

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

State of Alaska)
)
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 Plaintiff,)
)
 v.)
)
 Joseph George Solomon)
)
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 Defendant.)
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Case No. 4GA-15-00010CR

DECISION AND ORDER GRANTING MOTION FOR
THREE JUDGE SENTENCING PANEL

I. INTRODUCTION

The defendant, Joseph Solomon, previously filed a Motion for a Three Judge Sentencing Panel which was granted by this court. The Three Judge Panel found that the basis for referral was statutorily precluded and that in any event Mr. Solomon had not met his burden of proof that a manifest injustice would result from being sentenced within the presumptive range. However, the panel expressly declined to rule on whether manifest injustice would result from Mr. Solomon being ineligible for discretionary parole. This court finds that it would be manifestly unjust to limit Mr. Solomon's eligibility

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for discretionary parole and this case is referred to the Three Judge Sentencing Panel on that issue.

II. Procedural History

At a prior hearing on May 9, 2018, the defendant indicated a desire to request a referral to the three judge panel. The court discussed three possible referrals with the parties at that time: (1) manifest injustice in general, (2) extraordinary prospects for rehabilitation, and (3) eligibility for discretionary parole. At a continued hearing on May 29, 2018 the parties again discussed these three options. This court at those hearings was attempting to clarify which of those three categories Mr. Solomon was asking to be referred.

Final arguments were made by both parties at 11:23 on August 24, 2018 after testimony by Moreen Fried. Because Mr. Solomon's arguments on August 24th focused on the ability to sentence below the presumptive floor, this court believed that Mr. Solomon was not asking for a referral based on eligibility for discretionary parole, and as such did not refer on that basis. Having reviewed those hearings as a whole it is clear that Mr. Solomon was taking the position that the referral for manifest injustice was a single category with two subparts for

(1) the ability to give a sentence lower than the presumptive floor and (2) eligibility for discretionary parole.

III. STATEMENT OF FACTS

The facts of this case have been thoroughly discussed by the parties, this court, and by the three judge panel. No additional facts have been presented to this court, and no additional recitation will be made at this time. Although, as noted by the three judge panel either side may wish to present additional evidence at that panel's hearing.

IV. DISCUSSION

As a first time felony sexual assault offender, Solomon faces a presumptive term of 20 to 30 years for both counts 1 and 2.¹ Counts 3 and 4 merge with counts 1 and 2 for sentencing. Under AS 12.55.127(c)(2)(E) it is mandatory that 6.25 years of that sentence be consecutive between the two counts (one fourth of the presumptive term calculated from the middle of the presumptive term.) Therefore Solomon's sentencing range is 26.25 to 36.25 years. Solomon asserts that this presumptive range would be manifestly unjust and requests referral to a three-judge panel, pursuant to Criminal Rule 32.4(a) and AS 12.55.165.² This request is granted following an assessment of

¹ AS 12.55.125(i)(1)(A)(ii)

² Defendant's Request for Referral to Three-Judge Panel, Mar. 19, 2018.

the totality of circumstances and a finding of manifest injustice as applied to Solomon.

Under AS 33.02.010(a)(3)(B) Mr. Solomon is not eligible for good time because his convictions are for unclassified felonies. Under AS 33.46.090(b)(2) Mr. Solomon is not eligible for discretionary parole unless permitted by a Three Judge Panel. Under AS 12.55.175(e)(3) if the Three Judge Panel finds manifest injustice would otherwise result, they "may provide that the defendant is eligible for discretionary parole under AS 33.16.090 during the second half of the sentence imposed. As such, the panel could allow discretionary parole after the defendant has served 13.125 years (one-half of the 26.25 floor of the presumptive sentencing range).

Neither the facts of the case nor the legal standards for a manifest injustice finding have changed. The Three Judge Panel has already found a manifest injustice to not exist in the prior referral. This court must then assess whether or not the remedy requested is sufficiently different from the prior referral to warrant a finding of manifest injustice. To some extent the request is similar to the prior referral. Both requests request a remedy of the defendant spending less time in jail. The

fundamental difference in the request is one of timing and additional protections for the public.

As to the timing issue, the prior request if granted would have allowed for the defendant to receive a lesser amount of jail time at the time that the original sentence was imposed. This lesser sentence would not be subject to later modification or review at the time the defendant completed that lesser sentence and was released on probation. Discretionary parole on the other hand would be determined at a later point in time, after the defendant had served at least 13.125 years in prison. The parole board would have the discretion to grant or deny parole at that time. The parole board could deny discretionary parole and require the entire 26.25 year sentence to be served in full.

Additionally there are specific additional protections put in place for offenders of this type of charge. Under AS 33.16.090(a)(3)(B) the defendant "in addition to the factors set out in AS 33.16.100(a)" would have to complete all rehabilitative programs made available to him while in jail. Additionally AS 33.16.100 would prohibit the defendant's release and require him to serve the full 26.25 years in jail unless it determined that he would live in public without violating laws

or conditions of release, his release would further his rehabilitation, that he didn't pose a threat to the public, and that his release didn't diminish the seriousness of the crime. The victim would be entitled to notice of his parole under AS 33.16.120.

Mr. Solomon was originally remanded into custody on February 15, 2015. His eligibility for parole (13.125 years) would not take place until approximately March 31, 2028. This would provide extensive time for the defendant to participate in rehabilitative programs while in jail, as well as a significant history for the parole board to consider when determining whether to grant parole.

Mr. Solomon's significant cognitive disabilities have been extensively addressed in the previous finding and filings of the parties and courts. The majority of the Three Judge Panel's reasoning for rejecting his prior referral would apply to this referral as well. However, as noted by the Three Judge Panel,

..traditional notions of rehabilitation may not apply to Mr. Solomon. But the Panel does not find this argument persuasive because it presumes too many things that presently are not reasonably certain - that a program such as FRA will be available when he is released early, that a guardianship will be in place, that the other services will be available, and that he will agree to participate in these types of programs.

These concerns expressed by the Three Judge Panel are significantly mitigated by the discretionary nature and timing of the remedy now being sought. It no longer has to presume anything of the future since the determination will be made at that time. Additionally, the services available will be known at the time of that discretionary decision. Whatever services are available or unavailable, the board will not be allowed to release Mr. Solomon unless they are sufficient to protect the public. Also, under AS 33.16.160 parole conditions may be made more restrictive at any point in time when needed, including emergency changes that become effective immediately.

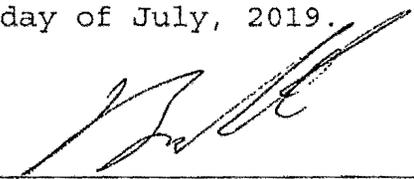
Given the significantly increased protections to the public, and the discretionary nature of a parole release, this court finds that it would be a manifest injustice for this defendant's eligibility for discretionary parole to be limited.

V. ORDER

Accordingly IT IS HEREBY ORDERED that the motion for referral to the three-judge panel is granted.

DATED at Fairbanks, Alaska, this 3 day of July, 2019.

I certify that on 7-9-19
copies of this form were sent to:
Clerk: VJB DA & PD



Ben A. Seekins
Superior Court Judge Pro Tem