

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

PATRICK ROBERT FERREIRA,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11806
Trial Court No. 3AN-13-556 CR

MEMORANDUM OPINION

No. 6538 — November 8, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, Kevin M. Saxby, Judge.

Appearances: Josie Garton, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Kenneth M. Rosenstein, 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 SUDDOCK.

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

Defendant Patrick Robert Ferreira was indicted for second-degree terroristic threatening after he falsely claimed that a bag that he was carrying contained a bomb.¹ Before trial, the State offered to let Ferreira plead guilty to a misdemeanor. Ferreira orally accepted the deal; however, the State withdrew the offer before the plea was formally entered. Ferreira was convicted by a jury and sentenced to 600 days with 280 days suspended (320 days to serve).

Ferreira now contends that the superior court erred in denying his motion for specific performance of the plea agreement. Because Ferreira did not establish that he detrimentally relied on the agreement, the court correctly denied his motion for specific performance.

Ferreira also argues that his sentence is excessive, and that several of his probation conditions related to alcohol are unnecessarily intrusive. We lack jurisdiction to review Ferreira's sentence because the sentence does not exceed 2 years to serve, so we refer that portion of Ferreira's appeal to the supreme court. We do, however, have jurisdiction over Ferreira's claim regarding his probation conditions, and we conclude that the judge did not abuse his discretion in imposing the challenged conditions.

Facts and proceedings

Ferreira approached the front gate to Joint Base Elmendorf-Richardson (JBER) around 3:30 a.m. on January 14, 2013. Ferreira was wearing an old military uniform and a black vest. A branch stuck in his hood covered his face. He was also carrying a messenger bag and a tall orange plastic traffic marker.

JBER gate personnel thought that Ferreira's behavior and appearance were strange. When Ferreira requested entry into JBER at the gate, a security guard redirected

¹ AS 11.56.810(a)(1).

him to the visitors' center because Ferreira lacked the proper credentials. Once inside the visitors' center, Ferreira told the guard on duty that he wanted to join the special forces. When the guard told him to see a recruiter off-base, Ferreira offered to do a push-up. Ferreira seemed on edge after personnel told him that he could not enter the base.

As he left the visitors' center, Ferreira dropped his bag on the ground and said something to the effect of: "Call E.O.D. [the bomb squad]! Take this bomb." He then gave the guard the middle finger and fled down Boniface Parkway. Ferreira was soon apprehended and taken into custody. Ultimately, the bomb squad determined there was no bomb in Ferreira's bag and that it instead contained food, a Coke can, plastic bags, and a bottle of red wine vinegar. As a result of Ferreira's actions, JBER closed its gates for over two hours.

Ferreira was indicted for second-degree terroristic threatening.² A few days before trial, Ferreira negotiated a plea agreement with the State under which he would plead guilty to making a false report,³ a misdemeanor, and receive a 90-day sentence, equal to the time he had served. Ferreira also agreed to seek mental health treatment. A change-of-plea hearing was set for the following day in the district court.

At the time of these negotiations, the State was aware that Ferreira had a recent conviction for fourth-degree assault, but soon after Ferreira orally accepted the deal, the State discovered that Ferreira's fourth-degree assault had been reduced from the more serious charge of second-degree assault.⁴ The State communicated this information to the defense, and the State requested a continuance at the change-of-plea hearing,

² AS 11.56.810(a)(1).

³ AS 11.56.800(a)(3).

⁴ Apparently this conviction did not appear in APSIN when the State first checked because it was so new — Ferreira was convicted of this offense only days before he was arrested in the instant case.

which the court granted until the next day. A different attorney was covering the hearing for the State, and she did not know the reason for the continuance. Defense counsel explained to the court that the parties had an agreement, but that Ferreira was not opposing the State's request for a continuance to allow the State to make contact with the complaining witnesses.

Then, at the re-scheduled change-of-plea hearing, the State withdrew its plea offer and refused to reduce the felony charge to a misdemeanor.

After the case was returned to the superior court, Ferreira moved for specific performance of the misdemeanor plea bargain. Superior Court Judge Kevin M. Saxby denied the motion, finding that Ferreira had failed to establish that he had detrimentally relied on the plea deal.

A jury found Ferreira guilty of the felony, and sentenced him to 600 days with 280 days suspended (320 days to serve) and 3 years' probation.

Why we reject Ferreira's detrimental reliance claim

On appeal, Ferreira argues that if his plea to a misdemeanor had occurred at the original change-of-plea hearing, he would have been released from custody on that day, because the agreement called for a sentence of time served. But he instead chose to stay in jail for an extra day to accommodate the State's request for a continuance because he assumed the State was going to honor their agreement. Ferreira claims that this shows that he detrimentally relied on the plea bargain.

The State is not bound to a plea agreement prior to the defendant's change of plea unless the defendant detrimentally relies on the agreement.⁵ To prove detrimental reliance, the defendant must show that his reliance on the agreement placed him "at [a]

⁵ *State v. Jones*, 751 P.2d 1379, 1381 (Alaska App. 1988).

significant disadvantage in attempting to defend against the charges” and thus “amount[ed] to legal prejudice warranting a finding of detrimental reliance on the State’s promise.”⁶

Ferreira failed to prove that he suffered a legal detriment such as giving testimony or providing information to the authorities.⁷ Furthermore, his extra day in jail did not prejudice him. He was ultimately sentenced to 320 days to serve; he never spent time in jail beyond this actually imposed sentence. He accordingly suffered no cognizable detriment from the State’s withdrawal from its plea offer, and we therefore affirm the superior court’s ruling on this issue.

Ferreira’s sentencing claims

Ferreira makes two claims regarding his sentence. First, Ferreira claims that his sentence is excessive. The superior court sentenced Ferreira to 600 days with 280 days suspended (320 days to serve). As Ferreira acknowledges, this Court lacks jurisdiction to review his excessiveness claim because his sentence does not exceed 2 years of unsuspended time.⁸ Instead, Ferreira’s remedy is discretionary review in the supreme court.⁹

⁶ *Id.* at 1382.

⁷ *See id.* at 1381-82 (holding that no legal prejudice occurred where, after the prosecutor told defendant his case was being dismissed, the defendant made travel plans to see his family out of state, but then the prosecutor reinstated the charges).

⁸ Alaska R. App. P. 215(a)(1) and AS 12.55.120.

⁹ *See* Alaska R. App. P. 215(a)(5).

We do, however, have jurisdiction over Ferreira’s other sentence-related claim — his claim that the superior court abused its discretion when it imposed alcohol-related conditions of probation.¹⁰

The challenged probation conditions prohibit Ferreira from possessing or consuming alcohol, from entering any place where alcohol is the main item for sale, and from possessing or using anything intended to conceal alcohol use.

Probation conditions “must be reasonably related to the rehabilitation of the offender and the protection of the public and must not be unduly restrictive of liberty.”¹¹

The presentence report in Ferreira’s case indicated that he suffered from substance abuse and mental health issues. When he was arrested in 2012 on the prior assault charge, Ferreira “appeared intoxicated and very agitated.” Ferreira had been treated or hospitalized for mental health issues twice before. Ferreira’s presentence report recommended that Ferreira participate in a mandatory Department of Corrections program for persons with a diagnosed psychotic disorder upon their release on felony probation or parole. As part of this program, Ferreira would be placed with a specialized field mental health probation officer to ensure that he complied with his mental health services plan.

The record indicates that Ferreira’s DataMaster test after his arrest showed that he did not have any alcohol in his system at the time of the offense. However, at trial, several officers stated that Ferreira looked and acted “odd.” One officer testified to trying to “make sure [Ferreira] wasn’t high on paint or anything of that nature.”

¹⁰ See *Allen v. Anchorage*, 168 P.3d 890, 893 (Alaska App. 2007).

¹¹ *Lambert v. State*, 172 P.3d 838, 838 (Alaska App. 2007) (citing *Roman v. State*, 570 P.2d 1235, 1240 (Alaska 1977)).

Given the defendant's mental health status, the probation officer recommended the alcohol conditions of probation to reduce the likelihood of Ferreira's self-medicating, and to ensure the effectiveness of his mental health treatment during his probationary period.

The judge found that Ferreira's mental health issues played a role in the present offense. Additionally, the judge noted that several people testified at trial that Ferreira appeared to be under the influence of some substance. The judge concluded "that substance abuse would simply exacerbate the problems that [Ferreira is] facing."

Given the circumstances in this case, Ferreira's record of mental health issues, and his history of substance abuse, the superior court did not abuse its discretion in imposing the challenged conditions.

Conclusion

Ferreira's conviction is AFFIRMED. We also AFFIRM the superior court's imposition of conditions of probation relating to alcohol. We refer Ferreira's excessive sentence claim to the Alaska Supreme Court for discretionary review.