

Uniform Sentencing Order Committee
Friday, August 14, 2009

Present: Circuit Judge Virginia Vinson, Chair; Circuit Judge David Rains; Circuit Judge Ben McLauchlin; Circuit Judge Sherrie Paler; District Attorney Ellen Brooks; Assistant District Attorney Robert Foster Johnston, Jr., DeKalb County; Kathy Eads for District Attorney Brandon Falls, Joel Sogol, Esq.; Kathy Holt, ADOC; Leigh McKee, County Clerk's Office; Rosa Davis, Chief Assistant Attorney General; Melisa Morrison, Analyst, ASC; Lynda Flynt, Director, ASC

Absent were: District Attorney Nick Abbett, Brandon Falls, Anne Adams ADOC, Vaughn Branch or TASC representative, /Circuit Clerk Corinne Hurst (but represented by Leigh McKee; District Attorney Greg Gambriel, Jeff Williams, ADOC; Circuit Clerk Melissa Rittenour, and Bob Williams, Shelby County Public Defender's Office.

Time: 10:15 a.m. CST

Chairman Vinson called the meeting to order at 10:15 CST. Lynda Flynt advised that she had e-mailed copies of 1) the last form, dated 7/09 with the revisions made to the first page by the Sentencing Order Committee during their June 9th meeting; 2) a copy of the Sentencing Order and Case Action Summary Sheet utilized in the 8th Circuit (Morgan County) and submitted for review by Judge Sherrie Paler; 3) a new form submitted by Judge Rains, and 4) a copy of the Case Action Summary Sheet utilized in the 15th Circuit and submitted by Ellen Brooks.

Referring to the Felony Sentencing Order dated 7/09 posted on the website, Lynda Flynt requested all members to log on to <http://sc.alacourt.org>, and advised them that the form would be modified based on recommendations made during the conference call and they would be told to refresh their screen to see the revised form.

Ellen Brooks mentioned that she had some suggested grammatical changes to the Sentencing Order, but that she would mail these to Lynda to incorporate rather to save the committee time to deal with the substantive issues. Judge Rains noted that the form submitted from the 15th Circuit did not have a space for the judge's signature.

The following provisions in the Sentencing Order were considered by the Committee:

1. Sentencing information regarding sentencing length should be contained on the first page rather than the second and the type of disposition should be included on the second page, as shown in the sample form order submitted by Judge Rains. *Approved*
2. Delete provision "Is this a Sentencing Standards event? Yes No and provision relating to Prison or non-prison disposition and in lieu thereof include the

following:

I. SENTENCE LENGTH DETERMINATION

A. Is this sentencing offense worksheet eligible? Yes No

1. If no, go to paragraph B below
2. a. If yes, the Court has considered the worksheet and applicable sentencing standards and the recommended sentence length under the standards is: ____ to ____ **months** (total) ____ to ____ **months** (incarceration portion, if split) *Approved*

b. Does the imposed sentence comply with the worksheet recommendation for sentencing length? Yes No -

If no, state the reason(s) for departure _____ *Tabled*

Judge Rains stated that it was his understanding that the Sentencing Commission needed to have information on whether 1) the worksheet recommendation was considered, 2) the sentence imposed complies with the recommended worksheet sentence and 3) if not, the reasons for departure. This information should be included on both the front and back page of the form in regard to the sentence length and In/Out disposition.

Judge Paler raised her concern that the judges may not know whether the sentence is in compliance with the standards. Since the Sentencing Commission now determines compliance, she is concerned that to include this provision on the Sentencing Order may cause problems and require the Sentencing Commission to deem a sentence compliant based on the judge's order, when in fact, it is not compliant. Judge Vinson noted that this information regarding compliance is already on the sentencing worksheet. Lynda mentioned that the Sentencing Order the Committee had been working on also contained a provision regarding compliance and departure, which the committee should reconsider, considering the concerns raised. Judge Rains indicated that if the Judge does not know whether the sentence is compliant with the recommended sentence under the standards, then his question should not be included on the sentencing worksheets either. Rosa noted that this information on the worksheet, if wrong, makes the Sentencing Commission aware of the judges that are not clear on what is compliance with the standards. Also, the reasons for departure are not statutorily required and are only requested, not required. Bob Johnston stated that by putting this information in the court order may cause the judges to consider the standards recommendation since it would require them to determine if the offense is worksheet eligible. It is to document whether the offense is worksheet eligible and compliant. Lynda indicated that everyone appeared to agree that a provision should be included in the Order that the judge has considered the worksheet and sentence recommendation for worksheet eligible offenses, the disagreement is with the compliance portion on the front and back page. Ms. Davis noted that while she was originally in favor of having a provision on compliance or noncompliance and the reasons for departure in the court order, she was moving further and further away from that position now, after considering that this may be an appealable issue if put in the sentencing order. It was noted that the Sentencing Standards Committee recommended to propose legislation to make the worksheet a part of the record.

It was ultimately decided that no vote would be taken by the committee on this issue today on whether compliance and reasons for departure should be considered in the

Sentencing Order, but would be tabled until the next meeting. Rosa's motion to table this issue until further research was seconded by Ellen Brooks and approved. *Tabled*

Judge Rains requested that it be noted in the minutes that he was withdrawing his vote yesterday in the Sentencing Standards Committee meeting to make the worksheet a part of the record. Rosa agreed that more research on this issue was needed. She stated that it should be left in the form until she, Judge Rains and Joel Sogol could research the issue further.

3. The Sentencing Order format provided by Judge Rains, which is a logical progression should be followed. *Approved.*

4. Insert the word months any time that there is a reference to time. Judge Vinson stated that there are only two spaces for months in SJIC. Lynda advised that she would contact Marty Ramsay to make this change. *Approved*

5. Amend the provision under special conditions as follows”
“The Defendant shall fulfill every item ~~specifically~~ marked below as a special condition of this Sentence, probation, Community Corrections, or other such program, probation, community corrections or other such program. *Approved*

6. Delete all bolding of the words “Enroll” “cooperate” “complete” and “file proof of completion” and bold programs. *Approved*

7. Amend the sentence discussing certification of completion to delete reference to filing with clerk and require certificate to be filed with supervising authority.

“Enroll in, cooperate fully with, and successfully complete all of the following marked programs as directed by any probation/supervising agency, and file proof of completion with the ~~Court Clerk~~ supervising authority. *Approved*

8. Delete sentence: “THE DEFENDANT had no questions about this sentence and acknowledged a full understanding of the same.” *Approved*

9. Add the following provision at the bottom of page 2:
The defendant pled guilty and reserved the following Issues for appeal

Approved

10. Provide a provision on the 2nd page of the Order at the end to require the court clerk to send the Worksheet and copy of the sentencing order to the Alabama Sentencing Commission. The following provision was added:

If the offense of conviction is a sentencing standards worksheet offense, the Clerk shall forward a copy of this Sentencing Order, a copy of the voluntary sentencing standards worksheet(s) prepared in this case to the Alabama Sentencing Commission forthwith. A copy of the Sentencing Order is also to

**be provided to all parties, the probation office, Community
Corrections Program, the Court Referral Officer Other** *Approved*

Judge Vinson recommended a face-to-face meeting in Birmingham rather than a conference call to discuss these issues. The next meeting was scheduled for September 8, 2009, at 1:00 p.m. in the DA's office.

There being no further business, the program committee adjourned.