

ARGUMENT

I. HAEG IS NOT ENTITLED TO A STAY OF THIS APPEAL PENDING THE OUTCOME OF HIS POST CONVICTION RELIEF APPLICATION.

A. This Court Should Again Deny Haeg's Request to Stay This Appeal

Appellant seeks an order staying his appeal pending the outcome of his post conviction relief application. There is no basis in the law to support appellant's request and policy reasons suggest it would be improper to grant his motion.

A petition for post conviction relief is a civil matter. Conclusion of appellant's post conviction relief case could be years away. If by chance he concluded his post conviction relief matter and returned to his appeal, and the court granted an appeal overturning his conviction, the State would be in the unenviable position of having to retry a case that would be several years old. There is substantial prejudice to the State in the event this were to unfold, including loss of witnesses and the impact of time on the memory of witnesses.

Haeg previously asked this Court to stay his appeal until his post conviction relief application is decided. Haeg once again is asking this Court

to stay his appeal based on his unsupported assertion that the trial record does not sufficiently address the alleged injustices that Haeg references in his appeal. This Court's order from November 16, 2006, held that "the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time. We therefore deny Haeg's request to stay his appeal." Additionally, Haeg's has refused to amend his points on appeal to include the alleged injustices and has failed to cite any evidence that would justify this Court changing its previous ruling denying his request. Consequently, this Court should once again deny appellant's request to stay his appeal pending the resolution of his post conviction relief application.

II. HAEG IS NOT ENTITLED TO SUPPLEMENT THE TRIAL RECORD BY FILING A POST CONVICTION RELIEF APPLICATION.

Appellant seeks to supplement the trial court record with matters that were not before the trial court, including proceedings before the Alaska Bar Association, appellant's representation hearing on remand, proceedings before the Alaska Commission on Judicial Conduct and the record he hopes to establish by filing an application for post conviction relief. Haeg claims evidence exists which will demonstrate plain error, but that this Court should trust his unfounded assertion that the material can only be exposed through PCR proceedings and not in this appeal.

Alaska Rule of Appellant Procedure 210 governs Haeg's request.

Subsection (a) states:

Composition of record. The record on appeal consists of the entire Superior Court file, including the original papers and exhibits filed in the Superior Court, and the electronic records of proceedings before the Superior Court.

All of the items appellant seeks to include in the record are excluded by this rule. Since the items he wants to include in the record would not advance his appeal, his motion should be denied.

Appellant recognizes that he is unable to bring an ineffective of counsel claim before this Court on a direct appeal. In fact, Haeg admits that his appeal is fruitless by pointing out that the trial court did not error in refusing to dismiss the information in his case. Thus Haeg is only left with his unsupported claims of ineffective assistance of counsel and malicious prosecution, both of which must be raised in a post conviction relief application.

III. HAEG IS NOT ENTITLED TO THE SPECIFIC RELIEF
SOUGHT BY THIS MOTION.

Haeg argues, without providing any evidence to support his claim that his attorneys actively conspired against him, that the state took illegal and unethical advantage of his attorneys' conflicts of interest and that the judiciary has colluded against him by denying him a remedy to the above

identified constitutional violations. This Court should deny Haeg's motion based solely on the fact that he failed to present this Court with proper appellate issues. Alternatively, this Court should deny the relief sought by Haeg in this motion as he is not entitled to the relief requested as a matter of law.

A. Haeg is not entitled to have his appeal immediately certified to the Alaska Supreme Court.

Haeg asks that this Court immediately certify his appeal to the Alaska Supreme Court under AS 22.05.015(b). AS 22.05.010(b) provides that “[a]ppel to the supreme court is a matter of right only in those actions and proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020 or to the superior court under AS 22.10.020 or AS 22.15.240.” AS 22.07.020(c) provides that “[t]he court of appeals has jurisdiction to review (1) a final decision of the district court in an action or proceeding involving criminal prosecution....” Haeg must therefore wait until this Court issues a final decision before he files an application for review with the Alaska Supreme Court. Consequently, this Court should deny Haeg's requested relief.

- B. Haeg is not entitled to have all of his outstanding motions ruled on by this Court.

Haeg, without specifically identifying which motions he is talking about, asks this Court to rule on all of his outstanding motions. This request is improper for a number of reasons. First, the State has no idea which motions Haeg is referring to in his request for relief and therefore is not able to adequately respond. Second, there is only one motion properly before this Court and thus this Court does not have jurisdiction to rule on any other motions. Consequently, this Court should deny Haeg's requested relief and not rule on any motions other than the one before this Court.

- C. Haeg is not entitled to a stay of this appeal pending the outcome of his post conviction relief application.

For the reasons previously stated above in section I of the State's Opposition, this court should deny Haeg's requested relief.

- D. Haeg is not entitled to file his post conviction relief application in the Kenai District Court.

Alaska Rule of Criminal Procedure 35.1 sets forth the procedure for post conviction relief applications. Rule 35.1(c) specifically provides that "[a] proceeding is commenced by filing an application with the clerk at the court location where the underlying conviction is filed." Haeg was convicted by a jury decision in the McGrath District Court. Under this rule, the Kenai

District Court does not have jurisdiction over Haeg's post conviction relief claim. Haeg must file his application for post conviction relief with the McGrath District Court. This Court should deny Haeg's request to allow him to file his post conviction relief application in Kenai District Court as there is no legal basis for allowing him to file a PCR application in Kenai as opposed to McGrath.

E. Haeg has no legal basis for asking this Court to stay the revocation and/or suspension of his guide license.

Haeg next asks that this Court stay the revocation and/or suspension of his guide license pending the outcome of his appeal and/or his PCR application. Haeg has previously asked this Court for this exact same relief. This Court, in its order dated November 16, 2006, previously informed Haeg that his request for a stay of his license suspension must first be presented to the trial court. *See* Nov. 16, 2006 Order of App. Ct.; *see also* Rule of App. Proc. 206(a)(4). Despite the clear direction provided by this Court, Haeg once again asked this Court for relief prior to presenting his case to the trial court. Consequently, this Court should deny Haeg's request to stay the revocation and/or suspension of his guide license.

F. Haeg failed to establish a claim for ineffective assistance of counsel and malicious/vindictive prosecution.

Haeg next asks this court for a remand order that includes a finding of ineffective assistance of counsel and malicious/vindictive prosecution as part of the basis for the remand. The issues of ineffective assistance of counsel and malicious/vindictive prosecution are not before this court. In fact, Haeg's conclusory allegations merely inform the court that the injustices he alleges to have suffered can only be exposed through a comprehensive PCR proceeding. Haeg also waived any right to file an appeal for malicious prosecution based on the fact that this issue was never raised at trial. Haeg can, however, raise these issues as part of his PCR application, which will give the State the ability to cross examine his counsel in order to explore the validity of his claims. Consequently, this Court should deny Haeg's requested relief.

G. Haeg is entitled to oral arguments and a public hearing, but he is not entitled to videotape the proceedings.

This court issued an order dated March 23, 2007, which provided that Haeg is entitled to oral arguments under Alaska Appellate Rule 505(a)(2) and that the proceeding will be public as defined in Alaska Administrative Rule 21(a). This court, however, denied Haeg's request to

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- videotape the proceedings as Alaska Administrative Rule 50 only pertains to the media.

CONCLUSION

Haeg is not entitled to any of the relief requested by his appeal other than oral arguments on the limited issues that are properly before this court. Therefore, this court should deny Haeg's motion in its entirety with the exception of his request for oral arguments which was previously granted.

DATED this 18th day of May, 2007.

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