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

JIMMY A. LAMPLEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13355
Trial Court No. 3PA-12-01094 CI

SUMMARY DISPOSITION

No. 0343 — August 30, 2023

Appeal from the Superior Court, Third Judicial District, Palmer, Jonathan A. Woodman, Judge.

Appearances: Benjamin I. Whipple, Attorney at Law, Palmer, for the Appellant. Timothy W. Terrell, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison, Judge, and Bolger, Senior Supreme Court Justice.*

Jimmy A. Lampley appeals the dismissal of his second application for post-conviction relief.[1] Lampley's second application alleged that his trial attorney and

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* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

[1] *See Grinols v. State*, 74 P.3d 889, 895 (Alaska 2003) (authorizing a criminal defendant to file a second post-conviction relief application challenging the effectiveness of their attorney in their first post-conviction relief proceeding).

his first post-conviction relief attorney were incompetent for failing to argue, based on *Keyser v. State*, that a worst offender finding was inappropriate when there was "no meaningful history of failed rehabilitative efforts."[2] The State moved to dismiss the application for failure to state a *prima facie* case. The superior court granted the motion and dismissed the second application for post-conviction relief. Lampley now appeals that ruling.[3]

Having reviewed the relevant portions of the record, including the sentencing hearing, we conclude that Lampley's application was properly dismissed for failure to state a *prima facie* case. Despite Lampley's arguments to the contrary, *Keyser* would have been of limited assistance to Lampley had his attorney raised it at sentencing. In *Keyser*, this Court reversed the defendant's 10-year sentence for first-degree theft because we concluded that "the record does not support the sentencing court's finding that Keyser is the type of 'intractable offender' who can neither be rehabilitated nor deterred."[4] We reached this conclusion, in part, because Keyser had only two prior misdemeanor convictions for which he had received minimal jail time.[5]

Here, by contrast, Lampley has over forty prior misdemeanor convictions (including a number of domestic violence and assault-related convictions), a significant history of custodial disciplinary infractions (including infractions related to violent behavior), and a well-documented track record of probation revocations (that have

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[2] *Keyser v. State*, 856 P.2d 1170, 1175-78 (Alaska App. 1993).

[3] We note that this appeal was initially stayed pending resolution of Lampley's first post-conviction relief application because resolution of that first application could have rendered this appeal moot. The stay was lifted after the superior court dismissed Lampley's first post-conviction relief application on remand and Lampley did not appeal that dismissal.

[4] *Keyser*, 856 P.2d at 1178.

[5] *Id.* at 1172, 1177-78.

resulted in substantial jail time over the years). The sentencing record also shows that Lampley has been ordered or recommended to participate in rehabilitative treatment in the past, and that Lampley was openly hostile and threatening to both the court and the victims at sentencing. Lastly, the sentencing record shows that, although the sentencing court was appropriately concerned about sentencing Lampley, a first-time felony offender, to a maximum sentence when Lampley had not yet had the benefit of supervised felony probation, the court ultimately concluded that a maximum sentence was necessary because of Lampley's conduct, significant record, and demonstrated dangerousness.

In sum, the court's sentence and worst offender finding are well supported by the record, and there is nothing in the record or in Lampley's pleadings to suggest that his sentence would have been any different if his attorney had made different arguments at sentencing.

The superior court's dismissal of Lampley's second post-conviction relief application for failure to state a *prima facie* case is AFFIRMED.