

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

JOHN KEITH HAMILTON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11856
Trial Court No. 3AN-13-7567 CR

MEMORANDUM OPINION

No. 6175 — April 29, 2015

Appeal from the Superior Court, Third Judicial District,
Anchorage, Philip R. Volland, Judge.

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

Before: Mannheimer, Chief Judge, and Allard and Kossler,
Judges.

PER CURIAM.

On July 10, 2013, John Keith Hamilton drove while intoxicated on the Seward Highway in Anchorage, hit another vehicle, left the scene, and continued driving several more miles before police officers stopped him. After Hamilton was pulled over, he rammed his truck into one of the patrol cars, injuring an officer. Hamilton then drove through a red light at a busy intersection and hit a car, injuring both of its occupants.

When patrol cars surrounded his truck, Hamilton repeatedly drove his truck into the officers' cars in an attempt to escape. The officers had to pull Hamilton from his truck because he refused to get out. Hamilton admitted drinking "a lot of tequila and beer," and officers found a half-empty bottle of tequila, four beers, and marijuana pipes and marijuana in Hamilton's truck. Hamilton's license was revoked at the time, and he had no driver's insurance.

Pursuant to a plea agreement with the State, Hamilton pleaded guilty to a consolidated count of third-degree assault, a consolidated count of failure to stop at the direction of a peace officer, and driving under the influence. The agreement left Hamilton's sentence to the discretion of the superior court.

Hamilton was fifty-two years old at the time of sentencing. He had a long history of abusing alcohol, marijuana, and cocaine. Hamilton's criminal history included felony convictions for possession of drugs, theft, robbery, burglary, and sexual assault, as well as over thirty misdemeanor convictions. He had six prior DUI convictions, four convictions for refusing to submit to a breath test, and four convictions for driving with a revoked or suspended license.

At sentencing, Superior Court Judge Philip R. Volland observed that Hamilton's criminal history was long, varied, and "discouragingly repetitive." He noted Hamilton had been subjected to substantial penalties in the past and had completed the Wellness Court program, yet he continued to use alcohol and drugs and to drive despite being ordered not to. Judge Volland found a compelling need to protect the public from Hamilton, and the judge discounted Hamilton's prospects for rehabilitation. Judge Volland also found that Hamilton was a danger to the community, requiring a sentence over the 5-year maximum term for his most serious offense.¹ He found three aggravating

¹ See generally *Phelps v. State*, 236 P.3d 381 (Alaska App. 2000) (under the *Neal-*
(continued...)

factors² and made a worst-offender finding. He imposed a composite sentence of 8 years and 2 months to serve with an additional 4 months suspended.

On appeal, Hamilton argues that Judge Volland should have given more priority to his prospects for rehabilitation in sentencing him for third-degree assault and in imposing the composite sentence for all his offenses. He also argues Judge Volland erred in finding him a worst offender.

The sentencing judge has the primary responsibility for determining the priority and weight to give the various sentencing goals codified in AS 12.55.005.³ When we review a trial court's ultimate sentencing decision, we assess whether the sentence imposed is clearly mistaken — that is, whether the sentence is within a permissible range of reasonable sentences, given the facts of the crime and the offender's history.⁴ In light of Hamilton's long criminal history and the aggravated facts of this case, the record supports Judge Volland's findings, and the sentence he imposed is not clearly mistaken.

We AFFIRM the judgment of the superior court.

¹ (...continued)

Mutschler rule, when a defendant is being sentenced for two or more crimes, the defendant's composite sentence cannot exceed the maximum sentence for the single most serious offense unless the judge makes findings justifying imposition of a longer sentence).

² AS 12.55.155(c)(6) (defendant's conduct created a risk of imminent physical injury to three or more persons); AS 12.55.155(c)(15) (defendant has three or more prior felonies); and AS 12.55.155(c)(31) (defendant has prior criminal history that includes convictions for five or more class A misdemeanors).

³ *Asitonia v. State*, 508 P.2d 1023, 1026 (Alaska 1973).

⁴ *See State v. Hodari*, 996 P.2d 1230, 1232, 1237 (Alaska 2000).