

SUPREME COURT OF ALASKA

Jason D. Ray v. State of Alaska

Opinion No. 7605 (Alaska 2022) · No. S-17645 · Decided July 22, 2022

SUMMARY

The Alaska Supreme Court held that former AS 12.55.090(f), applicable from 2012 to 2016, abrogated a defendant's right to reject further probation when a specific probation period was required by a Rule 11 plea agreement. The court concluded that the statute's plain text prohibited reducing the agreed probation period without the consent of both the defendant and the prosecuting authority. The opinion answered a certified question from the Alaska Court of Appeals in Jason D. Ray's probation-revocation appeal.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Borghesan; Bolger; Winfree; Maassen; Carney
JURISDICTION	Alaska
DECIDED	July 22, 2022
DOCKET	S-17645
DISPOSITION	remanded
PROCEDURAL POSTURE	Certified question from the Alaska Court of Appeals on appeal from the Superior Court, Third Judicial District, Anchorage.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Jason D. Ray v. State of Alaska

TOPICS

- criminal procedure
- statutory interpretation
- plea bargaining
- probation
- sentencing
- appellate procedure
- standard of review

PRACTICE AREAS

- Criminal Law
- Criminal Procedure
- Sentencing
- Statutory Interpretation
- Appellate Practice

QUESTIONS PRESENTED

1. Whether former AS 12.55.090(f) abrogates a defendant's right, recognized in *Henry v. State*, to reject probation previously agreed to in a Rule 11 plea agreement and instead serve active imprisonment only.

HOLDINGS

1. Yes. The statute prohibits a court from reducing the specific period of probation provided in a Rule 11 agreement unless both the prosecution and defendant agree, making it impossible for a defendant to unilaterally reject such probation. The statute therefore abrogates the right recognized in *Henry v. State*.
2. The court must apply the Chaney sentencing criteria; it may impose the balance of the remaining suspended time if warranted but is not required to do so. The statute does not mandate automatic imposition of the full suspended term.

KEY QUOTATIONS

“Unless the defendant and the prosecuting authority agree at the probation revocation proceeding or other proceeding, the court may not reduce the specific period of probation, or the specific term of suspended incarceration except by the amount of incarceration imposed for a probation violation, if (1) the sentence was imposed in accordance with a plea agreement under Rule 11, Alaska Rules of Criminal Procedure; and (2) the agreement required a specific period of probation or a specific term of suspended incarceration.” (at 12)

“The language of AS 12.55.090(f) plainly precludes a court from reducing periods of probation imposed pursuant to a Rule 11 agreement without the consent of both parties.” (at 15)

“Therefore we reject Ray's suggestion that interpreting AS 12.55.090(f) to eliminate a defendant's right to reject probation is pointless and an implausible interpretation of legislative intent.” (at 35)

FACTUAL BACKGROUND

Ray was arrested in October 2013 for stealing a pair of boots from a grocery store in Kodiak. Because of two prior theft convictions, the State charged him with theft in the second degree. He pleaded guilty under a Rule 11 plea agreement calling for 24 months' imprisonment with 20 months suspended and three years of supervised probation. After serving four months, he was released. The State later petitioned to revoke probation, alleging violations. Ray admitted two violations; the superior court found two others. At disposition, Ray announced he wanted to reject further probation. The court sentenced him to 16 months' imprisonment (all but 90 days of his remaining suspended time) and placed him on five years' unsupervised probation.

PROCEDURAL HISTORY

Ray pleaded guilty to second-degree theft pursuant to a Rule 11 plea agreement providing for 24 months' imprisonment with 20 months suspended and three years' supervised probation. After violating probation, he requested to reject further probation and be sentenced to active imprisonment only. The superior court instead imposed 16 months' imprisonment and five years' unsupervised probation. Ray appealed to the court of appeals, which split on whether AS 12.55.090(f) abrogated the right to reject probation. The court of appeals certified the question to the Alaska Supreme Court.

DISPOSITION

remanded

REMAND INSTRUCTIONS

We REMAND this case to the court of appeals for further proceedings consistent with this opinion.

CASES CITED

- Henry v. State, 240 P.3d 846 (Alaska App. 2010)
- Ray v. State, 452 P.3d 688 (Alaska App. 2019)
- State v. Chaney, 477 P.2d 441 (Alaska 1970)
- Brown v. State, 559 P.2d 107 (Alaska 1977)
- Pete v. State, 379 P.2d 625 (Alaska 1963)
- State v. Staael, 807 P.2d 513 (Alaska App. 1991)
- State v. Auliye, 57 P.3d 711 (Alaska App. 2002)
- Hurd v. State, 107 P.3d 314 (Alaska App. 2005)
- Sweezey v. State, 167 P.3d 79 (Alaska App. 2007)
- Chinuhuk v. State, 472 P.3d 511 (Alaska 2020)
- Se. Alaska Conservation Council, Inc. v. Dep't of Nat. Res., 470 P.3d 129 (Alaska 2020)
- Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183 (Alaska 2007)
- Progressive Ins. Co. v. Simmons, 953 P.2d 510 (Alaska 1998)
- Ward v. State, Dep't of Pub. Safety, 288 P.3d 94 (Alaska 2012)
- Wright v. Universal Mar. Serv. Corp., 525 U.S. 70 (1998)
- Metro. Edison Co. v. NLRB, 460 U.S. 693 (1983)
- In re Osslo, 334 P.2d 1 (Cal. 1958)
- State v. Fyfe, 370 P.3d 1092 (Alaska 2016)
- M.M. ex rel. Kirkland v. State, Dep't of Admin., 462 P.3d 539 (Alaska 2020)
- Mun. of Anchorage v. Suzuki, 41 P.3d 147 (Alaska 2002)
- Mun. of Anchorage v. Brooks, 397 P.3d 346 (Alaska App. 2017)
- De Nardo v. State, 819 P.2d 903 (Alaska App. 1991)
- State v. Shetters, 246 P.3d 332 (Alaska App. 2010)
- Harris v. State, 980 P.2d 482 (Alaska App. 1999)
- State v. ABC Towing, 954 P.2d 575 (Alaska App. 1998)
- Roeckl v. F.D.I.C., 885 P.2d 1067 (Alaska 1994)
- State v. Alaska State Emps. Ass'n/AFSCME Local 52, 923 P.2d 18 (Alaska 1996)
- City of Valdez v. State, 372 P.3d 240 (Alaska 2016)
- Vandenberg v. State, 371 P.3d 602 (Alaska 2016)

- *Hendricks-Pearce v. State*, 323 P.3d 30 (Alaska 2014)
- *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380 (Alaska 2013)
- *People v. Franks*, 211 P.2d 350 (Cal. App. 1949)
- *People v. Billingsley*, 139 P.2d 362 (Cal. App. 1943)

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