

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 218

Amending, adopting and  
rescinding various rules  
relating to sentence appeals.

IT IS ORDERED:

- (1) Rule 21, Rules of Appellate Procedure, is amended in accordance with the attached Appellate Rule 21.
- (2) Rule 7, District Court Rules of Criminal Procedure, is amended in accordance with the attached District Court Criminal Rule 7.
- (3) Rule 1(j), District Court Rules of Criminal Procedure, is amended by replacing the semicolon with a period after the word "investigation" at the end of Rule 1(j)(2), and by deleting the word "and" and all of subdivision (3) of Rule 1(j).
- (4) Rule 32.1, Rules of Criminal Procedure, is amended in accordance with the attached Criminal Rule 32.1.
- (5) Rule 32.2, Rules of Criminal Procedure is rescinded.

This order shall be effective January 15, 1976.

  
Chief Justice

  
Justice

  
Justice

  
Justice

I dissent from the adoption of this order.

  
Justice

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APPELLATE RULES

Rule 21. Sentence Appeal.

(a) Notification of Right to Appeal Sentence. At the time of imposition of any sentence of imprisonment of 45 days or more, the judge shall inform the defendant as follows:

(1) That the sentence may be appealed to the supreme court on the ground that it is excessive.

(2) That upon such appeal the court may reduce or increase the sentence, and that by appealing the sentence under this rule, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

(3) 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 him on the appeal.

(b) Notice of Appeal. Written notice of appeal from a sentence of the superior court by the state, or by a defendant appealing solely on the ground that the sentence is excessive, shall be filed with the clerk of the superior court which imposed the sentence not later than 30 days after sentence was imposed. The notice of appeal need only state that the sentence which is being appealed is too lenient or excessive.

(c) Termination of Appeal. Any appeal of a sentence initiated by the defendant may be terminated by his filing within 30 days from the filing of the notice of appeal a notice of intent to terminate the appeal. Such a termination shall prevent any increase in the sentence or sentences imposed.

(d) Indigent's Right to Counsel on Sentence

Appeal. An indigent defendant is entitled to the assistance of counsel in prosecuting an appeal on the ground that the sentence is excessive. Where an appeal is taken by the state pursuant to AS 12.55.120(b) on the ground that the sentence is too lenient, and the defendant has not appealed, the supreme court in its discretion may appoint counsel for an indigent defendant.

(e) Forwarding Notice of Appeal. Upon receipt of a notice of sentence appeal, the clerk shall forthwith forward a copy of the notice to the defendant and his counsel, to the district attorney, to the superior court judge who imposed the sentence, and to the clerk of the supreme court.

(f) Sentencing Report. The court shall prepare a sentencing report as part of the record, which shall include the following:

- (1) A verbatim record of the sentencing hearing, including statements made by witnesses, the prosecuting attorney, the defense attorney, and the defendant.
- (2) The reasons for selecting the particular sentence imposed.
- (3) Specific findings on all material issues of fact and on all factual questions required as a prerequisite to the selection of the sentence imposed.
- (4) A precise statement of the terms of the sentence imposed and the purpose the sentence is intended to serve.

(g) Record on Appeal.

(1) Preparation and Contents. Immediately upon the filing of a notice of sentence appeal, the clerk shall prepare sufficient copies of the record on appeal,

which shall consist of the following:

[a] A transcript of the entire sentencing proceeding, which shall include the complete sentencing report required by subdivision (f) of this rule.

[b] All reports and documents which were available to the sentencing court as an aid in imposing sentence.

(2) Distribution. Immediately upon preparation of the record on appeal, the clerk shall send copies by mail to the defendant and his counsel, the district attorney, and to the clerk of the supreme court.

(h) Memoranda on Appeal.

(1) By Appellant. Within 15 days after receipt of copies of the record on appeal provided for in (g) of this rule, the appellant shall file with the supreme court the original of a typewritten memorandum in support of the appeal.

(2) By Appellee. Within 15 days after receipt of a copy of appellant's memorandum, the appellee may file with the supreme court the original of a typewritten memorandum in opposition to the appeal.

(3) Reply Memorandum. No reply memorandum shall be filed unless ordered by the court.

(4) Form and Contents of Memoranda. The memoranda filed by either the appellant or the appellee need not comply with the requirement of Appellate Rule 11 unless ordered by the supreme court.

(5) Duplication and Service of Memoranda. The clerk of the supreme court shall forthwith reproduce and serve upon all interested persons involved in the appeal copies of all memoranda.

(i) Disposition of Appeals by Reviewing Court.

Sentence appeals will be disposed of by the court on the record. Oral argument may be granted in the court's discretion.

(j) Bail Pending Appeal. A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

(k) Effective Date. This rule becomes effective on January 15, 1976, and applies only to appeals of sentences which were imposed on or after that date.

(l) Consolidation of Sentence Appeals with Regular Appeals. An appeal of a sentence on the ground that the sentence is excessive or too lenient shall be consolidated with an appeal based upon other grounds. Upon consolidation, the procedure for perfecting an appeal on other grounds shall govern.

DISTRICT COURT CRIMINAL RULES

Rule 7. Sentence Appeal.

(a) Notification of Right to Appeal Sentence. At the time of imposition of any sentence of 45 days or more, the judge shall inform the defendant as follows:

(1) That the sentence may be appealed to the superior court on the ground that it is excessive.

(2) That upon such appeal the court may increase or decrease the sentence.

(3) 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 him on the appeal.

(b) Notice of Appeal. Written notice of appeal from a sentence of a district judge or magistrate on the ground that the sentence is excessive shall be filed with the clerk of the superior court not later than 30 days after sentence was imposed. The notice of appeal shall state the name of the court imposing the sentence, the date sentence was imposed, the length of the sentence, the fact that the defendant is appealing the sentence, shall state briefly but clearly the reasons why the defendant believes the sentence was excessive, and shall contain the date and signature of the defendant.

(c) Opposition to Appeal. A brief but succinct statement of reasons in opposition to the appeal shall be filed with the clerk of the superior court by the district attorney or other officer who prosecuted the case within 7 days after receipt of a copy of the notice of appeal.

(d) Statement of Reasons by Sentencing Judge.

(1) Contents of Statement. At the time of imposition of sentence a judge shall make a statement on the

record explaining his reasons for imposition of the sentence.

(2) Statement to be Recorded or Written.

The statement provided for in (1) shall be electronically recorded. If no electronic recording of the sentencing proceeding can be made, the judge shall promptly make a written statement of his reasons for imposition of the sentence.

(e) Record on Appeal.

(1) Filing with the Clerk. When a notice of sentence appeal has been given, there shall be filed promptly with the clerk of the superior court the record on appeal which shall consist of the entire case file pertaining to the defendant, the notice of appeal, and opposition to appeal referred to in (b) and (c) of this rule, and the electronic recording or an electronic reproduction thereof of the entire sentencing proceeding, or in lieu of such recording, the statement of reasons for imposition of sentence by the sentencing judge.

(2) Distribution. Immediately upon receipt of the record on appeal, the clerk of the superior court shall distribute to the defendant, to his counsel, and to the district attorney or other prosecuting officer copies of the notice of appeal and opposition to the appeal referred to in (b) and (c) of this rule.

(f) Disposition of Appeal by Superior Court.

Sentence appeals shall be disposed of on the record. However, in its discretion the court may permit the record to be augmented and may permit oral argument. The court will give priority to the hearing and disposition of sentence appeals.

(g) Bail Pending Appeal. A sentence appeal on the sole ground that the sentence is excessive does not

confer or enlarge the right to bail pending appeal.

(h) Definition. The word "judge" as used in this rule includes a district judge and magistrate.

(i) Effective Date. This rule becomes effective on January 15, 1976, and applies only to appeals of sentences which were imposed on or after that date.



CRIMINAL RULES

Rule 32.1. 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 he has the right to appeal from the judgment of conviction within 30 days from entry of the judgment of conviction by filing a notice of appeal with the clerk of court.

(b) That in accordance with appellate rule 21, 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 has twice been placed in jeopardy for the same offense.

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