

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

CRESS CARNEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13932
Trial Court No. 3DI-19-00151 CI

SUMMARY DISPOSITION

No. 0332 — July 19, 2023

Appeal from the Superior Court, Third Judicial District,
Dillingham, Christina L. Reigh, Judge.

Appearances: Chris Peloso, Attorney at Law, Juneau, for the
Appellant. Eric A. Ringsmuth, 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.

Cress Carney was convicted, following a jury trial, of first-degree murder
and tampering with physical evidence.¹ We affirmed his convictions on direct appeal.²

Carney filed a timely application for post-conviction relief, alleging that
his trial attorney was ineffective. The superior court dismissed Carney's first

¹ AS 11.41.100(a)(1)(A) and AS 11.56.610(a)(1), respectively.

² *Carney v. State*, 249 P.3d 308, 313 (Alaska App. 2011).

application on the pleadings, and we affirmed this ruling on appeal.³ Carney then filed a timely second application for post-conviction relief, which was also dismissed on the pleadings.

Over one year after the ruling on Carney’s second application became final, Carney filed a third application for post-conviction relief. The State moved to dismiss Carney’s third application, arguing that it was procedurally barred for two reasons: (1) because it was an impermissible successive application under AS 12.72.020(a)(6) and (2) because it was untimely under AS 12.72.025.

The superior court ruled that Carney’s third application was not barred as successive by AS 12.72.020(a)(6) because Carney was raising a layered *Grinols* claim — *i.e.*, a claim that his trial and post-conviction relief attorneys had all been incompetent.⁴ But the superior court dismissed the application as untimely under AS 12.72.025, holding that it was filed outside of the one-year limitation period for *Grinols* claims (*i.e.*, over one year after the dismissal of his second application became final). Carney now appeals that ruling.

Carney first argues that AS 12.72.025 does not apply to his application. We find no merit to this claim. Under AS 12.72.025, a successive application for post-conviction relief “based on a claim that the assistance the applicant’s attorney provided in a prior application . . . was ineffective” must be filed “within one year after the court’s decision on the prior application is final.” Carney’s third application is unambiguously based on a claim that he received ineffective assistance from his prior attorneys. Indeed, if Carney’s application was *not* based on such a claim, it would have been barred as successive under AS 12.72.020(a)(6).

³ *Carney v. State*, 2017 WL 655740, at *1 (Alaska App. Feb. 15, 2017) (unpublished).

⁴ *See Grinols v. State*, 10 P.3d 600 (Alaska App. 2000), *aff’d*, 74 P.3d 889 (Alaska 2003).

Carney also argues that strict adherence to the limitations period set out in AS 12.72.025 would violate his due process rights. In support of this argument, Carney argues that his second post-conviction attorney was ineffective and suggests that his cognitive deficits impaired his ability to file a timely application. But the limitations period in AS 12.72.025 expressly applies to claims that prior post-conviction attorneys were ineffective. And Carney did not assert facts in his pleadings that, if proved, would establish that he acted with due diligence in presenting his claim but was precluded from timely asserting his claim by a mental disease or defect.⁵ He did not explain what steps he took in preparing his third application for relief or why he was able to timely file his first and second applications but unable to timely file his third application.

The judgment of the superior court is **AFFIRMED**.

⁵ See AS 12.72.020(b)(1)(A) (providing an exception to the limitations period for a first application for post-conviction relief “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 the timely assertion of the claim”).