

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

CHUDIER KHAK BANGOUT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13303
Trial Court No. 3AN-17-04144 CI

MEMORANDUM OPINION

No. 6897 — September 9, 2020

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael D. Corey, Judge.

Appearances: Margot O. Knuth, Law Office of Marilyn J. Kamm, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Ann B. Black, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Mannheimer,
Senior Judge.*

Judge MANNHEIMER.

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

Chudier Khak Bangout appeals the superior court's dismissal of his application for post-conviction relief.

Bangout's post-conviction relief application was dismissed after his court-appointed attorney filed a certificate under Alaska Criminal Rule 35.1(e)(2)(C), declaring that Bangout had no claims for relief that had any arguable merit. In response to his attorney's "no arguable merit" certificate, Bangout filed a lengthy pleading in which he detailed his reasons for believing that his trial attorney had represented him incompetently.

One month later, the superior court issued a short preliminary order in which the court cursorily stated, "Upon review of the [attorney's] certificate and [Bangout's] file, it appears to the court that [Bangout] is not entitled to relief." The court's order did not explain why the court concluded that Bangout had no arguable claims for relief. However, the court stated that it would defer its final decision until it had a chance to more thoroughly evaluate Bangout's response to his attorney's "no merit" certificate.

A little over two months later, the superior court issued a one-page final order dismissing Bangout's application for post-conviction relief. Again, the court did not explain its reasons for concluding that Bangout had no arguable claims for relief.

The State concedes that both the superior court's preliminary order and its final order were improper, because both of these orders failed to offer any explanation of *why* the court believed that Bangout had no arguable claims for relief.

The State's concession is well-taken. In *Lampley v. State*, 353 P.3d 844, 845 (Alaska App. 2015), this Court held that when a trial court tentatively concludes, based on an attorney's "no arguable merit" certificate, that a defendant has no colorable claims for post-conviction relief, the trial court must explain its own reasons for reaching this conclusion — so that the defendant has a fair opportunity to respond to the court's

concerns, and so that, if the trial court later issues a final order dismissing the post-conviction relief application, an appellate court can meaningfully review the trial court's decision.

The superior court's two orders in this case failed to comply with this requirement. Accordingly, the judgment of the superior court is REVERSED, and this case is REMANDED for further proceedings on Bangout's application for post-conviction relief. We do not retain jurisdiction of this matter.