IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARK T. HARTVIGSEN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13070 Trial Court No. 3KN-17-00612 CI SUMMARY DISPOSITION No. 0078 — October 9, 2019

Appeal from the Superior Court, Third Judicial District, Kenai, Charles T. Huguelet, Judge.

Appearances: Mark T. Hartvigsen, *in propria persona*, Anchorage, Appellant. Matthias Cicotte, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison, Judge.

Mark T. Hartvigsen appeals the denial of his application for post-conviction relief. Hartvigsen argues that his parole time was unlawfully extended by the Department of Corrections. For the reasons explained here, we find no ground for reversal in Hartvigsen's case.

Relevant facts

On March 2, 1989, Hartvigsen was committed to the care of the Department of Corrections on multiple felony charges. His initial maximum release date ("MRD") was calculated to be March 1, 2019. He was released to mandatory parole on March 15, 2010.

In October 2012, the Alaska Parole Board found Hartvigsen in violation of his parole conditions. The board revoked Hartvigsen's parole and extended his maximum release date by the number of days he was at liberty on parole. Hartvigsen was later released back on mandatory re-parole on November 9, 2013.

In 2016, the Alaska Legislature amended AS 33.16.220(i) to eliminate the parole board's authority to extend a parolee's mandatory release date as they did in Hartvigsen's case. Alaska Statute 33.16.220(i) states, in pertinent part, "The board may not extend the period of parole beyond the maximum release date calculated by the department on the parolee's original sentence plus any time that has been tolled as described in this section." This provision went into effect on January 1, 2017.

Another provision related to parolee time accounting also went into effect at the same time. Alaska Statute 33.16.270 directed the Department of Corrections to create a program under which parolees may obtain "Earned Compliance Credits," — *i.e.*, credits that would reduce a parolee's period of parole based on a parolee's compliance with the conditions of parole. From January 1, 2017 Hartvigsen received the Earned Compliance Credits that he was due.

In June 2017, the legislature passed legislation stating that neither AS 33.16.220(i) nor AS 33.16.270 applied retroactively. Specifically, the legislation stated that "[n]othing in the provisions of AS 33.16.220(i) may be construed as invalidating a decision of the Board of Parole issued before January 1, 2017, that extended the period of supervision beyond the maximum release date on the original

sentence" and similarly that "[n]othing in the provisions of AS 33.16.270 may be construed as applying to credit for time served on parole before January 1, 2017."[1]

In July 2017, Hartvigsen filed an application for post-conviction relief, arguing that AS 33.16.220(i) and AS 33.16.270 should be applied retroactively. According to Hartvigsen, retroactive application of these statutes to his case would mean that his parole supervision was over. The State moved for summary disposition, arguing that the two statutes did not apply retroactively. In his opposition, Hartvigsen raised an equal protection argument for the first time. Hartvigsen argued that it would violate equal protection to not apply AS 33.16.220(i) and AS 33.16.270 retroactively, because some trial courts had initially ruled that the statutes were retroactive. (These rulings occurred before the June 2017 legislation, which stated that the statutes were not retroactive.)

The superior court granted the State's motion for summary disposition, ruling that the two statutes did not apply retroactively. The court rejected Hartvigsen's equal protection claim, ruling that it was not properly raised before the court.

Hartvigsen now appeals.

Hartvigsen's arguments on appeal

Hartvigsen makes three arguments on appeal. Hartvigsen's first argument is grounded in his belief that the original decision to revoke his parole and to extend his maximum release date was a decision made by someone in time accounting rather than by the parole board. But the record shows that Hartvigsen is incorrect. The Notice of Board Action from the 2012 parole violation hearing confirms that the parole board revoked his parole, thereby extending his maximum release date by the time he had spent

[1] SLA 2017, ch. 13, § 30.

on parole prior to the violations. Accordingly, we find no merit to Hartvigsen's first argument.

Hartvigsen next argues that the Department of Corrections time accounting officers are violating AS 33.16.220(i) every time they issue a new time accounting report that includes the original extension of Hartvigsen's maximum release date. We find no merit to this contention. As already explained, the decision to revoke Hartvigsen's parole and extend his maximum release date was made by the parole board in 2013 following Hartvigsen's violation of his parole conditions in 2012, prior to the enactment of AS 33.16.220(i).

Hartvigsen's final argument is based on equal protection. Hartvigsen points to varying decisions by the trial courts regarding the retroactivity of AS 33.16.220(i) and AS 33.16.270. In particular, Hartvigsen points to two superior court decisions that were issued prior to the passage of the 2017 legislation. In those decisions, the superior court gave the parolees the relief that Hartvigsen seeks here. According to Hartvigsen, it would be a violation of equal protection for these parolees to have received relief when Hartvigsen did not. But Hartvigsen does not address the fact that these decisions were made by superior courts, whose rulings do not have precedential value. Hartvigsen also does not provide any authority for the proposition that a trial court's granting of relief to one defendant automatically requires that the same relief be granted to all defendants by all future trial courts.

On appeal, Hartvigsen partially acknowledges that his equal protection argument was not properly raised in the trial court proceedings. He therefore requests that this Court remand his case to the superior court so that the equal protection argument can be further developed. We decline to grant Hartvigsen such an opportunity, given his failure to properly raise this claim in the first instance and his failure to meaningfully brief the claim on appeal.

Conclusion

The judgment of the superior court is AFFIRMED.