

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

HARLEY RON DEBEAULIEAU,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-11683 & A-11927
Trial Court Nos. 3PA-12-2817 CR &
3PA-12-144 CR

MEMORANDUM OPINION

No. 6368 — August 24, 2016

Appeal from the Superior Court, Third Judicial District, Palmer,
Kari Kristiansen, John Wolfe, and Gregory Heath, Judges.

Appearances: David D. Reineke, under contract with the Public
Defender Agency, and Quinlan Steiner, Public Defender,
Anchorage, for the Appellant. Nancy R. Simel, Assistant
Attorney General, Office of Criminal Appeals, Anchorage, and
Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge SUDDOCK.

Harley Ron Debeaulieu was convicted of felony driving under the
influence, felony eluding, reckless driving, and driving while licensed revoked after he

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

engaged in a high-speed vehicle chase while intoxicated. On appeal, Debeaulieu argues that the trial court erred in denying him the right to represent himself at his trial. But Debeaulieu was unable to present his case in a rational and coherent manner, nor did he conduct himself with minimally tolerable courtroom decorum. We thus find no error.

Debeaulieu also challenges his sentence as excessive. But as explained below, we reject Debeaulieu's claim and affirm his sentence.

In a separate case, Debeaulieu challenges the revocation of his probation based upon his new convictions, arguing that he had insufficient notice that he was on probation at the time of his arrest. But while the start date of his probation period was ambiguous, the trial court was authorized to anticipatorily revoke Debeaulieu's probation based on his new convictions, regardless of whether he was on probation during his commission of those offenses. We thus need not reach Debeaulieu's notice argument.

Relevant facts and proceedings

On October 17, 2012, an Alaska state trooper saw a vehicle — later determined to be driven by Debeaulieu — pass him at approximately ninety miles per hour. The trooper activated his siren and lights, but Debeaulieu did not stop. During the ensuing high-speed chase, Debeaulieu nearly collided with another trooper vehicle while the trooper was attempting to deploy a spike strip. Debeaulieu eventually turned onto a dead-end road, where his vehicle got stuck in mud. He exited the vehicle and ran, but he stopped when the trooper in pursuit brandished his weapon.

Troopers obtained a search warrant for Debeaulieu's blood. Testing revealed the presence of methamphetamine and an inactive metabolite of marijuana. Debeaulieu was charged with failure to stop at the direction of a peace officer (felony

cluding), felony DUI, reckless driving, driving while license revoked (DWLR), and third-degree assault.¹

Debeaulieu sought leave to represent himself at trial on these charges, and Superior Court Judge Kari Kristiansen held a representation hearing. She extensively warned Debeaulieu of the dangers of self-representation and questioned him on his capacity to represent himself. At the close of the hearing, the court concluded that Debeaulieu was in fact capable of representing himself with a public defender acting as “advisory counsel.”

Shortly thereafter, Debeaulieu filed seven motions in court and repeatedly requested an opportunity to “reserve [his] rights” under the Uniform Commercial Code (UCC). Relying on admiralty law and the UCC, the motions argued that the court lacked jurisdiction over Debeaulieu because he was a “sovereign citizen.” Judge Kristiansen informed Debeaulieu that the UCC does not apply to criminal proceedings.

Debeaulieu responded that “we’re running underneath a military courtroom here, Your Honor, and that’s why I’m reserving my rights underneath the common law.” Debeaulieu then stated, “[T]his is a military admiralty [sic] jurisdiction, statutory.” And he repeatedly interrupted the prosecutor and the judge.

At a motion hearing two days later, Debeaulieu again argued that the court lacked jurisdiction over him and then told the judge:

For this case right now, ... I’m being tried underneath an admiralty [sic] jurisdiction.

....

I’m wanting acquittal and dismissal of all charges. And with that there, I must move — I want — and without having proper venue and everything, you guys cannot not try me

¹ AS 28.35.182(a), AS 28.35.030(n), AS 28.35.400(a), AS 28.15.291(a)(1), and AS 11.41.220(a)(1)(A), respectively.

with this — this case here. I need proper — I need to know what jurisdiction I'm being prosecuted under so I can properly represent myself to this court.

Judge Kristiansen informed the parties that she would be denying the motions, and questioned Debeaulieu's competency to represent himself. The judge noted Debeaulieu's incessant interruptions and explained that he was "not critically looking at those aspects of [his] case that could actually have some impact on giving [him] the relief that [he needs]." Debeaulieu again attempted to reserve his rights under the UCC.

The prosecutor questioned Debeaulieu's competency to represent himself. The judge concluded that Debeaulieu was not capable of self-representation because he failed to understand the criminal process. Debeaulieu continued to interrupt the judge, eventually threatening to "com[e] after [the judge with] a class A misdemeanor." Debeaulieu also complained that the judge kept "talking over [him]," thus depriving him of his First Amendment rights.

The judge appointed counsel to represent Debeaulieu. The case then proceeded to a jury trial before pro tem Superior Court Judge John Wolfe, and Debeaulieu was convicted of felony eluding, felony DUI, reckless driving, and DWLR, and he was acquitted of third-degree assault. His reckless driving conviction merged with his felony DUI, and the judge sentenced him to a composite sentence of 7½ years to serve. Based on these convictions, Superior Court Judge Gregory Heath also revoked Debeaulieu's probation in a prior case.

Debeaulieu now appeals his convictions and his probation revocation. We have consolidated these appeals.

Why we conclude the court did not abuse its discretion in denying self-representation

Debeaulieu first argues that the trial court abused its discretion in denying his motion for self-representation. According to Debeaulieu, his “pre-trial motions, although relying on unconventional authority, were easily dealt with before trial and would not have interrupted or corrupted the actual trial,” and his behavior was “not violent or outrageous” or “obstreperous to the point where the court could not conduct business or talk to Debeaulieu.”

Our supreme court has explained that although a criminal defendant has a constitutional right to proceed pro se, that right is not absolute:

In order to prevent a perversion of the judicial process, the trial judge should first ascertain whether a prisoner is capable of presenting his allegations in a rational and coherent manner before allowing him to proceed pro se. Second, the trial judge should satisfy himself that the prisoner understands precisely what he is giving up by declining the assistance of counsel. ... Finally, the judge should determine that the prisoner is willing to conduct himself with at least a modicum of courtroom decorum.²

This Court has further explained that the right of self-representation may only be denied “if the defendant is not minimally capable of presenting their case in a coherent fashion ... [or] if the defendant is not capable of conducting their defense without being unusually disruptive.”³ But we have also reiterated that a defendant’s motion for self-representation may not be denied merely because he or she is “unfamiliar

² *McCracken v. State*, 518 P.2d 85, 91-92 (Alaska 1974).

³ *Falcone v. State*, 227 P.3d 469, 472 (Alaska App. 2010); *see also Shorthill v. State*, 354 P.3d 1093, 1110 (Alaska App. 2015) (explaining that a defendant must be capable of “basic tasks” such as “organization of the defense, making motions, arguing points of law, participating in voir dire, questioning witnesses, and addressing the court and jury”).

with court procedures, or has some difficulty understanding the pertinent rules, or advances unusual legal theories, or because it would generally be more convenient for the court if the defendant had a lawyer.”⁴

Here, we believe the judge did not abuse her discretion in concluding that Debeaulieu was not competent to represent himself. Debeaulieu repeatedly invoked his jurisdictional challenges, even after the judge explained that those arguments lacked merit and was attempting to move forward with Debeaulieu’s trial. He demonstrated an inability to grasp important legal concepts. And he repeatedly interrupted the court, revealing an inability to conduct himself with the required modicum of courtroom decorum.

We reiterate that a judge may not deny the right of self-representation based solely upon the substance of the accused’s arguments — even when the accused wishes to raise meritless arguments based on misguided interpretations of the court’s jurisdiction or the UCC. But where, as here, the accused obstructs the course of trial by refusing to relinquish those arguments even after the court has rejected them, and is unable to conduct himself in a manner that complies with court procedures, a denial of a motion for self-representation may be appropriate.

We believe the superior court could reasonably find that Debeaulieu’s conduct rose to this level. We accordingly find no error in the superior court’s decision that Debeaulieu failed to satisfy the criteria governing self-representation.⁵

⁴ *Shorthill*, 354 P.3d at 1098.

⁵ *See McCracken v. State, supra*.

Why we conclude the sentence was not excessive

Debeaulieu faced a presumptive sentencing range of 3 to 5 years' imprisonment for the felony eluding and felony DUI convictions, and a term of 30 days to 1 year for the driving while license revoked conviction.⁶ The court sentenced Debeaulieu to 5 years with none suspended for felony DUI, 4 years for felony eluding with 2 years to run concurrent to the DUI sentence, and a consecutive 6 months with none suspended for the DWLR conviction. This resulted in a composite sentence of 7½ years to serve.

Debeaulieu argues that this sentence was excessive because “it was not necessary to protect the public, did not adequately consider Debeaulieu’s potential for rehabilitation, and did not consider sentences imposed on similarly situated offenders.”

Under Alaska law, sentencing judges should not impose a composite term of imprisonment exceeding the maximum term of imprisonment for the defendant’s most serious offense unless the judge finds that the longer sentence is necessary to protect the public or satisfy one or more of the other sentencing goals codified in AS 12.55.005.⁷

Here, the court found that Debeaulieu’s conduct in this case — engaging in a high-speed vehicle chase while high on drugs — indicated a “complete disregard for the safety of others.” The judge noted that Debeaulieu committed the present offenses while on probation, with his driver’s license revoked, and after serving significant periods of imprisonment.

On these facts, the judge found that Debeaulieu had “pretty limited” prospects for rehabilitation. The judge also concluded that a sentence in excess of the maximum for Debeaulieu’s most serious offense was necessary to protect the public.

⁶ AS 12.55.125(e)(3); AS 28.15.291(b)(1)(D).

⁷ *Christian v. State*, 276 P.3d 479, 489 (Alaska App. 2012).

Having independently reviewed the record, we cannot say that Debeaulieu’s sentence was clearly mistaken.⁸

Debeaulieu also argues that the trial court failed to adequately consider the sentencing goal of “uniformity in sentencing” because his sentence is more severe than the sentences in other cases. But “affirmance of a sentence on appeal means only that ... the sentence is not excessive; it does not set a ceiling [or a floor] on sentences in similar cases.”⁹ This is because the clearly mistaken standard is founded in part on the idea that “reasonable judges, confronted with identical facts, can and will differ on what constitutes an appropriate sentence.”¹⁰

Why we reject Debeaulieu’s notice challenge to his probation revocation

At the time of his arrest, Debeaulieu was awaiting remand on a prior conviction. He had been convicted of felony DUI and sentenced to 4 years’ imprisonment with 2 years suspended and 3 years’ probation.

At the sentencing hearing on those convictions, Debeaulieu requested a ninety-day delayed remand so that he could attend to “family obligations.” The court granted the request on the condition that Debeaulieu participate in treatment while on probation during the delayed-remand period. But the written judgment of conviction stated that Debeaulieu’s probation would begin after he served his sentence. During the delayed-remand period he was arrested on the new charges.

⁸ See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

⁹ *State v. Korkow*, 314 P.3d 560, 566 (Alaska 2013) (quoting *Hurn v. State*, 872 P.2d 189, 199-200 (Alaska App. 1994)).

¹⁰ *State v. Hodari*, 996 P.2d 1230, 1232 (Alaska 2000) (quoting *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997)).

As a result of Debeaulieu's new charges, the State filed a petition to revoke Debeaulieu's probation in the prior case. The judge denied Debeaulieu's motion to dismiss for lack of notice of his probation status, revoked his probation, and imposed his suspended term of 2 years' imprisonment.

Citing the discrepancy between the court's oral sentence and written judgment regarding when his probation began, Debeaulieu argues that he had insufficient notice that he was on probation during the delayed-remand period when he committed the new crimes. The language of AS 12.55.080 is unclear as to whether a sentencing judge has the authority to impose probation before a period of imprisonment, as the judge purported to do in this case.

But we need not resolve Debeaulieu's notice claim. We have previously held that probation may be anticipatorily revoked for crimes committed before the technical commencement of a probationary period.¹¹ Thus, regardless of Debeaulieu's probationary status during his delayed-remand period, the sentencing judge had the authority to revoke his probation and impose some or all of his suspended time based on his new convictions. We accordingly find no error.

Conclusion

We AFFIRM Debeaulieu's convictions and sentence in the new case and the order of the superior court revoking Debeaulieu's probation in the prior case.

¹¹ *E.g.*, *Gant v. State*, 654 P.2d 1325, 1326-27 (Alaska App. 1982).