

Uniform Sentencing Order Committee

Tuesday, September 8, 2009

Present: Circuit Judge Virginia Vinson, Chair; District Attorney Ellen Brooks; Kathy Eads for District Attorney Brandon Falls, Jeff Williams ADOC; Kathy Holt, ADOC; Nathan Wilson AOC; Rosa Davis, Chief Assistant Attorney General; ASC; Lynda Flynt, Director, ASC (via conference call)

Absent were: District Attorney Nick Abbett, Brandon Falls, Circuit Judge David Rains; Circuit Judge Ben McLaughlin; Circuit Judge Sherrie Paler; Assistant District Attorney Robert Foster Johnston, Jr., DeKalb County; Anne Adams ADOC, Vaughn Branch or TASC representative; Circuit Clerk Corinne Hurst; District Attorney Greg Gambril; Circuit Clerk Melissa Rittenour, and Bob Williams, Shelby County Public Defender's Office; Joel Sogol, Esq.

Time: 10:15 a.m. CST

Chairman Vinson called the meeting to order at 10:15 CST. Judge Vinson noted that copies of the following versions of the orders had been provided to the committee members: 1) the last form approved by the Committee, with the revisions made to the first page by the Sentencing Order Committee during their August 14th meeting (referenced as 8/09 Rains; 2) a copy of a revised Sentencing Order provided by Judge Rains (referenced as Rains New), and 3) a new form submitted by Ellen Brooks. Minutes from the last meeting were also provided to the members. Judge Vinson asked if there were any corrections or changes that should be made to the August 14th minutes. Kathy Eades noted that she should be listed as attending for Brandon Falls. The minutes were approved as amended.

It was decided to first refer to the committee report and compare this with Judge Rains form. Referring to Judge Rains form, it was noted that the difference in his form and the form approved by the committee. **The following provisions in the Sentencing Order were considered by the Committee:**

- Following the provision for the offense of conviction, the section number of the Code was omitted. It was noted that the Committee wanted the section number of the crime included for data purposes and concluded that it should be left in.

The Defendant appears in court for sentencing with counsel,
_____, and having pled or been found guilty, is
adjudicated guilty of _____,
_____, **Section _____, Code of
Alabama 1975**, as charged/embraced/amended ...

- The provision regarding reference to count(s) was omitted from Judge Rains form.
in **Count ___ of the Information/Indictment.**

The Committee wanted this provision to remain in.

Reference to the presentence report was moved on Rains form to a Section 4 labeled “Proration” which should be “probation.” Judge Vinson noted that we were trying to accommodate the judges who sentence and then consider probation and this may be the reason Judge Rains moved the provision “**Presentence Report** considered by the Court waived”; however if a person gets a presentence report before sentence is imposed this provision should be at the top.

It was suggested that we have a Form A and Form B to accommodate all judges. This recommendation was rejected because 1) the purpose of the committee was to recommend a uniform sentence order form, not several forms and 2) the form will not be mandatory, and 3) reference to the presentence report is also referenced in the committee form under “probation.”

The Committee voted to leave reference to the presentence report in both places as previously voted, revising the provision at the top of the form as follows:

A Presentence Report is considered by the Court is waived
 will be considered at probation hearing.

The majority vote was on motion by Lynda, seconded by Rosa Davis, with Ellen abstaining.

- Lynda asked for clarification on the sentence imposed portion of the form as to whether the committee wanted to include months/years or just reference months.

sentenced to a term of ____ **months** in the custody of :
 Department of Corrections Community Corrections County Jail.

The Committee voted to reference months to be compatible with the existing sentencing standards and to pave the way for truth-in-sentencing. Lynda advised that she had spoken to Marty Ramsay with AOC and he had indicated that SJIS would be changed to accommodate this feature; however, she promised to follow up on this and, if it had not been done, request that it be done as soon as possible.

- Judge Rains form included the term “months” after the blank for jail credits. The committee voted to eliminate the blank for jail credit and simply state “in an amount certified by the Court Clerk,” omitting the provision “Jail Credit of ____ as certified by the Court Clerk or stipulated by the by the parties shall be deducted from this sentence or from any slit portion thereof.” It was decided that the number of days of jail credit is on the transcript and did not need to be included on the sentencing order for data purposes or otherwise.

- Concurrent and Consecutive provision. Judge Rains form included the following: “THE SENTENCE SHALL RUN: CONCURRENTLY WITH: CONSECUTIVELY WITH: ALL CASES ANYWHERE COUNTS _____ OTHER _____” Ellen’s form took out the provision “all cases anywhere.” The Committee voted to take out reference to “all cases anywhere” and include a blank as follows:

The sentence shall run consecutively concurrently, with _____.

- Sentence Length Determination. The Committee previously voted to state “Is this sentencing offense worksheet eligible? Yes No

Judge Rains change this to “ Is this offense worksheet eligible? Yes No

Ellen changed to “This sentencing offense is covered by the Sentencing Guidelines. Yes No

The Committee discussed the proper wording of this section at length, some noting that the Order only dealt with the offense of conviction and should not reference “sentencing event” and others noting that you must consider the sentencing offense to determine if the offense is covered by the standards. Lynda checked with Bennet and Melisa and confirmed that this information from the Order will not be used by the Sentencing Commission staff for data purposes since this data will be obtained from the worksheets. It was thought important to include this information on the Order to remind the judges to consider the standards when applicable. It was also noted that the sentencing order is the record of the sentence of conviction for one offense, not a sentencing event. It was finally determined that this issue should be tabled until the Sentencing Standards Committee meets again. At that time Rosa stated that “the Sentencing Standards Committee will consider the issue of whether you sentence under the standards for a covered offense in a sentencing event that is not controlled by the worksheets.” If the new rule is voted on, then this would be a modification that would have to be approved by the Legislature. Until that time it was decided to leave the provision as: “This offense is sentencing standards offense. Yes No

(Commission staff subsequently recommended the provision to state “this offense is part of a sentencing event covered by the standards Yes No)

Judge Vinson requested that the Sentencing Standards Committee come up with single sheet of common rules or checklist for use of the worksheets which would be provided to sentencing judges.

- While Outline form was recommended, it was suggested that the correct outline format be followed.
- Sentence Length Determination. Reword as I.A.1 and provide:
 1. If no, go to paragraph B.
 2. If yes, has the worksheet recommendation been considered? Yes No

- Judge Rains version modified the reference to the incarceration portion of a split to read “(split incarceration).” The committee voted that the remaining provisions under Sentence Length Determination, subsection A should read as follows:

3. The recommended sentence disposition is Prison Non-Prison
4. The recommended sentence length is ____ to ____ months (total),
____ to ____ months (incarceration portion, if split).

- Compliance Information (Tabled from previous meeting). The Committee voted to omit portion on compliance with sentencing standards and the reason for departure.

~~Does the imposed sentence comply with the worksheet recommendation for sentencing length? Yes No~~
~~If no, state the reason(s) for departure _____.~~

Subsection I. B. Reviewing the committee’s recommendation as well as those of Judge Rains and Ellen, the Committee voted to amend this subsection to read as follows:

B. Because the offense is not sentenced under the sentencing standards, the following enhancements apply:

1. Habitual Offender Act; the Court finds the Defendant has been duly convicted of ____ prior adult felony offenses and had reasonable notice of the State’s intention to seek enhancement under this Act.
2. 5 years for the Sale of Drugs within 3 miles of a school.
3. 5 years for the Sale of Drugs within 3 miles of a housing project.
4. Firearm or Deadly Weapon enhancement.
5.

(subsection 5 was changed from “this sentence includes an enhancement for _____” to have just a blank.

- Sentence and Allocution – Ellen’s form moved this portion to be included in the middle of the form as subsection C, rather than at the top of the form before the sentence imposed. The Committee voted to retain this provision at the top of the form as follows:

The Defendant being asked and given an opportunity to say why sentence should not now be imposed, the Defendant is hereby **sentenced to a term of** ____ months in the custody of :

Department of Corrections **Community Corrections** **County Jail.**

- “The Defendant being asked and given an opportunity to say why sentence should not now be imposed, the Defendant is hereby sentenced to…”
- Fines, Costs portion. Ellen’s changed the heading to reference Court Ordered Monies; added a provision for court costs and that the amount was to be set by the court clerk. The Committee previously voted to

include a separate blank for court costs since, by statute; they are automatically assessed upon conviction. The Committee voted to omit reference to Forensic Assessment (since it is included under “Drug Offenses” and to amend the form as follows:

II. FINES, COSTS, FEES AND RESTITUION

A. The Defendant shall pay to the Court Clerk:

Court Costs.

Fine of \$_____.

Alabama Crime Victims Compensation Assessment of \$_____.

Appointed Attorney Fees of \$_____ or in an amount to be determined.

Restitution (jointly & severally with any co-defendant) of \$_____ or in an amount to be determined by further hearing to _____

Other _____

The following are remitted: _____

- Drug Offenses. Reviewing the suggested revisions of Judge Rains and Ellen, the Committee voted to include a separate subsection for Drug Offenses as follows:

III. DRUG OFFENSE – The Defendant shall surrender all Driver's Licenses to the Department of Public Safety for suspension, pay CRO Fees, successfully complete a Substance Abuse Program, pay the Forensic Science Trust Fund fee of \$100, and pay the Drug Demand Reduction Assessment of \$___,000 which may be suspended pursuant to Section 13A-12-284, *Code of Alabama 1975*.

- Payment. The Committee voted to include a separate subsection for the payment of court ordered monies.

IV. PAYMENT

A. The full amount shall be paid: in full by _____; Defendant shall make payment of court-ordered monies in the amount of \$_____ each month with the first payment on _____ and on or before the same day each month thereafter.

B. Payment shall be a condition of probation, parole, community corrections, work release, SIR, SRP or any other release program.

C. Court Clerk shall apply payments to restitution first.

- In response to Rosa’s question regarding payment of court ordered monies prior to release from the penitentiary, Ellen recommended that a space be added in the Court Order requiring the deduction of %60 of any income be deducted. Also, in regard to restitution, many judges utilize a separate restitution order. Questions arose regarding the maximum amount that can be deducted by law. Jeff Williams stated that deduction is according to court order. This issue was tabled until Jeff Williams could research this issue and report his findings back to the committee.

- Application for Probation. The Committee voted to include a subsection V and adopt Ellen’s recommended language in regard to new bond and psi report as follows:

V. APPLICATION FOR PROBATION is set for a hearing on _____. Imposition of this sentence is hereby suspended and the Defendant is continued on the same \$_____ bond until the hearing. A pre-sentence investigation report shall shall not be prepared.

- The Date and Judge Signature Line. The committee voted to use the words “Done and Ordered _____(date) and _____ Judge” to be consistent with page 2.
- The Committee voted to label the form page one of two and page two of two in lieu of repeating the sentence imposed.
- Second page Change title of Order on page two to read “Felony Sentencing Order” as in Ellen’s recommended form.
- Second page - Reference as to the recommended sentence disposition Prison or Non-Prison was deleted and incorporated under IA, page one as subsection 3.
- All reference to whether the sentence is worksheet eligible or compliant with the sentencing recommendations was deleted.
- Disposition. Provide sentencing disposition information under section VI. to read as follows:

VI. DISPOSITION

- This is a **straight** sentence to be served.
- This sentence is **suspended**. The Defendant is placed on straight probation for a term of _____ months. The Defendant shall abide by all conditions, rules and regulations of the supervising agency and those specifically noted in this Order.

This probation shall be supervised by:

- State Probation Community Corrections _____
- Unsupervised.

- This is a **split** sentence. The Defendant shall serve a term of _____ months, in the Department of Corrections Community Corrections County Jail _____, beginning on _____. **The remainder shall then be suspended** for a term of _____ months on probation.

- The Defendant shall abide by all conditions, rules and regulations of the supervising agency and those noted in this Order. This probation shall be supervised by:

- State Probation Community Corrections _____
- Unsupervised.

- Special Conditions. The Committee voted to include as section VII and to include reference to “other” at the end, as follows:

VII. SPECIAL CONDITIONS

The Defendant shall fulfill every item marked as a special condition of probation, community corrections or other such program:

- Enroll in, cooperate fully with, and successfully complete all of the following marked programs as directed by any supervising agency, and file proof of completion with the supervising agency:

- | | |
|--|---|
| <input type="checkbox"/> Anger Management Training | <input type="checkbox"/> Parenting Skills Training |
| <input type="checkbox"/> Domestic Violence Education/Treatment | <input type="checkbox"/> Sex Offender Evaluation /Treatment |
| <input type="checkbox"/> Life Skills Training | <input type="checkbox"/> Substance Abuse Evaluation/Treatment |
| <input type="checkbox"/> Mental Health Evaluation/Treatment | <input type="checkbox"/> Other _____ |

- Avoid initiating any contact with _____.
- Complete _____ hours of community service _____
- Other _____

- Appeal. Include a separate section, VII. as on Ellen’s version:

VII. APPEAL -The Defendant pled guilty and for appeal
 did not reserve any issues reserved these issues

- Copies. The Committee voted to have a Section VIII entitled Distribution of Copies, which reads as follows:

VIII. DISTRIBUTION OF COPIES

If the offense of conviction is a sentencing standards worksheet offense (see I.A.), the Court Clerk shall forward a copy of this Sentencing Order and a copy of the related sentencing standards worksheet in this case to the Alabama Sentencing Commission within 45 days after imposition of sentence, as required by law.

The Court Clerk shall provide a copy of this Sentencing Order to counsel for all parties

The next meeting was not scheduled until answers could be determined and the committee members informed on 1) research by Jeff Williams regarding deductions from wages for inmates, parolees, offenders on work release for restitution, fines, costs and other court ordered monies; 2) Standards Committee to consider wording on “sentencing offense” vs. “sentencing event” in the Court Order and make recommendation, and also

consider amending the sentencing standards worksheet instructions in regard to offenses that qualify under a “sentencing event” as worksheet eligible. Rosa is to advise Judge Vinson of the Committee’s recommendation and another meeting of the Uniform Sentencing Order Committee will then be scheduled.

There being no further business, the program committee adjourned.