

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1368

Amending Appellate Rule 215(a) and (j)  
concerning sentence appeals and sentence  
petitions.

IT IS ORDERED:

1. Paragraph (a) of Appellate Rule 215 is amended to read as follows:

**(a) Appellate Review of Sentence.**

**(1) Defendant's Right to Appeal Sentence as Excessive.**

A defendant may appeal an unsuspended sentence of imprisonment that exceeds two years for a felony offense or 120 days for a misdemeanor offense on the ground that the sentence is excessive, unless the sentence was imposed in accordance with a plea agreement that provided for imposition of a specific sentence or a sentence equal to or less than a specified maximum sentence. If a sentence is imposed in accordance with a plea agreement that provides for a minimum sentence, a defendant may appeal as excessive only the part of the sentence that exceeds the minimum sentence by more than two years for a felony offense or 120 days for a misdemeanor offense. ~~The prosecuting authority may appeal a sentence of any length on the grounds that the sentence is too lenient. An appeal under this subparagraph must be taken to the court of appeals.~~

(2) Defendant's Right to Appeal Sentence on Grounds Other Than Excessiveness. A defendant may appeal a sentence of any length on grounds other than excessiveness, including but not limited to: illegality of the sentence; erroneous findings by the trial court that affect the statutory range of sentences to which the defendant is subject; and procedural errors in the sentencing proceeding.

(3) Prosecuting Authority's Right to Appeal Sentence. The prosecuting authority may appeal a sentence of any length as provided in AS 22.07.020.

(4) Where Appeal is Taken. An appeal under subparagraphs (a)(1)-(3) must be taken to the court of appeals.

~~(2)~~ (5) Right to Seek Discretionary Review for Excessiveness. A defendant may seek discretionary review of an unsuspended sentence of imprisonment which is not appealable under subparagraph (a)(1) by filing a petition for review in the supreme court under Appellate Rule 402. A defendant who is filing a sentence petition and a sentence appeal, or a sentence

petition and a merit appeal, must follow the procedure set out in paragraph (k).

2. Paragraph (k) of Appellate Rule 215 is amended to read as follows:

~~(j) **Consolidation of Sentence Appeals with Regular Appeals.** A party shall combine an appeal of a sentence on the ground that the sentence is excessive or too lenient, or a petition for review on those grounds, with an appeal based on other grounds. In a combined appeal, the procedure for perfecting an appeal on other grounds shall govern. All combined appeals must be taken initially to the court of appeals.~~

(j) **Combining of Sentence Appeals, Sentence Petitions, and Merit Appeals.** A party filing a sentence appeal and a sentence petition shall combine the two, and the procedures for sentence appeals shall govern the case. A party filing a merit appeal shall combine that appeal with any sentence appeal or sentence petition, and the procedures for merit appeals shall govern the case. All combined proceedings must be taken initially to the court of appeals, and the court of appeals shall decide all issues within its jurisdiction.

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Effective Date: April 15, 2000

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DATED: September 2, 1999

EFFECTIVE DATE: April 15, 2000

/s/  
Chief Justice Matthews

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Bryner

/s/  
Justice Carpeneti