

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

ROBERT R. DORR,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12291
Trial Court No. 3AN-08-10042 CI

MEMORANDUM OPINION

No. 6536 — November 1, 2017

Appeal from the Superior Court, Third Judicial District, Valdez,
Daniel Schally, Judge.

Appearances: Megan R. Webb, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Kenneth M. Rosenstein, under contract with the 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.

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

Robert R. Dorr was convicted, following a jury trial, of first-degree murder for shooting his wife.¹ Dorr testified on his own behalf at trial; his defense was heat of passion. This Court affirmed Dorr’s conviction for first-degree murder on direct appeal.²

Dorr then filed an application for post-conviction relief, alleging that his trial attorney, James McComas, was ineffective for failing to adequately prepare him for cross-examination and for failing to conduct redirect examination after the State’s cross-examination. In response to these allegations, McComas provided an affidavit. In the affidavit, McComas asserted that there had been “extensive” preparation for Dorr’s trial testimony, but that it was clear that Dorr “was going to have his say” from the witness stand “whether it fit the hours of prep [he and McComas] had done on heat of passion or not.” McComas agreed that Dorr had performed poorly on cross-examination and that his testimony undermined the heat of passion defense. McComas asserted that, because of Dorr’s poor performance, he made the strategic decision not to continue Dorr’s testimony by conducting a redirect examination. McComas stated that he made this decision because he did not want to risk further undermining the defense and thereby risk not obtaining the heat of passion instruction (which was only obtained over significant objection by the State).

In the post-conviction relief proceedings, the superior court held an evidentiary hearing in which Dorr testified to his version of events. The court found Dorr’s testimony “fuzzy” and “internally inconsistent, self-contradictory, and incredible.” The court further found that “Dorr’s poor performance under tough questioning on cross-examination appears to largely be attributable to his having

¹ Dorr was also convicted of kidnapping and second-degree misconduct involving weapons. *Dorr v. State*, 2007 WL 4125145, at *1 (Alaska App. Nov. 21, 2007) (unpublished).

² *Id.*

disregarded his attorney’s advice, as opposed to being attributable to not being adequately prepared.” The superior court also found that McComas’s decision not to conduct redirect was reasonable under the circumstances and a “sound tactical decision.” Based on these findings, the court denied Dorr’s application for post-conviction relief, ruling that Dorr had failed to show that his trial attorney’s performance was deficient.³

Dorr now appeals, arguing that the court erred in denying him post-conviction relief. Having reviewed the record, we conclude that the court did not err when it concluded that McComas’s performance was objectively reasonable.⁴ Accordingly, we AFFIRM the judgment of the superior court.

³ *See Risher v. State*, 523 P.2d 421, 424 (Alaska 1974).

⁴ *Id.*