IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DARIEN LAMAR JETER, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11892 Trial Court Nos. 3AN-11-12939 CR & 3AN-12-1443 CR MEMORANDUM OPINION No. 6187 — May 20, 2015

Appeal from the Superior Court, Third Judicial District, Anchorage, Michael L. Wolverton, Judge.

Appearances: Jim Corrigan, Assistant Public Advocate, Appeals and Statewide Defense Section, and Richard Allen, Public Advocate, Anchorage, for the Appellant. Jason B. Frasco, 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.[*]

Judge MANNHEIMER.

In 2012, while Darien Lamar Jeter was on probation from felony offenses he committed the previous year (attempted first-degree vehicle theft, and first-degree

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

failure to stop at the direction of a police officer), he committed a new felony — another first-degree vehicle theft (this one completed).

For this new vehicle theft, Jeter initially received a sentence of 36 months' imprisonment with 30 months suspended — *i.e.*, 6 months to serve. But in 2013, Jeter committed yet another felony (second-degree theft). Based on Jeter's commission of this new crime, the superior court revoked his probation in the 2012 vehicle theft case and imposed all 30 months of his suspended jail time. Jeter now appeals his 2012 vehicle theft sentence — which, at this point, totals 36 months to serve.

Jeter's case raises a procedural problem: he has failed to appeal all of his relevant sentences.

When Jeter was initially sentenced in his 2012 vehicle theft case, this was done in conjunction with the superior court's revocation of his probation from the 2011 case. And later, when the superior court revoked Jeter's probation from the 2012 vehicle theft case and imposed the remaining 30 months of Jeter's suspended jail time, this was done in conjunction with the court's imposition of a separate sentence for Jeter's new felony (his 2013 conviction for second-degree theft), as well as yet another revocation of Jeter's probation in the 2011 case.

In other words, the superior court was not working in a vacuum when the court revoked Jeter's probation from the 2012 case and imposed the remaining 30 months of his sentence. The court was also considering what sentence Jeter should receive for his newest felony (the 2013 conviction for second-degree theft), as well as the sentence Jeter should receive for the revocation of his probation from the 2011 case.

As this Court has repeatedly explained, "[w]hen a defendant challenges a composite sentence for two or more criminal convictions, this Court assesses whether the defendant's combined sentence is clearly mistaken, given the whole of the defendant's

conduct and history." *Tickett v. State*, 334 P.3d 708, 713 (Alaska App. 2014). [1] In these situations, the law "[does] not require that each specific sentence imposed for a particular count or offense be individually justifiable as if that one crime were considered in isolation." *Brown v. State*, 12 P.3d 201, 210 (Alaska App. 2000).

Under these legal principles, this Court can not evaluate the sentence Jeter received in his 2012 vehicle theft case without simultaneously evaluating the sentences he received in his 2011 case and his 2013 case. More specifically, this Court must evaluate the *combination* of sentences that Jeter has received for his 2011, 2012, and 2013 offenses in light of the *entirety* of his conduct and criminal history.

By fortuity, Jeter was sentenced in all three cases at one combined hearing. Because of this combined record, this Court has access to the facts of all three prosecutions. Thus, we know that when the superior court revoked Jeter's probation in the 2012 vehicle theft case and imposed all of his remaining jail time, (1) the superior court simultaneously revoked Jeter's probation in the 2011 case and imposed all of his remaining jail time in that case, and (2) the superior court sentenced Jeter to 3 years (all to serve) in the 2013 case.

In other words, we know that Jeter has now received a composite sentence of either 7½ or 8 years to serve in these three cases. (We explain this ambiguity in the next section of our opinion.) And we have a sufficient factual record to allow us to meaningfully evaluate that composite sentence.

But we caution the defense bar that, in future cases, we may decline to hear sentence appeals if the defense does not provide us with the record of *all* the pertinent

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[1] *See also Carlson v. State*, 128 P.3d 197, 214 (Alaska App. 2006); *Brown v. State*, 12 P.3d 201, 210 (Alaska App. 2000); *Comegys v. State*, 747 P.2d 554, 558-59 (Alaska App. 1987).

court proceedings. We will not allow defendants to challenge individual portions of a composite sentence as excessive.

Whether Jeter's composite sentence is excessive

Jeter is a relatively young offender — only 21 years old at the time of the sentencing hearing in this case. But he has already accumulated a substantial criminal record.

In his 2011 case, Jeter was convicted of two crimes: first-degree failing to stop at the direction of a police officer, and attempted first-degree vehicle theft. He was sentenced in that case in January 2012. The superior court imposed 18 months with 15 months suspended (*i.e.*, 3 months to serve) for the failure to stop, and 180 days, all suspended, for the attempted vehicle theft. The record is unclear whether these two sentences were imposed consecutively or concurrently. [2]

Six months later, in July 2012, Jeter's probation in the 2011 case was revoked for the first time, and the superior court imposed 3 months of his previously suspended jail time. This probation revocation was based on Jeter's conviction for the 2012 first-degree vehicle theft, for which he received a separate sentence of 36 months with 30 months suspended.

Jeter served his active term of imprisonment, and he was again released on probation. But in 2013, Jeter committed new offenses — which again involved a stolen

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[2] The superior court's written judgement does not say whether these two sentences are consecutive or concurrent. It is possible that the court clarified this matter in its oral sentencing remarks — in which case, the court's oral pronouncement of sentence would control. *See Whittlesey v. State*, 626 P.2d 1066, 1067-68 (Alaska 1980); *Graybill v. State*, 822 P.2d 1386, 1388 (Alaska App. 1991). But if the court failed to say whether the sentences are consecutive or concurrent, then they are concurrent by operation of law. *Baker v. State*, 110 P.3d 996, 1002 (Alaska App. 2005).

vehicle. He was indicted for second-degree assault, third-degree assault, failure to stop at the direction of a peace officer, and first-degree vehicle theft.

Jeter ultimately reached a plea bargain with the State. Under the terms of this agreement, Jeter pleaded guilty to second-degree vehicle theft, and he admitted that he had violated his probation in the 2011 and 2012 cases.

In addition to the offenses we have described, Jeter's probation officer told the superior court that Jeter had assaulted correctional officers while he was in jail, and that Jeter had assaulted his co-defendant in the courthouse. In addition, the probation officer and the prosecutor described an incident where Jeter maliciously damaged his girlfriend's car at a city library — throwing rocks at the vehicle until the car alarm went off and the air bags deployed — and then he threatened members of a church group who tried to intervene on the girlfriend's behalf. (This incident led the Municipality of Anchorage to separately charge Jeter with malicious destruction of property.)

The probation officer told the court that Jeter was a confirmed member of a street gang, with a long history of involvement in "assaults, weapons, and drugs throughout the juvenile system and [in] multiple states[.]" The probation officer added that, in his opinion, Jeter had "terrorize[d] the community" and had clearly proved that he was not amenable to probation supervision.

The prosecutor urged the superior court to emphasize the sentencing goals of isolation, community condemnation, and deterrence. The prosecutor argued that it was proper to emphasize these criteria because probation was not working for Jeter — as demonstrated by his poor performance on probation and his ongoing criminal activities.

The sentencing judge's remarks were quite short:

> *The Court*: I rarely come to this conclusion, especially with somebody as young as you are, Mr. Jeter, but I just

> don't see that you're amenable to supervision. There's nothing in your record over the last couple of years or more that suggests that you're going to be a successful probationer, and I'm sorry to have to say that. But I agree with the State that isolation is a factor, and ... community condemnation. And so I'm going to find that the sentencing criteria are met by imposing the balance of the sentences, flat time, with no probation to follow.

Although the superior court's terse sentencing remarks do not provide any detail, the record supports the judge's conclusion that probation was not working for Jeter. Jeter had repeatedly violated the conditions of his probation and had repeatedly committed new criminal offenses, all during a relatively short period of time. The judge could therefore reasonably find that Jeter had demonstrated that he could not be safely released on probation, no matter what the conditions.

When a judge revokes a defendant's probation, the judge can impose a sentence that does not include further suspended time if (1) the judge finds that the defendant can not be expected to benefit from further probation (assuming the record supports this finding), and if (2) the sentence imposed on the defendant is justified under the *Chaney* criteria.[3] Here, given Jeter's criminal history, his repeated violations of probation, and his string of new crimes, we conclude that the sentencing judge was not clearly mistaken when he decided to impose all of Jeter's remaining jail time from his prior offenses, and to impose a new sentence of 3 years to serve in the 2013 case.

In his brief to this Court, Jeter argues that the sentencing judge failed to make sufficient findings to justify his decision to impose all 30 months of Jeter's previously suspended jail time in the 2012 case. But as we have explained, when a judge sentences a defendant for two or more offenses, Alaska law does not require that each

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[3] *Crouse v. State*, 736 P.2d 783, 786-87 (Alaska App. 1987); *see State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

specific sentence be individually justifiable. The question is whether the composite sentence is justified, given the whole of the defendant's conduct and background.

Conclusion

The sentencing decision of the superior court is AFFIRMED.