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IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG Appellant, vs. STATE OF ALASKA, Appellee.	)	Case No.: A-09455/A-10015

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

9/19/08 PETITION FOR REHEARING

VRA CERTIFICATION: 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 DAVID HAEG, in the above case & in accordance with Rule 506 hereby asks the Court of Appeals for a rehearing.

1. The Court overlooked the directly controlling Alaska Supreme Court case *Waiste v. State* 10 P.3d 1141 (Ak 2000) in denying Haeg's due process claim he was entitled to the return of property & then to suppress it as evidence.

The Court claims Haeg, "relies *primarily* on the decisions in F/V American Eagle v. State and State v. F/V Baranof" – with not a single mention of Waiste when Haeg first, primarily, & repeatedly cited Waiste. [At. Br. 4; Motion for Return of Property 8-9].

How could due process have been given when the State seized property Haeg *was using at the very time as his primary means to provide a livelihood,* without a prompt

postseizure hearing ("within days if not hours") or even notice such a hearing was available? What about Haeg asking when he could get his property back & the very Trooper seizing the property telling Haeg *"never"?* To Haeg this meant there was *no* prompt opportunity to contest – he was out of business with no judge to hear his side.

Multiplying the harm was the fact every affidavit used to seize his property falsified the location of the evidence against Haeg & this false location was specifically used to charge & convict Haeg of crimes harsher then what may have been otherwise warranted. Because a judge never addressed the false evidence location at a prompt postseizure hearing it never was addressed - & thus adversely affected Haeg's entire case. *The reason for a mandatory hearing after taking someone's livelihood unopposed is clear – it may not be warranted.*

Haeg respectfully asks this Court apply the controlling caselaw in Waiste to the facts of Haeg's case & return Haeg's property.

2. The Court overlooked the material question that since Haeg was not given the due process of intent to forfeit, items to be forfeited, and/or the statutes authorizing forfeiture in any charging information he is entitled to the return of property. [Motion For Return of Prop 4-6, 32-35, & 52-60; Pet. For Rev. 2-3]

Haeg claimed due process required the State to place the intent to forfeit, items to be forfeited, & the statutes authorizing forfeiture in the charging informations. *See* Rules 7 & 32.2 of the Federal Rules of Criminal Procedure.

Since States must grant as much due process as the Federal Government, Haeg asks the Court apply the Federal standard to his case & return his property.

3. The Court overlooked the question the State's entire argument to Haeg's judge & jury was the evidence showed Haeg killed wolves *were he guided* to

benefit his business when they knew this was false when presenting the arguments & testimony. Also, the Court overlooked the directly controlling cases *Mooney v. Holohan*, 295 U.S. 732 & *Napue v. People*, 360 U.S. 264 [At. Br. 5-6, 13-16].

The State argued Haeg should be convicted because he took wolves where he guides to benefit his business. Gibbens then testified the evidence showed Haeg took the wolves where he guides – as he had put on all search & seizure affidavits. Yet Gibbens, when trapped on cross-examination, admitted this was false testimony & argument – proving he knew it was false when he testified – making it irrefutable perjury. Money & Napue hold it is a denial of due process to convict a person on false testimony known to the State. The false testimony in Haeg's case wasn't just known to the State, it was the State itself who knowingly gave the false testimony. Haeg respectfully asks this Court apply the controlling caselaw in Mooney & Napue to the facts of Haeg's case.

4. The Court overlooked the material question Haeg wished to stay his appeal to conduct a post-conviction relief procedure claiming ineffective assistance of counsel to prove his attorneys maliciously deprived him of constitutional rights & conspired to do so. [At. Br. 1-20]

For nearly 2 years Haeg has filed many motions with this Court to stay his appeal so he could conduct PCR, a critically important issue for Haeg. This Court held in *State v. Jones* 759 P.2d 558 that this was the proper procedure for someone on appeal wishing to claim IAOC - American Bar Association Standard 22-2.2 agrees. Yet this Court refused to stay Haeg's appeal, with *no justification* other then the law allows both to be conducted at the same time. Haeg filed many motions for reconsideration – asking for a justification to deny him, a non-attorney who cannot possibly conduct both at the same

time, the same procedure given to everyone else. This Court remained unmoved & now, with its decision in Haeg's appeal *after nearly 3 years*, the harm to Haeg is clear.

The decision claims "Haeg" waived innumerable fundamental constitutional rights that guarantee a fair prosecution. 1. The right against unreasonable searches & seizures; 2. The right to due process; 3. The right to equal protection of law; 4. The right against self-incrimination; 5. The right against double jeopardy; 6. The right to compulsory process for witnesses in his favor; 7. The right to have assistance of counsel; & 8. The right to have no State deprive any person the equal protection of the law or of due process.

Yet "Haeg" never waived a single right – his attorneys did over his taped demands something be done. Since, with this decision, this Court has kept him on an appeal treadmill for 2 years for nothing, Haeg's wants a *legitimate reason*, other then " the law allows it", that this court will not let him stay his appeal so he can prove his attorneys maliciously waived Haeg's rights over Haeg's demands. If there is no legitimate reason this is another violation of Haeg's right to the equal protection of the laws.

5. A smoking gun?

The day before his PA was to be finalized Haeg sent the court & the State a letter documenting what he was going to testify to under oath the next day - that a sitting Board of Game member told him if more wolves were not taken the WCP would most likely be shut down as ineffective; that Haeg had to kill more wolves so this did not happen; & that if Haeg took wolves outside the area to just mark them on GPS as being taken on the inside of the area. Just hours after they received this letter the State filed an amended

information violating the PA by greatly increasing the severity of the charges. As a result the PA never happened & Haeg never testified under oath in open court what the Board of Game member told him.

Animal rights activists were (and still are) trying to shut the WCP down by claiming the State & Board of Game were not using sound science & were manipulating facts to justify the program. Haeg's testimony in open court during his PA would have been the smoking gun proving this as fact.

Also interesting? Haeg's written statement vanished from the official court record of his case – *but the cover letter documenting its submission remained in the file.*

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this _____ day of _____2008.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the ____ day of _____ 2008,
a copy of the forgoing document by ___ mail, ___ fax, or
___ hand-delivered, to the following party(s):

Andrew Peterson, Attorney, O.S.P.A.

U.S. Department of Justice

By: _____