial Court No. 1JU-11-382 CR
	)	
v.	)	MEMORANDUM OPINION
	)	
STATE OF ALASKA,	)	
	)	
Appellee.	)	No. 6040 — April 9, 2014
	)	

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

Appearances: Josie Garton, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Mary Gilson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, David L. Brower, Assistant District Attorney, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats, Senior Judge.[*]

Judge ALLARD.

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

Nathan A. Block pleaded guilty to robbery in the first degree[1] and was sentenced to 10 years with 3 years suspended, 7 years to serve. Block appealed his sentence, arguing that the superior court erred in finding that he had possessed a firearm during the offense. Block also argued that his sentence is excessive. In *Block v. State*,[2] we affirmed the superior court's use of the firearm enhancement, but we postponed our decision on the excessiveness claim until we resolved whether we had jurisdiction to hear this claim under AS 12.55.120(e).[3]

Alaska Statute 12.55.120(e) provides that a sentence within the applicable presumptive range "may not be appealed to the court of appeals ... on the ground that the sentence is excessive" but that it may be reviewed "through a petition filed under rules adopted by the supreme court." This statute is in conflict with Alaska Appellate Rule 215(a), which provides that a defendant may appeal as excessive any unsuspended sentence of imprisonment that exceeds two years for a felony offense. We recently held in *Mund v. State*[4] that, because the legislature did not directly overrule Appellate Rule 215(a) when it enacted AS 12.55.120(e), Appellate Rule 215(a) still governs our jurisdiction in these matters.[5] We therefore have jurisdiction to hear Block's excessive sentence claim.

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[1] AS 11.41.500(a)(1).

[2] 2013 WL 1789457 (Alaska App. Apr. 24, 2013) (unpublished).

[3] *Id*. at *3.

[4] __P.3d__, Op. No. 2413, 2014 WL 1133555 (Alaska App. Mar. 21, 2014).

[5] *Id.* at *2; *see also Leege v. Martin*, 379 P.2d 447, 451 (Alaska 1963).

As a first felony offender who committed a class A felony with a firearm, Block faced a presumptive sentencing range of 7 to 11 years.[6] Although the sentencing court rejected Block's proposed mitigator — that he had committed the offense under "some degree of duress, coercion, threat, or compulsion"[7] brought on by two recent military combat tours and a traumatic childhood — the court indicated that it intended to sentence Block at the "very low end of the 7 to 11 range" based on his lack of any prior criminal history and his "commendable" military record. The court further noted, however, that the victim in the case had been extremely traumatized by Block's actions and that the evidence showed Block had planned the robbery in advance. Ultimately, the court sentenced Block to 10 years with 3 years suspended, 7 years to serve.

Block acknowledges that the unsuspended portion of his sentence (7 years to serve) is the lowest sentence he could have received under the circumstances. But he argues that the additional 3 years of suspended time makes his sentence excessive.[8]

We review a claim of excessiveness under the "clearly mistaken" standard of review.[9] This is a deferential standard of review grounded in two principles: first, that reasonable judges may differ regarding what constitutes an appropriate sentence for a given set of facts; and, second, that society accepts these discrepancies so long as the

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[6] AS 12.55.125(c)(2)(A).

[7] AS 12.55.155(d)(3).

[8] *See Reandeau v. State*, 265 P.3d 1045, 1058 (Alaska App. 2011) (excessive sentence review includes suspended and unsuspended time); *Heavyrunner v. State*, 172 P.3d 819, 821 (Alaska App. 2007) (same).

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

sentence falls within "a permissible range of reasonable sentences."[10] The permissible range of reasonable sentences is determined by examining "the particular facts of the individual case in light of the total range of sentences authorized by the legislature for the particular offense."[11]

Having independently reviewed the record in this case, we conclude that the sentence Block received is not clearly mistaken.

Conclusion

We AFFIRM the judgment of the superior court.

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[10] *State v. Hodari*, 996 P.2d 1230, 1232 (Alaska 2000) (quoting *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997)).

[11] *Id.* at 1233.