

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF REVENUE**

In the Matter of	)	
	)	
B. E. D.	)	OAH No. 23-0170-PFD
_____	)	

DECISION

I. Introduction

B. D.’s application for a 2022 permanent fund dividend (PFD) was denied because he was incarcerated during the qualifying year, 2021, when he had either a prior felony conviction or a conviction for two or more prior misdemeanors. Following an unsuccessful informal appeal, Mr. D. requested a formal appeal by correspondence. The record in this case closed on April 21, 2023.

Because Mr. D. was incarcerated in the qualifying year, 2021, due to a misdemeanor conviction, when he had also had two or more convictions for prior misdemeanors, he is not eligible to receive the 2022 PFD.

II. Facts

Mr. D. timely applied for a 2022 PFD. The division has raised no issue regarding Mr. D.’s eligibility apart from his incarceration during the qualifying year, 2021.

Mr. D. was charged with a misdemeanor in two separate criminal cases: Case Nos. 3AN-19-00000CR based on events occurring 00/00/2019, and 3AN-20-00000CR based on events occurring on 00/00/2020.¹ While he was out on bail in these two cases, he was additionally charged with four misdemeanor counts in Case No. 3AN-21-00000CR based on events that occurred on 00/00/2021.²

Mr. D. pleaded no contest on April 21, 2021 to misdemeanor charges on each of these three criminal cases and was convicted in each case based upon his no contest pleas. He was represented by counsel in each of these cases.³ He was sentenced to serve jail time for each of the four counts in Case No. 3AN-21-00000CR.⁴ He served that time in 2021.⁵

¹ Case No. 3AN-19-00000CR (Ex. 7, pp. 1- 6); Case No. 3AN-20-00000CR (Ex. 7, pp. 7 – 11).

² Ex. 8, pp. 16 – 17.

³ Case No. 3AN-19-00000CR (Ex. 7, pp. 1- 6); Case No. 3AN-20-00000CR (Ex. 7, pp. 7 – 11); Case No. 3AN-21-00000CR (Ex. 7, pp. 12 – 14).

⁴ Ex. 8, pp. 1 – 8.

⁵ Ex. 4.

III. Discussion

The Alaska legislature has directed that “an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a . . . misdemeanor if the individual has been convicted of . . . (i) a prior felony as defined in AS 11.81.900; or (ii) two or more prior misdemeanors as defined in AS 11.81.900.”⁶ The statute counts prior convictions for criminal offenses committed on or after January 1, 1997.⁷

The qualifying year for a 2022 dividend was 2021.⁸ In 2021, Mr. D. had three pending misdemeanor criminal cases, one dating back to 2019, one dating back to 2020, and one from 2021. He was convicted in each of those cases at the same time, on April 21, 2021. He was then incarcerated immediately thereafter for the last case. Mr. D.’s appeal form argues that these were violations, not misdemeanors, and apparently argues that these were not new charges and that he did not have prior misdemeanors.⁹ However, the record is clear that these were three distinct criminal cases with misdemeanor convictions in each case.

The question that arises is a legal one involving the interpretation of the relevant statute. If Mr. D. was incarcerated in 2021 based on a conviction in a 2021 criminal case when he had been convicted of two or more prior misdemeanors, he is not eligible for the 2022 dividend. In this case, he was convicted on all three cases on the same day. Under this unusual factual scenario—where all three convictions were issued on the same day—were these “prior misdemeanors”?

The relevant statute says “convicted of . . . two or more prior misdemeanors”, not “previously convicted of two or more misdemeanors.”¹⁰ The clear language of the statute focuses on the date *of the misdemeanor*, not the date of the conviction.¹¹ Mr. D. therefore had

⁶ AS 43.23.005(d). The two definitions from Title 11 simply specify that misdemeanors are crimes for which sentences greater than one year cannot be imposed, while felonies are crimes for which such sentences can be imposed.

⁷ Sec. 6 ch. 46 SLA 1996.

⁸ AS 43.23.095(6).

⁹ Ex. 6, p. 2.

¹⁰ AS 43.23.005(d).

¹¹ The Alaska Supreme Court applies a sliding scale approach for interpreting statutes (and hence to regulations). *Alyeska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1239 (Alaska 2003) (“The plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”) (quoting *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 150 (Alaska 2002))

two prior misdemeanor criminal cases, one in 2019 for acts committed in 2019, and one in 2020 for acts committed in 2020. Even though he was convicted on these two misdemeanor cases the same day as he was convicted on his 2021 misdemeanor case, these were convictions for misdemeanor crimes that preceded his 2021 misdemeanor case. And the facts show that he was incarcerated in 2021 based upon his sentence in his 2021 misdemeanor case. What this means for Mr. D. is that he is ineligible for the 2022 PFD because he was incarcerated in 2021, the qualifying year for the misdemeanor conviction (the 2021 misdemeanor case), when he had been convicted of two or more prior misdemeanors (the 2019 and 2020 misdemeanor cases).

IV. Conclusion

Mr. D.'s incarceration during 2021 due to his conviction in his 2021 misdemeanor case disqualifies him from being eligible for a 2022 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny his application for a 2022 Permanent Fund Dividend is AFFIRMED.

Dated: May 31, 2023

SIGNED
Lawrence A. Pederson
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of July, 2023.

By: SIGNED

Signature

Adam Crum

Name

Commissioner, Department of Revenue

Title

[This document has been modified to conform to the technical standards of publication. Names have been changed to protect privacy.]