

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

LYNN ROBERT MAILLELLE,)	
)	
Appellant,)	Court of Appeals No. A-11794
)	Trial Court No. 4AK-08-63 CR
v.)	
)	
STATE OF ALASKA,)	<u>MEMORANDUM OPINION</u>
)	
Appellee.)	No. 6115 — November 12, 2014
_____)	

Appeal from the Superior Court, Third Judicial District, Anchorage, Jack Smith, Judge.

Appearances: Jonathon T. Torres, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Daniel K. Shorey, Assistant District Attorney, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

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

PER CURIAM.

Lynn Robert Maillelle was charged with violating his probation a second time while on release from his second-degree assault conviction. Superior Court Judge

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

Jack Smith imposed 9 months of Maillelle’s suspended time and re-ordered him to undergo a substance abuse evaluation and to follow its recommendations. Maillelle argues the 9-month sentence is excessive. We conclude this sentence is not clearly mistaken.

Maillelle pleaded guilty to second-degree assault based on the allegation that he strangled B.D., told her to beg for her life, and then raped her.¹ He was sentenced to 8 years’ imprisonment with 4 years suspended (4 years to serve). Maillelle’s probation conditions included requirements that he abstain from alcohol and complete alcohol treatment.²

Maillelle served this sentence and was released on parole and probation.³ About a month later, a police officer found Maillelle heavily intoxicated.⁴ The State filed a petition to revoke his probation. After he was found guilty of violating the terms of his probation, the court imposed 6 months of Maillelle’s suspended time, consecutive to the approximately 16 months the parole board had imposed for the same violation. The court also ordered Maillelle to complete alcohol treatment and sex offender treatment.⁵ On appeal, this Court affirmed the imposition of 6 months of his suspended time and the probation condition requiring him to complete sex-offender treatment.⁶

¹ *Maillelle v. State*, 2013 WL 466438, at *1 (Alaska App. Feb. 6, 2013) (unpublished).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at *2-3.

On September 1, 2013, the State filed a second petition to revoke Maillelle's probation, alleging that Maillelle had consumed alcohol and had committed the crimes of resisting arrest and disorderly conduct. Maillelle admitted consuming alcohol, and Judge Smith took judicial notice that Maillelle had been convicted of resisting arrest. The State withdrew its allegation that Maillelle had committed the crime of disorderly conduct.

At the disposition hearing, the State recommended that the court impose 1 year of Maillelle's remaining suspended time. The State argued that in considering the *Chaney* criteria, the court should focus on isolating Maillelle and give less consideration to his prospect of rehabilitation.

Maillelle acknowledged struggling with alcohol. He told the court that a significant factor in his relapse and subsequent criminal conduct was the recent death of his adult daughter. Maillelle asked the court to focus on rehabilitation, to impose 4 months of jail time, and to order him to complete alcohol treatment with up to 6 months of residential treatment. Maillelle asked the court to allow him to do alcohol treatment while out of custody so he could pay child support for his five-year-old daughter and earn visitation rights to see her.

Judge Smith concluded rehabilitation was still a factor in this second petition to revoke, but he recognized community condemnation and deterrence of others were also relevant factors. Judge Smith considered Maillelle's initial crime, his continued abuse of alcohol in violation of his probation conditions, and the new crime Maillelle had committed. Judge Smith reasoned that imposing less time on a second petition to revoke than had been imposed on a first petition would be counterproductive, especially with alcohol consumption underlying both petitions and the fact that Maillelle committed a new crime. He therefore imposed 9 months of Maillelle's suspended time

and ordered Maillelle to complete an alcohol assessment and the recommended treatment, including up to 6 months of residential treatment. The court also reminded Maillelle he still needed to complete sex offender treatment.

Maillelle appeals this sentence. He argues 4 months of jail time and a renewed order to complete alcohol treatment would better meet the goal of rehabilitation than the 9 months imposed.

In exercising its discretion when sentencing a defendant, the judge must consider the *Chaney* sentencing factors.⁷ The sentence imposed must be based on the totality of the circumstances, including the original offense, the offender's background and experience, and the offender's intervening conduct.⁸ The sentencing court is responsible for determining the priority and relationship of the sentencing goals in each case.⁹ This Court will only disturb the sentencing court's decision if it is clearly mistaken.¹⁰

As we noted in his appeal following his first probation violation, Maillelle is a second felony offender with a history of violent misbehavior.¹¹ In imposing a sentence in this second revocation of Maillelle's probation, Judge Smith considered the seriousness of Maillelle's original offense, his history of probation violations involving alcohol abuse, and his commission of a new crime. The record shows that despite

⁷ AS 12.55.005; *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970).

⁸ *See Betzner v. State*, 768 P.2d 1150, 1155-56 (Alaska App. 1989).

⁹ *Asitonia v. State*, 508 P.2d 1023, 1026 (Alaska 1973).

¹⁰ *See McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974) (stating that a reviewing court must affirm a sentencing decision unless the decision is clearly mistaken).

¹¹ *Maillelle*, 2013 WL 466438, at *3.

Maillelle's violent criminal history and repeated use of alcohol in violation of his conditions of probation, Judge Smith still recognized rehabilitation as a sentencing factor, but he also considered the deterrence of others and community condemnation in fashioning Maillelle's sentence.

Given the seriousness of Maillelle's original offense, his continuing problems with alcohol, and his commission of another crime, we conclude it was reasonable for Judge Smith to continue to hold out rehabilitation as a sentencing goal while giving increased weight to the deterrence of others and community condemnation of Maillelle and his conduct in fashioning his sentence.

The sentencing court carefully considered the sentencing criteria, and, upon this record, the sentence imposed is not clearly mistaken.¹² The judgment of the superior court is AFFIRMED.

¹² See *McClain*, 519 P.2d at 813-14.