

ALASKA SUPERIOR COURT
THREE-JUDGE SENTENCING PANEL
DECISION SUMMARY

Hearing Date: January 15, 2008 in Anchorage

Case No.: 3AN-06-04679 CR

Defendant: Michael Joseph Idzinski

Charges: Two counts of Assault in the First Degree (AS 11.41.200(a)(1)), one count of Assault in the Second Degree (AS 11.41.210(a)(2)), and one count of Assault in the Third Degree (AS 11.41.220(a)(1)(B)).

Referred by: Judge Phillip R. Volland

Panel: Judge Stephanie E. Joannides

Judge Joel Bolger

Judge Michael Jeffery

BACKGROUND

On October 31, 2006, Defendant Michael Idzinski was found guilty following a jury trial of two counts of Assault in the First Degree, one count of Assault in the Second Degree, and one count of Assault in the Third Degree.¹ The presumptive sentence for Assault in the First Degree is 7-11 years for a first offense; the presumptive range for Assault in the Second Degree is 1-3 years for a first offense;

¹ For a detailed description of the facts and circumstances of the case, please refer to Judge Volland's ORDER FORWARDING THIS CASE TO A THREE-JUDGE SENTENCING PANEL, at 2-3. (attached) THREE-JUDGE SENTENCING PANEL DECISION SUMMARY
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the presumptive term for Assault in the Third Degree is 0-2 years for a first offense. The State asked for a composite sentence of 11 years with 3 years suspended and 5 years of probation. According to Judge Volland, the minimum presumptive sentence the court could lawfully impose would have to be in excess of 7 years to serve. On August 13, 2007, Mr. Idzinski moved to forward his case to the Three-Judge Sentencing Panel. A hearing was held on September 6, 2007 regarding Mr. Idzinski's motion, at which time the court heard from counsel, the defendant, and Probation and Parole Officer Levi.

Following the hearing, Judge Volland found that the case warranted referral to the Three-Judge Sentencing Panel. Specifically, Judge Volland found that Mr. Idzinski had established by clear and convincing evidence that (1) imposition of the presumptive sentence would result in manifest injustice; (2) manifest injustice would result if the sentencing judge did not consider, in mitigation of the presumptive term, the State's failure to establish Mr. Idzinski's role in the assault; and (3) manifest injustice would result if Mr. Idzinski's potential for rehabilitation was not permitted to mitigate his sentence.

FINDINGS AND CONCLUSION

The Three-Judge Sentencing Panel met in Anchorage on January 15, 2008. The panel heard arguments from counsel for Mr. Idzinski and the State of Alaska. The panel also heard testimony from Probation and Parole Officer Levi, John and Stephanie Pannick (family friends of Mr. Idzinski), Donald Pootjes (a family friend of

Mr. Idzinski), Angela and Chael Idzinski (daughters of Mr. Idzinski), Roberta Turner (wife of Mr. Idzinski), and Erwin Dahlman (the subject of Mr. Idzinski's assault).

After considering all the testimony, the panel found by clear and convincing evidence that Mr. Idzinski had proven his exceptional potential for rehabilitation and that a sentence less than the presumptive sentence should be imposed because the presumptive sentence would be manifestly unjust under A.S. 12.55.175(e). The panel did not find that imposition of a mitigated 3 1/2-year sentence would result in manifest injustice based upon the facts of the case.

The panel rejected the non-statutory mitigating factor relating to accomplice issues, and it emphasized that even if it had considered the accomplice factor, it would not have impacted the panel's decision.

After considering the *Chaney* criteria, the panel made the following findings:

1) Mr. Idzinski was convicted of a very serious offense, and his actions, at a minimum, set in motion a series of events that led to the victim's injuries, which were extensive.

2) Mr. Idzinski had no juvenile offenses, and his adult convictions were remote in time and not assaultive in nature.

3) Mr. Idzinski has an extraordinary potential for rehabilitation based on his work history, the probation officer's testimony, and his solid support from family and friends, and therefore a seven-year sentence would be detrimental to his rehabilitation.

4) The need to confine Mr. Idzinski for the full presumptive term was not necessary to protect the public, and an adjustment was therefore appropriate.

5) Mr. Idzinski has been adequately deterred from future crime by his sentence to date, but in order to provide a deterrent effect to others in the community, a sentence beyond what Mr. Idzinski had already served was appropriate.

6) Reducing Mr. Idzinski's sentence would enhance his ability to pay restitution to the victim.

Based on the above findings, the panel imposed the following sentence. With respect to Mr. Idzinski's conviction for Assault in the First Degree on Mr. Dahlman, the panel sentenced Mr. Idzinski to 8 years with 4 ½ years suspended. With respect to Mr. Idzinski's conviction for Assault in the First Degree on Mr. Percy, the panel sentenced Mr. Idzinski to 6 years with 2 ½ years suspended. The panel ordered that the sentences run concurrently except for 1 year of active jail time to be served consecutively, for a total sentence of 9 years with 4 ½ years suspended.

The panel found that the convictions for Assault in the Second Degree and Assault in the Third Degree merged into the two convictions for Assault in the First Degree.

The panel ordered that Mr. Idzinski should be eligible for discretionary parole during the second half of his active prison term if he successfully completes anger management while incarcerated. If he is deemed appropriate by the Alaska Department of Correction for furlough, completion of the anger management counseling could be accomplished during his furlough. The panel also imposed 3

years of probation subject to the general conditions outlined in the judgment and order of commitment and probation, and the specific conditions of probation as set forth in the hearing transcript. The panel adopted all special conditions in the pre-sentence report except condition number four, because there was no information presented to the court that Mr. Idzinski has any substance abuse problems or that the present crime involved substance abuse.

The panel ordered the State of Alaska to file notice of restitution amount within 90 days. The panel ordered that all but \$500 of the cost of Mr. Idzinski's court-appointed counsel be waived. Additionally, the panel recommended that Mr. Idzinski be able to serve his sentence at Wildwood.

A transcript of the hearing before the three-judge sentencing panel, which includes the panel's oral findings, is attached and incorporated by reference. Judge Volland's referral to the three-judge sentencing panel and the judgment issued by the panel are also attached.