

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

FEODOR FEODOT KONOVALOV,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12497
Trial Court No. 3AN-14-4372 CR

MEMORANDUM OPINION

No. 6503 — August 2, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael L. Wolverton, Judge.

Appearances: Daniel Lowery, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Saritha R. Anjilvel, Assistant District Attorney, Anchorage, and
Craig W. Richards, Attorney General, Juneau, for the Appellee.

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

Judge SUDDOCK.

Pursuant to a plea agreement, Feodor Feodot Konovalov pleaded guilty to one count of attempted second-degree sexual abuse of a minor. He stipulated to the “most serious” aggravator. The case proceeded to open sentencing, and Superior Court

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

Judge Michael L. Wolverton imposed a sentence of 20 years with 10 years suspended (10 years to serve) and 10 years of probation.

Konovalov appeals this sentence as excessive, arguing that, in light of his cognitive disabilities and mental health issues, the judge did not adequately prioritize rehabilitation as a sentencing factor. For the reasons explained in this opinion, we conclude that the sentence is not clearly mistaken.

Background facts and proceedings

In March of 2014, Konovalov attacked an employee of his assisted-living home with a crowbar. Then, on May 17, 2014, Konovalov absconded from the facility where he was residing while on bail release.

Konovalov soon seized seven-year-old L.P., who was playing in a neighborhood yard, and pulled him into a carport. L.P. attempted to scream, but Konovalov covered L.P.'s mouth with his hand, and then kissed him. Konovalov touched L.P.'s penis and buttocks. Konovalov released L.P. after approximately fifteen minutes. When police officers responded to the area, Konovalov walked up to the officers and immediately confessed to these actions.

The State indicted Konovalov on one count of second-degree sexual abuse of a minor¹ and one count of attempted second-degree sexual abuse of a minor.² Konovalov was placed at the Alaska Psychiatric Institute (API) while awaiting resolution of these charges. There he committed an additional offense: he attempted to punch an

¹ AS 11.41.436(a)(2).

² AS 11.41.436(a)(2) & AS 11.31.100.

API employee, and bit the employee in the arm. The State then charged Konovalov with fourth-degree assault.³

Konovalov subsequently agreed to a global resolution of these charges, including a plea to attempted second-degree sexual abuse of a minor with a stipulation to the “most serious” aggravator,⁴ and open sentencing. Because Konovalov was a first felony offender, the presumptive range for the attempted second-degree sexual abuse of a minor conviction was 2 to 12 years — but the court had the authority to impose up to 99 years based on the statutory aggravator.⁵

At the sentencing hearing, the State called Lisa Guzman, a supervisor at the mental health unit of the Anchorage Correctional Complex. Guzman had by then been supervising Konovalov’s treatment for over a year. Guzman testified that Konovalov had made sexually inappropriate statements to staff members as recently as the previous month. And according to the State’s sentencing memorandum, Konovalov had exposed himself to Department of Corrections staff. Konovalov also once stated: “I let little kids touch my penis when I was younger.”

The presentence report recounted that, according to Konovalov, he had lived in Alaska until he was twenty-five, when he was sent to the Belmont Care Center in Idaho for treatment. He resided there until he was thirty, and then he returned to Alaska. Since that time, he had once been admitted to API for competency restoration, and twice been admitted to the mental health unit in prison. At the time of his presentence report, Konovalov was housed at the mental health unit, where he was considered a danger to other inmates and to corrections staff.

³ AS 11.41.230.

⁴ AS 12.55.155(c)(10).

⁵ AS 12.55.125(i)(4)(A) & AS 12.55.155(a)(1).

Konovalov disclosed that he is sexually attracted to seven- to ten-year-old boys and that he would typically touch their penises and buttocks. In apparent contradiction to this, he denied actually having prior victims. According to his presentence report, he was diagnosed with depressive disorder, intermittent explosive disorder, mild mental retardation, antisocial personality disorder, and fetal alcohol spectrum disorder. He apparently possesses the intellectual capacity of a twelve-year-old. He scored in the moderate to high category on a test designed to predict the risk of recidivism for sex offenders.

According to the State's sentencing memorandum, Konovalov had been involved in four separate assaults in Kenai in the year preceding his arrest. Each of these cases was dismissed after he was found incompetent to stand trial. Konovalov was released in the fourth case just weeks before he attacked the care attendant with a crowbar.

The State argued in its sentencing memorandum that Konovalov could not be rehabilitated and that he would re-offend upon release. The State accordingly argued that isolation should be the primary sentencing goal. The State requested a sentence of 15 years with 2 years suspended, and 10 years' probation.

In contrast, Konovalov's attorney requested a sentence of 5 years with 3 years suspended and 5 years of probation. In his sentencing memorandum, the defense attorney argued that, in evaluating community condemnation, the court should consider that the community generally supports holding those with cognitive disabilities to be less culpable than other criminals. The defense memorandum discounted isolation as a significant factor, arguing that Konovalov could be adequately treated for his cognitive disabilities while out of custody.

Konovalov's attorney reiterated many of these themes at sentencing, contending that the criminal justice system was ill-suited to treat Konovalov's cognitive

disabilities. And Konovalov personally apologized to L.P. and expressed remorse for his crime, promising that he would never again sexually abuse a minor.

Judge Wolverton acknowledged that “there’s no question that this [crime] is the result of a mental illness and defect.” But the judge concluded that Konovalov presented “as clear and present [a] danger as [he had] seen.” He also noted that Konovalov’s behaviors belied his desire to obtain treatment and never to re-offend.

The judge concluded that isolation should be the preeminent sentencing criterion, along with community condemnation. The judge described Konovalov’s prospects for rehabilitation as “very guarded.” He imposed a sentence of 20 years with 10 years suspended (10 years to serve) and 10 years’ probation. This sentence appeal followed.

The judge’s sentence was not clearly mistaken

Konovalov challenges his sentence as excessive. He argues that the sentence is contrary to *Allen v. State*,⁶ in which this Court held that “the goal of rehabilitation should receive primary consideration in sentencing where psychiatric problems, rather than general criminal intent, lie at the root of the criminal behavior.”⁷ But the record shows that the superior court carefully considered Konovalov’s prospects for rehabilitation and found them to be “very guarded.” The judge also rejected

⁶ 759 P.2d 541 (Alaska App. 1988).

⁷ *Id.* at 552. See also *Hansen v. State*, 582 P.2d 1041, 1047-48 (Alaska 1978) (reversing 5-year larceny sentence as excessive given Hansen’s diagnosed bipolar disorder, his amenability to treatment, his stable home and work environment, and the fact that the monetary value of the stolen item was low); *Mattern v. State*, 500 P.2d 228, 234-35 (Alaska 1972) (holding incarceration inappropriate where incarceration might even aggravate the defendant’s psychological difficulties, and that a shorter sentence would better serve the goals of reforming the defendant and protecting the public).

Konovalov’s claim that he could be adequately treated out of custody, finding that Konovalov was “as clear and present [a] danger as [he had] seen.”

These findings are well-supported by the record, which documents multiple acts of assault and continued engagement in sexually inappropriate behavior even within institutionalized settings.⁸ Given these circumstances, we conclude that the superior court did not err in prioritizing the need for isolation over Konovalov’s “very guarded” prospects for rehabilitation, and we therefore conclude that the sentence imposed was not clearly mistaken.⁹

Conclusion

We AFFIRM the sentence of the superior court.

⁸ See, e.g., *Gest v. State*, 619 P.2d 725, 726 n.8 (Alaska 1980) (upholding life sentence for defendant with schizophrenia convicted of first-degree murder because “[i]n this case the nature of Gest’s psychological problems is such that future violent behavior is likely so long as they exist, and the psychiatrists agree that there is no short term prospect for resolving them”).

⁹ See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).