IN THE COURT OF APPEALS OF THE STATE OF ALASKA

WILLIAM SAKEAGAK, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12710 Trial Court No. 2BA-15-00174 CI MEMORANDUM OPINION No. 6791 — April 17, 2019

Appeal from the Superior Court, Second Judicial District, Barrow, Angela Greene, Judge.

Appearances: William Sakeagak, *in propria persona*, Wasilla. Patricia L. Haines, 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.

William Sakeagak was convicted of first-degree murder. We affirmed his conviction on direct appeal.[1] Sakeagak has since filed several post-conviction relief

[1] *Sakeagak v. State*, 952 P.2d 278, 286 (Alaska App. 1998).

applications.[2] Nearly six years after we affirmed the dismissal of Sakeagak's third application for post-conviction relief, Sakeagak filed a fourth application for post-conviction relief. The superior court dismissed that application. Sakeagak now appeals this latest dismissal.

For the reasons explained in this opinion, we affirm the superior court's decision.

Procedural background

Following the denial of his direct appeal, Sakeagak timely filed a pro se application for post-conviction relief challenging his conviction. The superior court appointed an attorney to represent Sakeagak, but the attorney filed a certificate of no merit and moved to withdraw from the case.[3] The superior court granted the attorney's motion to withdraw and dismissed Sakeagak's application.[4]

Sakeagak appealed, and we reversed, concluding that the superior court had erred in dismissing Sakeagak's application because the attorney's no-merit certificate had not complied with the requirements set forth in *Griffin v. State*.[5]

On remand, the superior court appointed a new attorney for Sakeagak. But this new attorney ultimately agreed with Sakeagak's first attorney that Sakeagak did not have any colorable claims for relief. The attorney therefore filed a supplemental no-

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[2] *See, e.g.*, *Sakeagak v. State*, 2002 WL 341841 (Alaska App. Mar. 6, 2002) (unpublished); *Sakeagak v. State*, 2009 WL 2568558 (Alaska App. Aug. 19, 2009) (unpublished).

[3] *Sakeagak*, 2002 WL 341841, at *1.

[4] *Id.*

[5] *Id.* (discussing *Griffin v. State*, 18 P.3d 71 (Alaska App. 2001)).

merit certificate.[6] After reviewing the information submitted by Sakeagak's new attorney, the superior court notified the parties of its intent to dismiss Sakeagak's application for a second time, but the court gave Sakeagak one month to supplement his application.[7] When Sakeagak failed to do so, the superior court dismissed his application. Sakeagak did not appeal.[8]

The superior court also dismissed a second, unrelated post-conviction relief application filed by Sakeagak, ruling that it was successive.[9]

Nearly three years after the superior court dismissed Sakeagak's first application for post-conviction relief, Sakeagak filed a third pro se application for post-conviction relief.[10] In this application, Sakeagak argued that the superior court had erred in dismissing his first post-conviction relief application after remand. The superior court dismissed this application as successive.[11]

Sakeagak appealed the superior court's decision, but on appeal we held that Sakeagak could not use a third (successive and untimely) post-conviction relief application as a vehicle for challenging the court's dismissal of his first post-conviction relief application.[12] Rather, we said, "If Sakeagak wanted to challenge the renewed dismissal of his first application after remand, his proper remedy was an appeal of that

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6 *Sakeagak*, 2009 WL 2568558, at *1.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.* at *2.

dismissal" — an appeal which he had failed to pursue.[13] We therefore affirmed the dismissal of Sakeagak's third application for post-conviction relief.

Nearly six years later, Sakeagak filed his fourth post-conviction relief application — the application that is the subject of this appeal. In this application, Sakeagak argued that the second attorney who represented him in his first post-conviction relief application (the new attorney who was appointed after we remanded Sakeagak's case to the superior court) was ineffective for failing to appeal the superior court's dismissal of his application after remand. The superior court dismissed this fourth application on the grounds that Sakeagak's application was successive and untimely, and that Sakeagak was precluded from relitigating claims that he had already raised in a previous post-conviction relief application. The superior court also based its decision on the fact that Sakeagak failed to provide an affidavit from his former attorney addressing his claims of ineffective assistance of counsel, or an explanation of why he was unable to obtain this affidavit.

Sakeagak filed a motion for reconsideration, which the superior court denied without comment.

Sakeagak now appeals.

Why we uphold the dismissal of Sakeagak's application for post-conviction relief

On appeal, Sakeagak renews his argument that the second lawyer who represented him in his first post-conviction relief application deprived him of the effective assistance of counsel by failing to appeal the superior court's dismissal of that

[13] *Id.*

application following our remand.[14] As we have explained, the superior court found that this claim was res judicata (because it had already been raised in Sakeagak's third petition for post-conviction relief), and that Sakeagak's fourth petition was both untimely and successive.

We question whether the superior court was correct in ruling that the claim Sakeagak raised in his current petition is the same claim he raised in his third application for post-conviction relief. In his third application, Sakeagak did not argue that his attorney was ineffective for failing to appeal the dismissal of his first post-conviction relief application. Rather, Sakeagak argued that the *superior court* erred in dismissing his first post-conviction relief application.

We nonetheless agree with the superior court that Sakeagak's claim is res judicata. This is because the doctrine of res judicata "precludes relitigation by the same parties, not only of claims raised in the [prior] proceeding, but also those relevant claims *that could have been raised*."[15] This rule of compulsory joinder is incorporated in AS 12.72.020(a)(6), which bars successive applications for post-conviction relief.[16]

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[14] *See Wassilie v. State*, 331 P.3d 1285, 1288 (Alaska App. 2014) (holding that when an attorney files a certificate of "no arguable merit" in a post-conviction relief proceeding, and the trial court dismisses the petition and allows the attorney to withdraw, the attorney has one "remaining obligation" — "to ascertain [the petitioner's] desires regarding a potential appeal, and to take the steps necessary to preserve [the petitioner's] right of appeal if that is what [the petitioner] wished to do").

[15] *Larson v. State*, 254 P.3d 1073, 1077 (Alaska 2011) (emphasis added) (quoting *DeNardo v. State*, 740 P.2d 453, 456 (Alaska 1987)).

[16] *Grinols v. State*, 10 P.3d 600, 607 (Alaska App. 2000) (noting that AS 12.72.020(a)(6) "performs a function analogous to the rule of compulsory joinder of claims contained in former Criminal Rule 35.1(h)"), *aff'd in part*, 74 P.3d 889 (Alaska 2003).

Sakeagak could have employed a previous application for post-conviction relief to challenge his attorney's failure to appeal the post-remand dismissal of his first application for post-conviction relief. This is not a situation in which Sakeagak was unaware of his right to appeal; he had already appealed, and had obtained a reversal of, the superior court's initial dismissal of his first post-conviction relief application.

Moreover, Sakeagak did not set forth any facts in his fourth application as to whether he wanted to appeal at the time of the post-remand dismissal, nor did he offer any information regarding his discussions with his attorney following that dismissal. Sakeagak also did not present an affidavit from his attorney about these matters. Rather, Sakeagak simply asserted that his attorney's failure to file an appeal constituted ineffective assistance of counsel as a matter of law.

Accordingly, we uphold the superior court's two rulings that (1) Sakeagak was precluded from raising this claim in his fourth post-conviction relief application, and that, in any event, (2) Sakeagak's application failed to set forth a prima facie case for post-conviction relief.

Sakeagak also argues that the superior court erred in failing to provide a more detailed order when it denied his motion for reconsideration. But the court was not required to issue *any* order on Sakeagak's motion for reconsideration.[17] Here, the court's order informed Sakeagak that his motion had been denied. No further explanation was required.

The judgment of the superior court is therefore AFFIRMED.

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[17] *See* Alaska R. Civ. P. 77(k)(4) & Alaska R. Crim. P. 42(k)(4) (both providing that if a court has not ruled on a motion for reconsideration by a certain date, the motion will be deemed denied).