

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, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PETER BALLOT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12546  
Trial Court No. 2KB-09-00215 CI

MEMORANDUM OPINION

No. 6795 — June 5, 2019

Appeal from the Superior Court, Second Judicial District,  
Kotzebue, Paul A. Roetman, Judge.

Appearances: Jason A. Weiner, Gazewood & Weiner, PC,  
Fairbanks, under contract with the Office of Public Advocacy,  
Anchorage, for the Appellant. Nancy R. Simel, Assistant  
Attorney General, Office of Criminal Appeals, Anchorage, and  
Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

Peter Ballot appeals the denial of his application for post-conviction relief as untimely. Ballot's post-conviction relief application was filed more than ten years

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

after the statutory deadline. For the reasons explained here, we affirm the superior court's order denying Ballot's application as untimely.

*Factual background and prior proceedings*

In 1996, Ballot pleaded no contest to third-degree sexual abuse of a minor. In 1997, Ballot pleaded no contest to attempted second-degree sexual abuse of a minor. Ballot was sentenced to 3 years to serve for each conviction for a total of 6 years to serve.

Ballot has been diagnosed with severe depression with psychotic and schizoid features. Ballot's IQ is 74, which is considered "borderline" intellectual functioning. According to the defense experts who have evaluated Ballot, Ballot has a difficult time processing information and following instructions.

From approximately 1996 through 1998, Ballot experienced an acute mental health crisis. Ballot was hearing voices and was intermittently suicidal; he was often placed in protective segregation by the Department of Corrections.

In 2000, Ballot was released from custody. From the time he was released until the present, Ballot has often been homeless. Shortly before his release, Ballot began writing letters to his sentencing judge, asserting that he was innocent of both sexual abuse convictions. The court responded to these letters by instructing Ballot on the procedures for filing a post-conviction relief application.

In 2001, the court issued an order acknowledging the receipt of Ballot's most recent letter and construing it as making a claim for post-conviction relief. The court also mailed post-conviction relief forms to Ballot. Ballot did not return the forms and, following several warnings, the case was closed.

In September 2004, Ballot sent a letter to the court indicating that he had mailed a post-conviction relief application to the court earlier that year. (No post-

conviction relief application was received by the court.) The court responded by mailing Ballot another set of post-conviction relief application forms to fill out.

In October 2005, Ballot filed an application for post-conviction relief, alleging that he was wrongfully convicted and that his attorney had provided ineffective assistance of counsel. The court responded by pointing out that Ballot still needed to file the paperwork asking for an attorney to be appointed and for the fee to be waived. Ballot successfully completed these two additional forms. However, after his request for a filing fee exemption was denied, Ballot took no further action in his case, and it was ultimately closed in May 2006 for failure to pay the filing fee.

In October 2009, Ballot filed the current application for post-conviction relief. Ballot was appointed counsel. In the years that followed, there were numerous representation hearings and other complaints by Ballot regarding his appointed attorney and the judge.

Ultimately, the parties agreed to bifurcate the proceedings, litigating the question of timeliness first and the underlying merits only if Ballot succeeded in having his application accepted as timely by the superior court. In the pleadings that followed, Ballot argued that the statutory exception under AS 12.72.020(b)(1)(A) applied to his case. Under AS 12.72.020(b)(1)(A), a post-conviction relief claim may be considered, notwithstanding the statute of limitations, if the applicant “establishes due diligence in presenting the claim and sets out facts supported by admissible evidence establishing that the applicant suffered from a mental disease or defect that precluded the timely assertion of the claim.”<sup>1</sup>

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<sup>1</sup> See AS 12.72.020(b)(1)(A).

The superior court held an evidentiary hearing to resolve the issue. Ballot and his two defense experts, Dr. Danelle Winn, a licensed clinical psychologist, and Dr. Aron S. Wolf, an expert in forensic psychiatry, testified at the hearing. Dr. Wolf testified that Ballot experienced an acute mental health crisis from 1996 to 1998, and that he continued to have symptoms after that time, although they were much less severe. Both experts testified that Ballot's thought disorder manifested itself in the jumbling of his oral and written thought processes.

During the evidentiary hearing, Ballot was questioned about why he failed to follow through on filing a post-conviction relief application. In response, Ballot testified that he wanted to wait until he took a class on legal research at the prison. Ballot also testified that he became discouraged after his 2005 application was dismissed for failure to pay the filing fee. According to Ballot, he became interested in filing another post-conviction relief application in 2009 after being advised to do so by another inmate, who then assisted him. (Ballot was incarcerated at the time for failure to update his sex offender registration.)

Following the evidentiary hearing, the superior court issued a nine-page written order, detailing its findings and legal conclusions from the hearing. In the order, the superior court suggested that Ballot had proved by clear and convincing evidence that he had initially suffered from a mental disease or defect that precluded him from timely filing his post-conviction relief application. But the court found that Ballot had failed to prove that the subsequent delay — from 1998 onwards — was caused by his mental disease or defect. The court found, in particular, that Ballot was “articulate,” with “good recall,” and that Ballot's testimony and pleadings over the years demonstrated that he had a sufficient understanding of the legal process and an ability to fill out the requisite forms. The court therefore concluded that Ballot had failed to show by clear and convincing evidence that he suffered from a mental disease or defect that precluded the

timely assertion of his post-conviction relief claims during the ten years that elapsed from 1999 to 2009.

*Why we affirm the superior court's order dismissing the post-conviction relief application as untimely*

On appeal, Ballot argues that the superior court erred in dismissing his application as untimely. In particular, Ballot argues that the superior court erred in finding that he did not suffer from a mental disease or defect after 1998. We agree with Ballot that the record establishes that Ballot was suffering from a mental disease or defect even after his acute mental health crisis was over. The evidence was undisputed that Ballot has a low IQ and that he continues to suffer disordered thoughts on an intermittent basis.<sup>2</sup> After reviewing the record, including Ballot's extensive filings with the court below, we acknowledge that Ballot deals with significant mental impediments.

However, the question before the superior court was whether Ballot proved, by clear and convincing evidence, that this mental disease or defect caused the significant delay that occurred here. We have reviewed all of the pleadings in this case as well as the evidentiary hearing. As the superior court noted, Ballot's 2005 pleadings indicate that there were times when he was capable of understanding what he needed to do and capable of complying with those requirements. Moreover, the record provides no clear explanation for the significant delay that occurred between the dismissal of the 2005 post-conviction relief application and the filing of the current 2009 application.

Given the record before us and Ballot's failure to explain this additional delay, we conclude that the superior court did not err when it determined that Ballot had

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<sup>2</sup> See AS 12.47.130(5) (criminal definition of "mental disease or defect").

failed to meet his burden of proving the exemption under AS 12.72.020(b)(1)(A) by clear and convincing evidence.

*Conclusion*

The judgment of the superior court is AFFIRMED.