

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA,)
)
 Plaintiff,)
)
vs.)
)
JUSTIN BULLOCK,)
)
 Defendant.)
_____) CASE NO. 3VA-07-113 CR

ORDER

Defendant has requested this court to refer this case to the three-judge sentencing panel. The state opposes. The court will grant defendant's request because defendant has demonstrated by clear and convincing evidence that he has an extraordinary potential for rehabilitation and that manifest injustice would result from imposition of a fully mitigated sentence.

Factual background

Defendant pled guilty to Assault in the First Degree. His crime was rather horrific. Defendant was working as a crew member on a fishing boat. He decided that he had to kill the captain. He made careful plans. He gathered a number of knives, took at least one knife and a marlin spike, took off his boots, crept up a ladder and quietly opened the door to the captain's cabin. Fortunately for

the captain, defendant yelled just as he stabbed the captain with the spike, which enabled the captain to roll away from the blow. Although he was stabbed, the captain, with some help later on from another crew member, was able to subdue defendant without being too seriously hurt. The captain is lucky to be alive.

The captain made this point quite cogently in his statement to the court. He very clearly bears no particular animus against defendant and recognizes that defendant's actions were caused by mental illness. But he very understandably is fearful that defendant will act violently again, and he urged the court to take careful account of defendant's violent behavior when he is not taking the necessary medication.

The state presented evidence regarding defendant's behavior while on third party release and while incarcerated. That evidence made it clear that when defendant is not on medication, he can be a very dangerous person. But once defendant started taking the appropriate medication, his dangerous behavior ceased.

The court also heard testimony at the sentencing hearing from a number of members of defendant's family, a good friend of the family, and Dr. Mark McClung. Dr. McClung diagnosed defendant as suffering from

schizoaffective disorder, a disease that cannot be cured but can be treated effectively with medication. He stated that the disease came on defendant slowly, with no warning, and that the delusions caused by the disease were what led defendant to attack the captain. He testified quite credibly that if defendant took his medication, he would pose no threat to the community. He also stated, again quite credibly, that there would be a number of warning signs should defendant stop taking the medication, and that the appropriate steps could be taken before defendant turned violent.

The family members and friend described defendant as a very good kid, hard working, who had never shown any sign of any violence. The family testified that they had rallied around defendant, researched his illness, and had made a significant commitment to helping him cope with the illness and to do what was needed to avoid any further problems. They were particularly focused on ensuring that defendant consistently took his medication. All of that testimony was quite credible and satisfied the court that defendant has a substantial support network in place.

Defendant made an eloquent statement fully accepting responsibility for what he had done. He clearly understands that he has a very difficult mental illness,

that he will never be free of it, and that he needs to take care of it so as not to pose a threat to anyone. The court finds that defendant is committed to treatment and to living a crime-free life. Having heard his statement, as well as the testimony of his family and friend, the court fully understands why defendant has no criminal history. The court finds he is highly unlikely to commit another crime, provided that he takes his medication.

The court found at the hearing that defendant had demonstrated by clear and convincing evidence that he had "committed the offense under some degree of . . . compulsion insufficient to constitute a complete defense, but that significantly affected the defendant's conduct." AS 12.55.155(d)(3). The court based this finding on the fact that defendant suffers from schizoaffective disorder, which caused him to have a number of delusions about the captain that led him to decide he had to kill the captain.

Analysis

The presumptive sentencing range for defendant's crime is seven to eleven years. AS 12.55.125(c)(2)(A). Because the court found a mitigator, the court has the authority to reduce the sentence to three and one-half years. AS 12.55.155(a)(2). The issue before the court is whether to refer this matter to the three judge panel in light of the

court's authority to impose a mitigated sentence of three and one-half years.

AS 12.55.165(a) "establishes two distinct grounds for referral of a case to a three-judge panel: (1) if the presumptive term, adjusted for aggravating or mitigating factors, would be manifestly unjust or plainly unfair and, (2) if manifest injustice will result from failure to consider a nonstatutory aggravating or mitigating factor." Kirby v. State, 748 P.2d 757, 762 (Alaska App. 1987). The Court of Appeals explained in Kirby that in evaluating the first prong, the court should determine whether the presumptive term, as adjusted, would be "clearly mistaken." Id. Under the second prong, the court must first find that a non-statutory mitigator, such as an extraordinary potential for rehabilitation, applies, and then inquire "whether, because of the non-statutory mitigator, it would be manifestly unjust to fail to make some adjustment to the otherwise allowable sentence." Harapat v. State, 174 P.3d 249, 254 (Alaska App. 2007). The Court of Appeals has stated that the term "extraordinary potential for rehabilitation" generally refers "to youthful first offenders whose criminal acts were out of character and whose background, education, and experience establish[] that they [can] be rehabilitated without danger to the

public by a sentence substantially shorter than the presumptive sentence." Dancer v. State, 715 P.2d 1174, 1180 n.5 (Alaska App. 1986). The court must also evaluate in this context what led the defendant to commit the crime, Boerma v. State, 843 P.2d 1246, 1248 (Alaska App. 1992), and whether the criminal activity is likely to be repeated. Manrique v. State, 177 P.3d 1188, 1194 (Alaska App. 2008). All of these findings must be based on clear and convincing evidence. AS 12.55.165(a).

Defendant has met this burden as to both prongs. First, he has an extraordinary potential for rehabilitation. He is quite young and has absolutely no criminal record. His act was utterly out of character - it was due to mental illness, an illness he did not know he even had at the time of the crime and one that caused him to commit the crime. He has a strong commitment to treating his mental illness and a significant support network in place to help him do so. That treatment will consist in substantial part of taking his medication and monitoring himself to look for any warning signs of the onset of the illness. If he takes his medication, he is exceptionally unlikely ever to commit another crime.

The state's principal argument on this issue is that because defendant suffers from an incurable mental illness

that can lead to quite violent conduct, it is impossible to conclude either that he is rehabilitatable or that his conduct will not recur. The state is correct that defendant's success cannot be absolutely assured. But the testimony from Dr. MaClung, defendant's family, defendant's friend, and defendant himself provide clear and convincing support for the court's finding that defendant is motivated to treat his illness and to take his medication, that he has a substantial support system in place to ensure that he does so, and that he is highly unlikely not to take his illness seriously or to engage in further illegal or violent conduct. As such, the court is confident that defendant has largely been rehabilitated through recognition and treatment of his illness, and any further rehabilitation should quickly be achieved.

Because defendant has an exceptional potential for rehabilitation, the court must evaluate whether it would be manifestly unjust not to make some adjustment to the presumptive sentence, as adjusted. The Court of Appeals emphasized in Harapat that if this issue is a close one, then the matter should be referred to the three judge panel. 174 P.3d at 255. This case is not a close call. Defendant has no criminal record; his crime was due in principal part to a mental illness of which he had no

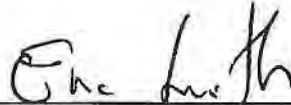
knowledge when he committed the crime; and defendant clearly is committed to treating his illness and avoiding any further criminal behavior. His family and friends stand ready both to assist him and to monitor him. At a minimum, these circumstances would call for making defendant eligible for discretionary parole after serving half of his sentence, an option that is not available to the trial court but is within the authority of the three judge panel pursuant to AS 12.55.175(e)(3). And the court finds that these circumstances would render a sentence of 3 and one-half years manifestly unjust.

The court recognizes that the crime was horrific. The victim fortunately was not badly hurt, but that was due to his own efforts and a considerable amount of luck. But as noted above, defendant committed the crime while in the throes of a mental illness that led him to believe he had to kill the captain. He had no idea that he was ill, nor did he have any way of realizing that he had become irrational. And he has credibly represented that he will take whatever actions he must to ensure that his behavior will not recur. Under these circumstances, the Cheyney criteria of rehabilitation and self deterrence can properly take sufficient weight that the adjusted presumptive

sentence of three and one-half years could readily be deemed to be clearly mistaken.

For the foregoing reasons, it is ORDERED that defendant's motion to refer this case to the three judge panel is GRANTED.

Dated at Palmer, Alaska, this 24th day of June 2009.



ERIC SMITH
SUPERIOR COURT JUDGE

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