

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT SITKA

State of Alaska,

Plaintiff,

vs.

James Allen Bradley,

Defendant.

Case No. 1SI-20-00246 CR

MEMORANDUM

The Three-Judge Sentencing Panel¹ (“Panel”) met on February 21, 2023, in Sitka, Alaska, to consider Judge Pate’s referral in the above-captioned case. Mr. James Bradley was present with counsel, Mr. Jay Hochberg. Mr. Chris Darnall appeared on behalf of the state. The victim, M.R., declined to participate, but the court heard from Mr. Bradley’s brother, Mr. Kenyatta Bradley, as well as Mr. Bradley and Dr. Kristy Becker, who participated via videoconference. The Panel accepted the referral, made verbal findings, sentenced Mr. Bradley, and advised that this related Memorandum would follow.²

Present Offense

Pursuant to a Rule 11 agreement, on June 13, 2022, Mr. Bradley pled guilty to one count of Distribution of Child Pornography,³ a class B felony, with no sentencing agreement. The state

¹ Judge Jennifer K. Wells (Administrative Head), Judge Paul Roetman, Judge Brent Bennett.

² Criminal Rule 32.4(e) requires the Panel to issue written findings and conclusions when remanding a case to the referring judge for sentencing. The Rule does not expressly require the Panel to do so when it accepts a case. The Panel’s view is that it should issue written findings and conclusions in every case, however, as the Panel’s decisions are being made publicly available to provide some guidance to judges and attorneys.

³ A violation of AS 11.61.125(a).

dismissed another charge of Distribution of Child Pornography, as well as Exploitation of Minor, and Possession of Child Pornography.⁴

According to the Stipulated Statement of Facts,⁵ Mr. Bradley met M.R. on Facebook in February, 2020, and the two had a dating and sexual relationship. At the time, M.R. was seventeen and Mr. Bradley was thirty-nine. On one occasion, Mr. Bradley made a one-minute and thirty-six seconds video which showed M.R. naked from the waist down, Mr. Bradley naked, and the two having penile-vaginal intercourse. When M.R. began dating Mr. Jake Cabeliza, Mr. Bradley sent the video via Facebook Messenger to M.R. and Mr. Cabeliza in an effort to end their relationship. The video has been deleted from Facebook and by its recipients.

Presumptive Sentence

Distribution of Child Pornography is a Class B felony. Mr. Bradley has two prior felony convictions: Robbery in the First Degree from an incident that occurred in 1997⁶ (he was 16 years-old), and Burglary in the Second Degree from an incident that occurred in 2003⁷ (he was 22 years-old.) With this third felony conviction, Mr. Bradley faces a presumptive sentence of 15-25 years.⁸ At the December 19, 2022, sentencing hearing, Judge Pate concluded that Mr. Bradley's offense was the least serious within its category, which authorizes the court to lower his sentence to 7.5 years.⁹ Despite this, Judge Pate referred the case to the Panel pursuant to his finding that Mr. Bradley's "conduct was significantly different from a typical offender . . . [and] . . . significantly different from a typical offense for distribution of child pornography."¹⁰ With this finding, Judge

⁴ See February 21, 2023, Judgment, CTN's 1, 3 and 4.

⁵ Filed June 13, 2022, with the Notice of Plea Agreement.

⁶ 3AN-97-08340CR.

⁷ 1SI-03-00559 CR.

⁸ A.S. 12.55.125(i)(4)(F).

⁹ A.S. 12.55.155(a)(2).

¹⁰ December 20, 2022, Order Referring Case to Three-Judge Panel, p. 2.

Pate concluded that a sentence within the presumptive range, even if adjusted for the mitigator, would constitute manifest injustice.

Mr. Bradley's Prior History:

An April 6, 2004, presentence report notes the robbery conviction,¹¹ a 2002 conviction for Escape,¹² a 2003 conviction for DWI/DWLR/Leaving the Scene,¹³ and two parole violations.¹⁴ According to the presentence report prepared for this case,¹⁵ Mr. Bradley's adult criminal history includes the burglary conviction¹⁶ and a 2006 conviction for Furnish Alcohol to a Minor.¹⁷ Until now, Mr. Bradley has had no other criminal convictions. Mr. Bradley has no convictions for sex-related crimes.

As part of Mr. Bradley's argument before the Panel, he described the bigger context of his history.¹⁸ Mr. Bradley asserts that his mother was addicted to alcohol, and that alcoholism seriously impacted his childhood. His grandmother primarily raised him, and he was referred to the juvenile justice system a couple of times, although neither resulted in adjudication/probation. When he was sixteen, Mr. Bradley was drinking with a friend when they went to Safeway and the friend exposed a BB gun to a cashier. This led to Mr. Bradley's robbery conviction, for which he served 5 years.¹⁹ About 90 days after his release, Mr. Bradley broke into a liquor store and was convicted of burglary.²⁰ The furnishing alcohol case involved a person he met in jail.

Presentation to the Panel:

¹¹ 3AN-97-8340 CR, p. 4 of April 6, 2004, PSR.

¹² 3AN-01-7988 CR, p. 4 of April 6, 2004, PSR.

¹³ 3AN-03-5945, p. 3 of April 6, 2004, PSR.

¹⁴ April 6, 2004, PSR, p. 4.

¹⁵ Submitted October 17, 2022.

¹⁶ 1SI-03-00559 CR, p. 4 of the PSR.

¹⁷ 1SI-06-00181 CR, p. 4 of the PSR.

¹⁸ Described in his November 14, 2022, Omnibus Sentencing Memorandum.

¹⁹ *Id.*, p. 10.

²⁰ *Id.*

Mr. Bradley presented a narrative to the Panel of someone who endured childhood abuse and neglect, and struggled with alcohol most of his life. Despite the alcohol-related crimes of his early years, he eventually achieved and maintained sobriety for more than ten years. Mr. Bradley married, had children, and worked. When his marriage ended in 2019, Mr. Bradley relapsed.²¹ This is when he got involved with M.R. and committed the current crime. Despite this, Mr. Bradley has maintained a positive relationship with his ex-wife, and has created a new relationship with a thirty four year-old partner.²² Mr. Bradley has expressed remorse, and a hope for healing for M.R..²³

On November 16, 2022, Mr. Bradley filed a Forensic Psychological Evaluation prepared by Dr. Kristy Becker, who evaluated Mr. Bradley in April, 2022. Judge Pate placed little weight on this report because Dr. Becker did not testify at that time. As noted, Dr. Becker did testify before the Panel. Her report corroborated the above narrative, and Dr. Becker concluded that Mr. Bradley does not suffer atypical sexual interests (paraphilia).²⁴ Dr. Becker wrote “[t]here is no evidence to suggest a strong antisocial component to Mr. Bradley’s presentation” and that he “appears to be a good candidate for supervision.”²⁵ In the report, Dr. Becker outlined treatment recommendations which focused on Mr. Bradley’s need to maintain sobriety, obtain therapy, seek psychiatrist care for medication management, and comply with Sex Offender Treatment.²⁶

At the hearing, Dr. Becker provided additional explanation of her testing and analyses, describing the specific positive and negative factors affecting Mr. Bradley. Dr. Becker testified

²¹ *Id.*

²² *Id.*, p. 11. Also see November 14, 2022, Notice of Sentencing Materials which attaches a statement from Mr. Bradley’s significant other, Ms. Shamarie Torres. See also November 16, 2022, Second Notice of Sentencing Materials, attaching a statement from Mr. Bradley’s ex-wife, Ms. Jane Mokofisi.

²³ See November 14, 2022, Notice of Sentencing Materials, which attaches a statement from Mr. Bradley and Lemon Creek Pastor Nelson.

²⁴ True North Evaluation, p. 10.

²⁵ *Id.*

²⁶ *Id.*, pp. 14-15.

that the risk for recidivism for this type of offense is highest if a person has an atypical sexual interest and personality disorder, which Mr. Bradley does not have. Dr. Becker opined that Mr. Bradley probably needs residential substance abuse treatment, as well as help for his depression and anxiety. If these needs are met, Dr. Becker predicts a low risk for recidivism. Dr. Becker testified that Mr. Bradley's sustained period of sobriety in the past, as well as his current willingness to engage in treatment, bode well for his ability to remain sober in the future.

The state asked the Panel to reject the referral, arguing that Mr. Bradley would be appropriately punished by the existing sentencing scheme. Mr. Bradley must be held accountable for the choices he made as an adult to turn back to alcohol, make an illegal video, and distribute that video. For Mr. Bradley, particularly, the use of alcohol leads to felony conduct. The fact that the seriousness of the offense has only risen as he ages is an indication that the presumptive terms appropriately address the court's sentencing goals. The state eloquently described the devastating impacts of child pornography.

Mr. Bradley asked the Panel to accept his case, focusing on the ways that he and this offense differ from a 'typical' defendant and a 'typical' child pornography crime. Mr. Bradley noted his cooperation with law enforcement, remorse, and potential for rehabilitation. He asked the Panel to find that the three years he has spent in custody are punishment enough.

Conclusions of Law:

Alaska Statute 12.55.165, entitled "Extraordinary circumstances," authorizes a referral to the Panel for sentencing if the court "finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in A.S. 12.55.155 or from imposition of a sentence within the presumptive range, whether

or not adjusted for aggravating or mitigating factors.”²⁷ The Panel may sentence the defendant to imprisonment as necessary “in the interest of justice.”²⁸

It is the province of the legislature, not the judiciary, to determine what penalty ranges appropriately reflect community condemnation.²⁹ For the many reasons noted in both parties’ sentencing memorandums, distribution of child pornography causes incalculable harm to society. Therefore, the presumptive terms are appropriately harsh. The creation of the Panel, however, reflects the legislature’s recognition that “there might be unusual circumstances in which the prescribed presumptive term of imprisonment would be manifestly unjust . . .”³⁰ In order to vary from the presumptive scheme, the Panel must focus on the law as it applies to this individual defendant in order to “articulate specific circumstances that make the defendant significantly different from a typical offender within that category or that make the defendant’s conduct significantly different from a typical offense.”³¹

Mr. Bradley has met his burden of convincing the Panel that there are unusual circumstances which make the presumptive jail term manifestly unjust. Mr. Bradley committed the prior felonies at a young age, before engaging in rehabilitative efforts. These crimes were directly related to alcohol abuse, and do not reflect a tendency for predatory or deviant sexual behavior. Mr. Bradley, as an adult, achieved and maintained sobriety, and engaged in appropriate ‘pro-social’ behaviors when he married, had children, and worked. Since his arrest, Mr. Bradley has had no write-ups in jail, and has maintained a job. Also relevant are the facts this was a discrete

²⁷ A.S. 12.55.165(a).

²⁸ A.S. 12.55.175(c).

²⁹ *Beltz v. State*, 980 P.2d 474, 480 (AK App. 1999), citing *Leuch v. State*, 633 P.2d 1006, 1012-13 (Alaska 1981).

³⁰ *Beltz*, 980 P.2d at 480.

³¹ *Id.*

event, the sex was not a crime, and Mr. Bradley distributed the video to two people. Mr. Bradley and this crime differ significantly from the person and crimes the legislature targeted.

That said, Alaska’s heart is uniquely broken by some of the highest rates of alcoholism, sexual assault, domestic violence and child abuse in the nation. As noted by the state, “child pornography crimes at their core demand the sexual exploitation and abuse of children. Not only are children seriously harmed – physically, emotionally, and mentally -in the process of producing such pornography, but that harm is then exacerbated by the circulation, often for years after the fact, of a graphic record of the child’s exploitation and abuse.”³² For these reasons, Child Abuse Sexual Material (CSAM), is particularly damaging. It harms children at the time, its distribution feeds consumer appetite, which in turn incites more sexual abuse. Unlike other sexual offenses, which have a beginning and end, CSAM recordings remain a permanent online fixture.³³ The state also notes that rehabilitation for defendants convicted of CSAM offenses is unclear, crimes are hard to detect, and the best way to prevent ongoing victimization is to “impose[e] severe criminal penalties” on everyone in the distribution chain.³⁴

This rationale is likely behind the legislature’s decision to treat people in this ‘chain’ severely. For example, unlawful exploitation of a minor, defined as creating a prohibited image of someone under 18 years of age, is an unclassified felony if the person has been convicted of this before.³⁵ Even for a first offense, exploitation is punishable by a presumptive jail term of 15 – 30 years.³⁶ A first offense for distribution of child pornography has a presumptive term of 5-15

³² State’s October 27, 2022, Sentencing Memorandum, p. 5, footnote 22, quoting *United States v. Reingold*, 731 F.3d 204, 216 (2d Cir. 2013).

³³ *Id.*, p. 6, footnote 35, See Jillian Roffer, *Nonconsensual Pornography: An Old Crime Updates Its Software*, 27 Fordham Intell. Prop. Media & Ent. L.J. 935, 983-4(2017).

³⁴ *Id.* P. 12, quoting *New York v. Ferber*, 458 U.S. 747 at 760, 102 S.Ct. 3348 (1982).

³⁵ A.S. 11.41.455(c)(2).

³⁶ A.S. 12.55.125(i)(2)(A)(ii).

years,³⁷ and a first offense for possession of child pornography has a presumptive term of 2-12 years.³⁸ These jail terms appropriately reflect Alaska's condemnation of these crimes, as well as the need to deter people from engaging in this behavior and isolate them from the public.

The Panel does not second-guess these sentencing parameters. In this particular case, however, the Panel is persuaded that Mr. Bradley does not represent a typical link in the child pornography chain, for the reasons described above. In reviewing the court's sentencing goals,³⁹ the court enters a sentence of 10 years with 5 years suspended. The choice of ten years reflects the court's concern about the need to deter others from distributing these images, as well as reflect community condemnation. It is also appropriate that Mr. Bradley serve 5 years to respond to the fact that drinking, for a third time – and this time as a grown man harming a minor - led to a felony. Beyond that, however, the Panel is persuaded that a ten-year period of probation, with appropriate conditions, can meet the other sentencing goals. Mr. Bradley must not drink again. He must also register for 15 years on the sex offender registry.

Probation Conditions

Mr. Bradley raised many objections to the proposed general and special conditions. The Panel discussed these extensively with the parties on record. Some of Mr. Bradley's concerns relate to contact with minors, internet use, and access to sexually explicit materials. The state suggested that the court defer these decisions to the treatment provider's recommendations. The Panel is concerned about abdicating its sentencing responsibilities, however, so designed conditions to balance Mr. Bradley's legitimate interests with society's need for effective supervision.


³⁷ A.S. 12.55.125(i)(3)(A).

³⁸ A.S. 12.55.125(i)(4)(A).

³⁹ *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

Accordingly, the Panel distributed the Judgment and Order of Commitment/Probation and Sex Offender and Child Kidnapper Registration Requirements.

DATED at Kenai, Alaska this 28 day of February, 2023.


Jennifer K. Wells, Judge
Administrative Head
Three-Judge Panel

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