

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL CHARLES REDFOX,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13825
Trial Court No. 4EM-13-00151 CR

SUMMARY DISPOSITION

No. 0337 — August 2, 2023

Appeal from the District Court, Fourth Judicial District,
Emmonak, William Montgomery, Judge.

Appearances: Olena Kalytiak Davis, Attorney at Law,
Anchorage, under contract with the Office of Public Advocacy,
for the Appellant. Seneca Theno Freitag, Assistant Attorney
General, Office of Criminal Appeals, Anchorage, and Treg R.
Taylor, Attorney General, Juneau, for the Appellee.

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

Michael Charles Redfox was convicted of first-degree harassment, two counts of first-degree criminal trespass, and violating conditions of release (VCOR).¹ The trial court sentenced Redfox to 9 months for the harassment offense, 6 months for each criminal trespass, and 6 months for the VCOR. This Court reversed Redfox's VCOR conviction on appeal, but we affirmed his remaining convictions.² The State

¹ AS 11.61.118(a)(2), AS 11.46.320(a)(2), and AS 11.56.757(b)(1), respectively.

² *Redfox v. State*, 2017 WL 4334031, *3 (Alaska App. Sept. 27, 2017) (unpublished).

opted not to retry the VCOR charge, and Redfox’s case proceeded to resentencing before a different judge.

While Redfox’s appeal was pending, the legislature amended the sentencing range for first-degree criminal trespass. When Redfox was initially sentenced, the sentencing range for this offense was 0 to 1 year.³ But following the amendment, and at the time of Redfox’s resentencing, the sentencing range was “no more than” 30 days.⁴

During Redfox’s resentencing hearing, the trial court determined that the new sentencing range applied to his criminal trespass convictions.⁵ The court sentenced Redfox to 30 days for each first-degree criminal trespass conviction, and 9 months for the first-degree harassment conviction. The court thus reduced the composite sentence for these offenses by a total of 10 months. Redfox now appeals this new sentence as excessive.

First, Redfox argues that his new sentences for first-degree criminal trespass are harsher than his initial sentences, violating double jeopardy principles. Redfox reasons that although his new sentences (30 days) require less jail time than his original sentences (6 months), they are relatively harsher because he is currently sentenced to the top of the sentencing range, whereas he formerly was sentenced to the middle of the sentencing range. We find no merit to this claim. The case that Redfox cites to support this relative harshness argument, *Hester v. State*, involves a fact pattern

³ Former AS 12.55.135(a) (2013).

⁴ Former AS 12.55.135(a)(2) (May 2019).

⁵ *See State v. Stafford*, 129 P.3d 927, 930-32 (Alaska App. 2006) (holding that a defendant should receive the benefit of an ameliorative sentencing law in effect at the time they are sentenced — even if not in effect at the time of the crime — unless the legislature intended a contrary result).

in which the length of the defendant’s sentence was *increased* on resentencing.⁶ We are aware of no authority where double jeopardy was violated when the length of a defendant’s sentence was *reduced* on resentencing.

Second, Redfox argues that the trial court’s sentencing remarks were insufficient to justify imposing the maximum sentences for first-degree criminal trespass and that the court failed to consider his prospects for rehabilitation. We disagree.

While trial courts must consider the *Chaney* factors, “it is only in instances where the court’s remarks afford no insight into its reasons for sentencing . . . that failure to address the goals expressly will require a remand.”⁷

In this case, Redfox was on felony probation at the time he committed these new criminal offenses. At resentencing, the court chose not to impose any suspended jail time, declaring that a “flat sentence is appropriate.” The court noted that Redfox entered “the [second] house and touched a woman on the buttocks in the middle of the night,” and that Redfox was “intending to engage in the same behavior, just with a different person” when he entered the first house. Accordingly, the court rejected the defense attorney’s assertion that the first trespass was “de minimus.”

We conclude that the court adequately explained the reasons for its sentencing decision.⁸ We also conclude the court’s comments were sufficient to demonstrate that it rejected further efforts toward rehabilitation in favor of a flat

⁶ *Hester v. State*, 797 P.2d 690, 692 (Alaska App. 1990) (holding that the double jeopardy clause was violated when the trial court imposed two *additional* years of probation on resentencing).

⁷ *Smith v. State*, 691 P.2d 293, 295 (Alaska App. 1984).

⁸ *See id.*; *Evans v. State*, 574 P.2d 24, 26 (Alaska 1978) (“The trial court need not recite the goals of sentencing as long as it is clear that it has considered those goals.”); *see also Johnson v. State*, 477 P.3d 665, 670-71 (Alaska App. 2020) (upholding a sentence where the court “did not expressly discuss the *Chaney* factors,” but still “generally addressed the important circumstances of [the defendant’s] cases”).

sentence (*i.e.*, one with no period of probation or suspended time). We accordingly reject Redfox's claims of error.

The judgment of the district court is **AFFIRMED**.