

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL JOSHUA CANNIZZARO,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11456
Trial Court No. 3AN-98-1479 CR

MEMORANDUM OPINION

No. 6045 — April 9, 2014

Appeal from the Superior Court, Third Judicial District, Palmer,
Eric Smith, Judge.

Appearances: Bruce L. Brown, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Kerry A. Corliss, Assistant District Attorney, Palmer, and
Michael C. Geraghty, Attorney General, Juneau, for the Appel-
lee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley,
District Court Judge.*

Judge MANNHEIMER.

In 1998, Michael Joshua Cannizzaro committed a series of four armed robberies, and he received a sentence of 14 years' imprisonment with 5 years suspended

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

— *i.e.*, 9 years to serve. After serving his term of imprisonment, Cannizzaro was released on probation. His probation was revoked three times. The fourth time that the State petitioned the superior court to revoke his probation, Cannizzaro rejected further probation and demanded a final sentence of active imprisonment.

At that point, Cannizzaro had about 44 months left of his originally suspended jail time. The superior court imposed 36 of these months.

Cannizzaro now appeals, contending that this sentence is clearly mistaken. For the reasons explained here, we affirm Cannizzaro’s sentence.

Underlying facts, procedural history, and the superior court’s sentencing decision

During the early morning hours of February 16, 1998, Cannizzaro committed two armed robberies. In each case, Cannizzaro entered an all-night video store, wearing a ski mask and brandishing a semi-automatic pistol, and yelled at the store clerk to give him all the money.

On February 19th, again during the early morning hours, Cannizzaro committed a third robbery of a video store — again wearing a ski mask and brandishing a semi-automatic pistol. And about two hours later, Cannizzaro committed a similar fourth robbery of a video store.

Because of this series of robberies, the Anchorage police began conducting early morning security checks of various all-night video stores. Around 3:00 a.m. on February 20th, the police observed a vehicle with its ignition running in the parking lot of Video X on Muldoon Road. As soon as the patrol car arrived, this vehicle left the parking lot. The police stopped the vehicle. Inside, they found Cannizzaro, a ski mask,

and a loaded MAC-10 semi-automatic pistol. Cannizzaro later confessed that he had committed the four robberies.

In a plea agreement, Cannizzaro pleaded guilty to three counts of first-degree robbery, AS 11.41.500(a)(1), in exchange for the dismissal of other counts of robbery and conspiracy to commit robbery.

First-degree robbery is a class A felony.¹ As a first felony offender, Cannizzaro faced a presumptive term of 7 years' imprisonment on each of the three robbery counts.² Under the terms of the plea agreement, Cannizzaro faced a minimum sentence of 7 years' imprisonment.

Cannizzaro was 17 years old at the time of his sentencing. Although he had no prior felony convictions, he had a juvenile record from California and Oregon which included adjudications for burglary, receiving stolen property, petty theft, and assault.

The superior court sentenced Cannizzaro to a composite term of 14 years with 5 years suspended — *i.e.*, 9 years to serve. Cannizzaro served this sentence and was released on probation in 2004.

In the ensuing years, Cannizzaro was convicted of two new misdemeanors: unlawful evasion, and violating the conditions of bail release. The State also filed four petitions to revoke Cannizzaro's probation. The first three times, the superior court imposed some of Cannizzaro's suspended jail time, and then Cannizzaro resumed his probation. But in response to the fourth petition to revoke probation, Cannizzaro announced that he was rejecting further probation and that he wished to receive a final sentence of active imprisonment.

¹ AS 11.41.500(b).

² Cannizzaro's sentencing was governed by the pre-2005 version of AS 12.55.-125(c)(2)(A), which provided for a specific presumptive term of imprisonment rather than a presumptive range of imprisonment.

At the ensuing disposition hearing, the prosecutor asked the superior court to impose all of Cannizzaro's remaining suspended jail time — approximately 44 months. Cannizzaro's attorney asked the court to impose half that amount, 22 months. The superior court declined to follow either of the attorneys' recommendations; instead, the court sentenced Cannizzaro to serve 36 months:

The Court: Well, Mr. Cannizzaro got out [of prison] in 2004. He had a [petition to revoke probation] that was adjudicated about two years later, and another one in 2007. Judge Volland gave him 12 months on that [second] one. And about a year and a half later, he came in, January 2010, to be adjudicated [for another probation violation]. And then these [additional petitions to revoke] started not long after the 2010 adjudication. We've got March 2010; it looks like the Anchorage probation officer essentially gave him a pass on that one. And about a year later, there was a string of violations in 2011 and there was somewhat of a pass, and more violations in 2012. And then there was the [incident where Cannizzaro] abscond[ed] [from supervision for several months].

So the problem is, we have a pattern of pretty bad behavior on probation; [probation] just never really clicked. [So it] makes sense [for] Mr. Cannizzaro to be off probation, for sure.

I recognize that [Mr. Cannizzaro's] original crime was a violent crime, and [he also had] a couple of misdemeanors. I will let up a little bit, but not a lot. I'm going to impose 36 months [of the suspended jail time]. I think, for the [sentencing goal] of general deterrence, [that] it's important to impose the bulk of the [remaining] time. But since we don't have any [further] crimes of violence, ... I will impose a little bit less than the full amount.

Cannizzaro's arguments on appeal

As just explained, Cannizzaro had 44 months of suspended jail time remaining, and the superior court imposed 36 of those months. In this appeal, Cannizzaro argues that the superior court violated Alaska sentencing law by reflexively imposing the bulk of Cannizzaro's remaining suspended jail time, rather than analyzing Cannizzaro's background, the original facts of his case, and his ensuing conduct while on probation using the sentencing criteria codified in AS 12.55.005.

(*See Bland v. State*, 846 P.2d 815, 818 (Alaska App. 1993): “An offender who elects imprisonment over probationary supervision ... does not thereby forfeit the right to a sentence that is reasonable under the totality of the circumstances of the case. Regardless of whether a sentence is probationary or non-probationary, it must comport with the sentencing principles articulated in *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970) and AS 12.55.005.”)

It is true that the superior court's sentencing remarks do not contain a lengthy analysis of Cannizzaro's background or the facts of his original offenses. Instead, the court focused on Cannizzaro's failures while on probation. But the prosecutor and the defense attorney likewise focused their comments on Cannizzaro's conduct since his initial release from prison. It appears that, because of the numerous times that Cannizzaro had been before the court, everyone involved was already familiar with the underlying facts of his case.

Moreover, the record does not support Cannizzaro's assertions that the superior court sentenced him reflexively, or that the court ignored the statutory sentencing criteria, or that the court gave undue prominence to the fact that Cannizzaro

had decided to reject further probation. As can be seen from the superior court’s sentencing remarks (quoted above), the court declared that its sentencing decision was based on the violent nature of Cannizzaro’s original offenses, Cannizzaro’s repeated failures while on probation, and the sentencing goal of general deterrence (*i.e.*, deterrence of others).

Cannizzaro also argues that his current sentence — which is now a total of 13 years and 4 months to serve for the three robbery convictions — violates the 10-year sentencing ceiling that this Court adopted and applied in cases such as *Pruett v. State*, 742 P.2d 257, 264 (Alaska App. 1987) (“Sentences of ten years or more for conduct equivalent in seriousness to class A felonies ... have generally been ... reserved for those with a proven record of recidivism, or those whose conduct involved premeditated attempts to kill or seriously injure.”); and *Castle v. State*, 767 P.2d 219, 221 (Alaska App. 1989) (“In ... cases involving multiple class A felonies, ... we have emphasized that composite sentences in excess of ten years are justified only when isolation of the offender is actually necessary for the protection of the public[.]”).

But this line of cases was expressly disapproved by the Alaska Supreme Court in *State v. Wentz*, 805 P.2d 962, 965 (Alaska 1991): “We believe that the court of appeals’ ‘ten-year rule’ is both inconsistent with the statutory scheme established by the legislature and contrary to our prior decisions concerning the proper role of the appellate courts in reviewing sentencing decisions.”

Finally, Cannizzaro argues that even if the superior court did not violate any procedural rules, the court’s sentencing decision is still clearly mistaken — *i.e.*, excessively harsh, given the circumstances of his case.

When the superior court originally sentenced Cannizzaro in January 1999, the judge explained that his sentencing decision was an effort to balance the senseless violence and dangerousness of Cannizzaro’s conduct and Cannizzaro’s already

substantial history of antisocial behavior (which the sentencing judge described as “a very disturbing track record”) against Cannizzaro’s relative youth and his remaining — albeit guarded — potential for rehabilitation.

Based on these considerations, the judge sentenced Cannizzaro to 14 years’ imprisonment, but he suspended 5 years of this sentence. After announcing this sentence, the judge declared that “if [Cannizzaro] fails on probation, then he [will] have to serve the additional five years.”

By the time that Cannizzaro rejected probation and appeared for his final sentencing hearing in this case, the superior court found that Cannizzaro *had* failed on probation. But instead of sentencing Cannizzaro to all 44 months of his remaining suspended jail time, the court imposed only 36 months — which, the court explained, was due to the fact that Cannizzaro had not engaged in any further acts of violence.

The record shows that the superior court had a reasoned basis for its sentencing decision, and we are convinced (having independently reviewed that record) that the superior court’s decision is not clearly mistaken.

Conclusion

The sentencing decision of the superior court is AFFIRMED.