IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BRADLEY SCOTT SEKULICH, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12788 Trial Court No. 3AN-14-5253 CR MEMORANDUM OPINION No. 6713 — September 26, 2018

Appeal from the Superior Court, Third Judicial District, Anchorage, Paul E. Olson, Judge.

Appearances: Carolyn Perkins, Law Office of Carolyn Perkins, Salt Lake City, Utah, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Hazel C. Blum, Assistant District Attorney, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

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

Judge WOLLENBERG.

Bradley Scott Sekulich was charged with first-degree robbery, first-degree burglary, first-degree theft, and vehicle theft. To resolve these charges, Sekulich entered into a plea agreement with the State. Pursuant to the agreement, Sekulich pleaded guilty

to first-degree robbery, and the State dismissed the remaining charges. Sentencing was open to the court.

As a second felony offender convicted of a class A felony, Sekulich faced a presumptive sentencing range of 8 to 12 years.[1]

At his sentencing hearing, Sekulich proposed a mitigating factor — that, under AS 12.55.155(d)(11), he had assisted authorities in apprehending others who committed an offense. Sekulich maintained that, following his arrest, he provided information to the police that helped them resolve this and another case and to locate his co-defendant.

The court found that Sekulich had established this mitigating factor — thus, reducing the low end of the permissible sentencing range to 4 years[2] — but the trial court ascribed the mitigator little weight. The court imposed a sentence of 11 years with 2 years suspended (9 years to serve) and a probationary term of 3 years. Sekulich now appeals his sentence.

In his framing of the issue on appeal, Sekulich describes his sentence as "illegal." But Sekulich received a sentence within the applicable presumptive range. Thus, the essence of his claim is not that his sentence is illegal, but rather that his sentence is excessive.[3]

Sekulich argues that the court placed insufficient emphasis on his rehabilitative potential and failed to give adequate weight to the mitigating factor. But the sentencing judge bears primary responsibility for determining the priority and

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[1] AS 11.41.500(b); AS 12.55.125(c)(3).

[2] AS 12.55.155(a)(2).

[3] *See Bishop v. Anchorage*, 685 P.2d 103, 105 (Alaska App. 1984) (narrowly defining the term "illegal sentence").

relationship of the various sentencing objectives in a given case.[4] The sentencing judge also has discretion to determine the weight to give an aggravating or mitigating factor.[5] We will not disturb a judge's sentencing decision unless it is clearly mistaken.[6]

At sentencing, the court engaged in a thorough analysis of the *Chaney* criteria, noting in particular the seriousness of Sekulich's offense in relation to other robberies. The court found that Sekulich and his co-defendant had committed a home invasion robbery, during which Sekulich personally held a gun to the head of one of the victims and tied the victim up. The court noted that a second victim was struck several times in the head and lost consciousness. The court found that even if Sekulich's co-defendant had been primarily responsible for assaulting the second victim, Sekulich was complicit in his co-defendant's conduct.

The court recognized that Sekulich had completed classes while in custody and expressed a commitment to rehabilitation. But the court nonetheless found that Sekulich's rehabilitative potential was suspect. The court noted that at the time of sentencing, Sekulich was thirty-five years old and no longer a youthful offender. Sekulich had a significant criminal history dating back to 2005. Although Sekulich was considered a second felony offender for purposes of presumptive sentencing based on a prior felony conviction in California, he had three other recent felony convictions in Alaska. The court noted that Sekulich was on bail release in one of these cases at the time he committed the offense in this case. Sekulich also had six prior misdemeanor convictions, including a domestic violence assault.

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

[5] *Machado v. State*, 797 P.2d 677, 689 (Alaska App. 1990).

[6] *Pickard v. State*, 965 P.2d 755, 760 (Alaska App. 1998).

Ultimately, the court found that Sekulich was a danger to the public and that isolation was a significant consideration. The court also emphasized the importance of general deterrence, community condemnation, and the reaffirmation of societal norms.

Having independently reviewed the record, we conclude that the judge's findings are supported by the record and that the judge's decision to emphasize sentencing goals other than rehabilitation and to ascribe little weight to the (d)(11) mitigating factor is not clearly mistaken.

Sekulich also argues that the sentencing judge failed to properly explain why he imposed an active sentence above the low end of the presumptive range. (The court imposed an active term that was 1 year above the 8-year presumptive minimum, not accounting for the mitigator.) Sekulich relies on our unpublished decision in *Pirtle v. State* to argue that the 2005 legislature intended the low end of the applicable presumptive range to be the default term of imprisonment, absent an affirmative reason for exceeding that term in a particular case.[7]

But Sekulich was not subject to the presumptive range set by the 2005 legislature; he was subject to the lower presumptive range established by the 2016 legislature.[8] Sekulich has not acknowledged this distinction or discussed the legislative intent or history of the 2016 legislature. Indeed, we note that Sekulich's active term of

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[7] *See Pirtle v. State*, 2017 WL 1200901, *2 (Alaska App. Mar. 29, 2017) (unpublished) (Allard, J., concurring).

[8] *Compare* AS 12.55.125(c)(3) (2005) (setting a presumptive range of 10 to 14 years for a second felony offender convicted of a class A felony), *with* AS 12.55.125(c)(3) (2016) (setting a presumptive range of 8 to 12 years for a second felony offender convicted of a class A felony). The presumptive sentencing ranges amended in 2016 are applicable to sentences imposed on or after July 12, 2016, the effective date of those provisions. SLA 2016, ch. 36, §§ 88-90, 185(u). Sekulich was sentenced in November 2016.

imprisonment is 1 year *below* the applicable presumptive range set by the 2005 legislature.

For these reasons, the sentencing decision of the superior court is AFFIRMED.