

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

CURTIS VINCENT POWELL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11485  
Trial Court No. 3AN-12-1577 CR

MEMORANDUM OPINION

No. 6053 — April 30, 2014

Appeal from the District Court, Third Judicial District,  
Anchorage, Stephanie Rhoades, Judge.

Appearances: Gretchen Staft, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Carina Uraiqat, Assistant District Attorney, Anchorage, and  
Michael C. Geraghty, Attorney General, Juneau, for the Appel-  
lee.

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

Judge MANNHEIMER.

Curtis Vincent Powell appeals the sentence of 90 days' imprisonment that  
he received for violating the terms of his probation.

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

Powell's underlying conviction was for driving under the influence. Powell had a lengthy criminal record, including several prior convictions for DUI or breath-test refusal, and eleven convictions for driving with a revoked or suspended license. The district court sentenced Powell to serve 80 days in jail (270 days with 190 days suspended), followed by 5 years' probation.

One of Powell's conditions of probation was to report for assessment to the Alcohol Safety Action Program (ASAP) in Anchorage and comply with their recommendations for substance abuse treatment. When Powell failed to report to ASAP, the State filed a petition to revoke his probation.

Powell admitted this violation, and the district court gave Powell approximately one month to obtain an assessment from a specific treatment provider in downtown Anchorage. But at the end of the allotted period, Powell had failed to obtain the assessment. Indeed, he was in custody for a new DUI.

Powell told the court that he had called the downtown treatment facility several times to arrange the alcohol assessment, but his attempts were unsuccessful: no one answered the phone or returned his calls, even though he left "messages and phone numbers".

But the court did not credit Powell's excuses. The court noted that it had ordered Powell to go to this particular treatment facility because the facility was housed in the downtown bus terminal, thus allowing Powell to go there any time he wished. The court found that Powell "could have gotten there any day [he] wanted to", and that Powell's failure to arrange the assessment demonstrated that he "apparently [was not] particularly motivated to do it."

Based on these findings, the district court revoked Powell's probation and imposed 90 days of his previously suspended sentence.

In this appeal, Powell argues that the district court erred when it found that Powell's excuses were not believable, and that he had failed to pursue alcohol treatment. These are issues of fact, and we must affirm the district court's findings unless Powell shows that they are clearly erroneous.<sup>1</sup> Powell has not done that. We therefore uphold the district court's conclusion that Powell failed to pursue alcohol treatment.

Powell also argues that his probation revocation sentence of 90 days is excessive. But the record shows that the district court did not reflexively impose this sentence. Rather, the court considered Powell's lengthy record, the danger he posed because of his driving, and the fact that the sentencing goal of deterrence was now more important, given Powell's rejection of treatment.

Theoretically, the court might have imposed all 190 days of Powell's suspended jail time. The prosecutor asked the court to impose 120 days. But the court rejected the prosecutor's recommendation and imposed 90 days. Given the record in this case, and given the district court's sentencing analysis, this 90-day term of imprisonment is not clearly mistaken.<sup>2</sup>

For these reasons, the judgement of the district court is AFFIRMED.

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<sup>1</sup> *Booth v. State*, 251 P.3d 369, 373 (Alaska App. 2011).

<sup>2</sup> *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).