

## 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

GILBERT J. OLANNA,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12799  
Trial Court No. 2NO-15-00007 CR

### MEMORANDUM OPINION

No. 6788 — April 17, 2019

Appeal from the Superior Court, Second Judicial District, Nome, Paul A. Roetman, Judge.

Appearances: Hatton G. Greer, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. John A. Earthman, District Attorney, Nome, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court Justice, and Andrews, Senior Superior Court Judge.\*

Judge ALLARD.

After entering a guilty plea, Gilbert J. Olanna was convicted of second-degree murder for strangling and killing his girlfriend. Sentencing was open, and

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

Superior Court Judge Paul A. Roetman imposed a term of 75 years, with no time suspended.

Olanna appeals, raising two claims of error. First, Olanna asserts that the superior court erred because it considered Olanna's parole eligibility when it fashioned his sentence. Second, Olanna asserts that the sentence imposed was excessive. Because the record shows that the sentencing court improperly considered Olanna's eligibility for discretionary parole when crafting his sentence, we remand this case to the superior court for resentencing.

In *Jackson v. State*, the Alaska Supreme Court cautioned against calculating the length of a sentence based on an assumption that the defendant would be released from prison as soon as he became eligible for discretionary parole.<sup>1</sup> The supreme court pointed out that "the assumption that an offender will be paroled on a particular date is, at best, speculative."<sup>2</sup> The supreme court also stated that imposing a sentence based upon such an assumption might result in the offender not being released, as the trial judge assumed, and serving a clearly excessive sentence.<sup>3</sup>

Olanna argues that the superior court improperly considered his future parole eligibility in deciding to impose 75 years with no time suspended. The record strongly suggests that Olanna is correct. At sentencing, the superior court explained the reasons for imposing 75 years and the following exchange took place:

*The Court:* I'm going to impose a sentence of 75 years, and that'll be flat. What that means is you'll serve 25

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<sup>1</sup> *Jackson v. State*, 616 P.2d 23, 24-25 (Alaska 1980); *see also Thomas v. State*, 413 P.3d 1207, 1212 (Alaska App. 2018).

<sup>2</sup> *Jackson*, 616 P.2d at 24-25.

<sup>3</sup> *Id.* at 25.

years, and you'll be out on parole. And then there's 50 years that you'll be before the parole board and have to . . .

*Defense counsel:* That is not correct, Your Honor. If he is given a sentence of 75 years flat, unless he's given discretionary parole, which . . .

*The Court:* Right. Well . . .

*Defense counsel:* . . . is quite . . .

*The Court:* . . . he would be eligible for discretionary parole after a third.

*Defense counsel:* Right, but that's quite unusual. So, realistically, he's looking at 50 years with . . .

*The Court:* Well . . .

*Defense counsel:* . . . good behavior.

*The Court:* . . . *I'm sentencing based on statutory requirements that show that you could be eligible after you serve a third.* (Emphasis added.)

These statements strongly suggest that the superior court violated *Jackson* when it considered Olanna's eligibility for discretionary parole in imposing a sentence. Accordingly, we conclude that a remand for resentencing is required. Because Olanna will be resentenced, we do not address his claim that his sentence is excessive.

### *Conclusion*

We REMAND this case to the superior court for resentencing. We direct the superior court to resentence Olanna within 90 days of the effective date of our

decision. Within 30 days of the time Olanna is resentenced, Olanna shall notify this Court whether he wishes to renew his excessive sentence claim. If Olanna wishes to renew his sentence appeal, a schedule for supplemental briefing, if appropriate, will be set. If Olanna does not wish to renew his excessive sentence claim after his resentencing, this appeal will be closed.