

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

JOSEPH R. TURNEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12125
Trial Court No. 4FA-09-172 CR

MEMORANDUM OPINION

No. 6480 — June 7, 2017

Appeal from the Superior Court, Fourth Judicial District,
Fairbanks, Paul R. Lyle, Judge.

Appearances: Michael Schwaiger, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. Sara E. Simpson, Assistant District Attorney,
Fairbanks, and Jahna Lindemuth, Attorney General, Juneau, for
the Appellee.

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

Judge ALLARD.

Joseph R. Turney was indicted on twenty counts of first-degree sexual
abuse of a minor and first-degree sexual assault based on allegations that he sexually

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

abused and sexually assaulted his stepdaughter on an almost daily basis from the time she was eleven years old until shortly before she turned eighteen. Turney pleaded no contest to one count of first-degree sexual abuse of a minor based on evidence that his stepdaughter had given birth to his child when she was fourteen years old. Turney later pleaded guilty, pursuant to a plea agreement, to two consolidated counts of first-degree sexual abuse of a minor and first-degree sexual assault. As a consequence of his no contest and guilty pleas, Turney faced a maximum composite sentence of 46 years with 5 years suspended, 41 years to serve — a maximum that could be exceeded only if the sentencing court found that a statutory aggravating factor applied.¹

At Turney’s first sentencing hearing, the superior court found aggravating factor AS 12.55.155(c)(18)(B) — that Turney had engaged in similar conduct with the same victim. The court subsequently sentenced Turney to a composite sentence of 66 years with 16 years suspended, 50 years to serve.

Turney appealed, arguing that the court had violated *Juneby v. State* because the judge found the aggravator based on the same consolidated conduct for which Turney was being sentenced.² We agreed that the court had violated *Juneby*, and we remanded Turney’s case to the superior court for resentencing.³

On remand, the superior court imposed 46 years with 5 years suspended, 41 years to serve — the maximum sentence applicable under these circumstances. The

¹ As Turney makes clear in his supplemental briefing, the 41-year “cap” was not a bargained-for term of the plea agreement; rather it was an acknowledgment by both parties that, absent a statutory aggravator, the maximum presumptive sentence that Turney could receive would be 46 years with 5 years suspended, 41 years to serve. *See Simon v. State*, 121 P.3d 815, 822 (Alaska App. 2005).

² *Juneby v. State*, 641 P.2d 823, 842 (Alaska App. 1982).

³ *Turney v. State*, 2013 WL 5209862, at *5 (Alaska App. Sept. 11, 2013) (unpublished).

superior court rejected Turney’s arguments that he should be sentenced at the lower end of the applicable presumptive ranges — finding good cause to exceed any potential benchmarks that might apply based on the length and severity of the sexual abuse and sexual assaults represented by these convictions. In its sentencing remarks, the court found that “the circumstances of this offense are egregious, and the emotional and mental harm to the victim extensive.” The court found that Turney had committed hundreds of assaults on his stepdaughter. The court also noted that Turney had forced his stepdaughter to lie to her mother and to the police and had left her with “lifelong challenges for herself and for the child he fathered by force.” The superior court further concluded that Turney’s prospects for rehabilitation were questionable, not only because he did not take responsibility for his actions during the eight years of assaults, but also because of his various claims that “everyone just needed to forgive him and move on” and that he was “hurting ... 10 times more than anyone else.” Based on this and other findings related to the need to isolate Turney and deter future criminal conduct, the court concluded that a sentence at the top of the applicable presumptive range was required in this case.

Turney now appeals the sentence he received, arguing that it is excessive and that the court failed to make sufficient findings to justify its sentence. Turney also makes a number of arguments about various benchmarks that he argues should apply when a defendant is a first felony offender and when the applicable presumptive range spans decades of possible prison time. We conclude that we need not address the specifics of Turney’s sentencing arguments because, even assuming *arguendo* that they apply, the sentencing judge made sufficient findings to justify exceeding any such benchmarks in this particular case.

We have independently reviewed the sentencing record in this case. The superior court’s findings regarding the severity and extent of the sexual abuse and sexual

assaults that occurred in this case are well-supported, as are its findings regarding the extreme harm that Turney caused and the limited prospects for his rehabilitation. Based on our review, we conclude that the sentence imposed — 46 years with 5 years suspended, 41 years to serve — is not clearly mistaken.⁴

Accordingly, the judgment of the superior court is AFFIRMED.

⁴ *Smith v. State*, 349 P.3d 1087, 1091 (Alaska App. 2015).