

ALASKA SUPERIOR COURT
THREE-JUDGE SENTENCING PANEL
DECISION SUMMARY

Hearing Date: October 1, 2008 in Anchorage

Case No. 3AN-06-02953 CR
Defendant: Scott C. Bombard, Jr.
Charge: Manslaughter (AS 11.41.120 (a) (1))
Referred by: Judge Patrick J. McKay
Panel: Judge Stephanie E. Joannides
Judge Mark Wood
Judge Jack W. Smith

BACKGROUND

On March 3rd, 2008, Defendant Scott Bombard pled no contest to manslaughter in connection with the reckless shooting death of his friend, Dustin Colgrove.¹ At his July 11, 2008 sentencing, Judge McKay found that Mr. Bombard's use of a firearm constituted a "special circumstance" which increased the presumptive sentencing term from 5-8 years to 7-11 years. Although Judge McKay did not find any aggravators or mitigators to be present, he did find that Mr. Bombard had established by clear and convincing evidence that he has

¹ A detailed account of the facts and circumstances of this case can be found in Judge McKay's ORDER FORWARDING THIS CASE TO A THREE-JUDGE SENTENCING PANEL, at 2. (attached)

unusually strong prospects for rehabilitation, a non-statutory mitigator. Because he found that manifest injustice would result if the court did not consider Mr. Bombard's extraordinary potential for rehabilitation as a relevant non-statutory factor that would mitigate the presumptive terms of Mr. Bombard's sentence (lowest available sentence of 7 years), Judge McKay referred Mr. Bombard's case to the three-judge sentencing panel.

FINDINGS AND CONCLUSION

The three-judge sentencing panel met in Anchorage on October 1, 2008. The panel heard arguments from counsel for Mr. Bombard and the State of Alaska. The panel also considered the testimony of Dr. Sperbeck, a support letter from Mr. Bombard's principal, and a statement from the defendant, as well as the victim impact statements. After considering all of the applicable law and all the evidence, the panel unanimously found that Mr. Bombard has exceptional potential for rehabilitation.

Central to the panel's decision was the fact that Mr. Bombard 1) had no prior criminal record, 2) was a youthful, first-time offender, 3) was 16 at the time this incident occurred, 4) has continued his education, and 5) has been a model prisoner. Agreeing with Judge McKay, the panel also found that there were no applicable aggravators or mitigators in this case, and that the weapon enhancement aggravator was already encompassed within the 7-year sentencing range.

The panel then considered whether the *Chaney* criteria (isolation, deterrence, and rehabilitation), when weighed altogether, supported a reduction of the sentencing range. The panel did not find that Mr. Bombard needed to be isolated not to commit further acts such as this one. With respect to the deterrence factor, the panel hoped that seeing his friend die would sufficiently deter Mr. Bombard from engaging in such irresponsible behavior and from incorporating guns into his life in the future. The panel identified two groups of people that this sentence might also deter: 1) people similarly situated as the defendant and 2) parents of 16-year old young adults. Furthermore, the panel found Mr. Bombard's rehabilitation potential to be high. Therefore, when evaluating all the *Chaney* criteria as they apply to the manifest injustice component, the panel found that it would be manifestly unjust for a sentence in the 7-11-year range to be imposed, but did not agree with the defense's request to a mitigation of 3 ½ years.

The panel therefore imposed on Mr. Bombard a sentence of 10 years with 5 years suspended, followed by a 7-year probationary period. The panel did not impose any fine. The panel ordered the State of Alaska to file notice of any restitution amount within 90 days.

A transcript of the hearing before the three-judge sentencing panel, which includes the panel's oral findings, is attached and incorporated by reference. The judgment issued by the panel is also attached, as is Judge McKay's order referring this case to the three-judge sentencing panel.