

SENATE BILL NO. 3
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR DONLEY

Introduced: 1/11/93
Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state's right to appeal in criminal cases; relating to
2 sentence appeals; amending Rule 202 of the Alaska Rules of Appellate Procedure;
3 and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. The legislature finds that AS 22.07.020, AS 22.10.020, and AS 22.15.240,
6 which give the state a right to appeal in criminal cases, are based on the provisions of 18
7 U.S.C. 3731.

8 * Sec. 2. AS 22.07.020(b) is amended to read:

9 (b) The court of appeals has jurisdiction to hear appeals of sentences of
10 imprisonment imposed by the superior or district court on the grounds that the
11 sentence is excessive or too lenient and, in the exercise of this jurisdiction, may
12 modify the sentence as provided by law and the state constitution.

13 * Sec. 3. AS 22.07.020(c) is amended to read:

14 (c) The court of appeals has jurisdiction to review ~~[(1)]~~ a final decision of the

1 district court in an action or proceeding involving criminal prosecution, post-conviction
2 relief, extradition, probation and parole, habeas corpus, or bail [; AND (2) THE
3 FINAL DECISION OF THE DISTRICT COURT ON A SENTENCE IMPOSED BY
4 IT]. In this subsection, "final decision" means a decision or order, other than dismissal
5 by consent of all parties, that closes a matter in the district court.

6 * Sec. 4. AS 22.07.020(d) is amended to read:

7 (d) An appeal to the court of appeals is a matter of right in all actions and
8 proceedings within its jurisdiction except that

9 (1) the right of appeal to the court of appeals is waived if an appellant
10 chooses to appeal the final decision of the district court to the superior court; and

11 (2) the state's right of appeal in criminal cases is limited by the
12 prohibitions against double jeopardy contained in the United States Constitution
13 and the Alaska Constitution [STATE HAS NO RIGHT OF APPEAL IN CRIMINAL
14 CASES EXCEPT TO TEST THE SUFFICIENCY OF THE INDICTMENT OR
15 INFORMATION OR TO APPEAL A SENTENCE ON THE GROUND THAT IT IS
16 TOO LENIENT].

17 * Sec. 5. AS 22.10.020(e) is amended to read:

18 (e) An appeal to the superior court is a matter of right, but an appeal from a
19 subordinate court may not be taken by the defendant in a criminal case after a plea of
20 guilty, except on the ground that the sentence was excessive. The state's right of
21 appeal in criminal cases is limited by the prohibitions against double jeopardy
22 contained in the United States Constitution and the Alaska Constitution [STATE
23 HAS NO RIGHT TO APPEAL IN CRIMINAL CASES, EXCEPT TO TEST THE
24 SUFFICIENCY OF AN INDICTMENT OR INFORMATION OR TO APPEAL A
25 SENTENCE ON THE GROUND IT IS TOO LENIENT].

26 * Sec. 6. AS 22.10.020(f) is amended to read:

27 (f) An appeal to the superior court may be taken on the ground that a sentence
28 of imprisonment of 90 days or more was excessive and the superior court in the
29 exercise of this jurisdiction has the power to reduce the sentence. The state may
30 appeal a sentence on the ground that it is too lenient. When a sentence is appealed
31 [BY THE STATE] on the ground that it is too lenient, the court may not increase the

1 sentence but may express its approval or disapproval of the sentence and its reasons
2 in a written opinion.

3 * Sec. 7. AS 22.15.240(b) is amended to read:

4 (b) The defendant may appeal a judgment of conviction given in the district
5 court in a criminal action to the superior court. When the judgment is given on a plea
6 of guilty, an appeal may not be taken by the defendant except on the ground that a
7 sentence of imprisonment of 90 days or more was excessive. The state's right of
8 appeal in criminal cases is limited by the prohibition against double jeopardy
9 contained in the United States Constitution and the Alaska Constitution. The
10 state may also [STATE HAS NO RIGHT OF APPEAL IN CRIMINAL ACTIONS
11 FOR WHICH JUDGMENT IS GIVEN IN THE DISTRICT COURTS, EXCEPT TO
12 TEST THE SUFFICIENCY OF THE INFORMATION OR TO] appeal a sentence on
13 the ground that it is too lenient. When a sentence is appealed [BY THE STATE] on
14 the ground that it is too lenient, the court may not increase the sentence but may
15 express its approval or disapproval of the sentence and its reasons in a written opinion.

16 * Sec. 8. Rule 202(c), Alaska Rules of Appellate Procedure, regarding the prosecution's
17 right to appeal in criminal cases, is repealed.

18 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).