IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JERRY LEWIS ANTHONY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12509 Trial Court No. 3AN-10-05939 CR SUMMARY DISPOSITION No. 0060 — August 21, 2019

Appeal from the Superior Court, Third Judicial District, Anchorage, William F. Morse, Alex Swiderski, and Michael D. Corey, Judges.

Appearances: Jerry Lewis Anthony, *in propria persona*, Anchorage. Nancy R. Simel, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court Justice, and Andrews, Senior Superior Court Judge.[*]

Jerry Lewis Anthony pleaded guilty to felony driving under the influence in exchange for a reduced sentence and admission into the State's felony DUI wellness court, giving him the opportunity to receive a suspended imposition of sentence upon

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

successful completion of the program.[1] Under Anthony's plea agreement, the superior court was required to discharge Anthony from the wellness court program "upon a judicial finding of probable cause that [he] drove a motor vehicle."

Anthony was subsequently discharged from the program after a wellness court probation officer observed Anthony driving a motorized bicycle with a gasoline-powered engine down Gambell Street, a busy thoroughfare in downtown Anchorage. The motorized bicycle was equipped with an after-market detachable 49cc gasoline-powered engine capable of reaching speeds over thirty miles per hour. Anthony appealed his discharge from the program to this Court, arguing that the term "motor vehicle" as used in the plea agreement was ambiguous and that he reasonably understood it to exclude his motorized bicycle.[2] We remanded the case to the superior court to apply principles of contract law to resolve any ambiguity as to whether Anthony's bicycle fell within the meaning of "motor vehicle."[3]

In a written order, the superior court concluded that the contract term "motor vehicle" was not ambiguous, and that the agreement itself provided sufficient guidance as to the meaning of the term as used by the parties at the time the agreement was entered into. Specifically, the superior court noted that the offense to which Anthony had pleaded guilty, felony driving under the influence in violation of AS 28.35.030(n), incorporated the definition of "motor vehicle" in former AS 28.90.990(a)(17) (2015)[4] — "a vehicle which is self-propelled except a vehicle moved by human or animal power."

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[1] *Anthony v. State*, 329 P.3d 1027, 1029 (Alaska App. 2014).

[2] *Id.*

[3] *Id.* at 1031-33.

[4] This definition has since been renumbered as AS 28.90.990(a)(18).

In the alternative, the court found that even if the term was ambiguous, the statutory definition was the most reasonable source of extrinsic evidence of the parties' intentions. The court noted that neither party had offered any other relevant extrinsic evidence as to what "motor vehicle" meant in the agreement.[5] The court also noted that Anthony's assertions of his subjective definition of "motor vehicle" — based on what wellness court participants had told him — did not establish an issue of fact regarding the parties' reasonable expectations at the time of contracting.

Finally, the court found that Anthony's motorized bicycle fell under the statutory definition of a "motor vehicle" in former AS 28.90.990(a)(17) (2015). The court noted that Anthony had admitted at an earlier hearing that the bicycle was self-propelled, and that, at the time the probation officer observed him in the roadway, the engine was engaged. The court also noted that the probation officer had first noticed Anthony after she heard what she thought was a motorcycle "revving" its engine, and that an automotive mechanic had testified that the engine on Anthony's bicycle could likely attain a speed of thirty-two to thirty-five miles per hour.

In his brief on appeal, Anthony does not directly address the superior court's ruling or reasoning. Specifically, he offers no argument challenging the superior court's ruling that the term "motor vehicle" was not ambiguous, and he offers no argument challenging the court's alternative analysis. Instead, he again relies on unsupported assertions regarding both his and others' subjective understanding of "motor vehicle." Not only are these assertions unsupported by the record, they do not relate to the parties' understanding of the terms in the Rule 11 agreement during the relevant time period — *i.e.*, at the time the agreement was made. And as the superior court found, the

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[5] On remand, the parties provided memoranda to the superior court on the definition of "motor vehicle" as used in the plea agreement. Although the court offered to hold an evidentiary hearing, both parties declined the offer.

relevant extrinsic evidence of the parties' intent at that time was that a motorized bicycle like Anthony's was a "motor vehicle" for purposes of the plea agreement. Anthony's arguments are insufficient to justify this Court's reversal of the superior court's judgment.

Anthony also argues that discharging him from the wellness court constitutes a violation of the ex post facto clause of the state and federal constitutions. Although Anthony frames this as an ex post facto argument, this case does not present a retrospective application of any law that could implicate the ex post facto clause. We therefore affirm the superior court's rejection of Anthony's ex post facto claim.

Finally, in the fact section of his brief, Anthony briefly asserts that several of the attorneys who litigated his case were ineffective. To the extent that Anthony is intending to make claims of ineffective assistance of counsel, we conclude that these claims are inadequately briefed.[6] In any event, the appropriate forum for pursuing these claims would be in an application for post-conviction relief.

Conclusion

We AFFIRM the decision of the superior court on remand.

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[6] *See Petersen v. Mut. Life Ins. Co. of New York*, 803 P.2d 406, 410 (Alaska 1990) (noting that "where a point is not given more than a cursory statement in the argument portion of a brief, the point will not be considered on appeal"). To the extent that Anthony is also making either a due process notice claim or an equal protection claim, these too are waived due to inadequate briefing.