

Chief Deputy
Meredith A. Erickson

Assistant County Attorneys
Craig E. Green
Catherine M. Miller
Jennifer J. Nelson
Nathaniel J. Reitz
Tori K. Stewart
Terence J. Swihart
Thao N. Trinh



RICE COUNTY

ATTORNEY
G. PAUL BEAUMASTER

Court House • 218 Third Street Northwest • Faribault, MN 55021

Telephones:
(507) 332-6103
Toll Free from Northfield
(507) 645-9576
Fax (507) 332-6175

Paralegal
Susan L. Duden

Victim Services Coordinator
Vanessa J. Eng

May 7, 2013

Ms. Kelly Mitchell
Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

RE: May Sentencing Guidelines Commission meeting

Dear Ms. Mitchell:

In anticipation of my presentation to the Sentencing Guidelines Commission at their May 16th Meeting, here are comments for advance circulation to the Commission members concerning the topic of permissive consecutive offenses.

Two Rice County cases are the simplest way to address the issue:

- Example One: Notwithstanding the fact that three of the offender's 22 prior adult felony convictions are for fleeing, and that the offender now faces new felony fleeing charges, he is released on his own recognizance. While on pretrial release, he flees police *again*. Both flights are high-speed chases through City of Faribault streets.
 - Under the current Guidelines, despite the dangerousness of both flights, we can give this offender nothing extra for the second fleeing; it is considered concurrent and he's maxed out on points.
 - In my opinion, fleeing is a felony for the same reason it belongs on the permissive consecutive list: It does not just thwart justice, it frequently endangers people while doing so. It is a person crime.
- Example Two: After fleeing police through Faribault city streets (Faribault pedestrians beware!), the offender, who has a criminal history score of seven, threatens to kill his passenger if she talks to the police while he is being placed in the squad car.
 - If the fleeing and the threats are considered to be part of the same course of conduct, consecutive sentencing is statutorily authorized per Minn. Stat. § 609.035, subd. 5, and MSG 2.F.2.a.(1)(ii).

Letter to Kelly Mitchell

May 7, 2013

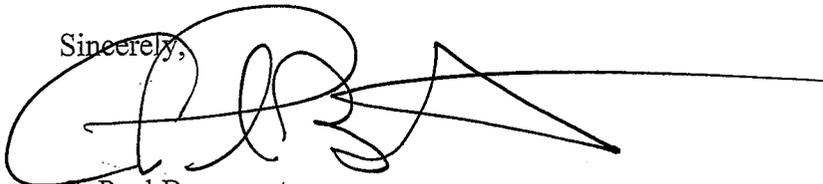
- If, on the other hand, the judge does *not* consider the two offenses to be part of the same course of conduct, consecutive sentencing is a Guidelines departure.
- Why would being part of the same course of conduct be a prerequisite to consecutive sentencing? I would think that two offenses **NOT** part of the same course of conduct are more appropriate for consecutive sentencing.

One could argue that this would open the floodgates, but I do not give this argument much merit. Yes, it is true that escape could be put in the same category as fleeing, but that is probably appropriate too. After all, consecutive sentences are presumptive when on escape status from an executed prison sentence -- why shouldn't the sentence for fleeing/escape be permissive when on fleeing/escape status from agencies other than the Department of Corrections?

Remember, both felony offenses must be on the permissive consecutive list in order for permissive consecutive sentencing to apply. Therefore, in all likelihood, a crime against the person is committed.

Thank you for sharing this information with the Commission members. I look forward to the meeting on May 16th.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Paul Beaumaster', with a long horizontal line extending to the right.

G. Paul Beaumaster
Rice County Attorney