IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT SEWARD

STATE OF ALASKA, Plaintiff, vs. JANINNE ELIZABETH SANDROCK, Defendant.	)	Case No. 3SW-07-21CR
STATE OF ALASKA, Plaintiff, vs. DYLAN J. PRICE, Defendant.	)	Case No. 3SW-07-22 CR

ORDER FORWARDING TO THREE-JUDGE SENTENCING PANEL

Defendants were arrested on January 19, 2007, following a traffic stop near mile 14.5 of the Seward Highway. The trooper thought defendants were nervous and became suspicious. In response to questions, Mr. Price volunteered that he had a small amount of marijuana. Later Ms. Sandrock said they also had four boxes of Sudafed and she explained that they had to go to two different places to buy the Sudafed because they were only allowed to buy two boxes at a time. In a consent search, the trooper found five boxes of Sudafed, two bottles of rubbing alcohol, two bottles of hydrogen peroxide, one

can of acetone, one bottle Prep and Etch, two bottles of Heet, four bottles of iodine, some Drano, a new five-gallon gas can, a two-burner hot plate, a crock pot, and glass cooking utensils. There were few other supplies in the vehicle. The trooper was not satisfied with the explanation offered by defendants and charged them with Second Degree Misconduct Involving a Controlled Substance.

At trial, the State and defendants presented testimony from expert witnesses. Both experts agreed that most of items seized could be used to manufacture methamphetamine. The State's expert said defendants would need red phosphorus to produce methamphetamine. The defendants' expert said there was a method where the Prep and Etch might be used to substitute for the red phosphorus process, but he had never seen it done before, and had only read about it in a journal article. The defendants' expert also testified that if red phosphorus was available, the ingredients defendants had would have produced about two grams of methamphetamine. He used two packages of artificial sweetener to show the amount.

Ms. Sandrock testified at trial; Mr. Price did not. The jury did not accept Ms. Sandrock's explanation as to why they had the items seized by troopers. The jury convicted defendants on three counts of Misconduct Involving a Controlled Substance in the Second Degree.

No aggravators were pled or approved. Defendants have proposed three mitigators under AS 12.55.155(d). The State concedes mitigator (d)(13) - the offense

involved small quantities of a controlled substance. The State has recommended a mitigated sentence of 2.5 years for each defendant.

Defendants argue that the case should be sent to a three-judge sentencing panel under AS 12.55.165. The Court of Appeals has interpreted AS 12.55.165 and determined that cases should be sent to a three-judge panel in two situations.[1] The first situation is when the judge finds manifest injustice would result from failure to consider a relevant mitigating factor not listed in AS 12.55.155. The second situation occurs when the judge finds that even after mitigating the sentence using statutory mitigating factors, the presumptive sentence would be unjust. In *Harapat*, the court held that when a three-judge panel is requested and the court finds a non-statutory mitigator applies, the question becomes whether it would be manifestly unjust not to make some adjustment, albeit small, to the presumptive sentence based on the non-statutory mitigator. If the court is inclined to adjust the sentence at all, the case should be sent to a three-judge panel.

This Court finds the mitigator agreed to by the parties, AS 12.55.155(d)(13). The Court also finds mitigator (d)(9) applies - the least serious conduct included in the definition of the offense. The least serious conduct finding is based on the fact that there was no evidence suggesting that defendants had ever made, used or sold methamphetamine. Required methamphetamine-manufacturing ingredients were missing. This was not a commercial lab. At most, troopers discovered an experimental or hobby lab still in the planning process.

---

[1] *Harapat v. State*, 174 P.3d 249 (Alaska 2007)

Ms. Sandrock has no criminal history. She was working at the time she was arrested at the Seward Subway restaurant as the manager. The owner of the store she managed trusted her enough to leave her in charge of his business when he was in Korea for long periods of time. After she was arrested, Ms. Sandrock continued to work, had a child, and as pointed out by Probation Officer Steven Meyer, she did not exhibit any signs of errant behavior during the two years she was awaiting trial. Ms. Sandrock's community appears to agree she is a good mother, good neighbor and productive citizen.

After applying statutory mitigators, the least this Court could sentence Ms. Sandrock is 2.5 years. The Court finds by clear and convincing evidence that Ms. Sandrock has extraordinary potential for rehabilitation. Sentencing Ms. Sandrock to 2.5 years would be manifestly unjust. If given the discretion, this Court would be inclined towards imposing a suspended imposition of sentence with a short period of supervised probation. The *Chaney* criteria would not support more than minimal shock jail time. Defendant Sandrock's Motion to Forward to Three-Judge Sentencing Panel is granted.

Mr. Price's case is more complicated. He has a 2003 conviction for possession with intent to distribute marijuana. He was, however, pardoned by the State of Louisiana in 2007. Mr. Price was working at the time of his arrest and continued to work pending trial. His friends and neighbors believe he is a good father, good neighbor, and productive citizen. Again, Probation Officer Steven Meyer pointed out that there were no problems during the two years pending trial, and working and remaining out of trouble is not typical of methamphetamine users.

This Court finds by clear and convincing evidence that Mr. Price has extraordinary potential for rehabilitation. Based on his past record that includes possession with intent to sell, it is not manifestly unjust to sentence to Mr. Price to 2.5 years. However, this Court would be inclined to reduce his sentence to less than 2.5 years because of his extraordinary potential for rehabilitation. This Court would be inclined to sentence him to one or two years followed by three years of supervised probation. Since this Court is inclined toward reducing the sentence based on the non-statutory mitigator, *Harapat* requires forwarding Mr. Price's case to a three-judge panel.

Based on the foregoing, defendants' motions requesting the Court forward their cases to three-judge sentencing panel is granted.

Dated at Kenai, Alaska this 13th day of April, 2009.

Charles T. Huguelet
Superior Court Judge

I certify that a copy of the foregoing was placed in box
in the Clerk's Office to the following at their addresses of record:

DA/BRENCKLE/PD/PROBATION

Date: 4/13/09 Clerk: AC