

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

EVERETT MAURICE MCKINNON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13692
Trial Court No. 3AN-18-04655 CI

SUMMARY DISPOSITION

No. 0329 — June 28, 2023

Appeal from the Superior Court, Third Judicial District,
Anchorage, Gregory Miller, Judge.

Appearances: Michael Horowitz, Law Office of Michael Horowitz, Kingsley, Michigan, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. RuthAnne Beach, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

In 2012, following a jury trial, Everett Maurice McKinnon was convicted of second-degree theft and second-degree forgery for attempting to cash a stolen check.¹

¹ Former AS 11.46.130(a)(7) (2011) and AS 11.46.505(a)(1), respectively.

We affirmed his convictions on direct appeal.²

In 2018, McKinnon filed an application for post-conviction relief. McKinnon’s application was facially untimely.³ However, following the appointment of counsel, McKinnon argued that he suffered from a mental disease or defect that precluded the timely assertion of his claims and thus qualified for an exception to the statute of limitations.⁴

The superior court rejected this argument on the pleadings and dismissed McKinnon’s application for post-conviction relief. McKinnon now appeals, arguing that he set out a *prima facie* case that the statutory exception to the statute of limitations applied and that the superior court should therefore have held an evidentiary hearing on the issue.

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 mental disease or defect that precluded timely assertion of the claim.” Here, McKinnon certainly set out facts that, if proven, established that he suffered from mental health issues. In particular, a psychologist diagnosed McKinnon with, *inter alia*, schizophrenia and mild neurocognitive disorder, the latter of which was due to a traumatic brain injury.

But McKinnon failed to set out any facts showing that his mental health issues “precluded timely assertion of [his] claim” or that he acted with due diligence in bringing his claim in light of his mental health issues. The closest McKinnon came on

² *McKinnon v. State*, 2015 WL 7197763, at *4 (Alaska App. Nov. 12, 2015) (unpublished).

³ McKinnon filed his application more than eleven months after the statutory deadline set out in AS 12.72.020(a)(3)(A).

⁴ AS 12.72.020(b)(1)(A).

this point were statements from the psychologist, who observed generally that McKinnon “appears to struggle with the tasks required to have filed his paperwork on time” due to his disorganized functioning. But McKinnon never presented any information about his attempts to file his application for post-conviction relief or any difficulties he had in filing.⁵

We therefore conclude that McKinnon failed to present a *prima facie* case that a mental disease or defect precluded the timely assertion of his claims.

The judgment of the superior court is AFFIRMED.

⁵ See *Andrews v. State*, 2016 WL 756971, at *2 (Alaska App. Feb. 24, 2016) (unpublished) (holding that the defendant’s conclusory assertion that his mental difficulties were sufficiently severe as to preclude him from timely filing his post-conviction relief application did not establish a *prima facie* case).