

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907)262-9249 & 262-8867 fax

Filed 11/6/06

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 TO CORRECT AND STAY GUIDE LICENSE SUSPENSION

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 and hereby files the following motion to correct sentence and to stay suspension of guide license pending post-conviction relief and/or appeal.

First Haeg respectfully asks this court to correct his guide license **revocation**, which was done in error, to a guide license **suspension**. Haeg was convicted AS 8.54.720(a)(15) and sentenced on 9/30/05 to **revocation** of his master guide license for five (5) years. AS 8.54.720(f)(3), which governs sentence limits regarding guides licenses in convictions of AS 8.54.720(a)(15), states, "the court shall order the department to **suspend** the guide license...for a specified period of not less than three years, or to **permanently revoke** the guide license...of a person who commits an offense set out in (a)(15)...of this section". It is clear

that only if the court wishes to take a license for life may they **revoke** it. If the court wishes to take deprive the license for a specified period of time it is clear it must **suspend** it for that time. **Revoke** means to cancel or annul, so if a license is **revoked** for five (5) years, as in Haeg's case, he will have to go through the process of re-obtaining it, since it will be as if he never had a license before the sentence. In Haeg's case this will mean that at the end of the five (5) year "**revocation**" he will have to "hunt" for two (2) years to be eligible to apply for an "assistant" guide license. Once he has been an "assistant" guide for a minimum of three (3) years he may apply for a "registered" guide license. After he has been a "licensed registered guide" for at least twelve (12) of the past fifteen (15) years he may apply for a "master" guide license. So Haeg's five (5) year "**revocation**" is in reality at least a twenty-two (22) year end of Haeg's life and his family's life as they know it.

Haeg would like this court to know what this has cost him and his family **already**. The Bureau of Land Management (BLM), issuer of many of Haeg's federal land and hunting camp permits, has **revoked** Haeg's permits and hunting camp permits because Haeg's guide license is **revoked** and not **suspended**. These permits and camps have been painstakingly developed through many years of dedicated work and represent an incalculable investment in time, negotiation, risk, and cost. All these camps were flown well over one hundred (100) miles through the Alaska Range while strapped underneath or to the wing of a small fabric plane over the course

of many years. At present, because Haeg's master guide license has been **revoked** instead of **suspended**, Haeg has been ordered to **destroy** these camps. In light of this Haeg again respectfully requests this court to correct his five (5) year master guide license **revocation** to a five (5) year guide license **suspension**.

In addition to correcting Haeg's sentence Haeg requests this court to stay his guide license suspension pending outcome of his post-conviction relief and/or appeal. Haeg, through his attorney Brent Cole (Cole), engaged in Rule 11 Plea Agreement negotiations with prosecutor Scot Leaders (Leaders) in the summer and fall of 2004, prior to Haeg ever being charged. Cole told Haeg that for the "deal" he had to give the prosecution an interview and give up one (1) to three (3) years guiding, dependent upon the outcome of a "mini-trial" discussing a complaint from a competing guides client (Haeg did not wish to do this but Cole said "it will just make the state look bad"). This client claimed "his huge moose" was "illegally hunted" by Haeg's client. Cole told Haeg he should start canceling the first years hunts "immediately" because "you won't have a guide license this fall"

After Haeg had given the interview and started canceling hunts as Cole had instructed Cole faxed an "offer" to Haeg from Leaders on 8/19/04. Haeg was shocked at this "offer" because Cole had told Haeg he had a "deal" and this "offer" was far harsher than the "deal" Cole had led Haeg to believe. This "offer" included the agreed to AS 8.54.720(a)(8) charges; the agreed to 1 to 3 year license suspension; the agreed "Parties agree that each

year's term will end effective July 1" (to reflect that Haeg was already canceling all hunts after May of 2004); the agreed to discussion of "a guided moose hunt" to determine the length of license suspension; that Haeg would plead to 11 counts (a huge shock as **over half were based upon only the statements made for the "deal"** and the rest were based mostly upon these statements, **all of which were corrupted by Trooper Gibbens perjury** and which Cole later described, under oath, as "a little overwhelming"; **10** years probation conditioned upon no **jaailable** offenses and no **fish** and wildlife, or guiding offenses; forfeit **all** items seized (including **airplane**, property that had absolutely no relation to the case and all Jackie Haeg's property); **suspend trapping privileges for 10 years**; 55 days in jail with all 55 suspended; 110 hours of community work service; and \$11,000 fine with \$8800 suspended; and \$5000 restitution.

Haeg was shocked at this "offer" and told Cole he would not accept it. Haeg told Cole that he would plead to all 11 AS 8.54.720(a)(8) charges, would discuss the moose hunt, would accept a 1 to 3 year guide license suspension dependent upon the judge after the moose discussion, but wanted the judge to make all other sentence decisions after she had heard everything Haeg wanted her to hear, including sworn testimony from Tony Zellers, Tom Stepnosky, Drew Hilterbrand, Jake Jedlicki, Jackie Haeg and himself. Cole said this was called "open" sentencing and he would ask Leaders about it. On 8/27/04 Cole told Haeg that Leaders accepted this arrangement. These actions, conversations and dates

are specifically detailed in Cole's itemized billing statements. The court hearing to finalize this Rule 11 Plea Agreement was set for 11/9/04 because the state was "busy" with the hunting/guiding season.

At 3:00 p.m. 11/8/04, after Haeg and the witnesses had arrived in Anchorage Cole told Haeg that Leaders had amended the information and changed the charges agreed to from AS 8.54.720(a)(8) to AS 8.54.720(a)(15). This meant the charges had been changed less than five business hours before the Rule 11 Plea Agreement was to be finalized in McGrath and after the finalized Rule 11 Plea Agreement had been in place for over two months - during which time Haeg had continued to cancel hunts and send back deposits and make arrangement for witnesses to get to McGrath from around the U.S. These new charges carried a minimum three (3) year guide license suspension and a maximum of guide license revocation for life. Cole told everyone "that's the way it is" and "there's nothing that can be done except call Leaders boss". Leaders also used statements as the only probable cause to file most of these charges that were never agreed to. Haeg's statements were also used as the primary probable cause for the rest.

Cole told Haeg he would now have to first sign his plane over to Leaders in order to get the **same** "open" sentencing agreement. When asked what there was to keep Leaders from again amending the charges [after getting the plane] Cole could not respond. Because Haeg felt Leaders and Cole were now actively

working together to strip everything they could from him he refused to accept anything but the deal Leaders had accepted on 8/27/04. All these actions by Leaders are clearly explained in the tape-recorded conversation between Joe Malatesta (Malatesta), Robinson's investigator, and Cole on 1/3/05.

After 11/9/04 until Haeg fired Cole on 12/3/04 he secretly taped all conversations he could with Cole. Haeg did this after discussing Cole's actions with Haeg's business and former criminal defense attorney Dale Dolifka (Dolifka) - who was shocked at Cole's conduct and said Haeg should immediately look for a new attorney.

On 12/10/04 Haeg hired Arthur Robinson (Robinson) and requested he find out how and why Cole and Leaders had taken so much from him with nothing in return. Robinson stated that "none of that matters" and he could not fix anything that happened with Cole because it was all "water under the bridge", the Rule 11 Plea Agreement was "fuzzy", and there was a "dispute" between Cole and Leaders it just didn't matter. Haeg, who still insisted on finding out exactly what had happened to the Rule 11 Plea Agreement, requested Robinson to investigate. Robinson refused to do so, again saying it didn't matter what happened, it was over. Haeg asked if Robinson's investigator Malatesta could conduct an investigation and this was discouraged. Haeg ended up calling Malatesta at home and asked if he could hire him to find out what exactly had happened to Haeg's Rule 11 Plea Agreement. Malatesta agreed and on 1/3/05 taped a conversation between himself and

Cole. Cole was extremely evasive but ended up admitting that Haeg had a "Rule 11 Plea Agreement" that Leaders had "reneged upon". Cole admitted he did not attempt "to get in there and get a sentencing on that". Cole admitted the transcriptions of this interview as being correct during sworn Alaska Bar Association proceedings. Haeg has Robinson listen to the tape and Robinson says, "so what - there is nothing I can do". Haeg eventually obtained documentation in which Malatesta writes this to Robinson after the interview: "don't forget to motion on DA backing out of original offer"

Haeg asks Robinson if he could try to get the same deal from Leaders as he originally had. Leaders responded to this request on 2/15/05 with an offer of **25 days in jail**, 100 hours work service, \$1250 fine, forfeiture of **all** items seized (**approximately \$100,00.00 worth**), and 1-year active suspension of guide license **from the date of conviction**.

In other words Haeg will not now even be given credit by Leaders for the year of guiding he already had given up for the first Rule 11 Plea Agreement Leaders has already broken. Haeg, who was shocked by this, asked Robinson how Leaders could do this and Robinson said the "prosecutor can do anything he wants". Haeg continued to insist something be done and but on 3/1/05 Robinson states in his billing records, "Recommendation David [Haeg] go to trial". Robinson afterward comes up with a defense that "since the informations were not sworn to the court was deprived of

jurisdiction" but Haeg continues to remain unconvinced. Robinson, in front of witnesses, states:

"Why would you want to plea to your deal and have a conviction on your record when with this mistake of the prosecution you won't have a conviction on your record?"

Haeg, who was still in shock at Leaders actions and wondering what to do, only very reluctantly agreed to trial, even though Robinson kept assuring him "you are no doubt going to win".

Robinson filed a motion to dismiss on 3/30/05 on the basis the court did not have jurisdiction because the information or amended information did not have a sworn probable cause statement from Leaders. This motion was denied by Magistrate/Judge Murphy because:

"prior to the issuance of a warrant or a summons an information must be supported by oath. In this case, no warrant or summons was issued. Criminal Rule 7(c) defines and information as 'plain, concise and definite written statement of the essential facts constituting the offense charged.' The Information and amended Information filed by the State clearly meet the requirement stated in Criminal Rule 7(c). Haeg has not provided any authority, nor has the court found any, which requires an information to be sworn to when no warrant or summons is issued.

Haeg is extremely upset by this and again asks Robinson if they can somehow enforce the Rule 11 Plea Agreement that was broken. Robinson replies, "the Judge doesn't know what she is talking about and even though you will lose at trial we will no doubt win on appeal. I suggest that we don't put on any evidence at trial and just get to the appeal without you having to spend a lot of time and money getting there. Your guide license won't be

affected on appeal and you will have your plane back so you can make money during the appeal".

Haeg of course loses at trial because of Trooper Gibbens unbelievably prejudicial perjury on the search warrant affidavits and during trial. Then after trial, when Trooper Gibbens testifies that Haeg didn't guide for the previous year he states: "We don't know why he did that". Leaders states: "Because Haeg broke the Rule 11 Plea Agreement that included talking about a moose hunt to enhance his sentence we will still require it so his sentence can be enhanced". This moose "mini-trial" then went from 11:00 a.m. on the day of sentencing to 9:00 p.m. At the end of it Judge Murphy ruled that the prosecution had **failed to make any showing whatsoever anything during the hunt was amiss.**

In other words if Haeg would have received the Rule 11 Plea Agreement he had bought and paid for he would have received a one year suspension of his guide license retroactive to July 1, 2004 (because the 1 to 3 year license suspension, retroactive to July 1, 2004, was to be decided by the outcome of Haeg's conduct in the moose hunt) - even with the Trooper Gibbens perjury to change everything from a possible Wolf Control Program violation to a Big Game Guiding violation.

At present David and Jackie Haeg have not only been illegally deprived of their property, used as the primary means of providing a livelihood for over 2½ years they have been deprived (undoubtedly unjustly) of their guide business (through David Haeg's loss of guide license) for well over 2 years. **This**

is an entire year, so far, over what Haeg should have received, not considering the unbelievably prejudicial perjury by Trooper Gibbens or any of the other unbelievable actions outlined in the included memorandum, motions, documents, and affidavits.

Because of this unbelievable breakdown in fundamentally fair procedures Haeg very respectfully requests this court to stay Haeg's guide license suspension pending his appeal and/or post-conviction relief so he may regain his ability to provide a livelihood for his family and end the harm being caused to his family. If Haeg loses his appeal and/or post-conviction relief he can always be required to finish out his sentence. Yet if Haeg is correct who will repay the harm unjustly caused to Haeg and his family?

The accompanying memorandum, motions, documents, and affidavits support this motion.

RESPECTFULLY SUBMITTED this ____ day of _____, 2006.

David S. Haeg, Pro Se Appellant

I HEREBY CERTIFY that a copy of the foregoing was served on:

Roger B. Rom, Asst. Attorney General
310 K. Street, Suite 308
Anchorage, AK 99501 907-269-6250
by hand on _____.

By: _____