

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

JOHNNY RUSSELL INGLES,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11844
Trial Court No. 4FA-11-2347 CI

MEMORANDUM OPINION

No. 6534 — October 25, 2017

Appeal from the Superior Court, Fourth Judicial District,
Fairbanks, Jane F. Kauvar, Judge.

Appearances: Jane B. Martinez, Anchorage, under contract with
the Public Defender Agency, and Quinlan Steiner, Public
Defender, Anchorage, for the Appellant. Nancy R. Simel,
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).

In January 2007, Johnny Russell Ingles was released from prison on mandatory parole after he had served a substantial portion of his sentence for first-degree sexual abuse of a minor. Three and a half years later, in July 2010, the Parole Board revoked Ingles's parole after finding that he had violated his parole conditions.

The Board decided that Ingles could be re-paroled in July 2012 (*i.e.*, after he served a little over two years in custody for the parole violations), but the Board conditioned Ingles's re-parole on his successful completion of the sex offender treatment program offered at the Lemon Creek Correctional Facility.

Ingles then filed a petition for post-conviction relief in which he challenged the Parole Board's decision. Ingles argued that the Parole Board acted unreasonably harshly when it required him to serve two years before he would be re-paroled. Ingles also argued that, because the Department of Corrections had not transferred him to Lemon Creek, it was a violation of due process for the Parole Board to require him to successfully complete the Lemon Creek sex offender treatment program — because it was apparently impossible for him to satisfy this requirement.

The superior court concluded that Ingles had failed to present a *prima facie* case to support either of his claims, so the court dismissed Ingles's petition for post-conviction relief. Ingles now appeals the superior court's decision. For the reasons explained in this opinion, we affirm the superior court's judgement.

Underlying facts

Ingles was convicted of nine counts of first-degree sexual abuse of a minor, AS 11.41.434(a)(1), based on evidence that he engaged in numerous acts of sexual penetration with his eleven-year-old niece. This Court affirmed Ingles's convictions on appeal. *Ingles v. State*, unpublished, 1997 WL 796504 (Alaska App. 1997).

Ingles was sentenced to serve 17 years, 8 months in prison (with an additional 8 years suspended). In January 2007, when the total of Ingles's actual days of imprisonment plus his good time credit equaled his active term of imprisonment, he was released on mandatory parole.¹

Ingles's conditions of release barred him from having contact with minors. He was also required to participate in sex offender treatment.

During a polygraph examination in February 2010, Ingles admitted that he had had social contact with a girl under the age of 18. He also admitted that he sexually stimulated himself by looking at catalog advertisements displaying girls in their teens.

Three months later, on May 6, 2010, during another polygraph examination, Ingles admitted that he had visited with a 17-year-old girl.

The following day (May 7, 2010), Ingles was stopped by the Anchorage police after they received complaints of a man stalking a young woman at the downtown bus station. When probation officers later searched Ingles's vehicle, they found several stuffed animals and other toys, plus a digital camera that contained photographs of women and their children.

Following this discovery, Ingles's probation officer arrested him. Four days later, Ingles was discharged from his sex offender treatment program. In the discharge letter, the treating psychologist wrote that Ingles "may be in his assault cycle and a danger to the community."

These events led the superior court to revoke Ingles's probation, and also led the Parole Board to revoke Ingles's mandatory parole.

¹ See AS 33.20.010 and AS 33.20.040.

We upheld the superior court’s revocation of Ingles’s probation in *Ingles v. State* (II), unpublished, 2015 WL 5086373 (Alaska App. 2015). Ingles’s current appeal concerns the revocation of his parole by the Parole Board.

Ingles’s parole violation report charged him with (1) failing to register as a sex offender some three years earlier, (2) committing three traffic violations, (3) having contact with a minor in May 2010, and (4) being discharged from the sex offender treatment program. On May 20, 2010, the Board held a preliminary hearing into these alleged violations. Ingles appeared at the hearing and admitted the violations.

On July 22, 2010, the Parole Board held its final disposition hearing on these charges. At the conclusion of this hearing, the Board revoked Ingles’s mandatory parole, based on his admission of the parole violations. The Board decided that Ingles could be re-paroled on July 11, 2012 (*i.e.*, two years in the future), but the Board conditioned Ingles’s release on his successful completion of the sex offender treatment program at the Lemon Creek Correctional Center.

Ingles’s superior court challenge to the Parole Board’s action

In August 2011, Ingles filed a petition for post-conviction relief in the superior court, challenging the Parole Board’s decision. In this petition, Ingles alleged that the Board acted unlawfully when it revoked his parole. However, in the portion of Ingles’s petition that recited the “specific facts and legal grounds upon which the application [was] based”, Ingles offered no reason to believe that the Parole Board acted unlawfully when it revoked his parole.

Rather, construing Ingles’s pleading in the light most favorable to him, Ingles attacked the Parole Board’s decision on two grounds.

First, Ingles claimed that the Parole Board imposed an excessive sentence when the Board decided to delay Ingles's re-parole until July 2012, thus forcing Ingles to serve a little over 2 years in custody before he was eligible for parole release again.

Second, Ingles claimed that the Board should be prohibited from enforcing the pre-condition that it placed on his parole release — the condition that Ingles successfully complete sex offender treatment at the Lemon Creek Correctional Center — because the Department of Corrections had not transferred Ingles to Lemon Creek, making it impossible for Ingles to fulfill this pre-condition.

The superior court notified Ingles that, in its view, neither of these claims raised a significant due process concern. The court noted that Ingles “was given a hearing before the Parole Board, at which he was represented by an attorney”, and the court also noted that this hearing appeared to have satisfied the demands of due process “even though Ingles disagrees with the actions taken by the Parole Board”.

However, the court deferred an ultimate ruling on Ingles's claims until Ingles had the opportunity to file supplemental pleadings. The court told the parties that, after it received the supplemental materials from Ingles, the court would then be prepared “to issue an order addressing whether Mr. Ingles stated a *prima facie* case for post-conviction relief with respect to the parole board, or whether the state is entitled to dismissal.”

Two months later, the superior court issued an order denying these two claims for relief, on the basis that Ingles had failed to present a *prima facie* case with respect to either of the two claims.

Ingles's claim that the Parole Board imposed an unreasonably harsh disposition for his parole violations

In the present appeal, Ingles renews his claim that the Parole Board imposed an unreasonably harsh disposition when it required Ingles to remain in custody for about two years (*i.e.*, until July 11, 2012) before he could be re-paroled.

But the arguments that Ingles presented to the superior court regarding the alleged harshness of the Board's decision were essentially a collection of the arguments that Ingles's attorney might have made to the Parole Board at the disposition hearing. We say "might have made", because we do not know what evidence and what arguments were presented to the Parole Board. Ingles did not furnish the superior court with a transcript or other record of the proceedings in front of the Board.

Essentially, Ingles's attorney asked the superior court to make a *de novo* decision regarding the proper sentence for Ingles's parole violations — rather than presenting the superior court with the record of the proceedings in front of the Parole Board, and asking the court to assess whether the Board acted unreasonably in light of the evidence and the arguments presented at the disposition hearing.

Ingles was not entitled to have the superior court make a *de novo* assessment of the proper sentence for his parole violations. And without a record of the parole proceedings, the superior court had no basis for evaluating whether the Parole Board's disposition was so unreasonable as to constitute a denial of due process. Thus, the superior court correctly concluded that Ingles failed to present a *prima facie* case on this issue.

Ingles's claim that, when a defendant's mandatory parole is revoked, the Parole Board has no legal authority to impose pre-conditions on the defendant's re-parole

Ingles raises a claim regarding the scope of the Parole Board's authority over a defendant who has been released on mandatory parole, but whose parole is later revoked for misconduct.

In these circumstances, the Parole Board has the discretion to re-parole the defendant rather than ordering the defendant to serve the remaining portion of their sentence. That is what happened in Ingles's case. But in Ingles's case, the Parole Board placed a pre-condition on Ingles's parole release: the Board declared that Ingles first had to successfully complete the sex offender treatment offered at the Lemon Creek Correctional Center.

In his petition to the superior court, Ingles claimed that it was a denial of due process for the Parole Board to enforce this condition against him because the Department of Corrections had not transferred Ingles to Lemon Creek, and thus it was apparently impossible for him to fulfill the Board's pre-condition.

But Ingles does not renew this argument on appeal. Instead, Ingles raises a new and different argument.

Ingles now claims that it was *illegal* for the Parole Board to require him to complete sex offender treatment before he was re-paroled, even if sex offender treatment was available. Ingles argues that, under the Alaska statutes and regulations governing parole, the Parole Board lacks the authority to impose *any* pre-conditions on *any* defendant in this situation — *i.e.*, any defendant who is released on mandatory parole, whose parole is revoked because of parole violations, and who is then re-paroled.

This argument was never presented to the superior court. It is therefore not preserved for appeal.

Conclusion

The judgement of the superior court is AFFIRMED.