

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

ANISHA MICHAEL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12641  
Trial Court No. 4BE-16-004 AU

MEMORANDUM OPINION

No. 6377 — September 14, 2016

Appeal from the District Court, Fourth Judicial District, Bethel,  
Nathaniel Peters, Judge.

Appearances: Nathaniel Hainje, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Kenneth M. Rosenstein, Assistant Attorney General, Office of  
Criminal Appeals, Anchorage, and James E. Cantor, Acting  
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,  
Superior Court Judge.\*

Judge MANNHEIMER.

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

Anisha Michael appeals the denial of her peremptory challenge of District Court Judge Nathaniel Peters. (See Alaska Appellate Rule 216(a)(2), which gives defendants the right to pursue an interlocutory appeal in these circumstances.)

Alaska Criminal Rule 25(d) governs a litigant's right to peremptorily challenge a judge in a criminal case. Under subsection (d)(2) of this rule, a peremptory challenge must be filed "within five days after notice that the case has been assigned to a specific judge". In the present case, Judge Peters ruled that Michael's peremptory challenge was untimely — that Michael waited too long to challenge him.

On appeal, the State concedes that this ruling was wrong, and that Michael's challenge was timely.

As the State explains in its brief, Michael was arraigned in front of Magistrate Judge Bruce Ward, and Michael's case was tentatively assigned to Magistrate Ward. But a magistrate judge is not allowed to conduct a criminal trial unless the defendant consents, *see* AS 22.15.120(a)(6), and Michael never consented to have Magistrate Judge Ward preside over her trial. So, on June 7, 2016, Magistrate Ward set Michael's case for a pre-trial conference in front of Judge Peters.

This pre-trial conference was scheduled to be held on June 10th. But on June 8th, Judge Peters rescheduled Michael's pre-trial conference for June 15th — and he scheduled it in front of Superior Court Judge Charles W. Ray Jr.

At the June 15th pre-trial conference, Judge Ray told Michael that her case would be called for trial on June 20th. Judge Ray further indicated that a judge would be assigned to Michael's case at that time.

On June 20th, Judge Ray set Michael's trial for the following day (*i.e.*, June 21st), and he assigned Judge Peters to be the trial judge. Upon hearing that Judge Peters was assigned to her case, Michael peremptorily challenged Judge Peters.

We agree with the State that, given this sequence of events, Michael's peremptory challenge of Judge Peters was timely. Michael was not on notice until June 20th that Judge Peters would be her trial judge, and Michael's attorney immediately challenged Judge Peters.

Accordingly, the decision of the district court is REVERSED, and Michael's case must be assigned to a different judge.