

IN THE SUPREME COURT FOR THE STATE OF ALASKA

DAVID HAEG)
)
 Petitioner,)
)
 vs.)
)
 STATE OF ALASKA,)
)
 Respondent.)

COPY

Supreme Court Case No.: S-12695

Court of Appeals Case # A-09455
Trial Court Case #4MC-S04-024 CR.

Memorandum of Law

I. Opposition to Petition for Hearing

The State of Alaska, by and through Assistant Attorney General Andrew Peterson, hereby submits the State's Opposition to Haeg's Petition for Hearing in the above captioned case.

II. Introduction

David Haeg, represented by counsel, was convicted at jury trial for various misdemeanor offenses alleging violations of Title 8, 11 and 16, and regulations promulgated under those statutes. He was sentenced on September 30, 2005, by District Court Judge Margaret L. Murphy for the nine counts upon which he was found guilty. Counts I through V were convictions for Unlawful Acts by a Guide for Taking Game on the Same Day Airborne (AS 8.54.720(a) (15)), Counts VI and VII for Unlawful Possession of Game (5AAC 92.140(a)), Count VIII for Unsworn Falsification (AS 11.56.210(a)(2)), and Count IX for Trapping in a Closed Season (5 AAC 84.270(14)).

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On April 16, 2006, Haeg moved for a stay of the forfeiture of his airplane and his guide license suspension pending appeal. The State opposed his request and on May 16, 2006, the Court of Appeals granted the stay of the order of the trial court imposing restitution, but denied the motion to stay the order of the trial court suspending petitioner's guide license and forfeiture of his airplane. Thereafter, Haeg sought an order of the Court of Appeals for permission to represent himself.

The Court of Appeals issued an order on June 23, 2006 which granted Haeg's motion for self representation, and denied without prejudice Haeg's motion for reconsideration of the suspension of his guide license and forfeiture of his aircraft. On September 21, 2006, the Court of Appeals denied Haeg's motion to supplement the trial record.

Haeg subsequently filed a motion with the Court of Appeals for return of his property seized by the State in this case. The Court of Appeals issued an order dated November 16, 2006, which denied Haeg's motion on the grounds that Haeg had not yet filed a motion with the trial court under Criminal Rule 37(c) for the return of his property. The Court of Appeals order further provided that Haeg must first raise the issue of the return of his property with the trial court before seeking appellate review.

The Court of Appeals next issued an order on February 5, 2007, remanding jurisdiction to the District Court for the limited purpose of allowing Haeg to file a motion

for the return of his property.¹ The Court of Appeals further ordered that the “District Court has the jurisdiction to conduct any proceedings necessary to decide this motion.”

On March 13, 2007, Magistrate Woodmancy conducted a status hearing and ordered a briefing schedule pertaining to Haeg’s motion. Magistrate Woodmancy ordered Haeg to file his motion with respect to all property seized in the above captioned case in McGrath District Court² and set a briefing schedule. Magistrate Woodmancy further denied Haeg’s oral request for an evidentiary hearing and/or oral arguments.

On March 16, 2007, Haeg filed a motion titled “Emergency Motion for Clarification with the Court of Appeals” in which Haeg asked the Court of Appeals for permission to file his motion for return of property in Kenai, not McGrath and to order the District Court to allow him to hold evidentiary hearings, cross adverse witnesses, present witness testimony and conduct oral arguments. The Court of Appeals treated Haeg’s motion as a Petition for Review due to the fact that Haeg was asking the Court of Appeals to review a decision of the District Court in which there was no final judgment within the meaning of Rule 202. The State filed an opposition and the Court of Appeals denied Haeg’s Petition for Review. Haeg now files this Petition for Hearing with the Supreme Court challenging the rulings of both the District Court and the Court of Appeals. The State opposes the Haeg’s Petition for Hearing.

¹ The Court of Appeals Order had a trial court number of 4MC-04-00024 CR.

² Magistrate Woodmancy actually told the parties to file documents in Aniak District Court due to the fact that Aniak is the location where Magistrate Woodmancy works while presiding over issues in McGrath.

I. Legal Argument.

- A. Haeg's Petition for Hearing should be denied as Haeg has failed to justify any legal basis for filing this petition as required under Rules of Appellate Procedure 304.

On March 13, 2007, Magistrate Woodmancy ruled that Haeg must file his motion for return of seized property with the McGrath District Court. Magistrate Woodmancy further set a briefing schedule and denied Haeg's oral request for an evidentiary hearing and/or oral arguments. Haeg filed a Petition for Review with the Appellate Court and now the pending Petition for Hearing seeking an order of from this Court allowing him to file his motion for return of property and suppression of evidence in the Kenai District Court as opposed to the McGrath District Court – the location of the trial court and the court that issued the search warrants that resulted in Haeg's property being seized. Haeg further demands that this Court order the District Court to allow him to subpoena and cross examine witnesses, present witness testimony, evidence and oral arguments. The State opposes Haeg's motion because he has failed to establish any legal basis or justification for this Court to review the District and Appellate Courts' decisions as set forth under Alaska Rule of Appellate Procedure 304.

Specifically, Alaska Rule of Appellate Procedure 304 provides that:

The granting of a petition for hearing is not a matter of right, but is within the discretion of the court of discretionary review. The following, while neither controlling nor fully measuring that court's discretion, indicates the character of reasons which will be considered: