

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3KN-15-01863CR
	)	3KN-14-01483CR
	)	
BRENT WAYNE ECKERT,	)	
	)	
Defendant.	)	
	)	
_____	)	

**REFERRAL TO THREE JUDGE PANEL**

This is a heroin distribution case. Postal Inspector Aaron Behnen identified a suspicious priority-mail package while reviewing postal databases on November 30, 2015. The package was suspicious for several reasons: it was the first priority-mail box that Inspector Behnen had seen sent to Nikiski from a drug-source state (California) in several years; the shipper paid with cash; the shipper was not associated with the shipping address; and the recipient (Mr. Eckert) had a history of drug-related criminal offenses. Inspector Behnen contacted the Nikiski Post Office and directed them to send the package to his office. After it arrived, a detector dog alerted to the package. Officers applied for a warrant and found 37.29 grams of heroin hidden in Christmas ornaments.

On December 15, 2015, the Kenai court granted a search warrant. This warrant permitted officers to place a breaker beacon and a GPS tracking device inside the package and deliver it to the post office in Nikiski. The package arrived at the Nikiski Post Office on December 16, 2015. Officers were present and watching. Mr. Eckert arrived at approximately 10 a.m. in a red Chevrolet pickup truck. Officers observed him enter the post office and leave carrying the

package. He got into his vehicle and left, at which point officers began to track him using the GPS device and visual observation. Mr. Eckert was immediately aware that he was being followed and contacted co-defendant Michael McLaughlin for advice or instructions. He then transferred the package to another vehicle.

At 12:46 p.m., the GPS tracker indicated that the package was moving. The package traveled to Mr. Eckert's driveway. When officers arrived at the driveway, they observed a red Ford Escort parked in the driveway; from the GPS signal, they determined the package was inside the vehicle. Officers contacted the vehicle and its occupants. Inside, they found Lamar Miller and Michael McLaughlin. They ordered the two men out and searched them for weapons. Officers released Mr. Miller from the scene after he refused to comment; however, they detained Mr. McLaughlin because their weapons search revealed evidence of at least one container large enough to conceal controlled substances. Officers retrieved the package from the Ford's trunk pursuant to the original warrant.

Investigator Russell telephonically applied for and obtained a search warrant for the two homes associated with Mr. Eckert—it turns out one house was occupied by Mr. Eckert, and the other by his sister. The homes were searched. In Mr. Eckert's home, police found baggies, scales and other paraphernalia associated with the sale of heroin. In Mr. Eckert's sister's home, police found Mr. Eckert's cell phone. The phone was searched, and text messages were discovered providing further evidence that Mr. Eckert was selling heroin.

No offers were extended, and the case slowly proceeded to trial. The charges against Mr. Miller were dismissed by the court. Mr. McLaughlin defended himself and testified at trial. He told the jury that he was a paralegal, and Mr. Eckert was his client. Mr. Eckert was owed money by someone in California who sent him a package. The package was delayed. Mr. McLaughlin

suspected that the package may contain contraband and recommended taking it to the Kenai Post Office where a US Post Office employee could open it—the Nikiski Post Office is apparently a contract post office, and the employees are not federal civil servants. If the package contained contraband, it could be left with USPO employees for their investigation. According to Mr. McLaughlin, they were captured on the way to the Kenai Post Office.

Mr. Eckert did not testify at trial. Mr. Eckert and his co-defendant, Mr. McLaughlin, were convicted of MISC 2, MISC 4, and conspiracy.

Mr. Eckert's criminal history is extensive. His first felony drug conviction was in 2001 (MICS 4), when police discovered his marijuana grow operation. He has four convictions for MICS 6 (2004, 2006, 2009, and 2011). He was out on bail following an August 19, 2015 felony conviction (jury trial) for MICS 4 (heroin) when this crime was committed.

Mr. Eckert's crimes were committed before SB 91, and he faces a minimum sentence of 13 years active jail time. This court released him on bail twice while the case was pending. On the first occasion, Mr. Eckert was released to a friend and did not make through the first day without using drugs and violating his conditions of release. The second release put him in the third-party custody of an older sister, Cynthia Rombach. During this four-month period, Mr. Eckert completed an outpatient treatment program and participated in charitable events. By his sister's account, he reconnected with family (he has a teenage son and seven siblings) and the values he was raised with.

At the sentencing hearing, Mr. Eckert's attorney argued that the sentence should be mitigated because Mr. Eckert's conduct was among the least serious constituting the offense (12.55.155(d)(9)), and the harm caused by his criminal offenses was minor (12.55.155(d)(12)). The court found that the proposed statutory mitigating factors did not apply.

Mr. Eckert conceded three aggravators, 12.55.155(c)(12) (on conditions of release for another felony), 12.55.155(c)(21) (criminal history includes repeated conduct similar in nature to the current offense), and 12.55.155(c)(31) (five or more class A misdemeanors).

Mr. Eckert argued that his case should be sent to a three-judge panel because the minimum sentence for his offense would be much less under the current law. He argued that application of presumptive sentence range for him amounts to a manifest injustice. The court did not agree with Mr. Eckert because the legislature considered the effect of statutory changes on pending cases and chose not to make the new law fully retroactive.

The court was considering a combined sentence of 13 years active jail time at the end of the sentencing hearing. Mr. Eckert's sister (Ms. Rombach) then asked to make a statement and handed the court Mr. Eckert's awards from his service in the Navy. *See attached awards*. The first award was a Navy Commendation Medal signed by Commander Submarine Force, US Atlantic Fleet. Mr. Eckert was awarded the medal for rescuing six sailors from the water who were survivors of a diesel submarine fire aboard the USS Bonefish (SS 582) in 1988. Mr. Eckert was an Airman (paygrade E-3) serving aboard an aircraft carrier (USS John F. Kennedy (CV-67)) at the time and apparently had a collateral duty as a rescue diver.

The undersigned judicial officer served aboard submarines in the Atlantic Fleet from 1976-79. At the time of the Bonefish fire, I was serving in the Pacific as a Navy Judge Advocate and remember the incident. I later served in the Alaska Army National Guard, Alaska Air National Guard, and Air Force Reserve. I retired in 2013 with 37 years of active and reserve service. I have received awards, recommended others for awards, and written awards. Commendation Medals are rarely awarded to E-3s, particularly in the Navy. A Commendation Medal for an E-3 signed by a Vice Admiral is extremely unusual.

The next award handed to the court was a Navy and Marine Corps Medal signed by the Secretary of the Navy. The medal was awarded for diving into the ocean to rescue crewmembers trapped in a sinking aircraft. The Navy and Marine Corps Medal, like the Soldier's Medal and Airman's Medal, is this nation's highest award for peacetime/noncombat heroism. In 37 years of service, I have only personally met one other service member who had been awarded this medal. It is an extremely rare honor.

The Court of Appeals has determined AS 12.55.165 requires cases to be sent to a three-judge panel in two situations.<sup>1</sup> The first situation is when the judge finds manifest injustice would result from failure to consider a relevant mitigating factor not listed in AS 12.55.155. The second situation occurs when the judge finds that even after mitigating the sentence using statutory mitigating factors, the presumptive sentence would be unjust.

In *Harapat v. State*, the court held that when a three-judge panel is requested and the court finds a non-statutory mitigating factor applies, the question becomes whether it would be manifestly unjust not to make some adjustment, albeit small, to the presumptive sentence based on the non-statutory mitigating factor. If the court is inclined to adjust the sentence at all, the case should be sent to a three-judge panel.

No offers were made in this case. This unusual posture by the State may have been motivated by Mr. Eckert's involvement with Michael McLaughlin. Mr. McLaughlin fancies himself to be some sort of expert in the criminal law. He has a lengthy criminal history, has taken to representing himself in his frequent appearances in criminal cases, and files lengthy motions accusing police, prosecutors, jailers, and judges of various misdeeds.

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<sup>1</sup>*Harapat v. State*, 174 P.3d 249 (Alaska 2007).

No statutory mitigating factors apply in this case. This court, however, finds that being decorated for selfless bravery twice—including receiving the nation’s highest award for peacetime heroism—is a mitigating factor that should be considered when sentencing Mr. Eckert. The court finds that it would be manifestly unjust not to adjust the presumptive sentence based on this non-statutory mitigating factor.

The court has observed Mr. Eckert during the lengthy pretrial period and heard from various members of his family and friends before, during, and after the trial. His involvement in the drug culture appears to have been motivated, at least in part, for social reasons. He seemed to enjoy the status of being a person with ‘connections,’ and was able to meet the needs of his much younger, drug-addicted girlfriend. When he was in the custody of his big sister, he appears to have reexamined his life and genuinely made an effort to change. His courage as a young man shows that he has the potential and willpower to succeed.

This court would be inclined to award a sentence of three to five years active jail time, 10 years suspended, and five years of supervised probation. One condition of probation would be absolutely no contact with co-defendant Michael McLaughlin. With respect to the petition to revoke probation in 3KN-14-483CR, this court would not impose active jail time.

Dated at Kenai, Alaska this 6<sup>th</sup> day of August, 2018.

ce 7.8/  
CHARLES T. HUGUELET  
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was  
\_\_\_ mailed to \_\_\_\_\_  
\_\_\_ place in court box to \_\_\_\_\_  
\_\_\_ faxed to \_\_\_\_\_  
✓ scanned to DH/DPD w/ Attachments  
AK 8-6-18  
Clerk Date