

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1655

Amending Appellate Rules 215, 402, and 403 and adding Notes concerning a victim's right to petition for review of a sentence.

IT IS ORDERED:

1. Appellate Rule 215 is amended to read as follows:

Rule 215. Sentence Appeal.

(a) Appellate Review of Sentence.

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(6) Victim's Right to Seek Discretionary Review of Defendant's Sentence. A victim as defined in AS 12.55.185 may seek discretionary review of an unsuspended sentence of imprisonment that is below the applicable presumptive sentencing range by filing a petition for review in the court of appeals under Appellate Rule 402.

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2. A Note is added to the end of Appellate Rule 215 to read as follows:

Note to SCO 1655: Chapter 65, section 4, SLA 2005 (HB 54) amended AS 12.55.120 by adding a new subsection (e) to provide that a victim of the crime for which a defendant has been convicted and sentenced may petition for review in an appellate court of a sentence that is below the sentencing range for the crime. New paragraph (6) of Appellate Rule 215(a) is adopted for the sole reason that the legislature made that statutory change.

3. Appellate Rule 402 is amended to read as follows:

Rule 402. Petitions for Review of Non-appealable Orders or Decisions.

(a) When Available.

(1) An aggrieved party, including the State of Alaska, may petition the appellate court as provided in Rule 403 to review any order or decision of the trial court, not appealable under Rule 202, and not subject to a petition for hearing under Rule 302, in any action or proceeding, civil or criminal. In addition, a party defendant may petition the supreme court as provided in Rule 403(h) to review an unsuspended sentence of imprisonment which is not appealable under Appellate Rule 215(a)(1), and a victim as defined in AS 12.55.185 may petition the court of appeals as provided in Rule 403(i) to review an unsuspended sentence of imprisonment that is below the applicable presumptive sentencing range.

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4. A Note is added to the end of Appellate Rule 402 to read as follows:

Note to SCO 1655: Chapter 65, section 4, SLA 2005 (HB 54) amended AS 12.55.120 by adding a new subsection (e) to provide that a victim of the crime for which a defendant has been convicted and sentenced may petition for review in an appellate court of a sentence that is below the sentencing range for the crime. The changes to Appellate Rule 402(a)(1) are adopted for the sole reason that the legislature made that statutory change.

5. Appellate Rule 403 is amended to read as follows:

Rule 403. Petitions for Review — Procedure.

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(h) **Defendant's Petitions for Sentence Review.**

(1) Except as provided in (h)(2), a defendant seeking relief from a sentence under Appellate Rule 215(a)(5) must file a notice of intent to file a petition for sentence review no later than 10 days after the date shown in the clerk's certificate of distribution on the written judgment. If the defendant is indigent, a request for preparation of a transcript of the sentencing proceeding must accompany the notice. The petition itself must be filed no later than 45 days after the date shown in the clerk's certificate of distribution on the written judgment or, if the court is preparing the transcript, no later than 15 days after service of the transcript on the petitioner. The following items must be filed with the petition:

- (A) copies of all charging documents;
- (B) a copy of the judgment being appealed;
- (C) a transcript of the entire sentencing proceeding;
- (D) copies of all reports, documents, motions, and memoranda pertaining to sentencing which were available to the sentencing court.

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(i) **Victim's Petition for Sentence Review.** A victim as defined in AS 12.55.185 seeking review of a sentence under Appellate Rule 215(a)(6) must file a notice of intent to file a petition for sentence review no later than 10 days after the date of sentencing or 10 days after notice of the

defendant's sentence is provided to the victim under AS 12.61.015(a)(3), whichever is later. The petition itself must be filed no later than 45 days after the date the victim received notice unless otherwise ordered. The items specified in (A) through (D) of Appellate Rule 403(h)(1) must be filed with the petition, unless the court grants the victim's motion to waive these items. The petition and any response shall each not exceed 15 pages in length. The victim must serve the state and the defendant with all pleadings.

6. A Note is added to the end of Appellate Rule 403 to read as follows:

Note to SCO 1655: Chapter 65, section 4, SLA 2005 (HB 54) amended AS 12.55.120 by adding a new subsection (e) to provide that a victim of the crime for which a defendant has been convicted and sentenced may petition for review in an appellate court of a sentence that is below the sentencing range for the crime. New subsection (i) is added to Appellate Rule 403 for the sole reason that the legislature made that statutory change.

DATED: October 4, 2007

EFFECTIVE DATE: April 15, 2008

/s/
Chief Justice Fabe

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Bryner

/s/
Justice Carpeneti