IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BLAKE JEPSON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13635 Trial Court No. 3PA-17-01217 CR SUMMARY DISPOSITION No. 0340 — August 16, 2023

Appeal from the Superior Court, Third Judicial District, Palmer, Vanessa H. White, Judge.

Appearances: Michael L. Barber, Barber Legal Services, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Michal Stryszak, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Blake Jepson was convicted, following a jury trial, of first-degree sexual assault against his sister-in-law.[1] Jepson was sentenced to 35 years with 13 years suspended (22 years to serve), a sentence with an active term of imprisonment close to

[1] Former AS 11.41.410(a)(1) (2017). The sexual assault resulted in injuries and Jepson was separately charged with and found guilty of fourth-degree assault. AS 11.41.230(a)(1). The court merged these counts.

the bottom of the applicable presumptive range.[2] Jepson raises two arguments on appeal.

First, Jepson argues that the superior court committed plain error when it failed to *sua sponte* order a mistrial after the complaining witness referenced Jepson's drug use during her testimony. Notably, Jepson did not object to this testimony. To the contrary, Jepson's attorney specifically suggested that this evidence should be admitted and the parties could "work with it." But the superior court (for reasons that are difficult to discern on appeal) instructed the jury to disregard the testimony and precluded either party from eliciting any testimony about Jepson's drug use. Despite the court's ruling, the complaining witness continued to make oblique references to Jepson's drug use during her testimony.

We find no merit to Jepson's claim that the court committed plain error when it failed to order a mistrial *sua sponte* in response to the complaining witness's references to Jepson's drug use. As a general matter, a mistrial should only be ordered where there has been an error that cannot be cured by the trial court's admonition.[3] And because of the double jeopardy implications of ending a trial short of a verdict, this Court has cautioned that a mistrial should be declared without a defendant's consent only in "very extraordinary and striking circumstances."[4]

We have reviewed the record, and we find no reason to believe that the court's actions, which included issuing a curative instruction, were insufficient to cure whatever unfair prejudice may have been caused by the complaining witness's

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[2] AS 12.55.125(i)(1)(A)(ii).

[3] *See Williams v. State*, 629 P.2d 54, 58-60 (Alaska 1981) (concluding that prosecutor's comment that previous jury had been hung 11 to 1 towards conviction was an incurable error that necessitated granting the defendant's untimely motion for a mistrial).

[4] *Tritt v. State*, 173 P.3d 1017, 1019 (Alaska App. 2008) (citations omitted); *see also Piesik v. State*, 572 P.2d 94, 96 (Alaska 1977) (holding that "manifest necessity" for mistrial is established when a mistrial is ordered at the request of the defendant).

references to Jepson's drug use. Accordingly, we reject this claim of error and affirm Jepson's conviction.

Second, Jepson argues that his sentence is excessive. When this Court reviews an excessive sentence claim it "independently examine[s] the record to determine whether the sentence is clearly mistaken."[5] The "clearly mistaken" standard contemplates that different reasonable judges, confronted with the same facts, will differ on what constitutes an appropriate sentence, and that a reviewing court will not alter a sentence that falls within a "permissible range of reasonable sentences."[6]

As a first felony offender, Jepson faced a presumptive sentencing range of 20 to 30 years.[7] In addition, because Jepson stipulated to a statutory aggravator, the court had the authority to sentence Jepson up to 99 years.[8] The superior court sentenced Jepson to 35 years with 13 years suspended (22 years to serve), a sentence with an active term of imprisonment near the low end of the presumptive sentencing range.

Jepson challenges this sentence as excessive, arguing that the court failed to prioritize his "strong prospects for rehabilitation." But a sentencing court has "substantial discretion when evaluating the priority of the various sentencing goals and assessing the weight they should receive under the facts of a particular case."[9] Here, the record shows that the superior court carefully considered Jepson's prospects for

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[5] *Morrissette v. State*, 524 P.3d 803, 807 (Alaska App. 2023).

[6] *Id.* (quoting *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997)).

[7] AS 12.55.125(i)(1)(A)(ii).

[8] Jepson stipulated to AS 12.55.155(c)(18)(A) — the felony was an offense "committed against . . . a member of the social unit made up of those living together in the same dwelling as the defendant."

[9] *Evan v. State*, 899 P.2d 926, 931 (Alaska App. 1995); *see also Blalock v. State*, 452 P.3d 675, 687 (Alaska App. 2019) (stating that "[d]etermination of an appropriate sentence involves the judicial balancing of potentially competing factors, of which primacy cannot be ascribed to any particular factor").

rehabilitation along with the other *Chaney* criteria, and the court reasonably emphasized that the sexual assault happened in Jepson's sister-in-law's home after he was invited to live with his brother and her, and it resulted in physical injuries. We have independently reviewed the sentencing record, and we find the superior court's sentence well-supported and not clearly mistaken.[10]

The judgment of the superior court is AFFIRMED.

[10] *See McClain v. State*, 519 P.2d 811, 814-15 (Alaska 1974).