IN THE COURT OF APPEALS OF THE STATE OF ALASKA

HARRY N. WILLIAMS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11204 Trial Court No. 4BE-10-1113 CR MEMORANDUM OPINION No. 6154 — March 11, 2015

Appeal from the Superior Court, Fourth Judicial District, Bethel, Michael A. MacDonald, Judge.

Appearances: Marjorie Mock, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Tamara de Lucia, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

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

Following a jury trial, Harry N. Williams was convicted of second-degree murder[1] and kidnapping[2] for his participation in the torture and death of a nineteen-year-old Bethel man. At sentencing, the superior court sentenced Williams to a composite sentence of 104 years to serve. The superior court also eliminated Williams's eligibility for discretionary parole.

Williams appeals both his convictions and his sentence. He contends that the trial judge unfairly rebuked his attorney in front of the jury, creating an appearance of bias that tainted his trial. He also argues that the judge erred in finding him a worst offender and failing to consider various relevant factors in his sentencing. Lastly, Williams argues that the judge erred in eliminating his eligibility for discretionary parole.

For the reasons explained here, we conclude that the trial judge's actions did not create an appearance of bias and that Williams's sentence and parole restriction are not clearly mistaken. We therefore affirm Williams's convictions and sentence.

Factual and procedural background

On October 27, 2010, police officers found nineteen-year-old Ben Kaiser's severely beaten body in a Bethel residence belonging to Jeffrey Hout. Kaiser's body and head were covered in bruises. He had multiple blunt-force injuries. An autopsy revealed that he had suffered significant internal injuries, including brain hemorrhages.

Based on information obtained from Bethel resident Nicholas Cooke, Williams and Hout were arrested, indicted, and jointly tried on charges of first-degree murder, second-degree murder, kidnapping, and tampering with evidence. At trial, Cooke testified that on the morning of October 26, 2010, he saw Kaiser tied to a table

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[1] AS 11.41.110(a)(1).

[2] AS 11.41.300(a)(1)(C).

saw in Hout's workshop. Kaiser was naked, gagged, and covered in bruises and injuries. Cooke watched as Williams and Hout beat Kaiser with a coiled-up electrical cord and angle iron, and Williams applied an orbital sander to Kaiser's torso and thumb. Cooke also testified that he helped Hout and Williams move Kaiser into Hout's residence.

The jury convicted Williams and Hout of second-degree murder and kidnapping. At sentencing, Superior Court Judge Michael A. MacDonald found that their conduct was akin to first-degree murder and that a maximum sentence was warranted for both defendants. The judge imposed the same sentence on both defendants: 99 years for the second-degree murder conviction and 99 years for the kidnapping charge with 5 years consecutive, for a total composite sentence of 104 years to serve. Judge MacDonald also eliminated both defendants' eligibility for discretionary parole.

The trial judge's actions did not create an appearance of bias

On appeal, Williams argues that the trial judge created an appearance of bias at his trial by "unwarrantedly rebuking" his attorney during her cross-examination of Cooke. We have reviewed the judge's comments carefully, and we disagree with Williams's characterization of the comments as a "rebuke."[3]

The judge's comments came at the end of Williams's attorney's cross-examination of Cooke. Williams's attorney had asked Cooke several times whether he had been told by the prosecutor that the grand jury recommended the State investigate Cooke's role in Kaiser's death. Cooke replied that he had not been told that information. Williams's attorney then rephrased her question in a way that suggested that she was

[3] *See Jones v. State*, 1984 WL 908613, at *3 (Alaska App. Aug. 29, 1984) (unpublished) ("[A]ppellate courts closely scrutinize judicial comments in the jury's presence due to the great influence judicial conduct has on ... [jurors'] conceptions of the case.").

directly asserting that this had occurred and the attorney was now informing the defendant of that fact. At this point, the trial judge interrupted the attorney:

Defense Attorney:	Prosecutor never told you that you should be investigated by the grand jury for — as an accessory?
Cooke:	Nope.
Defense Attorney:	This is the first you heard of it?
Cooke:	Yep.
The Court:	Hold on. That's not ...
Defense Attorney:	I have no further ...
The Court:	Hold on. That is not a fact in evidence. That's a question. The question was, had this witness ever been told that. The answer is no. You're not to assume the premise of the fact as a fact in evidence. Any further questions ... ?
Defense Attorney:	Well, no, but — and when we're not on the record and outside the jury, I want clarification from Your Honor.
The Court:	Yeah, understood. But that was a ...
Defense Attorney:	No further questions.
The Court:	... question and the answer was no.

A short time later, the jury was dismissed for a break. The parties then discussed the judge's comments out of the presence of the jury. The defense attorney stated that the judge's interruption of her cross-examination had shocked her, and that she was concerned that the judge intended to "generally interject and make objections for the state." The defense attorney asserted that the judge's interruption was unwarranted because she was entitled to question Cooke about his potential bias.

The judge agreed that the defense was entitled to question Cooke about his potential bias and that whether Cooke had been told about the grand jury's desire to have him investigated was relevant to this inquiry and proper cross-examination. He

explained that he had interrupted only to ensure that counsel did not represent to the jury that the grand jury had, indeed, recommended that the State investigate Cooke, which was a fact not in evidence.

Williams argues on appeal that the judge's "unmerited rebuke of Williams's counsel implicitly called her integrity into question and could have left the jury with the impression that she would engage in impropriety to obtain a favorable verdict."

We disagree that the jury would have understood the judge's comments in this manner. We have listened to the recording of the exchange that occurred in the presence of the jury. It is clear from this recording that, consistent with the judge's later explanation, the judge's interruption is directed at instructing the jury on a particular point of law. The judge's tone is measured and his comments do not suggest any disrespect towards the defense attorney or her advocacy.[4] We therefore conclude that the judge's comments did not create an appearance of bias or otherwise affect the fairness of Williams's trial. Our confidence in this conclusion is further strengthened by the fact that the jury was specifically instructed by the judge at the beginning of trial that:

> At no time during the course of the trial will it be my intention, by anything I say or do, or by any questions that I may ask, to intimate or suggest what you should find to be the facts on any questions submitted to you, or that I believe or disbelieve any witness. If anything I do or say seems to so indicate, please disregard it and form your own opinion.

We therefore reject this point on appeal and affirm Williams's convictions.

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[4] *See id.* (finding no error where judge's comments were "brief, limited to the law, ... [and] did not appear to show disrespect for counsel").

Williams's composite sentence is not clearly mistaken

Williams argues that the superior court erred in implicitly finding him a worst offender and in sentencing him to the maximum sentences for second-degree murder and kidnapping. Williams argues specifically that the trial judge failed to consider that he played a secondary role in the murder and that he suffers from cognitive deficits related to huffing gasoline when he was younger.

But the record shows that the judge considered these factors, and found that they did not weigh as heavily in Williams's favor as they otherwise might have. The judge agreed that Hout had played the leadership role in the murder, but the judge also concluded that Williams's significant and lengthy criminal history made him an even poorer candidate for rehabilitation than Hout, and "offset" the significance of his secondary role in the murder. The judge also found that it was not clear to what extent Williams suffered from cognitive deficits, and that "there [was] no evidence of a diminished capacity except for the capacity for empathy or self control."

In sentencing Williams to the maximum terms for both crimes, the judge focused on the "savage" nature of the crimes, Williams's prior criminal history, and Williams's "deliberate cruelty" and "total lack of remorse." The judge also found that the murder was akin to a first-degree murder, stating that "[w]hat happened here, without a doubt, is an intent to beat and torture a teenage boy by two grown men ... mercilessly and cruelly for hours."

We review a judge's sentencing decisions under the clearly mistaken standard of review.[5] Having independently reviewed the record in this case, we conclude that the sentence is not clearly mistaken and that the superior court did not err in viewing Williams as a worst offender.

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[5] *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1976).

Williams's parole restriction is not clearly mistaken

At sentencing, the judge eliminated Williams's parole eligibility because he found that Williams posed "an extreme danger to the public." In reaching this conclusion, the judge referred to Williams's prior criminal history and the "inexplicable nature of the defendants' conduct ... and the general depravity of heart and derangement of mind demonstrated by such a horrible crime."

A sentencing judge should restrict parole only when there is a "sound reason" to do so.[6] Given the record in this case, we conclude that the judge's decision to restrict Williams's parole eligibility for the duration of his incarceration was not clearly mistaken.[7]

Conclusion

We AFFIRM Williams's convictions and sentence.

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[6] *Kelley v. State*, 785 P.2d 567, 569 (Alaska App. 1990).

[7] *See State v. Korkow*, 314 P.3d 560, 565-66 (Alaska 2013).