In the Court of Appeals of the State of Alaska

Angelo Joseph, Appellant, v. **Angelo Joseph and State of Alaska,** Appellees.	Court of Appeals Nos. **A-13957/ A-13958** **Order** Date of Order: **May 31, 2022**

Trial Court Case Nos. **3AN-18-09153CI; 3AN-21-06712CI**

In 2018, Angelo Joseph filed a second post-conviction relief application alleging ineffective assistance of counsel against his appointed attorney in his first post-conviction relief application. *See Grinols v. State*, 10 P.3d 600, 624 (Alaska App. 2000) (holding that defendants have a due process right under the Alaska Constitution to effective assistance of counsel in their first post-conviction relief application).

Joseph was appointed public counsel — a contract attorney with the Office of Public Advocacy — under Administrative Rule 12(e) to represent him in his *Grinols* post-conviction relief application. According to later pleadings filed by the Alaska Public Defender Agency, the contract attorney failed to respond to the trial court's orders and effectively abandoned Joseph. The superior court responded to this lack of action by summarily dismissing Joseph's *Grinols* post-conviction relief application. The contract attorney did nothing in response to the dismissal.

Joseph (who was now *pro se*) responded to the dismissal by filing a *third* post-conviction relief application seeking to litigate the *Grinols* issues that the contract attorney in the second post-conviction relief application had failed to litigate. The superior court summarily dismissed this third post-conviction relief application as successive without appointing counsel.

With the assistance of the Alaska Public Defender Agency, Joseph timely appealed the dismissal of the third post-conviction relief application to this Court (A-13958). The Public Defender Agency also assisted Joseph in filing what was now an untimely appeal of the dismissal of his second post-conviction relief application (A-13957). In addition, the Public Defender Agency filed a motion under Civil Rule 60(b)(6) motion in the second post-conviction relief case, requesting that the superior court reopen the case and that Joseph be allowed to litigate his original *Grinols* claim with different appointed counsel. *See Powell v. State*, 460 P.3d 787 (Alaska App. 2020) (holding that criminal defendants may seek equitable relief against erroneous post-conviction relief default judgments through Civil Rule 60(b)(6)).

After reviewing the Public Defender Agency pleadings, this Court concluded that both appeals (A-13957 and A-13958) should be lodged with the Court. But the Court held the motion to accept untimely appeal in A-13957 in abeyance, recognizing that the superior court's ruling on the Rule 60(b)(6) motion could moot out both appeals.

The Court has now received notice that the superior court denied Joseph's Rule 60(b)(6) motion on the ground that the Public Defender Agency was not authorized to represent Joseph in the superior court. The superior court's order indicated that Joseph could re-file the motion *pro se* (or with privately retained counsel), but it did not address the issue of appointing counsel for Joseph. The superior court also does not appear to have served a copy of the dismissal order on Joseph. The superior court's order only indicates service to the Public Defender Agency, who the court ruled was not authorized to represent Joseph. It also appears that the superior court did not inform the Court of its decision on the motion, as had been requested in our earlier order.

Following the dismissal of the Rule 60(b)(6) motion, the Agency filed a copy of the dismissal order with this Court and informed this Court that it had also provided Joseph with a copy of the dismissal order. We are therefore in the same position that we were in earlier. Because the superior court's ruling on the Civil Rule 60(b)(6) motion will likely moot out Joseph's appeals, we again conclude that the appeals should be stayed pending a final resolution of the motion.

Regarding the issue of representation, this Court notes that Joseph was appointed counsel under Administrative Rule 12(e) to litigate the second post-conviction relief application. This was based on the superior court's recognition that Joseph was bringing a complex *Grinols* claim. A review of the current pleadings, particularly the Civil Rule 60(b)(6) motion, indicates that the litigation has only become more complex. Thus, because Joseph is essentially attempting to litigate a complex layered *Grinols* issue, and because it also appears that Joseph is still incarcerated and indigent, this Court concludes that under the due process clause of the state constitution, Joseph will require a lawyer's assistance for a fair and meaningful litigation of his Rule 60(b)(6) motion and for any litigation that may follow if his Rule 60(b)(6) litigation is successful.

Accordingly, it is ORDERED:

1. Because the superior court's ruling on the 60(b)(6) motion may moot out both appeals, the two appeals (A-13597 and A-13598) will remain lodged with the Court and we will hold the related motions in abeyance for the next 60 days to allow the superior court to determine if Joseph is eligible for appointed counsel to re-file the Rule 60(b)(6) motion. If he is eligible, then the superior court is directed to appoint counsel

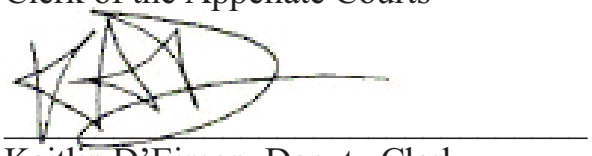
under Administrative Rule 12(e) to represent Joseph in re-filing the Rule 60(b)(6) motion and to order counsel to proceed expeditiously. If he is not eligible, then the superior court will allow Joseph 60 days to retain a private attorney or to proceed on his own following proper advisories of the dangers of self-representation.

2. Once the motion is re-filed, the superior court will have 60 days to rule on it. The superior court may extend this deadline, upon notice to this Court.

3. In any event, the superior court is directed to provide this court with a report on these matters on or before July 25, 2022.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



Kaitlin D'Eimon, Deputy Clerk

cc: Trial Court Clerk

Distribution:

Email:
McFarland, Renee, Public Defender
Ringsmuth, Eric