

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

EARL CORNELIUS BATES,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-10350
Trial Court No. 3AN-07-2010 Cr

MEMORANDUM OPINION

No. 5859 — July 18, 2012

Appeal from the Superior Court, Third Judicial District,
Anchorage, Jack W. Smith, Judge.

Appearances: Marcelle K. McDannel, Assistant Public Advocate, Appeals & Statewide Defense Section, and Richard Allen, Public Advocate, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger,
Judges.

MANNHEIMER, Judge.

In our previous decision in this case, *Bates v. State*, 258 P.3d 851 (Alaska App. 2011), we affirmed Earl Bates's convictions for the attempted murder of his former girlfriend and for his assaults upon two men who were present in the residence with her.

However, we remanded Bates's case to the superior court for reconsideration of its decision to restrict Bates's eligibility for discretionary parole. *Id.* at 866.

(Bates received a composite sentence of 33 years' imprisonment. He normally would be eligible to apply for discretionary parole after serving 10¾ years of this sentence, but the superior court delayed Bates's parole eligibility until he has served 20 years of his sentence. *Ibid.*)

On remand, Superior Court Judge Jack W. Smith concluded that the restriction on Bates's parole eligibility was justified by Bates's lengthy history of assaultive crimes, his repeated past failures on probation, and his apparently intractable problems with alcohol.

We conclude that the record supports Judge Smith's characterization of Bates's history, and that this history provides a reasoned basis for concluding "that the normal parole eligibility prescribed [by statute] is insufficient to protect the public and ensure the defendant's reformation." *Hinson v. State*, 199 P.3d 1166, 1173 (Alaska App. 2008), quoting *Stern v. State*, 827 P.2d 442, 450 (Alaska App. 1992).

Accordingly, the superior court's decision to restrict Bates's parole eligibility is AFFIRMED.