

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

WILLIAM G. YATCHMENOFF,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12037  
Trial Court No. 3AN-99-5507 CR

MEMORANDUM OPINION

No. 6488 — July 5, 2017

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Philip R. Volland, Judge.

Appearances: William G. Yatchmenoff, pro se, Wasilla, and Tracey Wollenberg, Assistant Public Defender, and Quinlan Steiner, Public Defender, 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 ALLARD.

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

In 2000, William G. Yatchmenoff was convicted of six counts of first-degree sexual abuse of a minor.<sup>1</sup> At sentencing, the sentencing judge found various statutory aggravators.<sup>2</sup> Based on those aggravators, the judge imposed a sentence above the applicable presumptive term on some of Yatchmenoff's convictions. Yatchmenoff's composite sentence was ultimately 45 years with 15 years suspended (30 years to serve).

Yatchmenoff appealed his convictions to this Court. We affirmed Yatchmenoff's convictions in an unpublished decision.<sup>3</sup>

A year after Yatchmenoff's appeal was final, the United States Supreme Court decided *Blakely v. Washington*.<sup>4</sup> *Blakely* held that the Sixth Amendment to the United States Constitution guarantees a criminal defendant a right to a jury trial and proof beyond a reasonable doubt on all factual issues (other than prior convictions) that would increase the defendant's potential maximum sentence.<sup>5</sup>

Following the *Blakely* decision, Yatchmenoff filed a motion under Alaska Criminal Rule 35(a), asserting that his sentence was illegal because the aggravators in his case had been found by the judge rather than a jury. The superior court denied the motion, concluding that *Blakely* did not apply retroactively to defendants whose appeals were final before *Blakely* was issued. Yatchmenoff appealed this ruling, and his appeal was stayed (along with the appeals of other criminal defendants similarly situated) until

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<sup>1</sup> AS 11.41.434(a)(3)(A).

<sup>2</sup> See AS 12.55.155(c)(5), (8), (10), (18)(A), (18)(B), and (21).

<sup>3</sup> See *Yatchmenoff v. State*, 2003 WL 21350242 (Alaska App. June 11, 2003) (unpublished).

<sup>4</sup> 542 U.S. 296 (2004).

<sup>5</sup> *Id.* at 301.

the Alaska Supreme Court decided *State v. Smart*.<sup>6</sup> In *Smart*, the Alaska Supreme Court held that the right to a jury trial announced in *Blakely* did not apply retroactively to defendants whose convictions were already final when *Blakely* was decided on June 24, 2004.

After the Alaska Supreme Court decided *Smart*, this Court issued an order (1) lifting the stay in all of the *Blakely* appeals, including Yatchmenoff's, and (2) directing the defendants in all of those cases to tell this Court whether they conceded that their appeal was resolved by the supreme court's decision in *Smart*. In response, Yatchmenoff's appointed counsel notified this Court that Yatchmenoff was abandoning his claim on appeal. The Clerk's Office thereupon closed Yatchmenoff's case.

More than three years later, Yatchmenoff filed a pro se motion to correct an illegal sentence, arguing that the pre-2005 presumptive sentencing scheme was unconstitutional. The State argued that Yatchmenoff was essentially seeking to relitigate the issue of whether *Blakely* was retroactive — an issue that had already been definitively resolved in *Smart*. The superior court agreed and denied the motion.

Yatchmenoff then filed this appeal, filing both a pro se brief and a brief through appointed counsel. On appeal, Yatchmenoff's counsel acknowledges that Yatchmenoff is essentially asking this Court to overrule the Alaska Supreme Court's decision in *Smart*. Counsel likewise acknowledges that this Court lacks the authority to do so.<sup>7</sup> Counsel nevertheless briefs the issue of whether *Smart* should be overruled in order to preserve it for consideration by the Alaska Supreme Court.

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<sup>6</sup> 202 P.3d 1130 (Alaska 2009).

<sup>7</sup> See *Alaska Pub. Interest Research Group v. State*, 167 P.3d 27, 43-44 (Alaska 2007); see also *Harmon v. State*, 2017 WL 540969, at \*2 (Alaska App. Feb. 8, 2017) (unpublished) (stating that this Court cannot overrule Alaska Supreme Court precedent).

In response, the State argues that *Smart* was correctly decided and should not be overruled. The State also argues that Yatchmenoff is procedurally barred from raising his *Blakely* claim because his motion is a successive petition for post-conviction relief.<sup>8</sup>

We conclude we do not need to decide if this is a successive petition because Yatchmenoff’s claim is also procedurally barred under AS 12.72.020(a)(5), which prohibits defendants from seeking post-conviction relief based on a claim that was “decided on its merits or on procedural grounds in any previous proceeding.” Indeed, Yatchmenoff’s claim is similarly barred under the doctrine of *res judicata*, which prohibits relitigation of already litigated claims and also bars parties from raising new claims or defenses that could have been raised in the prior litigation.<sup>9</sup> Having previously litigated the question of whether his sentence was illegal under *Blakely* in the earlier litigation, and having abandoned his appeal of this issue after the Alaska Supreme Court decided *Smart*, Yatchmenoff is not entitled to raise these arguments again.

Accordingly, we AFFIRM the judgment of the superior court.

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<sup>8</sup> See AS 12.72.020(a)(6) (prohibiting defendants from seeking post-conviction relief if a previous application for post-conviction relief has been filed under this chapter or under the Alaska Rules of Criminal Procedure).

<sup>9</sup> *Hurd v. State*, 107 P.3d 314, 327-28 (Alaska App. 2005).