

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, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LETICIA DELPRIORE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12386
Trial Court No. 3AN-12-04047 CR

MEMORANDUM OPINION

No. 6787—April 17, 2019

Appeal from the Superior Court, Third Judicial District, Anchorage, Philip R. Volland, Judge.

Appearances: Jason A. Weiner, Gazewood & Weiner, P.C., Fairbanks, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Terisia K. Chleborad, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior Judge.*

Judge ALLARD.

In 2012 Leticia Delpriore possessed 2.2 grams of heroin and sold another 0.3 grams to an undercover police officer. Based on this conduct, Delpriore was charged

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

with two counts of second-degree misconduct involving a controlled substance and one count of fourth-degree misconduct involving a controlled substance.¹

Prior to trial, Delpriore filed a motion seeking to preclude the State from prosecuting these charges and, by implication, any other criminal charges involving controlled substances against any other criminal defendant in Alaska. Delpriore pointed to a portion of the Controlled Substances Act of 1982 that directed the Department of Law to create a committee (the Advisory Committee) to periodically review Alaska's controlled substances statutes and substance abuse treatment programs, and to recommend policy changes to the governor, the Alaska Court System, and various other state agencies.² Delpriore argued that the Department of Law had never formed the required Advisory Committee, that it had therefore violated the law, and that as a remedy the court should declare Alaska's criminal controlled substances statutes invalid, unconstitutional, and unenforceable.³

The superior court denied Delpriore's motion on the ground that the claimed prejudice was too speculative. That is, the court found that Alaska's drug laws as they stood were constitutional and Delpriore's proposed remedies had no nexus with the alleged harms. Following a bench trial, Delpriore was convicted of all three counts.

Delpriore now appeals, arguing that the superior court erred in denying her motion to have Alaska's criminal controlled substances statutes declared unenforceable.

We find no error.

¹ Former AS 11.71.020(a)(1) (2012) and former AS 11.71.040(a)(3)(A) (2012), respectively.

² See AS 11.71.100-120.

³ The State admitted below that the Advisory Committee had not been assembled when this case was being litigated in 2013, but, according to the State's brief on appeal, the Advisory Committee was convened by 2015.

The central issue in this case is legislative intent: Did the legislature intend that, if the Department of Law failed to convene the Advisory Committee, the State of Alaska would be prohibited from prosecuting any crimes involving controlled substances? The answer to this question must rationally be no. We think it unlikely that, faced with some administrative foot-dragging, the legislature would have intended that the unlawful use and sale of controlled substances in Alaska be decriminalized if the advisory committee was not formed. Delpriore has not pointed to any statutory provision or legislative history to the contrary. We therefore conclude that the superior court properly denied Delpriore's motion.

We note that on appeal Delpriore has reframed her argument under the "exclusionary rule" — the legal rule requiring the suppression (*i.e.*, exclusion) of evidence obtained in violation of a criminal defendant's constitutional or statutory rights.⁴ The problem with this argument is that Delpriore is not seeking to suppress or exclude any evidence in her case. Rather, she is seeking to "exclude" an entire class of cases — controlled substance offenses — from prosecution. The exclusionary rule therefore provides no support for Delpriore's position. We also agree with the superior court that Delpriore's claim of prejudice is too speculative and that there is no basis for assuming that if the Advisory Committee had been formed, it would have decriminalized the controlled substance (heroin) at issue in this case.

For the reasons explained above, we AFFIRM the judgment of the superior court.

⁴ See, e.g., *Berumen v. State*, 182 P.3d 635, 641 (Alaska App. 2008).