

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

DAVID ALAN CIMINO,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12330  
Trial Court No. 1JU-15-362 CR

MEMORANDUM OPINION

No. 6462 — May 17, 2017

Appeal from the District Court, First Judicial District, Juneau,  
Thomas Nave, Judge.

Appearances: Grace Lee, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
James Scott, Assistant District Attorney, and Craig W. Richards,  
Attorney General, Juneau, for the Appellee.

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

Judge SUDDOCK.

David Alan Cimino pleaded no contest to five charges: two counts of  
fourth-degree assault, resisting arrest, fifth-degree criminal mischief, and providing false

---

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

information.<sup>1</sup> The district court imposed consecutive sentences on the five charges, including maximum sentences of one year for each assault conviction. Cimino's composite sentence was 2 years and 270 days to serve. On appeal, Cimino argues that the district court erred in finding him a worst offender on the two assault convictions and in imposing all five sentences consecutively.

We conclude that the district court's sentence was not clearly mistaken, and affirm.

*Background facts and proceedings*

Cimino was caught smoking in the bathroom of a commercial jet while in flight. After the plane landed at Juneau International Airport, two officers from the Juneau Police Department contacted Cimino to obtain information so that federal authorities could issue him a citation. Cimino identified himself as "Johnny Eagle" and, after becoming increasingly agitated, he ran away from the officers. The officers caught up with him and took him to the ground, where he continued to fight.

While struggling with the officers, Cimino grabbed at Juneau Police Officer Kim Horn's holstered handgun and attempted to take it from her. Sergeant Chris Burke punched Cimino in the head. Cimino then let go of the gun and instead tried to take Officer Horn's Taser. Cimino only stopped struggling when Burke drew his own Taser. The officers handcuffed Cimino and brought him to his feet.

But when Sergeant Burke bent down to retrieve his glasses from the ground, Cimino turned and bit Officer Horn's left cheek (without breaking the skin). The officers took him to the ground again, where he struggled for a time before

---

<sup>1</sup> AS 11.41.230(a)(1), AS 11.56.700(a)(1), AS 11.46.486(a)(2), and AS 11.56.-800(a)(1)(B)(i), respectively.

ultimately submitting to arrest. Then, during transport, Cimino repeatedly kicked the inside of the patrol vehicle, breaking the inner door handle and causing \$200 in damage.

Both officers suffered injury. Officer Horn's arm required splints and Sergeant Burke's hand and shoulders required ongoing treatment.

The State charged Cimino with two counts of fourth-degree assault (one for each police officer), resisting arrest, fourth-degree criminal mischief (for breaking the handle in the patrol vehicle), and providing false information to a police officer. Cimino pleaded no contest to these charges.

Sergeant Burke gave a victim impact statement at sentencing. He stated that his arrest of Cimino was one of the most violent encounters in his eighteen-plus years as a police officer. And he related to the court that Officer Horn had told him that she feared for her life when Cimino went for her gun.

District Court Judge Thomas Nave found Cimino to be a worst offender as to the two counts of assault. The judge imposed a composite sentence of 1000 days, or 2 years and 270 days to serve, with no suspended time.

*The district court's sentence was not clearly mistaken*

The judge sentenced Cimino to the maximum term of one year on each of the two fourth-degree assault charges. To impose a maximum sentence, a judge must find that the defendant is a worst offender.<sup>2</sup> A "worst offender" finding can be based either on the circumstances surrounding the charged offense, or on the defendant's criminal history, or both.<sup>3</sup>

---

<sup>2</sup> *Foley v. State*, 9 P.3d 1038, 1041 (Alaska App. 2000).

<sup>3</sup> *Id.*

Cimino had multiple out-of-state convictions. He was convicted in 1980 for resisting arrest, possession of stolen property, robbery, and Alaska's equivalent of coercion. He received 5 years for the robbery conviction.

And in 2009, Cimino was convicted of felony battery for assaulting his then-girlfriend in another state. According to a report the State received from the responding county sheriff's office, a passerby encountered Cimino and his girlfriend on the side of a road. The girlfriend related that Cimino had pushed her out of the car and had driven over her leg or foot, and had also hit and bitten her. She had bruising around her wrists and knees and bite marks on her right thigh, as well as a dislocated and fractured hip and an injured foot. Cimino was convicted of felony battery. When arrested on the present charges, Cimino had an outstanding warrant for a probation or parole violation in the out-of-state case.

In the present case, Judge Nave considered the *Chaney* sentencing criteria.<sup>4</sup> He found that only a long sentence would have any deterrent effect on Cimino, and he considered isolation "a significant factor" given Cimino's "impulse to act very violently." The judge also heavily weighed reaffirmation of societal norms, because Cimino had assaulted "police officers who are charged with protecting us." He concluded that Cimino was not presently amenable to rehabilitation, because Cimino had not availed himself of prior opportunities for rehabilitation and had continued to act violently. The judge commented that Cimino was "more than willing to use force and terror for [his] own ends." The judge emphasized the seriousness of the assaults on the police officers, the officers' ensuing injuries, and the reasonable fear that both officers experienced when Cimino attempted to grab Officer Horn's gun.

---

<sup>4</sup> See *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970); see also AS 12.55.005.

We conclude that Cimino’s violence, the injuries he inflicted, and the fact that he attempted to gain control of a police officer’s gun — taken together with Cimino’s prior record — justified the district court’s finding that Cimino was a worst misdemeanor-assault offender.<sup>5</sup> Having independently reviewed the record, we conclude that the sentence imposed was not clearly mistaken.<sup>6</sup>

*Conclusion*

We AFFIRM the district court’s sentence.

---

<sup>5</sup> See *Leopold v. State*, 278 P.3d 286, 296 (Alaska App. 2012); *Foley*, 9 P.3d at 1042.

<sup>6</sup> See *McClain v. State*, 519 P.2d 811, 813 (Alaska 1974).