

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

RICHARD DALE POMEROY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12571
Trial Court No. 3AN-15-7036 CI

MEMORANDUM OPINION

No. 6532 — October 25, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael D. Corey, Judge.

Appearances: Richard Dale Pomeroy, pro se, Anchorage,
Appellant. Eric A. Ringsmuth, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Jahna Lindemuth,
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg,
Judges.

Judge ALLARD.

In 2005, Richard Dale Pomeroy pleaded no contest to third-degree assault. In the intervening years, he has filed multiple petitions for post-conviction relief attacking this conviction.¹ This is the appeal from his fourth petition for post-conviction

¹ See, e.g., *Pomeroy v. State*, 2015 WL 1285700, at *1 (Alaska App. Mar. 18, 2015) (unpublished); *Pomeroy v. State*, 258 P.3d 125, 126 (Alaska App. 2011).

relief, which was dismissed by the superior court because it was untimely, successive, and raised claims that either were, or could have been, raised in prior proceedings.

On appeal, Pomeroy argues that the superior court erred in finding the petition untimely because he claims that he was filing a petition for writ of coram nobis, for which the timeliness requirements under Alaska's post-conviction statute purportedly do not apply. This claim is meritless. Given the nature of Pomeroy's challenges to his conviction, his petition is properly characterized as an application for post-conviction relief under Alaska Criminal Rule 35.1,² and it was properly dismissed as untimely under AS 12.72.020(a)(3). Pomeroy's petition was also properly dismissed under AS 12.72.-020(a)(5) and AS 12.72.020(a)(6).

Pomeroy also argues that the superior court erred in failing to make any factual findings regarding the merits of Pomeroy's underlying claims. But Pomeroy's application was properly dismissed on procedural grounds and, therefore, there was no reason for the superior court to reach the merits of Pomeroy's claims.

Lastly, Pomeroy argues that the trial court erred in failing to appoint him an attorney to litigate the timeliness of his petition. We find no error in the court's refusal to appoint an attorney to litigate the timeliness of this successive petition.³

The judgment of the superior court is AFFIRMED.

² Alaska R. Crim. P. 35.1(b) (explaining that Criminal Rule 35.1 is intended "to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs").

³ *Cf. Holden v. State*, 172 P.3d 815 (Alaska App. 2007); *see also Pomeroy v. State*, 2015 WL 1285700, at *5 (Alaska App. Mar. 18, 2015) (unpublished).