IN THE COURT OF APPEALS OF THE STATE OF ALASKA

EDWARD VERNON PARKS JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12150 Trial Court No. 4FA-12-1952 CI MEMORANDUM OPINION No. 6537 — November 1, 2017

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Paul R. Lyle, Judge.

Appearances: Edward Vernon Parks Jr., *in propria persona*, Wasilla, Appellant. Michael Sean McLaughlin, 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 WOLLENBERG.

In August 2010, pursuant to a plea agreement, Edward Vernon Parks Jr. was convicted of one count of third-degree criminal mischief. In July 2012, nearly two years later, Parks filed a pro se post-conviction relief application. The superior court appointed counsel to represent Parks, and counsel filed an amended application alleging ineffective assistance by Parks's attorney in his underlying criminal case.

Under AS 12.72.020(a)(3)(A), Parks was required to file his post-conviction relief application within eighteen months of the entry of the judgment of conviction in August 2010 — that is, by February 2012. Because Parks's pro se application was filed in July 2012, five months after the February 2012 deadline, the State moved to dismiss Parks's application as untimely. In response, Parks argued that an exception to the statute of limitations applied to his case because state agents (in particular, jail personnel) had prevented him from timely filing his application.[1]

In an affidavit, Parks asserted that he had prepared an application in May or June 2011, well within the eighteen-month statute of limitations, and had given it to Fairbanks Correctional Center staff to file. Parks explained that he only later learned that the Fairbanks court had not received his application, after which he filed a second application in July 2012.

The superior court held an evidentiary hearing at which several witnesses, including Parks, testified. Following the hearing, the court rejected Parks's argument that his case fell within an exception to the statute of limitations. The court found that Parks's testimony that he had handed a completed application to a correctional officer for filing in May or June 2011 was not credible. Alternatively, the court found that even crediting Parks's testimony, Parks had failed to establish that he was diligent in presenting his claim and that state agents had prevented a timely filing. The court noted that Parks was released from incarceration in September 2011 — five months prior to the February 2012 deadline — but presented no evidence of any efforts he had made to check on his application at the courthouse or file a new one during that time.

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[1] *See* AS 12.72.020(b)(1)(B) (providing that a court may hear a claim outside the applicable statute of limitations if the applicant "establishes due diligence in presenting the claim and sets out facts supported by admissible evidence establishing that the applicant . . . was physically prevented by an agent of the state from filing a timely claim").

The court therefore dismissed Parks's application as untimely.

Parks now appeals this dismissal. On appeal, Parks does not challenge the court's findings regarding his credibility or lack of due diligence. Rather, Parks raises two new claims. In both claims, Parks essentially argues that his post-conviction relief counsel provided ineffective assistance in litigating Parks's application.

First, Parks argues that his post-conviction relief counsel was incompetent for (1) failing to interview the correctional officer to whom Parks believed he had submitted his initial application in May or June 2011, and (2) failing to examine the notary log books at the Fairbanks Correctional Center for that same time period.

Second, Parks argues that his post-conviction relief counsel failed to sufficiently litigate his trial attorney's failure to pursue any post-conviction remedies on Parks's behalf following his plea. Parks asserts that he asked his trial attorney to file a direct appeal, but the attorney refused. Parks suggests that his trial attorney's actions may have excused Parks's failure to timely file his own post-conviction relief application.

Parks has not yet litigated these claims in the superior court. And as we said in *Barry v. State*, we will not generally consider claims of ineffective assistance of counsel for the first time on appeal because of the absence of a sufficient record to evaluate the claims.[2] We have repeatedly reaffirmed this principle, including in the post-conviction relief context.[3] Accordingly, we decline to consider Parks's claims of error. If Parks wishes to further pursue his claim that his post-conviction counsel rendered

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[2] *Barry v. State*, 675 P.2d 1292, 1295-96 (Alaska App. 1984).

[3] *See, e.g.*, *Pedersen v. State*, 2014 WL 4536293, at *11 (Alaska App. Sept. 10, 2014) (unpublished) (direct appeal from criminal convictions); *Baker v. State*, 2006 WL 438687, at *3 (Alaska App. Feb. 22, 2006) (unpublished) (post-conviction relief appeal).

ineffective assistance, he may seek post-conviction relief pursuant to AS 12.72.025 and *Grinols v. State*.[4]

In his recitation of the issues on appeal, Parks also appears to suggest that the superior court erred in failing to *sua sponte* call the correctional officer to testify or determine whether Parks's original trial attorney bore some responsibility for Parks's delay in filing his post-conviction relief application. But Parks was represented by counsel, who was advocating on Parks's behalf. To the extent Parks is arguing that the superior court had an independent obligation to intervene to correct perceived deficiencies in his attorney's presentation or identification of his timeliness claims, we reject this contention.[5]

As an alternative to reinstatement of his post-conviction relief application, Parks argues that he should be allowed to file a direct appeal in his original criminal case because of his trial attorney's failure to do so. But because the superior court concluded that Parks's application was untimely, the court did not reach the merits of any of Parks's substantive claims, including the claim in Parks's amended application that he entered his plea based on his trial attorney's assurance that he would file an appeal. As noted above, Parks does not directly challenge any of the findings underlying the court's ultimate conclusion that his post-conviction relief application was untimely.

Accordingly, we AFFIRM the dismissal of Parks's post-conviction relief application.

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[4] *Grinols v. State*, 74 P.3d 889, 895 (Alaska 2003) (authorizing defendant to bring second post-conviction relief application challenging effectiveness of counsel who provided representation in first application for post-conviction relief).

[5] *Cf. Rae v. State, Dep't of Corr.*, __ P.3d __, Op. No. 7209, 2017 WL 4855421, at *4 (Alaska Oct. 27, 2017) (recognizing that a judge may not act as an advocate for a party, even a pro se litigant, on substantive legal issues).