

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT DILLINGHAM

STATE OF ALASKA,

Plaintiff,

vs.

CHRISTOPHER H. STRUB,

Defendant.

Case No. 3DI-06-173 CR

SUPPLEMENTAL ORDER REFERRING SENTENCE TO THREE JUDGE PANEL

At the sentencing hearing held on 02/07/08 in Dillingham, this court made findings on record and this order supplements those findings necessary for referral to the three judge panel.

No statutory aggravators or mitigators are applicable under the facts of this case. The court does find the non-statutory mitigator that defendant has an extraordinary potential for rehabilitation. The court has considered the *Chaney* criteria (see AS 12.55.155(d)) and has determined that it would be clearly mistaken to impose the lowest allowed sentence on the defendant.

The court finds, by clear and convincing evidence, that Strub has proved the non-statutory mitigator of extraordinary potential for rehabilitation. Strub is a college student with three semesters to attain his bachelor degree in aviation. He was 22 years old at the time of the offense, 25 years old at the time of sentencing. Strub has no prior criminal convictions. The court acknowledges a citation for under age drinking and driving leading to a conviction as a violation as the sole, relevant previous brush with law enforcement.

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Strub has wide based support from the community and strong family support as evidenced by the many letters written on his behalf and attendance at the trials (2) and hearings in this case. The letters describe a young man with strong rehabilitative potential: a strong work ethic; a strong scholastic background; and an impressive record of volunteer and community service for his age.

Strub expressed sincere remorse at the sentencing hearing- he could not finish reading his prepared statement through his tears. Strub has abstained from alcohol since the April 2006 incident (admittedly, a court ordered bail condition) and has expressed willingness to undergo substance abuse assessment and follow any recommendation for treatment. Strub has no history of assaultive conduct. This incident appears to be out of character. There is therefore no need to isolate him further to deter future assaultive conduct. His strong family ties and employment history suggest that he will be a productive member of the community when not incarcerated. Community condemnation of assault can be affirmed with a sentence equivalent to the presumptive term, but with a period of time suspended. To the extent that societal condemnation of assault needs to be affirmed by a sentence in Strub's case, it is this court's belief that this is accomplished by a suspended term of imprisonment.

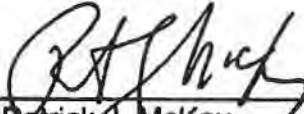
Strub is a non-violent individual who is being sentenced for a recklessly harmful act resulting in prolonged injury to at least two victims. However, it is clear to the court that the incident was solely fueled by alcohol, which is a highly treatable condition with proper individual motivation. The court believes Strub has that motivation.

In this court's view, seven years of incarceration or any greater term would deter the prospects of Strub returning to a productive life. It does not appear to this court that Strub needs to be incarcerated either to protect the public or to deter him from assaultive or other criminal conduct in the future. This court finds Strub is an excellent candidate for supervised probation. Manifest injustice will result if Strub's unusually positive prospects for rehabilitation are not allowed to mitigate the presumptive terms of the imprisonment he faces.

For the reasons stated herein, and stated previously on the record, the court finds, by clear and convincing evidence, that Defendant Strub has an extraordinary potential for rehabilitation and that it would be clearly mistaken to impose the lowest

available sentence on the defendant. This case will be referred to the three judge sentencing panel.

DATED at Anchorage, Alaska this 11th day of February, 2008.



Patrick J. McKay
Superior Court Judge

I certify that on the 13th day of Feb
2008, a copy was mailed to: (DA/OPA)

K. Nixon, Judicial Assistant 