

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

LEROY STANSBERRY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13291
Trial Court No. 3AN-17-07947 CI

MEMORANDUM OPINION

No. 6934 — April 7, 2021

Appeal from the Superior Court, Third Judicial District,
Anchorage, Dani Crosby, Judge.

Appearances: Fleur L. Roberts, Law Offices of Fleur L. Roberts, Fairbanks, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Eric A. Ringsmuth, 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 WOLLENBERG.

Leroy Stansberry appeals the summary dismissal of his application for post-conviction relief as untimely. Stansberry argues that he presented a prima facie case that

he suffered from a mental disease or defect that prevented him from timely filing his application.

Having reviewed the pleadings filed in the superior court, we agree with Stansberry. We therefore vacate the dismissal of his application and remand for an evidentiary hearing to address the timeliness of Stansberry's application.

Underlying facts and proceedings

Following a jury trial, Stansberry was convicted of multiple counts of first-degree sexual assault and kidnapping. The superior court imposed a sentence of 95 years to serve.

Stansberry appealed, and on May 4, 2012, we affirmed Stansberry's convictions.¹ In our decision, we discussed at length the pretrial proceedings on Stansberry's competency and his repeatedly disruptive behavior that led the trial judge to remove him from the courtroom during trial. Stansberry did not file a petition for hearing in the Alaska Supreme Court challenging our decision.

Because Stansberry did not file a petition for hearing, our decision in Stansberry's direct appeal became final under the Alaska Rules of Appellate Procedure when the time for filing a petition expired in late May 2012.² (At that time, an appellant had fifteen days to file a petition for hearing from a decision by this Court.³) Under AS 12.72.020(a)(3)(A), Stansberry then had one year to file an application for post-conviction relief. Stansberry did not file an application during this time.

¹ *Stansberry v. State*, 275 P.3d 579 (Alaska App. 2012).

² Alaska R. App. P. 507(b) & 512(a)(2)(a).

³ Former Alaska R. App. P. 303(a) (2012).

In July 2017 — over four years after the statute of limitations expired — Stansberry filed a pro se application for post-conviction relief.

The State moved to dismiss Stansberry's application as untimely. Stansberry, then represented by counsel, filed an opposition to the motion to dismiss, arguing that a statutory exception to the statute of limitations applied. In particular, Stansberry's attorney contended that, under AS 12.72.020(b)(1)(A), Stansberry suffered from a mental disease or defect that precluded timely assertion of his claims.

Stansberry's attorney attached multiple exhibits to the opposition, including a series of Department of Corrections (DOC) medical records reporting on Stansberry's mental health. The records show that Stansberry was diagnosed with delusional disorder, paranoid type, and that he had a "lengthy resistance to treatment" before being involuntarily medicated in November 2014. According to the medical records, after Stansberry's involuntary medication, he showed some improvement, but his insight into his mental illness continued to be poor and he frequently returned to delusional thinking.

In particular, the records indicate that Stansberry continued to suffer persistent delusions about his criminal case. At times, he refused to recognize that he had been convicted and sentenced, and he seemed to believe that he was going to be released soon. He also believed that he had multiple different lawyers maintaining ongoing challenges to his continued incarceration.

Stansberry's attorney attached a notarized filing by Stansberry, dated July 2018. In the filing, Stansberry stated that he struggled with "keeping his sanity in place." He also stated that he had been in segregation from 2009 through 2015, during which time his mental health worsened. According to Stansberry, he had not been capable of understanding or focusing on his case during those years.

Based on the above, Stansberry's attorney asserted that Stansberry was suffering from a mental illness that precluded him from filing a timely application for

post-conviction relief. On behalf of Stansberry, the attorney requested an evidentiary hearing in order to present the testimony of Stansberry's treating physicians and mental health practitioners who could attest to his mental capacity.

The superior court granted the State's motion to dismiss. In a written order, the court stated that the only evidence supporting the claim that Stansberry's mental defect prevented him from filing was his own statement that he had suffered a mental breakdown while in segregation between 2009 and 2015. The court also noted that the medical records, from late 2014 to 2016, did not cover the period during which Stansberry was required to file (2012 to 2013). Accordingly, the court concluded that Stansberry had failed to present "a material factual issue of his mental defect requiring further consideration."

Why we conclude that Stansberry presented a prima facie case that a mental disease or defect prevented him from timely filing

Under AS 12.72.020(a)(3)(A), if a conviction is appealed, a criminal defendant may file for post-conviction relief up to one year after the appellate court's decision is final under the Alaska Rules of Appellate Procedure. Alaska Statute 12.72.020(b)(1)(A) sets out an exception to this 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 physical disability or from a mental disease or defect that precluded timely assertion of the claim[.]"

Thus, Stansberry's pleadings had to establish a prima facie case that he suffered from a mental disease or defect that precluded timely assertion of his claims and

that he presented his claims with due diligence.⁴ Whether an application for post-conviction relief sets forth a prima facie case for relief is a question of law that we review de novo.⁵

Having reviewed the pleadings, we conclude that Stansberry set forth a prima facie case that he met the timeliness exception. At this stage in the proceedings, in considering whether to grant a motion for summary dismissal, a court is obliged to treat all well-pleaded assertions of fact as true.⁶ While we agree with the superior court that conclusory statements are generally inadequate, we also conclude that the totality of the information offered by Stansberry raised a reasonable inference that he was suffering from a mental disease or defect during the filing period (and thereafter). His application therefore should have survived the motion to dismiss at this stage, although the ultimate factual question of whether he was suffering from a mental disease or defect that prevented him from timely filing his application must be determined following an evidentiary hearing.⁷

In its order, the superior court noted Stansberry's own statement that he suffered a mental breakdown while in segregation from 2009 to 2015. But the court nonetheless suggested that this statement, together with the medical records from 2014 to 2016, were insufficient to warrant an evidentiary hearing.

⁴ See *State v. Jones*, 759 P.2d 558, 565 (Alaska App. 1988).

⁵ *David v. State*, 372 P.3d 265, 269 (Alaska App. 2016).

⁶ See *LaBrake v. State*, 152 P.3d 474, 480 (Alaska App. 2007).

⁷ See *Eckhardt v. State*, 2011 WL 3558450, at *1 (Alaska App. Aug. 10, 2011) (unpublished) (recognizing that a post-conviction relief applicant “is entitled to a hearing on the application of the statute of limitations if there are any material factual issues”).

But it is clear from the medical records that Stansberry’s mental health issues predated the 2014 involuntary medication hearing. In a progress report from that time, a counselor noted that Stansberry had a history of mental health issues and a “lengthy resistance” to treatment. The report also explained that, following his involuntary medication, Stansberry was not as illogical as he had been “in the past” and that his judgment had “improved a bit,” but that his “insight into his mental illness continue[d] to be poor.” We also note that our decision in Stansberry’s direct appeal indicates that concerns about his competency dated back to before his 2008 trial.⁸ It is reasonable to infer that Stansberry’s health did not improve in the period before he was involuntarily medicated — and the records support that inference.

And once Stansberry started receiving treatment in 2014, there is significant documentation of the state of his mental health, including his difficulties with self-care and his delusions about his legal status and criminal case. At times, Stansberry refused to recognize that he had been convicted and sentenced, and he seemed to believe that he was going to be released soon.

When considered in the light most favorable to Stansberry, these records were sufficient to create a genuine issue of material fact as to whether Stansberry was suffering from a mental disease or defect prior to being involuntarily medicated. Stated differently, it was error to conclude from the absence of documentation explicitly tracing Stansberry’s mental disease or defect back to 2012 that there was no genuine issue of material fact as to his mental state during the relevant limitations period.⁹

⁸ *Stansberry v. State*, 275 P.3d 579 (Alaska App. 2012).

⁹ *See Cikan v. ARCO Alaska, Inc.*, 125 P.3d 335, 340 (Alaska 2005) (holding, in the context of a civil lawsuit, that the psychiatrist’s failure to specifically state that the plaintiff was incompetent during the years immediately after the accident, and therefore incapable of
(continued...)

Relying on Stansberry’s own assertion in his notarized filing that he had “made a full recovery for four years,” the State argues that Stansberry himself has suggested that he has been competent since 2014 (because the filing was dated July 2018).¹⁰ According to the State, even if Stansberry was initially incompetent, he was restored in time to file an application for post-conviction relief well before July 2017 and therefore was not diligent in filing. But the DOC records state that Stansberry continued to suffer from paranoid delusions, including delusions related to his criminal case, through October 2016. And Stansberry’s post-conviction relief attorney reported, in her opposition to the State’s motion to dismiss, that Stansberry had “little or no understanding of this court proceeding.” Thus, there is a question of fact as to whether Stansberry sufficiently regained competence and whether he was diligent in filing.

Finally, the State argues that Stansberry did not offer a sufficient explanation as to how his delusional disorder made it impossible for him to file a timely application for post-conviction relief.¹¹ But Stansberry stated in his notarized filing that, because of his mental health, he was not capable of understanding or focusing on his criminal case. The DOC records state that Stansberry had difficulty comprehending legal issues and that he suffered persistent delusions related to his criminal case. And

⁹ (...continued)
timely filing the lawsuit, was not determinative, where the psychiatrist otherwise provided substantial evidence of this possibility; “an unequivocal and time-specific diagnosis ruling out competency was not required to raise a genuine issue of disputed fact”).

¹⁰ The State also argues that Stansberry’s notarized filing was not admissible evidence. But the State did not object to the filing in the superior court, and the court considered Stansberry’s statement in its order. The State’s objection is therefore waived. *See Wilson v. State*, 244 P.3d 535, 539 (Alaska App. 2010) (citing *Turnbull v. LaRose*, 702 P.2d 1331, 1335 (Alaska 1985); *Kvasnikoff v. Weaver Bros. Inc.*, 405 P.2d 781, 784 (Alaska 1965)).

¹¹ *See Andrews v. State*, 2016 WL 756971, at *2 (Alaska App. Feb. 24, 2016) (unpublished).

Stansberry's attorney represented that Stansberry showed little or no understanding of his post-conviction relief case. Stansberry established a sufficient nexus between his mental disease and his lack of filing to overcome a motion to dismiss at this stage and to warrant an evidentiary hearing on the timeliness of his application.

Conclusion

We VACATE the judgment of the superior court dismissing Stansberry's application for post-conviction relief, and we REMAND for an evidentiary hearing on the timeliness of Stansberry's application.