IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LINDSEY MELVIN DUNY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11971 Trial Court No. 3AN-12-11323 CR MEMORANDUM OPINION No. 6570 — January 10, 2018

Appeal from the Superior Court, Third Judicial District, Anchorage, Larry D. Card, Judge.

Appearances: Andrew Steiner, Bend, Oregon, for the Appellant. Nancy R. Simel, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

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

Judge MANNHEIMER.

In late October 2012, Lindsey Melvin Duny was in custody, awaiting trial on a charge of burglary — a felony. The Department of Corrections placed Duny at the Cordova Center, a privately owned halfway house that was operated under contract with the Department of Corrections.

Duny absconded from the Cordova Center only a few hours after he arrived there. He was apprehended about six weeks later, and he was charged with second-degree escape under AS 11.56.310(a)(1)(B), which makes it a class B felony to unlawfully "remove[] oneself from ... official detention for a felony".

Following a jury trial, Duny was convicted of this crime, and he now appeals his conviction. In this appeal, Duny contends that the trial judge committed error when the judge refused to allow Duny's attorney to introduce evidence at trial concerning a portion of the Cordova Center's residents' handbook.

Duny underwent an orientation session when he arrived at the Cordova Center and, during that orientation session, Duny was given a copy of the residents' handbook. One passage in this handbook warned Cordova Center residents that they were not allowed to leave the Center without authorization. The handbook then mistakenly stated that residents who were in custody for a felony would be charged with "unlawful evasion" under AS 11.56.340 if they left the halfway house without permission.

In fact, AS 11.56.340 does not apply to felony prisoners who abscond from a halfway house. Instead, this statute applies to misdemeanor prisoners — persons "charged with or convicted of a misdemeanor" — who fail to return to official detention after they have been granted a "temporary leave ... for a specific purpose or [for a] limited period".

The statute that applies to Duny's situation is the second-degree escape statute under which he was indicted, AS 11.56.310(a)(1)(B).

But in the trial court, Duny's attorney argued that Duny and the State had entered into a "contract" when the Department of Corrections sent Duny to the Cordova Center. According to Duny's attorney, the terms of this "contract" included the text of the Cordova Center's residents' handbook. And because the Cordova Center handbook

mistakenly said that the unlawful evasion statute, AS 11.56.340, was the statute that would apply if Duny absconded from the Cordova Center, Duny's attorney argued that it was a violation of this "contract" for the State to charge Duny with second-degree escape — even though the escape statute was the one that actually applied to Duny's conduct.

The trial judge refused to allow the defense attorney to introduce the Cordova Center handbook under this "contract" theory.

On appeal, Duny concedes that his trial attorney's "contract" theory had no legal validity, and that the trial judge was correct to reject it. However, Duny argues that the trial judge should have seen that the trial attorney had a better argument to make — and that the trial judge should have raised that argument himself.

According to Duny, the trial judge should have seen that the facts of Duny's case raised a potential *due process* violation, in that Duny was potentially misled by the Cordova Center's handbook concerning the consequences he would face if he absconded from custody. Duny also asserts that the trial judge should have realized, *sua sponte*, that Duny's potential due process argument was supported by the Alaska Supreme Court's decision in *Olson v. State*, 260 P.3d 1056 (Alaska 2011) — a case that Duny's trial attorney never mentioned.

We reject Duny's claim for two reasons.

First, the facts of Duny's case do not present an obvious due process violation. It is a general principle of the criminal law that a person's ignorance of a criminal statute, or a person's misunderstanding of a criminal statute, is not a defense to a prosecution under that statute. This principle is codified in AS 11.81.620(a):

Effect of ignorance or mistake upon liability.

> (a) Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides. Use of the phrase "intent to commit a crime", "intent to promote or facilitate the commission of a crime", or like terminology in a provision of law does not require that the defendant act with a culpable mental state as to the criminality of the conduct that is the object of the defendant's intent.

Based on due process concerns, this Court has recognized a limited exception to this principle in situations where a person acts in reasonable reliance on an official pronouncement or a formal interpretation of the law issued by the chief enforcement officer or agency entrusted with the enforcement of that law. *Stevens v. State*, 135 P.3d 688, 695 (Alaska App. 2006); *Ostrosky v. State*, 704 P.2d 786, 791 (Alaska App. 1985). [1]

But this limited "mistake of law" defense is not available to people who rely on a mistaken statement or interpretation of the law received from a police officer or other subordinate officer. *Morgan v. State*, 943 P.2d 1208, 1212 (Alaska App. 1997); *Haggren v. State*, 829 P.2d 842, 844 (Alaska App. 1992).

And, of course, this defense is not available to people who form their own mistaken opinion about the law. *Stevens*, 135 P.3d at 695; *Busby v. State*, 40 P.3d 807, 816-17 (Alaska App. 2002).

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[1] *See also Morgan v. State*, 943 P.2d 1208, 1212 (Alaska App. 1997); *Haggren v. State*, 829 P.2d 842, 844 (Alaska App. 1992).

In the present case, the Cordova Center's handbook erroneously stated that a felony defendant who absconded from the Center could be charged with "unlawful evasion" under AS 11.56.340. But the handbook did not say that "unlawful evasion" was a misdemeanor, nor did the handbook assert that "unlawful evasion" was a less serious crime than "escape".

But more importantly, Duny's trial attorney never suggested that Duny was ready to testify that he (Duny) was affirmatively misled into thinking that he faced only a misdemeanor penalty if he absconded. Instead, the defense attorney said only that Duny was willing to testify that he "signed off" on the Cordova Center's residents' handbook — *i.e.*, that he acknowledged the handbook as constituting the Center's governing rules. In other words, the defense attorney never asserted that Duny relied to his detriment on the contents of the handbook when Duny decided to abscond from the Cordova Center.

Given this record, it was not obvious that Duny might potentially have a due process claim — much less that Duny's due process rights had definitely been violated. Thus, the trial judge had no duty to raise a due process argument on Duny's behalf *sua sponte*.

Our second reason for rejecting Duny's appellate claim is that Duny's claim rests on the implicit premise that trial judges have a duty to actively assist litigants in formulating the issues to be litigated and the contentions to be resolved — a duty to *sua sponte* identify any and all legal arguments for relief that are potentially suggested by the record, or by an attorney's offer of proof. This is not the law. As we explained when we addressed a related issue in *Pierce v. State*:

> It was not [the trial judge's] job to figure out how the testimony presented at the evidentiary hearing, in combination with the applicable law, might conceivably justify

> suppression of the witness's identification. Nor was it [the trial judge's] duty to make, unprompted, all the findings of fact and rulings of law needed to resolve any and all possible arguments in support of suppression. Rather, it was the defense attorney's job to frame an argument that contained a proposed factual and legal analysis of [the] case, and to seek the judge's ruling on that argument.

Pierce v. State, 261 P.3d 428, 433 (Alaska App. 2011).

For these reasons, we reject Duny's claim that the trial judge committed plain error by failing to (1) reformulate Duny's trial attorney's argument and then (2) grant Duny relief on that reformulated argument.

The judgement of the superior court is AFFIRMED.