

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

THOMAS M. BEATTIE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11887
Trial Court No. 3PA-11-2739 CI

MEMORANDUM OPINION

No. 6474 — May 24, 2017

Appeal from the Superior Court, Third Judicial District, Palmer,
Eric Smith, Judge.

Appearances: Gavin Kentch, Law Office of Gavin Kentch,
LLC, Anchorage, for the Appellant. Diane L. Wendlandt,
Assistant Attorney General, Office of Criminal Appeals,
Anchorage, and Craig W. Richards, Attorney General, Juneau,
for the Appellee.

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

Judge MANNHEIMER.

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

Thomas M. Beattie was convicted of felony driving under the influence and driving with a revoked license. This Court affirmed Beattie's convictions on direct appeal. *See Beattie v. State*, 258 P.3d 888 (Alaska App. 2011).

A few months after this Court affirmed Beattie's convictions, Beattie filed a petition for post-conviction relief. In his petition, Beattie asserted that he was entitled to a new trial because of newly discovered evidence — in particular, evidence that one of the witnesses who testified at trial, Robert Gustafson, had now recanted his testimony.

At Beattie's trial, Gustafson testified that he observed a truck stuck in the snow outside his house. Gustafson stated that there was only one occupant in the truck, and that this occupant walked away from the scene, yelling not to worry "about the fucking truck". Later, when the troopers detained Beattie and brought him back to Gustafson's residence, Gustafson identified Beattie as the occupant of the truck by the sound of his voice.

But in Beattie's petition for post-conviction relief, he claimed that Gustafson later admitted (in a conversation with a mutual friend, Dennis Hopkins) that Beattie had *not* been the driver. According to Beattie's petition, Gustafson told Hopkins that the prosecuting attorney had "asked him to get on the witness stand and [falsely] say that Beattie was the driver."

The superior court held an evidentiary hearing to investigate this claim. At this hearing, the court heard testimony from Beattie, from Gustafson, and from the mutual friend, Dennis Hopkins.

Contrary to Beattie's claim of recantation, Gustafson re-affirmed his trial testimony. Gustafson denied that the prosecutor had directed him to identify Beattie as the driver, and Gustafson further denied that he (Gustafson) had ever said anything like that to Hopkins.

Hopkins also failed to corroborate Beattie’s claim of recantation. Hopkins testified that he did not recall Gustafson ever saying that the prosecutor had directed him to identify Beattie as the driver.

Beattie then took the stand and disputed the testimony given by Gustafson and Hopkins. Beattie testified that Hopkins approached him after the trial and related a conversation that he (Hopkins) had had with Gustafson. According to Beattie, Hopkins told him that, during this conversation, Gustafson admitted that Beattie had not been the driver of the car, and Gustafson further stated that the prosecutor had instructed him to falsely identify Beattie as the driver.

After hearing this testimony, the superior court declared that Gustafson and Hopkins were “totally credible”. More specifically, the court found that Gustafson had never said the things that Beattie claimed in his petition for post-conviction relief. The judge suggested that Beattie must have misunderstood what Hopkins was saying when Hopkins described his post-trial conversation with Gustafson.

Having concluded that Beattie had failed to prove that Gustafson ever recanted his trial testimony, or that the prosecutor had directed Gustafson to falsely identify Beattie as the driver, the superior court denied Beattie’s petition for post-conviction relief.

In this appeal, Beattie attacks the superior court’s ruling on various technical grounds — most notably, on the ground that the court articulated the wrong legal standard when it denied Beattie’s petition. But the superior court’s ruling did not turn on fine differences in the applicable legal standard. Rather, the superior court’s ruling hinged on the court’s finding that Beattie had failed to prove the factual assertions contained in his petition for post-conviction relief.

In his petition, Beattie alleged (1) that Gustafson had recanted his trial testimony, and (2) that Gustafson had admitted that the prosecutor instructed him to

falsely identify Beattie as the driver. The superior court expressly found that Beattie had failed to prove either of these assertions.

Unless the superior court's findings of fact are clearly erroneous, Beattie is not entitled to post-conviction relief. Beattie has failed to show that the court's findings are clearly erroneous. Indeed, Beattie's brief fails to address these crucial findings of fact.

Accordingly, the judgement of the superior court is **AFFIRMED**.