

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

EDWARD JOSEPH PAGE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12218
Trial Court No. 3AN-14-7722 CI

MEMORANDUM OPINION

No. 6571 — January 10, 2018

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

Appearances: Edward Joseph Page, *in propria persona*,
Wasilla, for the Appellant. Jack R. McKenna, Assistant District
Attorney, Anchorage, and Craig W. Richards, Attorney General,
Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

Edward Joseph Page appeals the superior court's dismissal of his petition for post-conviction relief. The superior court dismissed the petition as untimely because

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

it was filed many years after the expiration of the filing deadline specified in AS 12.72.020.

During the litigation in the superior court, Page asked the court to appoint an attorney to assist him in litigating the timeliness of his petition. The court denied Page's request.

If this had been Page's first petition for post-conviction relief, he clearly would have been entitled to the assistance of counsel when litigating whether his petition was timely. *See Holden v. State*, 172 P.3d 815, 818 (Alaska App. 2007); *Alex v. State*, 210 P.3d 1225, 1228-29 (Alaska App. 2009).

Page's situation is distinguishable from *Holden* and *Alex* because this is Page's second petition for post-conviction relief, and the right to the assistance of counsel only extends to a defendant's *first* petition for post-conviction relief. *Grinols v. State*, 10 P.3d 600, 621-23 (Alaska App. 2000).

Nevertheless, as this Court explained in *Grinols*, even when a defendant is litigating a second petition for post-conviction relief, the trial court has the authority to appoint counsel to assist an indigent defendant in particular cases: "The due process clause of our state constitution gives courts the authority to appoint counsel when the circumstances of [the] defendant or the difficulties in presenting a particular matter are such that fair and meaningful hearing cannot be had without the aid of counsel." *Id.*, 10 P.3d at 623.

The record in this case fails to reveal whether the superior court considered this aspect of *Grinols* when it declined to appoint counsel for Page. We therefore remand this case to the superior court for reconsideration of whether Page should receive appointed counsel.

The superior court shall notify us within 60 days whether it has appointed counsel to assist Page. If the superior court appoints counsel to assist Page, this Court

will close this appeal (because Page's petition will be relitigated). If the superior court does not appoint counsel to assist Page, then this Court will resume its consideration of this appeal.