

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 precedent for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SONYA M. SIMMONS,	)	
	)	
Appellant,	)	Court of Appeals No. A-11217
	)	Trial Court No. 1KE-11-989 CR
v.	)	
	)	<u>MEMORANDUM OPINION</u>
STATE OF ALASKA,	)	
	)	
Appellee.	)	No. 6068 — July 2, 2014
_____	)	

Appeal from the District Court, First Judicial District, Ketchikan,  
Kevin G. Miller, Judge.

Appearances: Tracey Wollenberg, Assistant Public Defender,  
and Quinlan Steiner, Public Defender, Anchorage, for the  
Appellant. James Scott, District Attorney, and Michael Geraghty,  
Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

Pursuant to a plea agreement with the State, Sonya M. Simmons pleaded  
guilty to driving with a revoked license.<sup>1</sup> As part of her sentence for that offense, the

---

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

<sup>1</sup> AS 28.15.291(a)(1).

district court revoked her driver's license for 5 years. The court also required that she not drive for 5 years as a condition of her probation.

Simmons challenges the 5-year license revocation and driving ban as excessive and unduly restrictive. For the reasons explained here, we uphold both elements of Simmons's sentence.

*Factual and procedural background*

Sonya Simmons pleaded guilty to driving with a revoked license. Under the plea agreement, the court could not impose a term of imprisonment longer than 120 days, but all other terms of the sentence were left open.

At the first sentencing hearing, the prosecutor mistakenly told the district court that Simmons's driver's license had already been revoked for life because of a prior conviction for driving under the influence. Although Simmons objected and asserted (correctly) that her license had only been revoked for 3 years, the district court accepted the prosecutor's representation and sentenced Simmons under the belief that she already had a lifetime license revocation.

The court noted that it was a "little pointless" to revoke Simmons's driver's license if it had already been revoked for life, but the court concluded that license revocation was a mandatory term of Simmons's sentence. The court therefore revoked Simmons's license for 5 years, in addition to imposing a condition of probation that prohibited her from driving for 5 years.

Simmons moved to modify her sentence, arguing that she was entitled to resentencing because the district court sentenced her based on the erroneous assumption that her driver's license had been revoked for life. The district court agreed that Simmons was entitled to resentencing because of this error. However, at the second sentencing hearing, the court imposed the same sentence it had imposed at the first hearing: 360 days

with 240 days suspended (120 days to serve), a 5-year license revocation, and a 5-year driving ban as a condition of probation.

At both sentencing hearings, the prosecutor provided a detailed history of Simmons's criminal record, which included more than thirty prior convictions, many of them drug or alcohol related and/or driving related. Simmons's past driving offenses included four prior convictions for driving under the influence, two prior convictions for driving with a revoked or suspended license, and two prior convictions for driving without a license.

The prosecutor also detailed the circumstances of the current offense: the Ketchikan police were alerted to Simmons's poor driving by a 911 caller, who provided his name and reported that there was a car stopped in the middle of the road with its headlights illuminated. The 911 caller said that the driver was female and that her voice was slurred. After responding to the call, the officer followed Simmons's car, observing it cross the fog line twice and jerk abruptly. When the officer activated his overhead lights to stop Simmons, she braked hard, causing her vehicle to skid. Upon contact with the officer, Simmons said, "I'm ready to assume the position," and then explained that her license was revoked.

The officer noticed the smell of alcohol on Simmons's breath and administered field sobriety tests, which Simmons failed. The Datamaster breath test indicated a blood alcohol level of .039 percent, below the legal limit of .08 percent.<sup>2</sup> A subsequent blood test showed the presence of clonazepam (a medication that qualifies as a controlled substance<sup>3</sup> for which Simmons had a prescription), THC, carboxy THC, and methamphetamine.

---

<sup>2</sup> AS 28.35.030(a)(2).

<sup>3</sup> See AS 11.71.170(b)(5).

The prosecutor argued that Simmons's conduct in this case was aggravated because of her poor driving and her deliberate decision to drive knowing that her license was revoked. The prosecutor argued that isolation and protection of the public should be the primary goals of the court's sentence.

The district court agreed. At the resentencing, the court found that Simmons's prospects for rehabilitation were poor and that her conduct in this case was aggravated. The court concluded that isolation and deterrence should be the primary sentencing goals and that a significant suspended sentence and lengthy period of probation was needed to further these goals. The court also concluded that a lengthy license revocation and driving ban was needed, stating:

[W]hat I have yet to hear is any reason why Ms. Simmons should ever be behind the wheel of a vehicle ever. She has certainly established that she's unwilling or unable to follow societal rules, that she's willing to drive on revoked licenses, she's willing to drive while impaired as evidenced by the number of DUIs. And for that reason, a lengthy period of a license revocation is appropriate.

The trial court acknowledged that the typical license revocation for driving while license revoked was 90 days, but it concluded that a much lengthier revocation was called for in this case:

[I]n the vast majority of ... driving with license revoked case[s], the license suspension is ninety days and we do that ... over and over. However, in Ms. Simmons's case, she has got a very lengthy criminal history; it's a substance-related criminal history. Given the DUIs, and given her willingness to drive while impaired and her inability to follow societal rules, ... she just should not be driving. And I think the license revocation for a period of 5 years is — it's sort of a compromise. ... She needs to understand that before she can drive again, she needs to establish a period of time where she's clean, sober. And at least for that period of 5 years, as well, the community is theoretically safe from Ms. Simmons being behind the wheel.

*Why we uphold the 5-year license revocation as not clearly mistaken*

On appeal, Simmons argues that the 5-year license revocation is excessive because it is well beyond the mandatory minimum 90-day license revocation that typically accompanies a conviction for driving with a revoked license. She asserts that such a lengthy period of revocation is contrary to the statutory scheme setting out mandatory minimum license revocation periods for various types of driving offenses. Simmons also asserts that the 5-year revocation period will undermine her efforts at rehabilitation.

But as Simmons’s briefing acknowledges, the statutory scheme setting out the mandatory minimum license revocation periods for various offenses does not prescribe any limitation on the maximum period of revocation that can be imposed in an individual case.<sup>4</sup> That decision is left to the discretion of the sentencing judge, who is in the best position to evaluate the appropriate license revocation period in a particular case.<sup>5</sup> Moreover, our review of the sentencing court’s decision is limited to determining whether it is “clearly mistaken” — that is, whether the defendant’s license revocation falls within “a permissible range of reasonable sentences” given the facts of the case and the range authorized by the legislature for that offense.<sup>6</sup>

Simmons asserts that the sentencing judge’s discretion (and our review) should nevertheless be guided by the mandatory minimum license revocation periods set out in the statutory scheme. She argues that, under this statutory scheme, her 5-year

---

<sup>4</sup> See AS 28.15.291(b)(4); *see also* AS 28.15.181(a)(9), (d); *Bottcher v. State* 300 P.3d 528, 531-32 (Alaska 2013); *Dodge v. Anchorage*, 877 P.2d 270, 272 (Alaska App. 1994); *Wylie v. State*, 797 P.2d 651, 663 n.11 (Alaska App. 1990).

<sup>5</sup> See *Bottcher*, 300 P.3d at 534-35; *Dodge*, 877 P.2d at 273.

<sup>6</sup> See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974); *Dodge*, 877 P.2d at 273.

license revocation for driving with a revoked license is excessive and disproportionate because it is greater than the 3-year mandatory minimum she would have faced if she had been convicted of driving under the influence, a more serious offense.<sup>7</sup>

Even if we were to accept Simmons’s theory that the mandatory minimum license revocation periods for various offenses should serve as sentencing “guideposts” or “benchmarks,” we fail to see how this theory would lead to a reversal in this case. Even under this proposed framework, sentencing courts would still have the discretion to impose longer periods of license revocation if the facts or circumstances of the individual case warranted the greater sentence.<sup>8</sup> And the issue on review would remain the same — was the sentencing court clearly mistaken in imposing the lengthy license revocation given the totality of the circumstances in the case?

Having independently reviewed the record in Simmons’s case, we conclude that the district court’s decision to impose a 5-year license revocation was not clearly mistaken. Based on Simmons’s prior criminal history and her conduct in this case, the district court could properly consider Simmons’s case to be aggravated and her driving

---

<sup>7</sup> Under subsections (a)(5), (c)(3), and (i) of AS 28.15.181 and AS 28.35.030(u)(4), trial courts must revoke the license of a person convicted of DUI for “not less than 3 years” if the person has previously been convicted of DUI twice in the preceding fifteen years. Because Simmons had two prior DUI convictions in the preceding fifteen years, she would have been subject to this mandatory 3-year minimum if she had been convicted of driving under the influence instead of driving with a revoked license.

<sup>8</sup> Simmons’s proposed framework is similar to the sentencing framework set out in *Austin v. State*, 627 P.2d 657 (Alaska App. 1981). In *Austin*, this Court held that in typical cases, “a first offender should receive a more favorable sentence than the presumptive sentence for a second offender.” *Id.* at 657-58. Simmons invites us to similarly hold that a person convicted of a less serious driving offense should receive a more favorable sentence than the mandatory minimum sentence for a greater offense. The *Austin* rule has been superseded by statute. See *Dayton v. State*, 120 P.3d 1073, 1083 (Alaska App. 2005). But even under the *Austin* framework, a judge could exceed the prescribed benchmark in “exceptional cases” of an “aggravated nature.” *Austin*, 627 P.2d at 658.

to be a particular danger to the public. Moreover, it is clear from the district court's statements that, while rehabilitation remained a goal of the sentence, the primary goal of the sentence, including the 5-year revocation and the 5-year driving ban, was to deter Simmons from driving and to give the court the means to protect the public by incarcerating her if she did drive.

*Why we uphold the 5-year driving ban as not unduly restrictive*

Simmons next challenges the driving ban as unduly restrictive. She acknowledges that the driving ban is essentially coterminous with the 5-year license revocation; if Simmons drives during her 5-year term of probation, she will likely be in violation of two conditions of probation — the special condition banning her from driving, and the general condition requiring her to obey all federal, state, and local laws.

Simmons asserts that “it is conceivable” that she will be able to obtain a valid driver's license a few months before her probationary term expires because her 5-year license revocation began before she was released on probation. She therefore argues that the driving ban should be modified to “no driving unless with a valid license” to ensure that she will be able to drive under those circumstances.

But Simmons made a similar request at the resentencing, which the district court rejected. Instead, the court reimposed the 5-year ban, reasoning that “at least for that period of five years ... the community is theoretically safe from Ms. Simmons being behind the wheel.” Given Ms. Simmons's past conduct, we conclude that the district court's concerns regarding Simmons's driving are well-founded and that the 5-year ban is therefore not unduly restrictive or excessive.

*Conclusion*

The judgment of the district court is AFFIRMED.

