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.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RONALD T. WEST, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11882 Trial Court No. 3AN-13-10880 CI MEMORANDUM OPINION No. 6200 — July 1, 2015

Appeal from the District Court, Third Judicial District, Anchorage, Pamela Scott Washington, Judge.

Appearances: Ronald T. West, *in propria persona*, Anchorage, for the Appellant. Carole A. Holley, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Kossler, Judges.

Judge MANNHEIMER.

Ronald T. West appeals the district court's denial of his petition for post-conviction relief. In his petition, West sought to withdraw his guilty plea to a charge of unlawfully possessing a wolf hybrid. West argued that he should be allowed to withdraw his plea because, according to West, the State failed to make pre-trial disclosure of exculpatory information within its possession. The district court denied West's petition

on several grounds. Among these grounds was the district court's conclusion that the information West was referring to was, in fact, not exculpatory.

For the reasons explained here, we agree that the information in question is not exculpatory, and we therefore affirm the district court's decision.

Underlying facts

Under 5 AAC 92.030, it is unlawful for a person to possess a wolf or a wolf hybrid unless the person has a permit from the Department of Fish and Game. For purposes of this regulation, a "wolf hybrid" includes "[any] offspring from a mating of a wolf or wolf hybrid with a dog or another wolf hybrid". 5 AAC 92.030(e)(3).

In 2010, West was charged with possessing a wolf hybrid without a permit. West's wolf hybrid — named Gringo — came to the attention of the authorities when, on June 8, 2010, it escaped from West's control, attacked two dogs (killing one of them), and then acted aggressively toward people who were in the area.

The State obtained DNA samples from Gringo and sent these samples to the Veterinary Genetics Laboratory at the University of California at Davis. This laboratory had a test for determining, based on an animal's DNA, whether that animal was a wolf, a dog, or a wolf hybrid.[1] The laboratory tested Gringo's DNA and concluded that Gringo was a wolf hybrid.

After West was charged with unlawfully possessing a wolf hybrid, he filed a number of motions challenging the validity and reliability of the DNA test used by the Veterinary Genetics Laboratory. Among these pleadings was a request for a *Daubert/Coon* hearing to determine whether the DNA test results were admissible at all.

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[1] For a description of the laboratory's DNA test, see: https://www.vgl.ucdavis.edu/services/Wolf-DogHybrid.php

But before any *Daubert* hearing was held, West decided to accept a plea agreement. Under this agreement, West pleaded guilty to possessing a wolf hybrid (Gringo) in violation of state law, and the State agreed that West would receive a 1-year suspended imposition of sentence. The State also dismissed a related reckless endangerment charge, and the State agreed not to pursue any other charges in connection with West's ownership of Gringo. Additionally, the State agreed to return Gringo to West if West removed Gringo from the state.

On May 13, 2011, West was sentenced in accordance with the terms of this plea agreement.

During the ensuing year, West followed the terms of his probation, and his conviction was set aside. West then returned to Alaska with Gringo.

In 2013, Gringo again came to the attention of the authorities when he escaped from West's control. When the authorities investigated the situation, they discovered that West had a second wolf hybrid in addition to Gringo. Consequently, West was charged with two counts of unlawfully possessing wolf hybrids. Soon after these charges were filed, West initiated a post-conviction relief proceeding in which he sought to withdraw his guilty plea in the 2010 case.

The gist of West's post-conviction relief claim was that the State had withheld exculpatory information from him during the plea negotiations. West claimed that, sometime in 2012 or 2013, he examined the Veterinary Genetics Laboratory website and found that the laboratory had posted additional information about its DNA test for wolves and wolf hybrids — information that, according to West, substantially undermined the validity or reliability of the test.

West claimed that this information was in the State's possession during the plea negotiations, but that the State had not provided this information to West before he

entered his plea. West also claimed that, if he had been aware of this information, he would not have pleaded guilty.

Here is the information from the laboratory's website that West claimed was exculpatory:

> The [laboratory's] dog-wolf hybrid test is powerful to detect hybrids within 3 generations. Because of the close genetic relationship among dogs and wolves, wolf ancestry beyond 3 generations may be undetectable by these tests.

The district court concluded that this information was not exculpatory, and the court therefore dismissed West's petition.

Why we agree with the district court

The information posted on the laboratory's website is an acknowledgement that, due to the close genetic relationship between dogs and wolves, the laboratory's DNA test may fail to detect wolf hybrids if the wolf ancestor is farther back than three generations.

Indeed, the most current version of the laboratory's website contains an even more explicit warning that its DNA test may fail to detect wolf ancestry, even within three generations:

> We test for 22 DNA STR (short tandem repeat) markers that have variants specific to wolves. Because of their close genetic relationship, dogs and wolves share most alleles in the markers used for this test. Wolf-specific alleles in our marker panel are also infrequent in wolves[,] such that not all wolves possess these alleles. Although our test is powerful to detect hybridization, absence of wolf-specific alleles is not a guarantee that there is no wolf ancestry.

We take judicial notice of the content of this website, not for the truth of the matters asserted in the above-quoted text, but simply for the fact that the website contains this text — and that, if this text is to be believed, it further supports West's position that the laboratory's DNA test is fallible.

But it is not sufficient for West to show that the DNA test is deficient or inaccurate in certain respects. West must show good cause to believe that he was prejudiced by deficiencies or inaccuracies in the test.

In the above-quoted disclaimers, the laboratory is conceding that its test for wolf ancestry may produce "false negatives" — *i.e.*, that there will be times when an animal is descended from a wolf, but the laboratory's DNA test will fail to detect the animal's wolf ancestry. But in West's case, the Veterinary Genetics Laboratory positively identified Gringo as having wolf ancestry. To prevail on his exculpatory evidence claim, West would have to show that the laboratory's testing process yielded a significant number of false *positives* — instances where an animal was *not* a wolf hybrid, but the laboratory's test falsely identified the animal as having wolf ancestry.

The information that West relies on does not suggest that the laboratory's DNA testing process is flawed by false positives — only false negatives. The district court therefore correctly concluded that this information is not exculpatory in West's case.

West's other listed points on appeal

West's statement of points on appeal lists eighteen numbered claims, including the claim that the district court judge assigned to his case should have recused herself, as well as various claims that West was denied procedural due process during

the district court proceedings, and various claims that the district court either affirmatively misapplied the law or failed to apply the correct law.

Most of these claims are inadequately briefed. We note, in particular, that our conclusion of inadequate briefing applies to West's claim that the district court judge should have recused herself. The remainder of West's points on appeal are moot, given our conclusion that the information West relied on is not exculpatory.

Conclusion

The judgement of the district court is AFFIRMED.