

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ST. PAUL

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD J. ZACHAROF,)
)
 Defendant.)
 _____)

CASE NO. 3ST-10-23 CR

ORDER

At the hearing on January 27, 2012 before the Three Judge Panel, the Panel was informed by counsel for both defendant and the state that defendant had filed proposed mitigators prior to sentencing in the trial court. Based on this representation, the Panel decided to return this case to Judge Cutler so that she could rule on the mitigators that had been filed by defendant.

Unfortunately, a review of the file and the court docket indicates that while there are references to mitigators in the log notes, it does not appear that any mitigators were in fact formally filed. Given the representations made by the attorneys at the hearing and their agreement that the matter should be sent back to Judge Cutler, as well as defense counsel's apparent understanding that the Panel could address the mitigators,

the Panel concludes that defendant has not waived his right to raise the mitigators in the trial court. The Panel notes in this respect that the state will suffer no prejudice by a referral to the trial court, since defendant's memorandum to the Panel sets forth both the mitigators and the factual support for those mitigators.

The Panel accordingly hereby refers this case back to Judge Cutler so that she can rule on the mitigators identified in defendant's sentencing memorandum that he submitted to the Panel. If after ruling on these mitigators, Judge Cutler refers this case to the Panel again, the Panel will expedite the matter and calendar a hearing as quickly as possible.

The Panel does not retain jurisdiction over this case.

Dated at Palmer, Alaska, this 30th day of January 2012.

Eric Smith

ERIC SMITH
SUPERIOR COURT JUDGE

1-30-12
Dermall
i Phelan
Judge Cutler (via Second Court) Clerk of Court - Second
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