

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

LINARDO SANTOS QUEZADA,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13040
Trial Court No. 3AN-16-06302 CR

MEMORANDUM OPINION

No. 6834 — November 13, 2019

Appeal from the District Court, Third Judicial District,
Anchorage, Jo-Ann Chung, Judge.

Appearances: Rex Lamont Butler, Rex Lamont Butler &
Associates, Inc., P.C., Anchorage, for the Appellant. Chad
Flanders, Assistant District Attorney, Anchorage, and Jahna
Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison,
Judges.

Judge ALLARD.

Pursuant to an Alaska Criminal Rule 11 plea agreement, Linardo Santos Quezada pleaded guilty to fourth-degree assault against his wife.¹ The agreement provided for a fully suspended term of imprisonment if Quezada completed a Domestic

¹ See AS 11.41.230(a)(3).

Violence Intervention Program (DVIP) or, alternatively, for an active term of imprisonment if he failed to complete the program. Quezada enrolled in a state-approved DVIP and ultimately obtained a certificate of completion. However, before he received his certificate, the State presented evidence to the court that Quezada had violated his contract with the DVIP by committing acts of violence against his wife and by forcing her to do his program homework. Based on this evidence, the court found that it was “doubtful” that the program would have given him a certificate of completion if it was aware of these facts. The court therefore found that Quezada had failed to satisfy the requirement that he complete the DVIP and sentenced him to 360 days with 120 days suspended (240 days to serve).

Quezada now appeals, arguing that he was entitled to a fully suspended sentence because he complied with the express terms of his plea agreement when he presented the court with a certificate of completion for the DVIP. For the reasons explained in this opinion, we conclude that a remand is required so that the parties can more fully litigate whether Quezada fulfilled the terms of his plea agreement.

Prior proceedings

The State charged Quezada with second-degree assault for allegedly strangling his wife, Yenny Santos.² At a change of plea hearing, defense counsel announced that the parties had reached a deferred sentencing agreement. Under the terms of the agreement, Quezada would plead guilty to fourth-degree assault and, if he completed a 36-week DVIP, he would be sentenced to 270 days with all 270 days suspended. If he did not complete the program, he would be sentenced to 360 days with 120 days suspended (240 days to serve).

² See AS 11.41.210(a)(1).

At a status hearing held eight months later, defense counsel informed the court that Quezada was on track to complete the DVIP and asked for a continuance until Quezada's projected graduation date. The State disagreed with the defense's characterization because less than two months before this hearing, Santos had sent a letter to the District Attorney's Office describing incidents which, if true, belied Quezada's progress.

In her letter, Santos described an incident that took place two months after Quezada entered into the plea agreement; Santos alleged that Quezada crashed his car into hers while she was parked outside her home and then threatened to kill her if she called the police. She described another incident that took place three months later in which Quezada broke a window in her car after she ignored his threatening phone calls and texts. Santos also stated that Quezada had been forcing her to do all of his homework for the DVIP.

The State sought to call Santos as a witness and present evidence that Quezada was not on track to complete the DVIP — and that the court should therefore impose the more severe sentence.

The court held a contested sentencing hearing three days later at which Santos testified and was subject to cross-examination. She explained that Quezada forced her to fill out his program homework and that she had completed his homework over twenty times. Santos also testified that he had physically assaulted her "several times" since his conviction. As the hearing continued, the court noted that, given the DVIP requirements, it was possible that Quezada would not get credit if the program knew about his conduct, and that it would be important to get the DVIP's input.

At a subsequent hearing, Thomas Anderson, the coordinator of the program Quezada had enrolled in, was present with records and prepared to testify. However, defense counsel had apparently informed Quezada that he did not need to appear at the

hearing, and the court therefore continued the case without hearing Anderson's testimony. Before going off record, the court confirmed with Anderson that the program takes into consideration input from victims, that victims have a right to provide input, and that the program may consider that input in determining whether an individual is in compliance with the program.

For unknown reasons, Anderson did not appear at the next hearing. At this hearing, Quezada filed a certificate of completion for the DVIP and asked the court to find that he had satisfied the terms of the deferred sentencing agreement. The prosecutor contended that Quezada had not successfully completed the program because he had failed to abide by the terms of the contract he signed with the DVIP, which required that he "remain free of violence" and complete all homework assignments. The prosecutor claimed that if Anderson had shown up for the hearing, "he would have changed that certificate of completion." But the prosecutor did not claim that he had actually spoken to Anderson about Quezada's conduct. Nor did the prosecutor offer any explanation for Anderson's absence or request a continuance so that Anderson could appear.

The court subsequently issued a written decision, finding that Quezada had failed to complete the DVIP as required by the plea agreement. In the written decision, the court noted that DVIPs are "unique among treatment programs" in that they must be state-certified pursuant to Alaska's Administrative Code. One of the "unique factors associated with DVIP" is the mandate that the "program requirements address victim safety."³ The court also noted Anderson's statement that the program must consider victim input when determining whether a defendant has completed the program. The

³ See, e.g., 13 Alaska Administrative Code (AAC) 90.160(2) ("A program or component of a program whose primary focus is on providing services to perpetrators of domestic violence must . . . contain mechanisms to maintain regular contact with the victim of a perpetrator who is a client to ensure the victim's safety.").

court found Santos to be a credible witness and further found it “doubtful” that Quezada would have received his certificate of completion had Santos reported her allegations to the DVIP.

The court additionally found that Quezada violated the terms of his contract with the program by directing acts of physical violence at Santos and by not completing all of his homework assignments. On this basis, the court found that Quezada “did not complete DVIP, despite the certificate of completion,” and it imposed a sentence of 360 days with 120 days suspended.

Why we conclude that a remand is necessary

On appeal, Quezada argues that the district court erred when it found that he had failed to complete the DVIP. Quezada points out that he received a certificate of completion from the program and argues that the court had no authority to question it.

We disagree. Under the terms of the plea agreement, Quezada was required to “complete” the DVIP in order to obtain the more favorable sentence. The plea agreement did not specify what qualified as “completion” for these purposes.

As a general matter, because the State is in a superior bargaining position compared to a defendant, ambiguities in a plea agreement are construed against the State.⁴ Because it was reasonable for Quezada to assume that “completion” in this context meant graduation from the program, Quezada was entitled to rely on the certificate as evidence of his completion. However, the State was also entitled to

⁴ *Anthony v. State*, 329 P.3d 1027, 1032 (Alaska App. 2014) (holding that where parties have unequal bargaining power, as in criminal plea agreements, “the court is required to construe the ambiguity against the State, because [it] is the party with the greater bargaining power”).

question the validity of his certificate of completion and to argue that it was fraudulently obtained in violation of the program's rules and procedures.⁵

Here, the State presented evidence that Quezada had violated the terms of his contract with the DVIP by assaulting Santos and by making her do his homework. The State also argued that the DVIP would not have issued the certificate of completion if it had been aware of these violations. The State was entitled to prove up that allegation by calling Anderson or another DVIP representative to testify to its position regarding the certificate's validity. But given the ambiguity in the plea agreement, the court was not entitled to rely on mere speculation or to substitute its own judgment for the program's judgment.

Accordingly, we vacate the court's order and the judgment, and we remand this case to the district court for further proceedings. Because we remand on this issue, we need not decide Quezada's remaining claims.

Conclusion

The decision of the district court is VACATED, and this matter is remanded for further proceedings consistent with this decision. We retain jurisdiction. The district court shall have 120 days in which to conduct these further proceedings. This deadline can be extended by the district court for good cause conditioned upon a status report to this Court.

⁵ Cf. *Casey v. Semco Energy, Inc.*, 92 P.3d 379, 384 (Alaska 2004) ("The covenant of good faith and fair dealing is implied in all contracts in Alaska."); *Restatement (Second) of Contracts* § 205 (Am. Law Inst. 1981) ("Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.").