

ALASKA SUPERIOR COURT
THREE-JUDGE SENTENCING PANEL
DECISION SUMMARY

Hearing Date: October 2, 2008 in Anchorage

Case No.: 3AN-07-8904 CR

Defendant: Charles Egbe

Charge: Robbery in the First Degree, AS 11.41.500.

Referred by: Judge Eric A. Aarseth

Panel: Judge Michael Thompson

Judge Mark Wood

Judge Eric Smith

BACKGROUND

On February 21, 2008, defendant Charles Egbe was found guilty following a jury trial of Robbery in the First Degree, a Class A Felony.¹ The presumptive term for this offense is five to eight years. Mr. Egbe requested that his sentencing be forwarded to a three-judge panel on May 23, 2008, a motion that the State opposed. A presentence hearing was conducted by Judge Aarseth on June 27th,

¹ Mr. Egbe was convicted of participating in the armed robbery of a restaurant owner. According to the PRESENTENCE REPORT (PSR), Mr. Egbe played an ancillary role in the crime: he did not wield the weapon (later identified as a BB gun), assault the victim, or take the money from the till. For a full description of the facts and circumstances, please refer to the PSR, at 2-8. (attached)

2008, at which time the court took evidence and heard arguments on statutory and non-statutory mitigators, as well as the issue of referral to the three-judge panel.

Mr. Egbe proposed three statutory mitigators: (AS 12.55.155(d)(2); AS 12.55.155(d)(9); and AS 12.55.155(d)(13). Judge Aarseth only found the statutory mitigator AS 12.55.155(d)(2) (the defendant, although an accomplice, played only a minor role in the commission of the offense), by clear and convincing evidence.

This finding was supported by the fact that Mr. Egbe appeared to be a passive participant in the event: he did not initiate the robbery, he did not touch the victim or direct traffic, nor did he give any orders or direction to his fellow offenders, and he did not play a critical role in the robbery.

Judge Aarseth also found that Mr. Egbe had proven by clear and convincing evidence that he had strong prospects for successful rehabilitation. When considered in light of the totality of evidence presented, which included the fact that Egbe had a good work history, strong family support, a desire to meet his family's expectations, a high school diploma, plans to further his education and career, and no apparent substance abuse issues, Judge Aarseth found this to constitute a non-statutory mitigator.

Given the presence of both a statutory and non-statutory mitigator, Judge Aarseth found that the presumptive term, even if reduced to the lowest available sentence of two and a half years, would be inconsistent with or might even undermine Mr. Egbe's strong potential for rehabilitation, and could constitute a

manifest injustice. Accordingly, Judge Aarseth referred the case to the three-judge sentencing panel.

FINDINGS AND CONCLUSION

The panel met in Anchorage on October 2, 2008. After taking testimony from the victim, Mr. Egbe's mother, and the probation office, listening to arguments from counsel for Mr. Egbe and the State, and hearing from Mr. Egbe, the panel found satisfactory evidence that Mr. Egbe had extraordinary potential for rehabilitation, but nonetheless determined that it would not be manifestly unjust for the defendant to be sentenced within the presumptive range.

The panel found that the imposition of a mitigated sentence for such a serious offense did not shock the conscience, nor was it obviously unfair. More specifically, the panel found that, even though Mr. Egbe's potential for rehabilitation was very high, it did not outweigh the other key factors, namely the *Chaney* criteria of isolation, general deterrence, and reaffirmation of societal norms such that it rendered the imposition of the lowest available sentence of two and a half years manifestly unjust.

The matter was remanded to the sentencing judge for sentencing pursuant to statute. A transcript of the hearing before the three-judge sentencing panel, which includes the panel's oral findings, is attached and incorporated by reference. A copy of Judge Aarseth's referral to the three-judge sentencing panel and the judgment issued by the three-judge sentencing panel are also attached.