IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT DILLINGHAM

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TYRONE GAMECHUK,	)	
	)	
Defendant.	)	
	)	CASE NO. 3DL-10-611 CR

ORDER

Defendant was convicted of Attempted Sexual Assault in the First Degree. The trial judge referred the case to the Three Judge Sentencing Panel. The Panel held a hearing on February 22, 2013 in Dillingham. The Panel found that it should take jurisdiction of this case, and it sentenced defendant to a slightly mitigated sentence of twenty years, with ten years to serve. The Panel's findings were set forth on the record at the hearing; this order will summarize and to some extent elucidate those findings as they relate to jurisdiction.

Defendant is relatively young. He has been convicted of some misdemeanors, all committed while he was highly intoxicated. He did not complete the alcohol treatment program ordered in one case, which led the court to revoke his SIS. The panel was not provided with any evidence that he has started,

much less completed, a substance abuse program; indeed, there is no evidence that he has even had an evaluation for substance abuse. He also has not had a sexual abuse evaluation.

On the other hand, defendant is a valued member of his village of Manokotak. He was credibly described by the witnesses who testified at the hearing that he is a dedicated member of the community who is invariably helpful and a key member of the search and rescue teams. He also did not present a problem for Melvin Andrews, who was the VPSO for Manokotak for 23 years. The Panel finds that given the size of the village and the fact that everyone knows everyone there, defendant did not commit any sex crimes in the village - had he done so, those crimes would quickly have come to light. The Panel further finds that defendant did not commit any such crimes while in Anchorage or Seward, for he only gets in trouble when he gets intoxicated, and he almost certainly would have been arrested for a sex crime had he committed one.

In light of these facts, the Panel found that defendant did not prove by clear and convincing evidence that defendant has an extraordinary potential for rehabilitation. In order to find such a potential, the Panel must be able to understand why the crime happened and to determine that the crime is unlikely ever to happen again. Beltz v. State, 980 P.2d 474, 481 (Alaska App. 1999). It is clear that this crime only occurred because

defendant was very drunk. But it is not clear why defendant attacked the victim, nor does the Panel have any information to evaluate either the extent to which defendant has attempted to address his substance abuse problem or the possibility that defendant is in need of sexual offense treatment. As such, there is no basis upon which to find that defendant has an extraordinary potential for rehabilitation.

The Panel did find, however, that it could properly take jurisdiction of this case pursuant to Collins v. State, 287 P.3d 791 (Alaska App. 2012), and Beltz. Defendant did prove by clear and convincing evidence that he has a normal potential for rehabilitation, given his value to the village, his relatively minor misdemeanor history, and the fact that he only breaks the law when he is highly intoxicated. And as discussed above, he also proved that he did not have a history of uncharged sexual conduct. Collins therefore requires the Panel to take jurisdiction.

The Panel recognizes that the Alaska Supreme Court has granted a petition for review in Collins, but that case has not been stayed and so the Panel feels bound by the decision. But even if Collins did not apply, the Panel finds that it must take jurisdiction pursuant to Beltz. In Beltz, the Court of Appeals held that in determining whether imposition of the presumptive term would result in manifest injustice, a trial judge - and the

Panel - must evaluate the "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." Beltz, 980 P.2d at 480. The offense here is not atypical: it was a very scary and highly inappropriate attempted rape, but (sadly) not that unusual, especially (as the trial judge noted) in rural Alaska. But defendant is not a typical offender for this category of offense. Rather, defendant does not fit the profile of a sexual offender as that profile was defined by the legislature when it increased the penalties for Attempted Sexual Assault in the First Degree.

The legislative history of those changes demonstrates that the legislature believed that persons who committed rape and attempted rape tended to be serial sexual abusers who had been able to commit but not be charged with this crime many times prior to their conviction. The legislature further found that these offenders tended to be untreatable. And it determined that these crimes were part of a larger effort at complete control by the perpetrator over their many victims. 2006 Senate Journal 2207-14 (February 16).

Defendant does not fit this profile. The Panel found by clear and convincing evidence that he did not have a history of uncharged crimes. There is no basis upon which to conclude that

he is a sexual predator. He clearly was remorseful at the sentencing hearing, and indicates a desire to be able to return to his village and resume being a productive member of the community. And there is no evidence that he has ever sought to control members of the opposite sex. As such, defendant has demonstrated by clear and convincing evidence that he is not a typical offender as the legislature defined offenders who commit attempted rape.

In short, the Panel finds that it does not need to rely upon the analysis or factors set forth in Collins in order to take jurisdiction of this case. It is arguable, in fact, that the approach used by the Panel here can in many instances suffice to address the important concerns raised in Collins regarding how to reconcile the substantial periods of imprisonment required by the legislature for sex offenders with the fact that some offenders neither fit the profile identified by the legislature nor qualify as having an extraordinary potential for rehabilitation.

The same factors that led the Panel to take jurisdiction also led the Panel to find that it would be manifestly unjust to impose the presumptive term on defendant. The basis for the sentence that was imposed was fully explained at the hearing and will not be repeated here.

Dated at Palmer, Alaska, this 28th day of February 2013

ERIC SMITH
ADMINISTRATIVE HEAD,
3 JUDGE PANEL