IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DAVID L. PARKER, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11410 Trial Court No. 3AN-06-8157 CI MEMORANDUM OPINION No. 6247 — October 21, 2015

Appeal from the Superior Court, Third Judicial District, Anchorage, John Suddock, Judge.

Appearances: J. Adam Bartlett, Attorney at Law, Anchorage, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley, District Court Judge.[*]

Judge ALLARD.

David L. Parker appeals the superior court's order dismissing his application for post-conviction relief. Because we agree with the superior court that

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Parker's application failed to state a prima facie case for relief, we affirm the superior court's ruling.

Factual background and prior proceedings

In 1999, Parker was charged with various felony criminal offenses for taking sexually explicit photographs of a seventeen-year-old girl with whom he was having a sexual relationship and for providing marijuana to the girl and attempting to influence her later testimony.[1] Parker was also separately charged with three counts of first-degree misconduct involving a controlled substance after the police discovered LSD in Parker's briefcase and obtained information that he provided LSD to three minors.[2]

During the pretrial proceedings, Parker's trial attorney filed various motions to suppress, seeking to suppress the evidence found in the briefcase. The superior court denied the suppression motions. Parker initially wanted to enter a *Cooksey* plea — that is, to enter a no contest plea while reserving his right to appeal the superior court's denials of his motions to suppress.[3] But Parker could not enter a *Cooksey* plea because the suppression issues Parker wished to litigate were not dispositive of the charges against him.[4] (As the State pointed out at the time, the minors who received the LSD

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[1] For details of Parker's underlying criminal case and the prior appeals related to the case, see *Parker v. State*, 2004 WL 720111 (Alaska App. March 31, 2004) (unpublished), *on reh'g*, 90 P.3d 194 (Alaska App. 2004), *rev'd* 147 P.3d 690 (Alaska 2006), *on remand*, 151 P.3d 478 (Alaska App. 2006).

[2] AS 11.71.010(a)(2). First-degree misconduct involving a controlled substance is an unclassified felony that carries a maximum sentence of 99 years. AS 11.71.010(c); AS 12.-55.125(b).

[3] *See Cooksey v. State*, 524 P.2d 1251, 1255-57 (Alaska 1974).

[4] *See Miles v. State*, 825 P.2d 904, 905 (Alaska App. 1992).

from Parker could still testify to those transactions even without the LSD found in Parker's briefcase).[5]

After consulting with his attorney, Parker decided to enter a plea agreement with the State, thereby abandoning his right to appeal the suppression issues.[6] Parker subsequently pleaded no contest to three felony charges — attempted first-degree controlled substance misconduct,[7] unlawful exploitation of a minor,[8] and possession of child pornography.[9] The State dismissed the other charges.

(We note that Parker later moved to withdraw his plea, but the superior court denied the motion to withdraw from the plea, and we affirmed that denial on appeal.[10])

Parker then filed an application for post-conviction relief, arguing that his attorney incompetently litigated the suppression motions. The superior court dismissed Parker's application for failure to state a prima facie case.

Parker now appeals.

Why we agree with the superior court that Parker's pleadings failed to state a prima facie case for relief

On appeal, Parker argues that the superior court applied the wrong legal standard in dismissing his application. Specifically, Parker argues that the court

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[5] *Parker*, 2004 WL 720111 at *2.

[6] *Id.* at *3.

[7] AS 11.71.010(a)(2); AS 11.31.100.

[8] AS 11.41.455(a).

[9] AS 11.61.127(a).

[10] *Parker*, 2004 WL 720111 at *8.

erroneously ruled that because Parker was convicted under a plea agreement, he had no legal right to pursue an application for post-conviction relief challenging the competence of his attorney.

Having reviewed the superior court's orders, we conclude that the court did not dismiss Parker's application on this basis. In its order, the superior court observed — correctly — that, by accepting the plea agreement, Parker had abandoned his right to appeal the suppression motions that his attorney had filed; his claim of ineffectiveness therefore was limited to the claims that his attorney had *not* brought.

Ultimately, the superior court dismissed Parker's application because Parker's pleadings failed to state a prima facie case that his attorney's performance was constitutionally ineffective. In the superior court, and on appeal, Parker presented only general, conclusory claims of ineffectiveness, asserting that his attorney failed to "properly litigate" his suppression claims and claiming that if his attorney had "properly litigate[d]" these claims, the trial court would have ruled in his favor. We agree with the superior court that these types of conclusory assertions are insufficient as a matter of law.[11]

Accordingly, we AFFIRM the superior court's dismissal of Parker's application for failure to state a prima facie case for relief.

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[11] *LaBrake v. State*, 152 P.3d 474, 484 (Alaska App. 2007).