

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 101

Repealing and Re-Promulgating
Rules 6, 21, 22 Rules of the
Supreme Court of Alaska and
Adding Rule 7, District Court
Rules of Criminal Procedure

IT IS ORDERED:

Rules 6, 21 and 22, Rules of the Supreme Court of
Alaska, are hereby repealed and are re-promulgated to read as
set forth in the Appendix attached to this order.

District Court Rules of Criminal Procedure are
hereby amended by adding thereto Rule 7 as set forth in the
Appendix attached to this order.

EFFECTIVE DATE: January 1, 1970.

/s/ JOHN H. DIMOND
Acting Chief Justice

/s/ JAY A. RABINOWITZ
Associate Justice

/s/ GEORGE F. BONEY
Associate Justice

/s/ ROGER G. CONNOR
Associate Justice

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SUPREME COURT RULE

Rule 6. What May Be Appealed.

An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or on the ground that the sentence is too lenient.

SUPREME COURT RULE

Rule 21. Sentence Appeal.

(a) Notification of Right to Appeal Sentence. At the time of imposition of any sentence for a term or for aggregate terms exceeding one year, the judge shall inform the defendant as follows:

(1) That the sentence may be appealed to the supreme court on the ground that it is excessive.

(2) That upon such appeal the court may modify the sentence as provided by law.

(b) Notice of Appeal. Written notice of appeal from a sentence of the superior court by the state, or by a defendant appealing solely on the ground that the sentence is excessive, shall be filed with the clerk of the superior court which imposed the sentence not later than 10 days after sentence was imposed. The notice of appeal need only state that the sentence which is being appealed is too lenient or excessive.

(c) Termination of Appeal. Any appeal of a sentence initiated by the defendant may be terminated by his filing within 30 days from the filing of the notice of appeal a notice of intent to terminate the appeal. Such a termination shall prevent any increase in the sentence or sentences imposed.

(d) Indigent's Right to Counsel on Sentence Appeal. An indigent defendant is entitled to the assistance of counsel in prosecuting an appeal on the ground that the sentence is excessive. Where an appeal is taken by the state pursuant to

AS 12.55.120(b) on the ground that the sentence is too lenient, and the defendant has not appealed, the supreme court in its discretion may appoint counsel for an indigent defendant.

(e) Forwarding Notice of Appeal. Upon receipt of a notice of sentence appeal, the clerk shall forthwith forward a copy of the notice to the defendant and his counsel, to the district attorney, to the office of the public defender if appropriate, to the superior court judge who imposed the sentence, and to the clerk of the supreme court.

(f) Statement of Reasons by Sentencing Judge. At the time of imposition of sentence the judge shall make a statement on the record explaining his reasons for imposition of the sentence.

(g) Record on Appeal.

(1) Preparation and Contents. Immediately upon the filing of a notice of sentence appeal, the clerk shall prepare sufficient copies of the record on appeal, which shall consist of the following:

[a] A transcript of the entire sentencing proceeding.

[b] All reports and documents which were available to the sentencing court as an aid in imposing sentence.

(2) Distribution. Immediately upon preparation of the record on appeal, the clerk shall send copies by certified mail to the defendant and his counsel, the district attorney, the

public defender if appropriate, and to the clerk of the supreme court.

(h) Memoranda on Appeal.

(1) By Appellant. Within 15 days after receipt of copies of the record on appeal provided for in (g) of this rule, the appellant shall file with the supreme court the original of a typewritten memorandum in support of the appeal.

(2) By Appellee. Within 10 days after receipt of a copy of appellant's memorandum, the appellee may file with the supreme court the original of a typewritten memorandum in opposition to the appeal.

(3) Reply Memorandum. Within 10 days after receipt of a copy of appellee's memorandum, the appellant may file with the supreme court the original of a typewritten reply memorandum.

(4) Form and Contents of Memoranda. The memoranda filed by either the appellant or the appellee need not comply with the requirements of Supreme Court Rule 11 unless ordered by the supreme court.

(5) Duplication and Service of Memoranda. The clerk of the supreme court shall forthwith reproduce and serve upon all interested persons involved in the appeal copies of all memoranda.

(i) Disposition of Appeals by Reviewing Court.

Sentence appeals will be disposed of by the court on the record. Oral argument may be granted in the court's discretion.

(j) Bail Pending Appeal. A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

(k) Effective Date. This rule becomes effective on January 1, 1970, and applies only to appeals of sentences which were imposed on or after that date.

SUPREME COURT RULE

Rule 22. Supervision of Criminal Appeals - Applicability of Rules.

(a) Supervision of Criminal Appeals. The supervision and control of the proceedings on appeal shall be in the supreme court from the time the notice of appeal is filed with its clerk, except as otherwise provided in these rules. The court may at any time entertain a motion to dismiss the appeal, or for directions to the superior court, or to modify or vacate any order made by the superior court or by any judge in relation to the prosecution of the appeal, including any order fixing or denying bail.

(b) Applicability of Rules. The rules governing the practice and procedure in civil cases including, but not limited to, the rules governing the preparation, form and filing of the record and the preparation, form and filing of briefs, shall apply to appeals in criminal cases, except as otherwise provided in these rules, and except where any such rule is obviously inconsistent with or not reasonably adaptable to appeals in criminal cases.

DISTRICT COURT CRIMINAL RULE

Rule 7. Sentence Appeal.

(a) Notification of Right to Appeal Sentence. At the time of imposition of any sentence of 180 days or more, the judge shall inform the defendant as follows:

(1) That the sentence may be appealed to the superior court on the ground that it is excessive.

(2) That upon such appeal the court may modify the sentence as provided by law.

(b) Notice of Appeal. Written notice of appeal from a sentence of a district court on the ground that the sentence is excessive, shall be filed with the clerk of the court which imposed the sentence not later than 10 days after sentence was imposed. Where there is no clerk of court, the notice shall be filed with the judge of the court which imposed the sentence. The notice of appeal need only state that the sentence which is being appealed is excessive. In lieu of written notice, a defendant may give oral notice of appeal in open court, immediately following the imposition of sentence, which shall be entered by the court in the docket. The clerk or judge shall thereupon prepare and file forthwith a notice of appeal on behalf of the defendant.

(c) Forwarding Notice of Appeal. Upon receipt of a notice of sentence appeal, the clerk or judge shall forthwith forward a copy of the notice to the defendant, and to his counsel if he is represented by counsel, to the district attorney or other

state official who prosecuted the case in behalf of the state, and to the clerk of the superior court of that judicial district.

(d) Statement of Reasons by Sentencing Judge.

(1) Contents of Statement. At the time of imposition of sentence the judge shall make a statement on the record explaining his reasons for imposition of the sentence.

(2) Statement to be Recorded or Written. The statement provided for in (1) shall be electronically recorded. If no electronic recording of the sentencing proceedings can be made, the judge shall make a docket entry noting that an appropriate statement was made, and within five days after receipt of his copy of a notice of sentence appeal, the judge shall prepare a separate written statement of his reasons for imposition of the sentence in the manner provided in (1) above.

(e) Record on Appeal.

(1) Preparation and Contents. Immediately upon the filing of a notice of sentence appeal, or the giving of oral notice of appeal by a defendant at the time of imposition of sentence, the clerk or judge shall cause to be prepared sufficient copies of the record on appeal, which shall consist of the following:

[a] A transcript of the entire sentencing proceeding. In courts where no electronic recording of the sentencing proceeding was made, the transcript shall be prepared by the judge from notes made during the sentencing proceeding, and must include each of the following:

[1] A summary of all statements and evidence relevant to the sentence imposed.

[2] The written statement by the judge of his reasons for imposition of sentence, as provided by (d) of this rule.

[b] All reports and documents which were available to the sentencing judge as an aid in imposing sentence.

(2) Distribution. Immediately upon preparation of the record on appeal, the clerk or judge shall send copies by certified mail to the defendant, his counsel, if he is represented by counsel, the district attorney or other prosecuting official representing the state, and the clerk of the superior court.

(f) Memoranda on Appeal.

(1) Defendant's Memorandum. Within 10 days after receipt by the defendant of a copy of the record on appeal provided for in (e) of this rule, the defendant may file with the clerk of the superior court the original copy of a typewritten or longhand memorandum in support of his appeal. The clerk shall forthwith reproduce and send by certified mail a copy of the defendant's memorandum to the district attorney or other prosecuting official representing the state.

(2) State's Memorandum. Within 10 days after receipt of a copy of the defendant's memorandum, the district attorney or other prosecuting official representing the state shall file with the clerk of the superior court the original

copy of a typewritten memorandum in opposition to the appeal. The clerk shall forthwith reproduce and send by certified mail a copy of the state's memorandum to the defendant and to his counsel, if he is represented by counsel.

(3) Reply Memorandum. Within 10 days after receipt of a copy of the state's memorandum, the defendant may file with the clerk of the superior court the original copy of a typewritten or longhand reply memorandum.

(g) Disposition of Appeals by Superior Court. Sentence appeals will be disposed of by the court on the record. Oral argument may be granted in the court's discretion.

(h) Bail Pending Appeal. A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

(i) Definition. The word "judge" as used in this rule includes a district court judge and magistrate.

(j) Effective Date. This rule becomes effective on January 1, 1970, and applies only to appeals of sentences which were imposed on or after that date.