IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JASON EDWARD REANDEAU, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-10469 Trial Court No. 3KO-08-002 CR MEMORANDUM OPINION No. 6051 — April 30, 2014

Appeal from the Superior Court, Third Judicial District, Kodiak, Peter G. Ashman, Judge.

Appearances: G. Blair McCune, Wasilla, for the Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Daniel S. Sullivan, Attorney General, Juneau, for the Appellee.

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

Judge MANNHEIMER.

Jason Edward Reandeau was convicted of second-degree sexual abuse of a minor (sexual contact with a child under the age of 16 by a person residing in the same

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

household and who has authority over the child),[1] two related acts of fourth-degree assault, and first-degree "failure to register" as a sex offender. (Actually, Reandeau did register as a sex offender; his offense was in failing to file the required quarterly verification of his address.)

Reandeau faced a presumptive sentencing range of 15 to 30 years' imprisonment for his most serious offense, the second-degree sexual abuse conviction.[2] He ultimately received a composite sentence of 52½ years' imprisonment with 25 years suspended (*i.e.*, 27½ years to serve) for all his offenses. Reandeau challenges this composite sentence as excessive.

Initially, Reandeau's case presented the issue of whether he was entitled to pursue a sentence appeal, or whether his appeal was barred by AS 12.55.120(e) (which declares that felony offenders who receive a sentence within the applicable presumptive range have no right to appeal their sentence).

We recently resolved this issue in *Mund v. State*, __ P.3d __, Alaska App. Opinion No. 2413 (March 21, 2014), 2014 WL 1133555. In *Mund*, we held that AS 12.55.120(e) was invalidly enacted by the Alaska Legislature — because this statute directly conflicts with Alaska Appellate Rule 215(a), and because the legislature failed to follow the procedural requirements set forth in *Leege v. Martin*, 379 P.2d 447, 451 (Alaska 1963), for modifying a court rule.[3]

Under our decision in *Mund*, Reandeau has the right to appeal his sentence, and this Court has jurisdiction to hear Reandeau's sentence appeal. Accordingly, we now consider the merits of Reandeau's excessive sentence claim.

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[1] AS 11.41.436(a)(5)(A).

[2] AS 12.55.125(i)(3)(C).

[3] 2014 WL 1133555 at *2, 8.

Reandeau argues that his active term of imprisonment, 27½ years to serve, is considerably more severe than it would appear to be on its face because Reandeau is a repeat sexual felony offender and he is therefore not eligible for good time credit. *See* AS 33.20.010(a)(3). (Reandeau was convicted in 1995 of attempted first-degree sexual assault, based on an incident where Reandeau sexually assaulted a cab driver at knife-point.)

Because Reandeau is not eligible for good time credit, he must serve the entire 27½ years, instead of having the chance (assuming he maintains good behavior in prison) to serve two-thirds of his sentence (approximately 18 years) and then be released on mandatory parole for the remainder of his sentence.

But Reandeau's lack of eligibility for good time credit was not a sentencing choice of the superior court. Rather, this ineligibility applies across the board to all repeat sexual felony offenders. In effect, the legislature has increased the severity of sentences for repeat sexual felony offenders — a decision that falls within the legislative purview. [4]

In a separate argument, Reandeau points out that his composite term of 27½ years to serve exceeds the benchmark sentencing ranges that this Court has previously adopted for class B sexual felonies. But the cases that Reandeau relies on were decided before 2006 — the year when the Alaska Legislature amended the sentencing statutes

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[4] *See Scholes v. State*, 274 P.3d 496, 503 (Alaska App. 2012) ("[W]ithin our system of divided government powers, it is the legislature's role to assess the proper penalty or range of penalties for a particular crime."). The Alaska Supreme Court has consistently held that the power to determine an appropriate punishment for an offense is vested in the legislature. *See*, *e.g.*, *Rust v. State*, 582 P.2d 134, 136-37 (Alaska 1978); *B.A.M. v. State*, 528 P.2d 437, 439 (Alaska 1974); *Faulkner v. State*, 445 P.2d 815, 818 (Alaska 1968). *See also Dancer v. State*, 715 P.2d 1174, 1179 (Alaska App. 1986) (rejecting various constitutional attacks on presumptive sentencing).

to sharply increase the sentencing ranges for sexual offenders.[5] The benchmark sentencing ranges for class B sexual felonies that this Court approved in our pre-2006 decisions have little relevance to Reandeau's case.

In addition, the sentencing court found, as a factual matter, that Reandeau's offense was atypically serious for second-degree sexual abuse of a minor because Reandeau did not simply engage in sexual contact with the victim; rather, he sexually penetrated the victim — conduct that constituted the greater offense of first-degree sexual abuse of a minor.[6]

Reandeau argues that his sentence is particularly severe because, in addition to the 27½ years to serve, the superior court imposed 25 years of suspended jail time. When this Court reviews a sentence for excessiveness, we take the suspended portion of the defendant's sentence into account.[7] However, as we indicated in *Heavyrunner v. State*, 172 P.3d 819, 821 (Alaska App. 2007), the suspended portion of a defendant's sentence plays a role different from the defendant's term of active imprisonment: it acts as a deterrent when the defendant is released from prison, and as a safeguard in the event that the defendant's efforts toward rehabilitation prove unsuccessful.

As we explained earlier, Reandeau was subject to a presumptive sentencing range of 15 to 30 years to serve. Given the record in this case, given the findings of the sentencing judge, and given the seriousness of Reandeau's prior sexual felony, Reandeau has not shown that the superior court was clearly mistaken when it sentenced him to a

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[5] *See* SLA 2006, ch. 14, §§ 4-7.

[6] *See* AS 11.41.434(a)(3)(A).

[7] *Heavyrunner v. State*, 172 P.3d 819, 821 (Alaska App. 2007); *Jimmy v. State*, 689 P.2d 504, 505 (Alaska App. 1984).

composite term of 27½ years to serve with another 25 years suspended. [8] Accordingly, the superior court's sentencing decision is AFFIRMED.

[8] *See McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974) (an appellate court is to affirm a sentencing decision unless the decision is clearly mistaken).