

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PAUL JAMES JR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13907
Trial Court No. 4BE-19-00457 CI

SUMMARY DISPOSITION

No. 0342 — August 23, 2023

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

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth
D. Friedman, Prineville, Oregon, under contract with the
Office of Public Advocacy, Anchorage, for the Appellant. Ann
B. Black, Assistant Attorney General, Office of Criminal
Appeals, Anchorage, and Treg R. Taylor, Attorney General,
Juneau, for the Appellee.

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

Paul James Jr. appeals the dismissal of his application for post-conviction relief as untimely.

In August 2016, pursuant to a plea agreement, James pleaded guilty to attempted third-degree sexual assault, a misdemeanor offense,¹ and coercion, a felony

¹ AS 11.41.425(a)(1)(B) & AS 11.31.100(a).

offense.² The plea agreement encompassed a number of probation conditions, one of which prohibited James from returning to his home village of Alakanuk. The superior court went over the terms of the plea agreement at the change-of-plea hearing, including the level of charges to which James was pleading and the probation condition prohibiting James from returning to his village. James stated on the record that he understood the terms of the agreement.

More than three years later, in December 2019, James filed a facially untimely application for post-conviction relief, seeking to withdraw his plea based on ineffective assistance of counsel.³ James alleged that his attorney had incorrectly told him that coercion was a misdemeanor, as opposed to a felony, and that he would be able to return to his village under the plea agreement. James also argued that the statutory exception to the limitations period for newly discovered evidence of innocence applied, although he did not allege any newly discovered evidence.⁴ In addition, James argued that he was entitled to equitable tolling of the limitations period, but did not articulate a cognizable theory of equitable tolling.

The State moved to dismiss James's application for post-conviction relief as untimely, and the superior court granted the motion without holding a hearing.

Whether the defendant established a *prima facie* case that an exception to the statute of limitations applies is a question of law. We review questions of law *de novo*.⁵

² AS 11.41.530.

³ See AS 12.72.020(a)(3)(A) (establishing a limitations period of eighteen months from the entry of the judgment of conviction for post-conviction relief applications if the conviction was not appealed).

⁴ AS 12.72.020(b)(2).

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

We have reviewed James's pleadings in this case, and we conclude that James failed to establish a *prima facie* case that an exception to the statute of limitations applies. We agree with the superior court that the newly discovered evidence exception to the statute of limitations does not apply because James was not alleging newly discovered evidence of innocence, but instead was alleging ineffective assistance of counsel. And we agree that James is not entitled to equitable tolling because he was on notice at the time of the change-of-plea hearing that he was pleading to a felony and that he was not allowed to return to his home village while on probation.

We therefore AFFIRM the judgment of the superior court.