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IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: A-09455
	)	
Appellee.	)	
	)	

Trial Court Case #4MC-S04-024 Cr.

MOTION FOR RULING

I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case. On 11/27/06 Haeg filed a motion for clarification and reconsideration of the Court of Appeals 11/16/06 full court ruling of Haeg's motions of 11/6/06.

With no direction from the Court of Appeals, State attorney Roger Rom (Rom), the non-moving party, filed a "limited response" on 12/1/06 to this reconsideration – directly violating Alaska Rules of Appellate Procedure 503(h)(3), which prohibits a response to a motion for full court reconsideration by the non-moving party, unless requested by the court.

In this limited response Rom states, "The State has reviewed the motion for clarification and reconsideration and pursuant to Alaska R. App. P. 503(h)(3) no response is required – unless directed by the court the State does not intend to file a

response." In other words the State is unopposed to Haeg's motion for clarification and reconsideration.

Next, the Court of Appeals, in their ruling of 12/29/06 or over a **month** after Haeg's request, fails to reconsider or clarify **any** of the requested rulings – violating Haeg's **absolute right to have** them do so. This is **after** they know the State is **unopposed**. Haeg will now be forced to burn down approximately $100,000.00 of property because of their failure to timely rule on just a single one of his motions.

The Court of Appeals only action is to "direct" the State to respond to "Haeg's claim that the trial court has refused to decide the merits of Haeg's various motions for the return of his property."

This is a clear attempt to intentionally deny Haeg his right to have his motions reconsidered. Also, exactly how is the State supposed to "respond"? The Court of Appeals already has the 15 motions Haeg filed in the district and trial courts, the State's oppositions, and the district courts rulings denying these motions – including affidavits supporting these facts. What, exactly, can the State add to this? The Court of Appeals **already** has **every** filing made in Haeg's unbelievable quest for the return of his property. The State has wisely not claimed there were no proceedings in district court.

The law is clear – Haeg is entitled to a ruling on his **unopposed** motion for clarification and reconsideration of **all** his previous motions. The lower courts have denied Haeg and he has a

right to appeal to this court. Haeg then has a right for the Court of Appeals to reconsider their first adverse ruling. The clarification Haeg asked for in addition to his motion for reconsideration is clarification of **why** the Court of Appeals **denied** his first **emergency** motions. Haeg expressly asked this in his motions because there was very little reason given - including the fact the Court of Appeals claimed there was no evidence of filings in the district court when in fact Haeg had already presented abundant and irrefutable evidence to the Court of Appeals – confirmed in person by the clerks of court.

The Court of Appeals mysteriously fails to mention anything whatsoever of the other vitally important emergency motions Haeg asked to have clarified and reconsidered. These motions include: motion to correct sentence and to stay suspension/revocation of guide license; motion for summary judgment reversing conviction with prejudice; motion to supplement record; motion to stay appeal pending post-conviction relief procedure; and a request for oral arguments and the proper procedure for Haeg to appeal these denials to the Alaska Supreme Court. In addition Haeg asked this court for an order to the district court to accept a post-conviction relief application – as they have refused, on the record, to accept one – blatantly violating Criminal Rule 35.1. Haeg had also asked this court to change the venue for this procedure to Kenai, Alaska for the convenience of very nearly everyone involved.

It is chilling there is not a single mention of the word "reconsider" or "reconsideration" anywhere in the Court of Appeals ruling of 12/29/06 even though Haeg had asked for **every one** of his motions be reconsidered.

Even more chilling is the Court of Appeals has **required** the State to "inform" them of something the State did not dispute and the Court of Appeals already had all records of.

Because the Court of Appeals is ignoring the immediate and vitally important emergency rulings Haeg needs to obtain justice, just to force the State, who has already stated it did not intend on filing a response, to duplicate that which has already been done, Haeg respectfully requests the Court of Appeals to rule, without further delay, on **all** Haeg's motions **and** requests presented to them on 11/27/06.

Haeg finds *Alaska Rules of Criminal Procedures Rule 42(h)* extremely salient at this juncture:

> "The court shall rule **promptly** on **all** motions. If no opposition or statement of non-opposition has been filed, the court may determine whether the moving party has made a prima facie showing of entitlement to the relief requested without further notice to the parties. If a prima facie showing is made, the court may grant the motion. If the court denies a motion to which no opposition has been filed, the court must set forth the reasons for the denial with **specificity**."

Again Haeg points out he has made a prima facie showing of entitlement of the relief requested and the State has clearly, intentionally, and specifically stated it "does not intend to file a response" to Haeg's current motions and requests before this court. In effect the State is unopposed to Haeg's motions –

tactfully admitting defeat in the face of Haeg's incredibly impregnable position, consisting of stunning and irrefutable evidence of a gross and fundamental breakdown in justice. The State is wise not to assault such a formidable position again as it would only add to the already serious consequences. For the State to continue to attack the United States constitution, if Haeg is standing guard, is extremely foolish. Haeg thinks it long overdue for prosecutor Rom to read the rules governing State prosecutors.

Haeg would like to direct this courts attention to the *AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE SECTION STANDARDS*:

> *Part 1 – General Principles*:
>
> *Standard 22-1.4. Jurisdiction and venue; assignment of judges (b)* "An action for post conviction relief should be brought in the court in which the applicant's challenged conviction and sentence was rendered **For efficient management of a pending case, the court should be authorized in extraordinary circumstances to conduct proceedings in any place within the state.** In addition, provision should be made for transfer of a case to another court **if that is appropriate for the convenience of the parties** or to guard against undue prejudice in the proceeding. (c) Neither a general rule favoring nor one disfavoring submission of a post conviction application to the same trial judge who originally presided is clearly preferable. If by rule or practice ordinary assignment to the same judge is adopted, there should be a declared policy permitting the judge freely to recuse himself or herself in a particular case, whether or not formally disqualified."
>
> *Standard 22-2.2. Prematurity of applications for post conviction relief; postponed appeals* (a) "When an application for post conviction relief is filed before the time for appeal from the judgment of conviction and sentence has lapsed, **the trial court should have the power to extend the time for taking such appeal until**

the conclusion of the post conviction proceeding. When an application for post conviction relief is filed while an appeal from the judgment of conviction and sentence is pending, the appellate court should have the power to suspend the appeal until the conclusion of the post conviction proceeding or to transfer the post conviction proceeding to the appellate court immediately. The trial court or appellate court should exercise these powers to enable simultaneous consideration of the appeal, if taken, from the judgment of conviction and sentence and an appeal, if taken, from the judgment in the post conviction proceeding, where joinder of appeals would contribute to orderly administration of criminal justice."

Again Haeg is in awe of this courts unbelievably prejudicial ruling they will not suspend or stay his appeal until the conclusion of his post conviction proceeding; and that he **must** conduct his post conviction procedure **and** his appeal in two different courts at the same time – effectively denying him simultaneous consideration in one court. How can they continue to justify this position when their own prior decisions, backed up by the Alaska Supreme Court and all leading authorities in the United States, hold otherwise? Has this Court of Appeals forgot the constitutional right to equal protection under law? Has this court also forgot the trial court has ruled it will not accept the constitutionally guaranteed application for post-conviction relief from Haeg? Has this court decided Haeg has no right to an order requiring a district court (in Kenai for the convenience of the parties) to accept a constitutionally guaranteed post-conviction relief application? Will this court continue its part in this blatant attempt to deny Haeg post-conviction relief?

Haeg wishes to clarify this Court of Appeals direction to the State where this court requires "the State to respond to Haeg's claim the *trial* court has refused to decide the merits of Haeg's various motions for the return of his property." These motions were filed in accordance with Criminal rule 37(c) - and thus were filed "in the judicial *district* in which the property was seized". In other words Haeg filed motions in the *Aniak trial* court but most of the motions were filed in *Kenai district* court with Judge David Landry (who has since been removed from office because of corruption) because most of Haeg's property was seized in the Kenai/Soldotna area. The State thus must also obtain the proceedings that took place in *Kenai district* court for this court to have complete information (although as stated earlier this court has already been given a copy of all written motions, responses, and rulings). For the States reference Haeg hand delivered his filings to the Kenai District Attorney's office and with the Kenai clerk of court Deirdre Cheek. She did not know how to even file Haeg's motions, as they had never had a Rule 37(c) return of property and suppress as evidence motion before, and finally ended up consulting with Anchorage for the proper procedure.

In closing Haeg formally and respectfully asks this court to rule on **all** motions and requests– including the one for the proper procedure to have the Alaska Supreme Court review the rulings currently under reconsideration by this court - so he can move forward with his case.

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED on this ____ day of January 2007.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that on the ____ day of January 2007, a copy of the forgoing document by ___ mail, ___ fax, or ___ hand-delivered, to the following party:

Roger B. Rom, Esq., O.S.P.A.
310 K. Street, Suite 403
Anchorage, AK 99501

By: _____