

ALASKA SUPERIOR COURT
THREE-JUDGE SENTENCING PANEL
DECISION SUMMARY

Hearing Date: April 4, 2008 in Fairbanks

Case No. 4FA-07-00409 CR

Defendant: Kevin L. Garner

Charge: Manslaughter (AS 11.41.120(a)(1), a Class A felony) and Driving Under the Influence (AS 28.35.030(a)(1), a Class A misdemeanor)

Referred by: Judge Randy Olsen

Panel: Judge Stephanie E. Joannides
Judge Richard H. Erlich
Judge Eric Smith

BACKGROUND

On October 11, 2007, Defendant Kevin Garner was convicted by a jury of Manslaughter and Driving Under the Influence.¹ At sentencing on February 15, 2008, Judge Olsen found that Garner possessed outstanding rehabilitation potential. The following factors support this finding: Mr. Garner is relatively young and without

¹ Police were notified of the body of a deceased woman underneath a car on the morning of February 4th, 2007. Mr. Garner subsequently identified the car as his vehicle. Mr. Garner's vehicle had run over the body of Catherine Ahsoak on February 3rd, 2007, and had dragged the body underneath the vehicle for nearly a quarter mile. An autopsy determined that the victim's injuries were consistent with her lying on the road, that she had been alive when struck by Mr. Garner's vehicle, but that she died fairly rapidly. At the time of her death, the victim's alcohol level was .229 and she had over three times the therapeutic range of Benadryl in her system. When questioned by police on the morning of February 4th, Mr. Garner failed several sobriety tests. See PRESENTENCE REPORT, at 3-4. (attached)

a significant criminal history; he has taken responsibility for his conduct; he was and continues to be remorseful; he has exceptional support from family, employer, coworkers, teachers, and friends; he has acknowledged his need for alcohol treatment and has already begun to address the problem while in custody; he has a college degree; he has an excellent reputation and work history; he has completed educational programs and assisted other inmates while in custody; and he had a history of charitable service prior to this current situation.

Although Judge Olsen did not find that the presumptive sentencing range of 7-11 years would result in manifest injustice, Judge Olsen concluded that Garner had established by clear and convincing evidence that manifest injustice would result from failure to consider Garner's potential for rehabilitation at sentencing. Accordingly, Judge Olsen referred Garner's case to the three-judge sentencing panel.

FINDINGS AND CONCLUSION

The three-judge sentencing panel met in Fairbanks on April 4, 2008. The panel heard arguments from counsel for Mr. Garner and the State of Alaska. The panel also heard testimony from Detective Chris Nolan and a statement from Mr. Garner. After considering, the testimony presented, and letters from the Mr. Garner's supporters as well as the victim's family, and the arguments made, a majority of the panel found by clear and convincing evidence that Mr. Garner possessed an extraordinary potential for rehabilitation. The panel based this conclusion on factors including Mr. Garner's cooperation with authorities, his remorse, his community

involvement both before and after the incident, his efforts to seek out treatment, and the stressors present in his life at the time of the incident.

Despite finding that Mr. Garner had an extraordinary potential for rehabilitation, the panel concluded that imposition of the presumptive term would not result in manifest injustice. The panel's finding on this point was supported by Mr. Garner's high blood alcohol level at the time of incident, as well as Mr. Garner's history of drinking heavily, including a previous conviction for driving under the influence of alcohol.

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. Judge Olsen's referral to the three-judge sentencing panel and the judgment issued by the panel are also attached.