

RECOMMENDATION TO THE LEGISLATURE OF ALASKA FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 17-2017, adopted August 23, 2017:

Revise the Three-Judge Panel Statutes

Most defendants in Alaska are sentenced by a single judge, who may impose sentence only as authorized by statute. In certain cases, if the sentencing judge finds that manifest injustice would result from imposing a sentence that is within the range authorized by statute, that judge may refer the case to a three-judge panel. If the panel agrees that manifest injustice would result from imposing a sentence within the authorized range, the panel may sentence the defendant to a definite term of imprisonment outside that range.

In practice, the three-judge panel is not often used. The standards for its use are not clear to practitioners, and the infrequency of its use means that many judges are unfamiliar with the process as well. Furthermore, when a panel does not find manifest injustice, the case must be sent back to the original sentencing judge for sentencing within the authorized range. This can extend the sentencing of a case by weeks, if not months, and delays closure for the victims. If the panel were authorized to impose a sentence within the authorized range, it would save this last step.

The Commission therefore recommends the following statutory amendments:

AS 12.55.155(d) **Factors in aggravation and mitigation** is amended to read:

- (22) THE DEFENDANT HAS AN EXTRAORDINARY POTENTIAL FOR REHABILITATION;
- (23) THE DEFENDANT ENGAGED IN EXEMPLARY BEHAVIOR AFTER THE OFFENSE;

AS 12.55.165(a)-(b) **Extraordinary Circumstances** is amended to read:

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155, FROM REQUIREMENTS FOR CONSECUTIVE SENTENCING, FROM RESTRICTIONS ON DISCRETIONARY PAROLE ELIGIBILITY, or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

(b) [REPEALED]

AS 12.55.175(b)-(e) **Three-judge sentencing panel** is amended to read:

(b) Upon receipt of a record of proceedings under AS 12.55.165, the three-judge panel shall consider all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The panel may [HEAR ORAL TESTIMONY TO] supplement the record before it AND [. IF THE PANEL SUPPLEMENTS THE RECORD, THE PANEL] shall permit the victim to ADDRESS [TESTIFY BEFORE] the panel. If the panel finds that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155, FROM

REQUIREMENTS FOR CONSECUTIVE SENTENCING, FROM RESTRICTIONS ON DISCRETIONARY PAROLE ELIGIBILITY, or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, it shall sentence the defendant in accordance with this section. If the panel does not find that manifest injustice would result, it shall remand the case to the sentencing court, with a written statement of its findings and conclusions, for sentencing under AS 12.55.125 UNLESS THE PARTIES AGREE THAT THE PANEL MAY IMPOSE A SENTENCE AUTHORIZED BY LAW APART FROM THIS SECTION.

(c) The three-judge panel may in the interest of justice GRANT DISCRETIONARY PAROLE ELIGIBILITY DURING ANY PORTION OF THE ACTIVE TERM OF IMPRISONMENT IMPOSED, AND sentence the defendant to any definite term of imprisonment up to the maximum term provided for EACH [THE] offense or to any sentence authorized under AS 12.55.015. IF THE PARTIES AGREE THAT THE PANEL MAY IMPOSE SENTENCE AUTHORIZED BY LAW APART FROM THIS SECTION, THE PANEL SHALL IMPOSE SENTENCE IN ACCORDANCE WITH SENTENCING LAW GOVERNING ORDINARY SENTENCING COURTS.

(d) Sentencing of a defendant or remanding of a case under this section shall be by a majority of the three-judge panel.

(e) [REPEALED]