

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions 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

LUCAS JOHN POLWIN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13134  
Trial Court No. 4FA-15-01929 CI

SUMMARY DISPOSITION

No. 0125 — April 22, 2020

Appeal from the Superior Court, Fourth Judicial District,  
Fairbanks, Bethany S. Harbison, Judge.

Appearances: Olena Kalytiak Davis, Attorney at Law,  
Anchorage, under contract with the Office of Public Advocacy,  
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, Wollenberg, Judge, and Fabe,  
Senior Supreme Court Justice.\*

In 2012, Lucas John Polwin pleaded no contest to one count of fourth-degree assault.<sup>1</sup> Three years later, Polwin filed an application for post-conviction relief,

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

<sup>1</sup> AS 11.41.230(a)(1).

arguing that his original plea was not knowing and voluntary.<sup>2</sup> Polwin claimed that he had struggled to hear the magistrate judge who was taking his plea over video conference, and that he therefore did not understand the nature of his plea.

The trial court reviewed the audio and transcript of the plea hearing and held an evidentiary hearing to take testimony from Polwin. The court then issued a written order dismissing Polwin’s application for post-conviction relief. In the order, the court found that “the audio recording (and accompanying transcript) of the change of plea hearing unquestionably demonstrate that Mr. Polwin was able to hear and understand his colloquy with the court” and that Polwin’s self-serving testimony to the contrary was “not credible.” On appeal, Polwin argues that the trial court erred in finding that he understood the nature of his plea.

We have previously explained that “[s]tatements made by a defendant in support of a plea withdrawal motion should not be rejected out of hand merely because they are inconsistent with statements made during the change of plea hearing; nor should statements automatically be credited merely because they were made in the course of a formal change of plea hearing.”<sup>3</sup> But ultimately, “[t]he accuracy of the defendant’s representations is a question of fact to be resolved by the trial judge” based on the totality of the circumstances.<sup>4</sup> We review a trial court’s factual findings for clear error.<sup>5</sup>

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<sup>2</sup> See *Dolchok v. State*, 639 P.2d 277, 288 (Alaska 1982). The State moved to dismiss Polwin’s application as untimely under AS 12.72.020(a)(3)(A), but the court denied the State’s motion. The State did not cross-appeal this issue.

<sup>3</sup> *Wahl v. State*, 691 P.2d 1048, 1052 n.5 (Alaska App. 1984).

<sup>4</sup> See *Shetters v. State*, 751 P.2d 31, 35 n.1 (citing *Wahl*, 691 P.2d at 1052 n.5).

<sup>5</sup> See *Lindeman v. State*, 244 P.3d 1151, 1154 (Alaska App. 2011).

We have reviewed the record and conclude that the trial court did not clearly err in finding that Polwin understood the nature of his plea. In particular, we note that, at several points during the plea colloquy, when Polwin indicated that he was having trouble hearing or understanding, he asked the court to repeat or clarify the question. On each occasion, the court responded with a further explanation, and Polwin then consistently and coherently expressed his understanding and acceptance. The court specifically informed Polwin that it would not accept his plea unless he was confident that he understood the rights he was relinquishing, and Polwin stated that he was confident. The court's finding that Polwin's contrary testimony at the evidentiary hearing was not credible is entitled to broad deference.<sup>6</sup>

Polwin also argues on appeal that the trial court's order was insufficient for meaningful appellate review. But in its order, the trial court summarized the plea colloquy and Polwin's testimony from the evidentiary hearing and then expressly found that Polwin's testimony was not credible. Having reviewed the record as a whole, we conclude that the court's findings were sufficient for appellate review.

The judgment of the trial court is AFFIRMED.

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<sup>6</sup> See *Pease v. State*, 54 P.3d 316, 331 (Alaska App. 2002).