IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DANIEL SPIERS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13033 Trial Court No. 3SW-15-00061 CI MEMORANDUM OPINION No. 6894 — August 19, 2020

Appeal from the Superior Court, Third Judicial District, Seward, Jennifer K. Wells, Judge.

Appearances: Jason A. Gazewood, Gazewood & Weiner, PC, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Timothy W. Terrell, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge ALLARD.

Daniel Spiers was leaving a bonfire when he backed his truck into another man's car. Spiers asked the man not to call the police and then left the scene. The vehicle owner reported the incident to the troopers and stated that Spiers was intoxicated. The troopers found Spiers at his home and arrested him. Spiers refused to submit to a breath test.

Spiers was subsequently charged with five offenses: driving under the influence, driving with a revoked license, leaving the scene of an accident involving property damage, driving in violation of a limitation placed on a driver's license, and refusal to submit to a chemical test.[1] At a trial call five weeks later — before discovery was complete — Spiers entered into a Rule 11 agreement, under which he pleaded guilty to driving under the influence and driving with a revoked license in exchange for dismissal of the three remaining charges and immediate release from jail.

Several months later, Spiers received the relevant police reports, which suggested that his attorney could have raised a meritorious suppression motion with regard to at least one of his charges.[2] Spiers then filed an application for post-conviction

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[1] AS 28.35.030(a)(1), AS 28.15.291(a)(1), AS 28.35.050(b), AS 28.15.291(a)(2), and AS 28.35.032(a), respectively.

[2] In the trial court proceedings and again on appeal, Spiers mischaracterizes this suppression motion as a "dispositive motion" that he claims would have resulted in the dismissal of "all charges." But, as the State correctly points out, the suppression motion was likely to result only in the dismissal of the refusal charge — a charge that was also dismissed as part of the accepted plea agreement. And to the extent Spiers believes that prevailing on his ineffective assistance of counsel claim in the post-conviction relief proceedings would result in the dismissal of all of his charges, this is incorrect. Assuming Spiers prevailed on his ineffective assistance of counsel claim, the remedy would be vacatur of the plea and reinstatement of the original charges. The parties would then proceed to litigate the merits of the suppression motion, and Spiers would go to trial on any remaining charges.

relief alleging ineffective assistance of counsel on the ground that his trial attorney should have received and reviewed the case discovery before Spiers accepted his plea.

The superior court dismissed Spiers's application for failure to state a *prima facie* case for relief. Spiers now appeals.

Whether the trial court erred in dismissing a post-conviction relief application for failure to establish a *prima facie* case is a question of law that we review *de novo*.[3] As a general matter, to establish a *prima facie* case of ineffective assistance of counsel, a defendant must show (1) that defense counsel failed to meet the standard of performance minimally required of criminal law practitioners; and (2) that there is at least a reasonable possibility that the outcome of the trial court proceedings would have been different but for the attorney's deficient performance.[4]

In the context of plea negotiations, a defendant must set forth facts that, if true, demonstrate that counsel provided incompetent advice that was "crucial to the defendant's decision whether to accept the plea bargain."[5] The defendant must also affirmatively state that "as a result of this incompetent advice, the defendant accept[ed] the plea bargain when he or she otherwise would not have done so."[6]

Spiers's pleadings fail on both counts. As an initial matter, we note that it is impossible to determine whether Spiers's attorney provided incompetent advice in this case because Spiers never explained what that advice actually was. In addition to failing to articulate the advice his attorney gave, Spiers also failed to establish that his

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[3] *See State v. Simpson*, 946 P.2d 890, 892 (Alaska App. 1997).

[4] *See Risher v. State*, 523 P.2d 421, 424-25 (Alaska 1974); *Garay v. State*, 53 P.3d 626, 628 (Alaska App. 2002).

[5] *Ferguson v. State*, 242 P.3d 1042, 1049 (Alaska App. 2010).

[6] *Id.*

decision to plead would have been different had he received different — *i.e.*, competent — advice. Instead, Spiers simply argued that his defense attorney was incompetent for letting Spiers plead guilty before receiving full discovery in the case.

But there are legitimate reasons why a defendant may choose to take a plea offer before discovery is complete, and it is not *per se* incompetent for a defense attorney to advise the defendant to do so, particularly when the offer may come with significant advantages such as immediate release from jail. Here, the record shows that Spiers was aware that discovery was not yet complete when he accepted the plea offer. Indeed, his attorney announced that fact and initially requested a continuance on that basis at the beginning of the hearing.

However, the record does not include any information about the advice Spiers received from his attorney or any way to evaluate its competency and its effect on Spiers's decision to accept the plea offer. Given these deficiencies, we agree with the superior court that Spiers failed to plead a *prima facie* case of ineffective assistance of counsel, and we AFFIRM the judgment of the superior court.