



1 Mr. Balallo presented one issue to the Panel - whether the Panel should exercise  
2 its authority under AS 12.55.175(c) to order that Mr. Balallo at some point during his 20-year  
3 prison sentence for Sexual Assault 1<sup>st</sup> Degree be eligible to apply for discretionary parole, with  
4 or without related conditions.

5 Mr. Balallo requested that the Panel order that he be eligible for discretionary  
6 parole after having served one-third or one-half of the 20 year sentence, and that the Panel not  
7 impose a pre-condition that he have completed sex offender treatment (SOTP) while incarcerated  
8 as he has no control over whether the Department of Corrections (DOC) will make SOTP  
9 available to him prior to an eligibility to apply for discretionary parole date.  
10

11 Mr. Balallo bears the burden of proving by clear and convincing evidence that  
12 manifest injustice would result if he is sentenced within the presumptive range and is not made  
13 eligible to apply for discretionary parole after serving a certain period of time, which may be  
14 conditioned on his satisfying certain conditions while incarcerated.<sup>2</sup>

15 The Panel's view is that Mr. Balallo, in order to meet his burden of proof, must  
16 prove that there are exceptional circumstances that, when considered in light of the facts of the  
17 case and the applicable *Chaney*<sup>3</sup> considerations, warrant the Panel taking the requested action  
18 with respect to discretionary parole eligibility.<sup>4</sup>  
19  
20

21  
22 <sup>2</sup> *See, Luckart*, 314 P.3d at 1232. This is the standard used by the trial court in *Luckart* and the  
Court, after noting as much, did not state or otherwise indicate that the standard was not  
appropriate.

23 <sup>3</sup> *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

24 <sup>4</sup> The Panel notes that in a recent Fairbanks case, *State of Alaska v. Timothy D. Tanberg*, 4FA-  
16-619 CR the Panel found that the defendant had met this burden based on findings that the  
25 defendant differed from the typical sex offender, based on related expert testimony, and that  
related appropriate and effective treatment specific to the defendant's problem which contributed  
to his committing the offense was available, again based on expert testimony. The Panel

**MEMORANDUM**

State of Alaska v. Ismael T. Balallo, 3UN-12-51 CR

1 Mr. Balallo relies on the Panel's prior finding that he is different from the typical  
2 sex offender, and the facts that: he had no prior criminal record; he is a Philippine citizen but was  
3 in the country legally when he committed the offense; he was employed and has a good  
4 employment history; he has a supporting family; and, while in custody he has not had any write-  
5 ups, has participated in all rehabilitative classes and programs made available to him, and has  
6 been employed in the facility's laundry.

7  
8 The Panel found that those circumstances are the types of circumstances that  
9 could, in conjunction with other circumstances, support a finding by clear and convincing  
10 evidence that manifest injustice would result if the defendant is sentenced to the presumptive  
11 term and not made eligible for discretionary parole, but were not themselves<sup>5</sup> sufficient for the  
12 Panel to make that finding in this case in light of the seriousness of Mr. Balallo's offense, the  
13 impact on the victim, and the pertinent *Chaney* considerations.<sup>6</sup>

14  
15  
16  
17 imposed related pre-conditions to his actually being able to apply for discretionary parole when  
18 he had served the prescribed portion of his sentence (10 years).

19 <sup>5</sup> The Panel also noted that the prior finding that he is different than the typical sex offender was  
20 made in the context of the discussion of that issue in *Collins v. State*, 287 P.3d 791 (Alaska App.  
21 2012). The legislature reacted to *Collins* by enacting AS 12.55.165(c) and AS 12.55.175(f),  
22 thereby, in effect, overturning *Collins*. *See, State v. Seigle*, 394 P.3d 627, 631-32 (Alaska App.  
23 2017). The Panel nonetheless may still consider the factors identified in *Collins*. *See, Seigle*,  
24 287 P.3d at 634-39. And the Panel has done so herein.

25 <sup>6</sup> This case is in a unique procedural posture as the Panel itself typically imposes sentence when  
accepting a case, even if the only basis is eligibility for discretionary parole, but here the trial  
court has imposed sentence. The Panel's view of the *Chaney* goals is that community  
condemnation, reaffirmation of societal norms, isolation (noting the finding that the Panel still  
does not know Mr. Balallo committed this offense), and general deterrence are important  
considerations and warrant a sentence within the presumptive sentencing range, and he has not  
shown that his being eligible for discretionary parole as requested would adequately serve those  
goals.

**MEMORANDUM**

State of Alaska v. Ismael T. Balallo, 3UN-12-51 CR

1           So Mr. Balallo's request that the Panel order that he be eligible for discretionary  
2 parole after serving one-third or one-half of his sentence, with or without related pre-conditions,  
3 is denied.

4           **IT IS SO ORDERED.**

5           Dated at Ketchikan this 4<sup>th</sup> day of February 2019.

6  
7 

8           \_\_\_\_\_  
9 Trevor Stephens  
10 Superior Court Judge  
11 Three-Judge Panel  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25