

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1136

Amending Criminal Rules 32 and
32.1 and adding Criminal Rules
32.4 and 32.5 concerning
sentencing.

IT IS ORDERED:

1. Criminal Rule 32 is repealed and reenacted to provide:

Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Sentencing in felony cases shall follow the procedures established in this rule and Rules 32.1 through 32.5. Sentencing in misdemeanor cases shall follow the procedures established in this rule and Rules 32.2(b)-(f), 32.3, and 32.5.

(b) **Judgment--Execution.**

(1) **Execution.** The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining the reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate. When the sentence includes a term of incarceration, the clerk shall promptly deliver a copy of the judgment to a peace officer or correctional facility. If the

defendant does not appear at the correctional facility at the time specified, the peace officer or a representative of the correctional facility shall promptly notify the court by affidavit.

(2) *Conviction of a Corporation.* If a corporation is convicted of any criminal offense, the judge shall enter judgment against the corporation and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

2. Criminal Rule 32.1 is repealed and reenacted to provide:

Rule 32.1. Presentence Procedures for Felony Sentencings.

(a) *Scheduling.* At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and shall order a presentence investigation by the Department of Corrections. If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

(b) **Presentence Investigation and Report.**

(1) The Department of Corrections shall prepare and deliver the report of the

presentence investigation not less than 30 days before the presentencing hearing. The report shall contain any prior criminal conviction and any finding of delinquency of the defendant and such information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100-.150.

The report shall be submitted to the judge, the state's attorney, and the attorney for the defendant; the defense attorney shall not be prohibited from providing a full copy to the defendant unless the judge enters on the record findings why providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public.

Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(2) In the event the parties request preparation of a presentence report to aid

them in reaching a plea agreement, the judge may order such a report made prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(3) Notwithstanding subparagraph (b)(2), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(c) Notice of Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, and Other Information to be Relied on at Sentencing. (1) Within ten days after receipt of the presentence report, each party shall file:

(A) notice of any aggravating or mitigating factors, pursuant to AS 12.55.155, or extraordinary circumstances, pursuant to AS 12.55.165, on which it intends to rely, supported by a written statement outlining, as an offer of proof, the evidence that counsel contends establishes each aggravating or mitigating factor or extraordinary circumstance; and

(B) a memorandum giving notice of any evidence which the party intends to rely on at sentencing which was not previously presented at a prior proceeding in the case, in the notice described in (c)(1)(A), or in the presentence report. If the party intends to

present additional witnesses, the memorandum shall include a list of these witnesses and a brief summary of their anticipated testimony. The memorandum need not give notice of matters to be mentioned in a defendant's allocution or a victim's oral statement.

(2) Within ten days after receipt of the presentence report, the state shall file:

(A) notice of the prior convictions, if any, on which it intends to rely for presumptive sentencing purposes; and

(B) notice of the amount of restitution, if any, it intends to request, supported by a memorandum or exhibits that establish the basis for the restitution request.

(d) **Disputing Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, or Other Information.** (1) Within ten days after receipt of the notices required by paragraph (c), each party shall file:

(A) notice whether the party concedes or disputes each aggravating or mitigating factor or extraordinary circumstance asserted by the opposing party; and

(B) notice of objection to any information in the presentence report or in any other material the judge or opposing party has identified as a source of information to be relied on at sentencing on the ground that

such information is insufficiently verified or is inaccurate. For each item a party contests as inaccurate, that party shall submit an affidavit from the party or another witness with personal knowledge outlining the testimony the witness is prepared to provide to refute or to explain the allegation, or a notice that the party has served or attempted to serve a subpoena upon the person who provided the contested information and intends to examine the person at the presentencing hearing.

(2) Within ten days after receipt of the notices required by paragraph (c), the defense shall file:

(A) notice of any objection to any of the prior convictions relied on by the state and a statement of the grounds for the objection as provided in AS 12.55.145(c), which shall be supported by affidavit if the objection is based on facts outside the record; and

(B) notice of any objection to any restitution request and a statement of grounds for the objection.

(e) **Presentencing Hearing.** At the presentencing hearing, the judge shall review the notices filed pursuant to paragraphs (c) and (d). The judge shall enter findings as to undisputed facts. For each allegation a party contends is based on insufficiently verified

information, the judge shall determine whether the allegation is sufficiently verified and shall order stricken from the presentence report any allegation the judge finds is not sufficiently verified. The judge shall provide an opportunity for argument and then shall enter conclusions on legal issues that may be resolved without an evidentiary hearing. The judge shall clarify the material disputed facts, so that the parties can be prepared to present witnesses at the sentencing hearing.

3. Adding new Criminal 32.4 to provide:

Rule 32.4. Sentencing Referrals to Three-Judge Panel.

(a) **Referral to Panel.** If the trial judge finds that extraordinary circumstances exist under AS 12.55.165, the case shall be transferred forthwith to a three-judge sentencing panel of the superior court. All pertinent files, records and transcripts shall be transmitted to the sentencing panel by the clerk of the court within 30 days of the date of the order transferring the case.

(b) **Appointment of Panel.** Three judges of the superior court shall be appointed by the chief justice to be the regular members of the sentencing panel. Two other judges of the superior court shall be appointed by the chief justice as first and second alternate members of the sentencing panel. At least one of the

three regular members and one of the two alternate members of the sentencing panel shall reside outside of Anchorage. The term of appointment of the regular and alternate members of the sentencing panel shall be two years, except that the first three regular members appointed shall serve staggered terms of one, two, and three years. The chief justice may appoint additional alternate members of the sentencing panel to serve on a case-by-case basis in the event of the disability or disqualification of more than two judges.

(c) **Repository of Documents.** The chief justice shall appoint one of the three regular members to be administrative head of the sentencing panel and his or her office shall serve as the administrative repository for all papers and documents pertaining to cases submitted to the sentencing panel.

(d) **Challenge of Panel Member.** Both the prosecuting attorney and the defendant may exercise in a timely fashion a challenge for cause, or a peremptory challenge if not previously exercised, to one judge on the sentencing panel in accordance with AS 22.20.022 and Criminal Rule 25(d)(1). In the event that a judge on the sentencing panel is the same judge who made the finding under paragraph (a) of this rule, that judge shall be automatically disqualified.

(e) **Time for Decision.** Within 60 days from the date that the case was transmitted to the sentencing panel, the sentencing panel shall either sentence the defendant or remand the case to the judge who referred the case to the sentencing panel. The sentencing panel shall provide a written statement of its findings and conclusions in support of any order remanding a case to the referring judge.

(f) **Hearing.** If the sentencing panel elects to take testimony or sentence the defendant under AS 12.55.175(b) or (c), both the prosecution and the defendant shall have the right to be present in court during the proceedings. The defendant shall have the right to address the sentencing panel personally before sentence is imposed. The proceedings shall be held in a location best suited to the convenience of the parties and the court as determined by the sentencing panel.

(g) **Further Sentencing Proceedings.** If the sentencing panel imposes sentence on the defendant, proceedings relating to sentence modification under Criminal Rule 35(a) shall be assigned to the sentencing panel sitting at the time such action is ready for decision. All other post-sentencing proceedings shall be assigned to the judge who referred the matter to the sentencing panel for consideration. The referring judge may impose any sentence which the sentencing panel would be empowered to impose, except that the referring judge may

not reduce a sentence imposed by the sentencing panel.

(h) **Right to Bail.** The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

4. Adding new Criminal Rule 32.5 to provide:

Rule 32.5. Appeal From Conviction of Sentence--Notification of Right to Appeal.

A person convicted of a crime after trial shall be advised by the judge or magistrate:

(a) that the person has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Appellate Rule 217) from the date shown in the clerk's certificate of distribution on the judgment appealed from by filing a notice of appeal with the clerk of court;

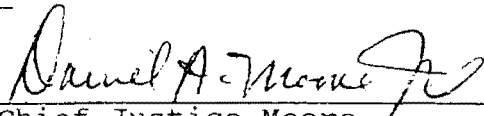
(b) that in accordance with Appellate Rule 215, the defendant may appeal the sentence on the ground that it is excessive, that upon such appeal the court may reduce or increase the sentence, and that by appealing the sentence, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he or she has twice been placed in jeopardy for the same offense; and

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(c) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

DATED: April 9, 1993

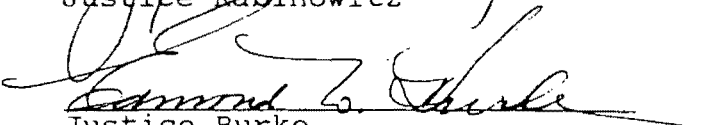
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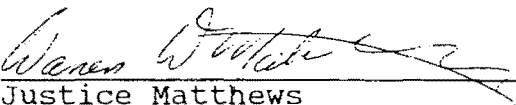
Chief Justice Moore



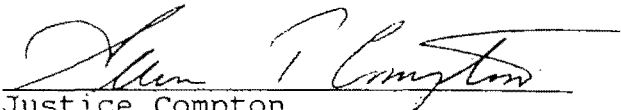
Justice Rabinowitz



Justice Burke



Justice Matthews



Justice Compton