

Uniform Sentencing Order Committee
Thursday, June 3, 2010

Present: Circuit Judge Virginia Vinson, Chair; Cathy Eades; District Attorney Ellen Brooks; Circuit Judge Ben McLaughlin; Circuit Judge Scott Donaldson; Nathan Wilson AOC; Lynda Flynt, Director, ASC

Absent were: Circuit Judge David Rains, District Attorney Nick Abbett; Jefferson County District Attorney Brandon Falls; Assistant District Attorney Robert Foster Johnston, Jr., DeKalb County; Rosa Davis, Chief Assistant Attorney General; Jeff Williams ADOC; Anne Adams ADOC; Kathy Holt ADOC; Foster Cook, UAB TASC; District Attorney Greg Gambriel; Circuit Clerk Melissa Rittenour; Bob Williams, Shelby County Public Defender's Office; Joel Sogol, Esq., Tuscaloosa; Circuit Clerk Corinne Hurst, Lee County.

Time: 10:03 a.m. CST

The meeting commenced at 10:03 a.m. with the Committee reviewing the form labeled 3-5-10 which was sent to the members by e-mail and which appeared on their computer when logging into the website <http://sc.alacourt.org>. The Committee reviewed the suggested changes to amend the form as follows:

- Add a specific provision for reverse split sentences (recommended by Circuit Judge J. Langford Floyd). After a discussion of the current use of reverse splits by judges, the committee voted to not revise the Standard Sentencing Order. It was noted that to do so might encourage judges to utilize reverse splits.
- Revise Section I b so that it does not imply the only reason for not following the sentencing standards is to apply one of more of the enhancements. Judge Floyd indicated that, as written it does not appear to give the court the authority to deviate for non-enhancement reasons. This section now reads as follows:

B. Because this sentence is not imposed 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 offense(s) and had reasonable notice of the State's intention to seek enhancement under t 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.

The committee noted that, as written, this section was not intended to capture the reasons for deviation from the sentencing standards, but rather, to emphasize that the

enhancements should be applied if the standards are not followed for standards cases and if the conviction is for a non-standards offense.

In reviewing this section, Judge Vinson did recommend the following amendments to clarify that the sentence imposed previously included any applicable enhancements. The committee voted to make the following changes (noted by underline and italics) on page 1 of the form:

Having been given an opportunity to say why sentence should not now be imposed, the Defendant is hereby **sentenced** to a term of _____ months (*includes enhancements where applicable*) in the custody of :
 Department of Corrections Community Corrections County Jail.

and

B. Because this sentence is not imposed under the sentencing standards, the following enhancements apply *and were incorporated in the sentence imposed above*:

1. Habitual Offender Act; the Court finds the Defendant has been duly convicted of _____ prior adult felony offense(s) 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.

- ADOC requested that language be included in the Sentencing Order to ensure compliance with §14-9-4(e) which provides: “The court sentencing a person shall note upon the transcript to accompany such prisoner the fact that he or she has been sentenced as a result of a crime that forbids his or her being classified as a Class I prisoner.” It was recognized that unless this information was included on the Sentencing Order, the court specialist would have no knowledge of when it should be entered on the transcript.

The committee noted that ADOC could get this information from PSIs and voted not to include this reference on the Sentencing Order. There was some discussion that the §1409041(e) should be amended to delete this provision.

- Foster Cook suggested that the Sentencing Order should be amended to tie the SAP conditional sentence (now provided for splits) in with the institutional diversions. Suggested language was:
“Sentence the Defendant to _____ months incarceration in the Department of Corrections to participate and complete the SAP Crime Bill program, and upon completion to return to court for consideration of application to participate in a community corrections program, pursuant to the provisions of §15-18-172.”

The committee voted not to revise the Sentencing Order to include this reference to institutional diversions, noting that according to the statute this procedure is to be initiated by the Department of Corrections.

There being no further business, the program committee adjourned.