

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

XEUY SIKEO,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12779
Trial Court No. 3AN-12-07634 CI

SUMMARY DISPOSITION

No. 0045 — June 26, 2019

Appeal from the Superior Court, Third Judicial District,
Anchorage, Eric A. Aarseth, Judge.

Appearances: Krista Maciolek, Law Office of Krista Maciolek,
Inc., Palmer, under contract with the Office of Public Advocacy,
Anchorage, for the Appellant. Ann B. Black, Assistant Attorney
General, Office of Criminal Appeals, Anchorage, and Kevin G.
Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Joannides and E. Smith,
Senior Superior Court Judges.*

Xeuy Sikeo appeals the dismissal of his application for post-conviction
relief for failure to state a prima facie case.

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska
Constitution and Administrative Rule 23(a).

In 2009, Sikeo was convicted of first-degree sexual abuse of a minor after he impregnated his then-girlfriend's eleven-year-old daughter.¹ Because Sikeo had two prior convictions for attempted second-degree sexual abuse of a minor, he received a presumptive 99-year term.² We affirmed his sentence on direct appeal, holding that it did not constitute cruel and unusual punishment.³

Sikeo then filed an application for post-conviction relief. He argued that his sentencing attorney's performance was ineffective because his attorney failed to investigate and pursue three nonstatutory mitigating factors: (1) Sikeo had an undiagnosed or untreated mental health issue; (2) one of the prior sexual abuse offenses that triggered Sikeo's 99-year presumptive term arose out of an arranged Laotian cultural marriage that was consented to by the victim's family (even though the victim could not legally consent under Alaska law); and (3) Sikeo and his family were political refugees from Laos.

After giving Sikeo an opportunity to supplement his application with additional facts and legal arguments, the superior court ultimately granted the State's motion to dismiss Sikeo's application for failure to state a *prima facie* case for relief. The superior court concluded that Sikeo failed to show that he would have succeeded in proving his proposed mitigating factors (which he would have been required to prove by

¹ *Sikeo v. State*, 258 P.3d 906, 907 (Alaska App. 2011).

² *Id.*

³ *Id.* at 912.

clear and convincing evidence⁴) and that Sikeo also failed to show how those factors, if proven, would have resulted in a more lenient sentence.⁵

We have reviewed Sikeo's pleadings in this case and we agree with the superior court that Sikeo's pleadings failed to state a prima facie case for relief. Although he was provided with multiple opportunities to supplement his pleadings, Sikeo made only conclusory statements regarding how each mitigating factor could have been investigated, and he provides little actual support for any of the mitigating factors. Sikeo also provides only conclusory statements regarding how consideration of these mitigating factors, if proved, could actually have affected his sentencing.

Given the deficiencies in Sikeo's pleadings, and his failure to adequately support his proposed mitigating factors, we find no error in the superior court's dismissal of Sikeo's application for failure to state a prima facie case for relief.

The judgment of the superior court is AFFIRMED.

⁴ AS 12.55.155(f)(1).

⁵ See, e.g., *Williams v. State*, 2012 WL 104489, at *3 (Alaska App. Jan. 11, 2012) (unpublished).