

unsuspended terms of imprisonment on both counts were to run concurrently. The composite sentence was, therefore, one year to serve in the Majuro Jail, a fine of \$250 and one year imprisonment suspended subject to certain terms and conditions of probation..

The sentencing order required Elanzo to report to the Majuro Jail by noon of the second day following expiration of the time of filing an appeal or, if an appeal was filed, by noon of the second day following the Supreme Court's decision on appeal if the sentence was affirmed.

Elanzo timely filed a Notice of Appeal on October 18, 2006. Elanzo contends his sentence is excessive characterizing it as "very harsh." Elanzo requests this Court to suspend the entire sentence of imprisonment imposed by the High Court and place him on "strict probation."

The Standard of Review: Abuse of Discretion.

We review sentence appeals under the "abuse of discretion" standard. *See, e.g., United States v. Haack*, 403 F.3d 998, 1003 (8th Cir. 2005) ("we hold that our standard of review is whether the district court abused its discretion by imposing an unreasonable sentence").

Among the reasons proffered for the "abuse of discretion" standard is that the trial judge is in a superior position from which to determine an appropriate sentence. The trial judge has the opportunity to consider many factors from which an appropriate sentence may be deduced such as a defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. A reviewing court, on the other hand, has only the "cold record." We, accordingly, give great deference and weight to the trial judge's sentencing decision so long as it is within the statutory range of permissible sentences and is not arbitrary or capricious. We will not substitute our judgment for that of the trial judge merely because we could have balanced the factors differently and could have arrived at a lesser sentence. Provided the trial

judge fully considered the factors relevant to imposing sentence, we will generally conclude there was no abuse of discretion. *See, e.g., People v. Williams*, 635 N.E.2d 781, 790 (Ill. App. Ct. 1994).

Application of the standard of review in cases challenging a sentence on grounds of excessiveness is well-established and narrow. The reviewing court ““may not change or reduce a sentence imposed within the applicable statutory limits on the ground that the sentence was too severe unless the trial court relied on improper or unreliable information in exercising its discretion or failed to exercise any discretion at all in imposing the sentence.”” *United States v. Hoffman*, 806 F.2d 703, 713 (7th Cir. 1986) (quoting *United States v. Fleming*, 671 F.2d 1002, 1003 (7th Cir. 1982)), *cert denied*, 95 L. Ed. 2d 201 (1987) (footnote omitted).

The High Court Did Not Abuse Its Discretion In Imposing the Sentences Appealed From.

The sentences imposed on Elanzo were within the statutory range of punishments which could be imposed for the offenses for which he was convicted. 26 MIRC 512(3) provides that “any person who is found guilty of committing child abuse or neglect shall, upon conviction, be liable to a fine not exceeding \$2,000, or to a term of imprisonment not exceeding two years, or both.” 31 MIRC 152(D)(2) provides that “Sexual assault in the fourth degree is a misdemeanor, and any person found guilty thereof, shall be liable to a term of imprisonment not exceeding one year.” Because the sentences imposed on Elanzo were within the statutorily permissible range, the inquiry then becomes whether the trial judge abused his discretion by acting arbitrarily or capriciously.

In challenging his sentence as excessive or “very harsh,” Elanzo asserts he is 63 years of age, is a first offender without any prior criminal record, that he receives regular medical

examinations for his eyes at the Majuro hospital and that the jury found and entered a not guilty verdict on the charge of Sexual Assault in the First Degree.

Elanzo does not identify any reason why the jury verdict of not guilty on the count of Sexual Assault in the Third Degree should reduce or mitigate the sentences imposed on the two counts on which he was convicted. He does not argue that any of the jury's findings are inconsistent with the findings made by the trial judge on those two counts. Elanzo does not challenge his convictions on those counts. We hold that Elanzo is not entitled to a lesser sentence on these counts because he was found not guilty of a more serious offense.

The record discloses that the trial judge considered each of the factors identified by Elanzo as justifying imposition of a lesser sentence. The judge considered other factors relevant to the selection of an appropriate sentence tailored to the specifics of the crimes, taking into account Elanzo's individual circumstances, the impact on the victim, as well as the needs of society.

The trial judge was able to observe Elanzo during trial and found him not to be a credible witness. The judge considered Elanzo's age of 63 at the time of sentencing. There is nothing in the record which would allow a finding that Elanzo's age would mitigate the offenses or present a barrier to serving the unsuspended portion of his sentences. The trial judge took Elanzo's lack of prior criminal history into account. The trial judge also took into account Elanzo's lack of acceptance of responsibility as a potential aggravating circumstance. The trial judge noted the effect of the crime on the minor victim and the breach of familial trust.

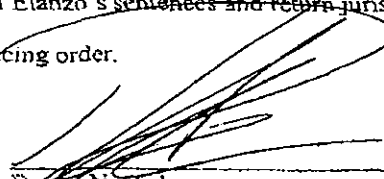
Regarding Elanzo's claim that he receives regular medical examinations for his eyes at the Majuro hospital, we observe that this claim was not raised before the trial judge at sentencing. We further note that there has been no medical or other evidence introduced below or on appeal

that appellant's eye condition presents an obstacle to serving the unsuspended portion of his sentence. The Republic has represented, and this court has no reason to doubt, that Elanzo's medical needs relative to his eye condition can be met while incarcerated.


The trial judge considered the broad sentencing goals of deterrence of the offender and others in society from committing the sort of offenses of which Elanzo was convicted. Elanzo's need and potential for rehabilitation was also taken into account. The trial judge specifically urged the Ministry of Justice to allow Elanzo to participate in any counseling or treatment programs which may be available.

We hold that the trial judge's selection of sentences was within the statutorily permissible range, the trial judge carefully explained his reasons for imposing the sentences appealed from, and conclude the sentences imposed were neither arbitrary nor capricious. We do not believe the sentences are "excessive." We, therefore, AFFIRM Elanzo's sentences and return jurisdiction to the High Court to insure compliance with its sentencing order.

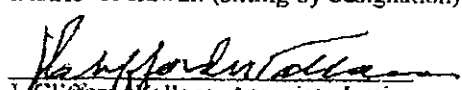
Dated this 4th day of June, 2008.


Daniel N. Cadra
Chief Justice, Supreme Court

Dated this 4th day of June, 2008.


Barry Kurren, Associate Justice
U.S. District Court Magistrate Judge,
District of Hawaii (sitting by designation)

Dated this 4th day of June, 2008.


J. Clifford Wallace, Associate Justice
Senior Judge, U.S. Court of Appeals, Ninth
Circuit (sitting by designation)

