

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

JEREMY S. DEACH,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12240
Trial Court No. 1JU-13-1147 CR

MEMORANDUM OPINION

No. 6547 — November 22, 2017

Appeal from the Superior Court, First Judicial District, Juneau,
Philip M. Pallenberg, Judge.

Appearances: Renee McFarland, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. Angela D. Kemp, 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 MANNHEIMER.

In August 2014, Jeremy S. Deach pleaded guilty to seven counts of
distributing child pornography and seven counts of possessing child pornography.¹

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

¹ AS 11.61.125(a) and AS 11.61.127(a), respectively.

Deach faced a presumptive sentencing range of 2 to 12 years' imprisonment on each of these charges.²

At Deach's sentencing hearing, a state trooper testified that he and his fellow troopers downloaded over 2700 pieces of child pornography from Deach's computer, including both videos and photographs. The trooper testified that this was the largest amount of child pornography he had ever found on a person's computer. Deach told one of the detectives in this case that he obtained and distributed child pornography using BitTorrent, a file-sharing program that enables rapid sharing of files among large numbers of subscribing computer users.

(The working of BitTorrent is described in some detail in this online article in Forbes Magazine: <https://www.forbes.com/sites/quora/2013/07/24/how-does-bittorrent-work-in-laymans-terms>. Essentially, BitTorrent works by dividing big computer files into small pieces, then harnessing large numbers of individual computers to work in parallel, each of them distributing the various small pieces of the file to any other subscribing users who want the file. By dividing the work of uploading and downloading the file in this fashion, multiple complete copies of the source computer file can be speedily assembled on all of the subscribing computers. Once a computer user signs onto the BitTorrent network, all of this happens in the background. There is no need for any computer user to know any other user, and no need for anyone to deliberately send a particular computer file to a particular user. It happens automatically.)

At sentencing, Deach's attorney argued that Deach's sentence should be mitigated under AS 12.55.155(d)(9). That is, the defense attorney argued that Deach's

² See AS 11.61.125(e)(1), AS 11.61.127(g), and AS 12.55.125(i)(4)(A).

conduct was among the least serious included within the definition of his two offenses (distribution and possession of child pornography).

The defense attorney pointed out that, because of the way BitTorrent works, Deach probably never distributed an entire pornographic image or an entire pornographic video to anyone. Rather, Deach allowed his computer to be used to distribute various small pieces of pornographic images and videos to other BitTorrent subscribers. Because Deach only distributed small pieces of child pornography rather than complete images and videos, the defense attorney asserted that Deach's conduct was among the least serious within the range of conduct defined in the statute.

The sentencing judge found that Deach had failed to prove this proposed mitigator. The judge noted that Deach's case involved an atypically large number of pornographic images, and that these images were extremely graphic in nature. The court also found that Deach was aware of how BitTorrent worked; in other words, Deach was aware that, by signing onto the network, he was not only obtaining child pornography for himself, but also allowing his computer to be used to distribute this pornography to an essentially unlimited number of other users.

On appeal, Deach renews his argument that his conduct was among the least serious because he never distributed whole pornographic files to others — only small pieces of files. But the whole idea behind BitTorrent is that computer files can be distributed to large numbers of people much more efficiently by dividing the files into small pieces and then enlisting a great many individual computers to work in parallel, each computer distributing small pieces of the file to a large number of users.

The sentencing judge found that Deach understood how BitTorrent worked. In essence, this was a finding that when Deach signed up for child pornography “torrents”, Deach knowingly agreed to assist a group effort to efficiently distribute child pornography to an unlimited number of other computer users. These other users may

have been unknown to Deach personally, but Deach understood that his computer would be used to distribute child pornography to whoever else signed up for the torrent. This was not among the least serious conduct within the meaning of the statute.

Deach argues in the alternative that, even if the superior court was correct in rejecting his proposed mitigator, the court nevertheless gave him an excessive sentence.

As we have explained, Deach pleaded guilty to seven counts of distributing child pornography and seven counts of possessing child pornography, and he faced a presumptive sentencing range of 2 to 12 years' imprisonment on each of these offenses. The superior court sentenced Deach to a composite term of 8 years, 4 months to serve, with an additional 16 years suspended.

In his sentencing remarks, the judge noted that Deach had "unhealthy sexual proclivities for children". The judge further noted that, in the past, Deach had frequently convinced himself that young children were making sexual overtures to him. Based on this, the judge concluded that there was a "substantial risk" that Deach would act on these impulses in the future.

The judge stated that he was hopeful that Deach could return to the community if he received appropriate treatment and if he was appropriately monitored. Nevertheless, the judge was concerned that Deach might still represent a danger to the community even after receiving treatment. For these reasons, the judge concluded that he should sentence Deach to a substantial term of imprisonment, followed by a lengthy term of probation with a large amount of suspended jail time in case Deach's treatment was not successful.

We have independently reviewed the record, and we conclude that the judge's sentencing decision is not clearly mistaken.³ Accordingly, the judgement of the superior court is AFFIRMED.

³ See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974) (an appellate court is to affirm a sentencing decision unless the decision is clearly mistaken).