

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

LONNIE REED JR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-12567, A-12568,
& A-12577

Trial Court Nos. 3AN-13-12727 CR,
3AN-15-2811 CR, & 3AN-15-1934 CR

MEMORANDUM OPINION

No. 6548 — November 22, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, Jack W. Smith, Judge.

Appearances: Michael Barber, Barber Legal Services, Boston,
Massachusetts, under contract with the Office of Public
Advocacy, for the Appellant. G. Michael Ebell, Assistant
District Attorney, Anchorage, and Jahna Lindemuth, Attorney
General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg,
Judges.

Judge MANNHEIMER.

In October and November 2013, Lonnie Reed Jr. and three co-defendants committed a series of robberies, as well as two residential burglaries. Reed was ultimately apprehended, and he was indicted on thirty-one felonies.

Reed was released on bail to the custody of a third party. While on bail release, Reed pulled a handgun on the boyfriend of his ex-girlfriend. He was arrested and indicted for third-degree assault based on this conduct.

Reed was again released on bail to the custody of a third party. Six weeks later, Reed's third-party custodian reported that Reed had absconded and his whereabouts were unknown. Reed was apprehended two months later, and this time he stayed in jail until his cases were resolved.

Reed ultimately reached a plea agreement with the State. Under this agreement, Reed pleaded guilty to several offenses that he committed during his initial crime spree in October and November 2013. Specifically, Reed pleaded guilty to two counts of first-degree robbery, one count of first-degree burglary, one count of second-degree assault, one count of third-degree assault, and one count of fraudulent use of an access device (for using one of the credit cards that were stolen during the crime spree).

In addition, Reed pleaded guilty to third-degree assault (for threatening his ex-girlfriend's boyfriend with a handgun) and to violating the conditions of his release (for absconding from the custody of his third-party custodian).

For these offenses, Reed received a composite sentence of 27 years' imprisonment with 10½ years suspended — *i.e.*, 16½ years to serve.

During the sentencing proceedings, the judge found that Reed was a “worst offender”. The sentencing judge apparently believed that he needed to make a “worst offender” finding if he wished to impose a composite sentence greater than 11 years of active imprisonment — because 11 years was the top end of the applicable presumptive sentencing range for Reed's most serious offense, first-degree robbery.¹

¹ See former AS 12.55.125(c)(2)(A) (pre-2016 version).

On appeal, Reed argues that this “worst offender” finding is not supported by the record. But this issue is moot, because Reed’s sentencing judge did not need to make a “worst offender” finding to justify a composite sentence exceeding 11 years to serve.

Alaska law requires a “worst offender” finding when a defendant receives the maximum term of imprisonment for their single most serious crime.² But in Reed’s case, his most serious crime was first-degree robbery, and the maximum sentence for that offense is 20 years’ imprisonment.³ As we have explained, Reed’s composite time to serve is only 16½ years.

It is true that when Reed’s suspended term of imprisonment (10½ years) is added in, Reed’s total composite sentence exceeds 20 years. But no “worst offender” finding is required in cases where the defendant’s composite *active* term of imprisonment (*i.e.*, their “time to serve”) is less than the maximum sentence for their most serious offense, even though the defendant’s total sentence (including their term of suspended imprisonment) exceeds the maximum sentence for their most serious offense.⁴

For these reasons, Reed’s challenge to the sentencing judge’s “worst offender” finding is moot.

(To the extent that Reed’s sentencing judge needed an affirmative good reason to impose a sentence exceeding 11 years to serve—*i.e.*, a sentence exceeding the

² *State v. Wortham*, 537 P.2d 1117, 1120 (Alaska 1975); *Napayonak v. State*, 793 P.2d 1059, 1062 (Alaska App. 1990).

³ *See* AS 11.41.500(b) (first-degree robbery is a class A felony) and AS 12.55.125(c) (the maximum sentence for a non-sexual class A felony is 20 years’ imprisonment).

⁴ *See Douglas v. State*, 151 P.3d 495, 504 (Alaska App. 2006); *see also Pusich v. State*, 907 P.2d 29, 32-34 (Alaska App. 1995).

high end of the applicable presumptive range for Reed's most serious offense⁵ — the record in this case provides ample reason for such a sentence.)

In a separate argument, Reed contends that his composite sentence of 16½ years to serve is excessive. We have independently examined the record in this case, and we conclude that the superior court was not clearly mistaken in imposing this sentence.⁶

We note, in particular, the fact that Reed committed a series of violent robberies, as well as two burglaries of residences that happened to be unoccupied at the time. After Reed was apprehended for these crimes and released on bail, he committed another armed assault. And then, after Reed was released again, he absconded and remained at large for two months. Reed's sentencing judge had good reason to conclude that Reed posed a significant danger to the public, as well as good reason to conclude that a substantial sentence was warranted to express the community's condemnation of these crimes.

The sentencing decision of the superior court is AFFIRMED.

⁵ See *Farmer v. State*, 746 P.2d 1300, 1301 (Alaska App. 1987) (decided under Alaska's pre-2005 sentencing laws).

⁶ 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).