

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

JAMES E. BARBER,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11401
Trial Court No. 1SI-10-446 CR

MEMORANDUM OPINION

No. 6469 — May 17, 2017

Appeal from the Superior Court, First Judicial District, Sitka,
David V. George, Judge.

Appearances: James E. Barber, *in propria persona*, Anchorage,
for the Appellant. Timothy W. Terrell, Assistant Attorney
General, Office of Criminal Appeals, Anchorage, and Jahna
Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

This case is before us, ostensibly as a motion for review of a bail order.
But, in fact, there is no final order to review.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

This Court recently decided James E. Barber’s criminal appeal,¹ but Barber’s appellate litigation is not yet resolved, because he has given notice that he intends to petition the Alaska Supreme Court to review certain portions of our decision that are unfavorable to him. *See Barber v. State*, File No. S-16631.

Barber filed a motion in the superior court (through an attorney, Jon Buchholdt) in which Barber seemed to ask for bail release pending the final resolution of his appeal. The State responded to this motion by informing the superior court that Barber had already been released on parole, so there was no longer a question of bail.

Barber’s attorney then informed the superior court that the relief Barber was *really* seeking was unconditional release from his sentence. He argued that, because this Court had reversed Barber’s conviction for witness tampering, Barber had completely fulfilled his remaining sentence, and thus he should not be on parole; rather, he should be free.

The superior court told Barber and his attorney that the court had not understood that Barber was raising this claim. Barber’s attorney replied that, if the court had only read his pleadings more carefully, the court would have understood that Barber was seeking unconditional discharge from his sentence. The court answered that, even if that was so, the court was not prepared to issue a ruling on a claim for unconditional release. The court told Barber’s attorney that he should file another motion formally seeking Barber’s unconditional release from his sentence; the State would then be allowed to respond, and the court would then rule on the merits of Barber’s claim.

Instead of doing that, Barber filed this “bail appeal”.

This case is not a bail appeal under Alaska Appellate Rule 206(b) — because it does not involve the propriety of an order setting bail. Rather, Barber’s

¹ *See Barber v. State*, 386 P.3d 1254 (Alaska App. 2016).

underlying claim is that he has served his sentence and is therefore entitled to unconditional release.

The superior court has yet to issue a final order with respect to that claim.² Indeed, the superior court expressly *declined* to issue a final order resolving that claim. The court instead directed Barber to formally make his claim for unconditional release in a new pleading, and *then* the court would issue a ruling on that claim in due course.

Thus, the only order for us to review is the superior court's order directing Barber to formally renew his claim in a new pleading. That order is not a "final order" because it does not resolve the merits of Barber's claim, nor does it otherwise terminate his litigation of that claim. Thus, Barber's appeal is premature.

Potentially, Barber could be petitioning us to review the superior court's interlocutory order directing Barber to renew his claim for unconditional release in a new pleading. If so, then we deny the petition for review; Barber has not shown that the superior court abused its discretion when it directed Barber to file a new pleading that clearly set forth his claim for unconditional release from his sentence.

In sum, this appeal is DISMISSED.

² See Alaska Appellate Rule 202; *McLaughlin v. State*, 173 P.3d 1014, 1015 (Alaska App. 2007).