

1 Panel's oral findings and conclusions control to the extent that there is a material discrepancy
2 between what was stated during the hearing and what is written herein.

3 The Panel's analysis and rationale in granting Mr. Solomon's discretionary parole
4 request was as follows.

5 The Panel first addressed the State's contention that the Panel should not consider
6 Judge Seekins' referral because it was not legally and/or factually supported. The Panel
7 determined that it would consider the referral because: it is the Panel's position, as previously
8 articulated in this case, that a trial judge can refer a case to the Panel solely on the basis of
9 eligibility for discretionary parole; Judge Seekins made such a referral; and, once such a referral
10 is made the Panel exercises its independent judgment with respect to the merits of the referral
11 and is not bound by the trial judge's factual findings or legal reasoning.

12 The Panel next addressed the pertinent legal standards, as follows:

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- 14 1. The Panel has the authority per *Luckart v. State*² and AS 12.55.175(c) to grant
15 a defendant the opportunity to apply for discretionary parole if the defendant
16 shows by clear and convincing evidence that manifest injustice would result if
17 he or she is sentenced within the presumptive range and could not be eligible
18 for discretionary parole at some point under certain conditions.
 - 19 2. Neither the Alaska legislature nor appellate courts have prescribed a set
20 analytical formula for the Panel to apply in making the above-stated manifest
21 injustice determination.
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25 ² 314 P.3d 1226 (Alaska App. 2013).

1 3. The Panel's discretionary parole eligibility manifest injustice analysis is not
2 the same as it employs in deciding whether a defendant has shown by clear
3 and convincing evidence that a non-statutory mitigating factor applies and that
4 manifest injustice would result from failing to consider the same. That
5 analysis, in the extraordinary potential for rehabilitation context, focuses on
6 whether the Panel can find at the time of the Panel hearing that the Panel
7 understands the problem(s) that led the defendant to engage in the criminal
8 conduct and that the problem(s) is/are readily correctable or unlikely to recur -
9 put another way, that the Panel can find that the defendant can be adequately
10 treated in the community and need not be incarcerated for the entire
11 presumptive term in order to prevent future criminal conduct.³ While the
12 discretionary parole analysis may focus on whether similar findings can be
13 made at a later time, based on the circumstances that exist at that point.

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15 4. The Panel's discretionary parole eligibility manifest injustice analysis is also
16 not the same as it employs in deciding whether a defendant has shown by
17 clear and convincing evidence that manifest injustice would result if a
18 defendant is sentenced within the applicable presumptive range, whether or
19 not the sentence is adjusted for aggravating or mitigating factors. That
20 analysis focuses on whether a defendant has shown at the time of the Panel
21 hearing that he or she is significantly different than the typical offender
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25 ³ See, *Boerma v. State*, 843 P.2d 1246, 1248 (Alaska App. 1992); *Lepley v. State*, 807 P.2d
1095, 1100 (Alaska App. 1991); *Beltz v. State*, 980 P.2d 474, 481 (Alaska App. 1999);
Manrique v. State, 177 P.3d 1188, 1193 (Alaska App. 2008); *Silvera v. State*, 244 P.3d 1138,

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1 committing the type of offense at issue or that his or conduct was significantly
2 different from a typical offense.⁴ While the discretionary parole analysis may
3 focus, at least with respect to whether the defendant is significantly different
4 than the typical offender, on whether such a showing can be made at a later
5 time, based on the circumstances that exist at that point.⁵

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7 5. The *Chaney* sentencing criteria are a critical component of the Panel's
8 discretionary parole eligibility analysis.

9 The Panel applied the foregoing to Mr. Solomon as follows:

- 10 1. The Panel applied aspects of both the "extraordinary potential for
11 rehabilitation" non-statutory mitigating factor analysis and the "manifest
12 injustice if sentenced within the presumptive range" analyses, and the *Chaney*
13 criteria.
- 14 2. The Panel's focus was on whether Mr. Solomon had shown that his
15 circumstances were such that after serving a period of time consistent with the
16 *Chaney* goals of isolation, community condemnation, reaffirmation of societal
17 norms, and general deterrence, he could be released into the community under
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20 1149 (Alaska App. 2010); *Daniels v. State*, 339 P.3d 1027, 1030-31 (Alaska App. 2014); *Smith*
v. State, 258 P.3d 913, 917 (Alaska App. 2011).

21 ⁴ *See, Beltz*, 980 P.2d at 480; *Knipe v. State*, 305 P.3d 359, 363 (Alaska App. 2013); *Smith*, 258
22 P.3d at 920-21; *Moore v. State*, 262 P.3d 217, 221 (Alaska App. 2011); *Dancer v. State*, 715
23 P.2d 1174, 1177 (Alaska App. 1986); *Aveoganna v. State*, 757 P.2d 75, 77 (Alaska App. 1988);
Shinnault v. State, 258 P.3d 848, 850-51 (Alaska App. 2011).

24 ⁵ The Panel also notes that, as a practical matter, in most if not all cases in which a defendant is
25 to be sentenced for an offense for which he or she is not eligible for discretionary parole, a Panel
decision that a non-statutory mitigating factor applies and it would be manifestly unjust not to
give it material weight and/or that manifest injustice would result if a defendant is sentenced
with the presumptive range, whether or not adjusted for aggravating or mitigating factors, would
obviate the need to address eligibility for discretionary parole.

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1 circumstances and conditions that would substantially reduce, if not eliminate
2 any threat he may present to the community, in particular with regards to the
3 type of offense for which he is being sentenced.

4 3. The Panel found that Mr. Solomon had shown that he is different than the
5 typical sexual assault offender insofar as he has FASD and a low IQ, and he
6 has no prior record, and the danger he would pose to the public would be
7 substantially reduced, if not entirely eliminated, if while incarcerated he
8 participated to the best of his ability with the programing referenced in Special
9 Probation Condition No. 10; a guardian with the authority to place him in a
10 therapeutic residential program appropriate for his cognitive and intellectual
11 deficits and to apply for and receive benefits to which he is entitled, has been
12 appointed per AS 13; and, he complies with the requirements of such a
13 residential program.⁶

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15 4. The Panel's stated *Chaney* goals would satisfied if he is eligible to apply for
16 discretionary parole after serving one-half of the 26.25 year jail sentence
17 imposed provided that he has complied with the "Discretionary Parole"
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21 ⁶ The Panel notes that it addressed Mr. Solomon's "manifest injustice if sentenced within the
22 presumptive range" claims during the January 30, 2019 Panel Hearing and in the subsequent
23 February 4, 2019 Memorandum and that nothing herein should be viewed as modifying or
24 materially conflicting with the Panel's related decision. The Panel's focus here is on whether Mr.
25 Solomon would be a significantly different offender than the typical offender committing this
offense if he complies with the stated requirements for discretionary parole eligibility as the
present record reflects that the risk he would pose to the public, in particular with respect to
committing a new sexual crime, would at that point be substantially reduced, if not eliminated.
The Parole Board can make a related determination at that point based on the record then before
it.

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1 requirements set forth in his Judgment, which set forth the requirements stated
2 in the preceding paragraph.

- 3 5. Given the above, Mr. Solomon showed by clear and convincing evidence that
4 manifest injustice would result if he were not eligible to apply for
5 discretionary parole after serving one-half of the 26.25 year jail sentence and
6 his having satisfied the "Discretionary Parole" requirements of his Judgment.
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8 Dated at Ketchikan, Alaska this 6th day of January 2020.

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11 _____
12 Trevor Stephens
13 Superior Court Judge
14 Three-Judge Panel Administrative Head
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