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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 ON PETITION FOR REVIEW & THE MOTION FOR ITS EXPEDITED REVIEW AND TO SUPPLEMENT THE RECORD OF DAVID'S CRIMINAL APPEAL WITH OFFICIAL PROCEEDINGS BEFORE THE ALASKA BAR ASSOCIATION & THE ALASKA COMMISSION OF JUDICIAL CONDUCT

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 Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files a motion for ruling and, in accordance with Criminal Rule 47, hereby files a motion to supplement the record with the official proceedings before the Alaska Bar Association and the Alaska Commission of Judicial Conduct.

MOTION FOR RULING

On 8/18/07 David filed a petition for review with this court of Magistrate Woodmancy's decision to not return all of David's property, used as the primary means

to provide a livelihood, and to suppress it as evidence. David included a motion for expedited consideration of the petition for review – stating under oath that a delay would cause further expense, hardship, and deprivation of David's constitutional rights.

On 8/31/07 the State filed a motion for an extension of time in which to file the State's response to David's petition for review. This motion, although written in attorney of record Andrew Peterson's name, was signed by some unheard of attorney – directly violating Appellate Rule 514(e). This motion was supported by a two (2)-page affidavit in Andrew Peterson's name – yet signed by the same unheard of attorney. Notary Sherry Gowan then certified this affidavit, with both her official seal and signature, that Andrew Peterson had been first duly sworn under oath before he stated and deposed the reasons David's motion should not be addressed in an expedited manner.

This is irrefutably the class B felony crime of perjury as defined by AS 11.56.200 and AS 11.56.240.

This fraudulent motion and fraudulent affidavit were then placed in the U.S. mail for delivery by same.

This is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment. Since this fraud took both Gowan and the unheard of attorney to accomplish, it is also a conspiracy under United States Code Title 18 Chapter 18 Section 1341, also punishable by up to 20 years imprisonment.

On 9/7/07 David filed a motion to strike this motion and affidavit, citing perjury and conspiracy.

On 9/7/07, with no ruling from the Court of Appeals on the State's illegal motion for more time, the State filed an opposition to David's petition for review that was 10 days beyond the deadline in which to do so. This unauthorized opposition contained numerous intentional falsehoods and misrepresentations – including the following:

1. That David is asking for the very same relief already denied in his first petition for review by this Court of Appeals (when the Court of Appeals *never* even accepted that first petition for review, let alone ruled on David's requests in that petition for review – none of which included the return of his property and/or to suppress it as evidence.)

2. That Magistrate Woodmancy denied the forfeiture statutes were unconstitutional (when Magistrate Woodmancy had ruled he had no authority to determine whether or not they were unconstitutional.)

3. That David did not support his petition for review (when David supported it not only with facts, sworn to under penalty of perjury, but also with overwhelming and controlling caselaw and principles.)

4. That David failed to justify a petition for review under Appellate Rule 402(b)(1)-(4) (when David justified his petition with each and *every* one of the four (4) justifications, any one of which justifies review.)

5. That David failed to support his claim of enormous economic consequences, hardship, and injustice (when David supported this claim with a sworn affidavit that the property he is trying to recover with this petition for review, which includes his airplane, is the *primary* means with which *both* he and his wife Jackie provide a livelihood for their family of four (4) – and that this means has been kept from them for nearly four (4) years at present – all in violation of the constitutional and procedural due process that had to be provided "within days if not hours" of seizure).

6. That the District Court had no authority to find the statutes unconstitutional (when the very essence of a court's duty is to determine if laws and actions are in compliance with constitution).

7. That "This courts order (to the District Court) did not authorize Haeg to file a motion for the return of his property". This was the *exact* reason for this Court of Appeals remand. See Court of Appeals Order of 2/5/07:

> "Jurisdiction in this case is remanded to the District Court for the limited purpose of allowing Haeg *to file a motion for the return of his property* which the State seized in connection with this case. The District Court has the jurisdiction to conduct any proceedings necessary to decide this motion. We express no opinion on the merits of Haeg's motion. This limited remand does not alter the briefing deadline in this case."

8. That David cited no authority that would authorize Magistrate Woodmancy to find the forfeiture statutes unconstitutional or to suppress evidence (when David cited the constitutional rights of due process, equal protection under law, and against unreasonable searches and seizures, any one of which would authorize this –

along with citing the specific U.S. and Alaska Supreme Court controlling caselaw and principles that also support Magistrate Woodmancy's authority to do this.)

9. That David had no right to the constitutional prompt notice of an opportunity to contest after the State seized and deprived him of his property that was his primary means to provide a livelihood; that David had no right to the constitutional prompt notice of the intent to forfeit his property, used as his primary means to provide a livelihood; that David had no right to the constitutional prompt notice of the case for forfeiture of his property, used as his primary means to provide a livelihood, and that David had no right to the constitutional prompt notice of an opportunity to bond out his property, used as his primary means to provide a livelihood. (This is proven perjury by Peterson – proven by a literal mountain of U.S. and Alaska Supreme Court controlling caselaw and U.S. and Alaska Supreme Court controlling principles – all of which were presented to Magistrate Woodmancy in David's motion for the return of property and to suppress as evidence and to this Court of Appeals in David's petition for review.)

10. That Magistrate Woodmancy did not have to hold an evidentiary hearing because Criminal Rule 42(e)(3) provides "[i]f material issues of fact are *not* presented in the pleadings, the court need not hold an evidentiary hearing". Peterson fails to acknowledge *numerous* material issues of fact *were* presented in the pleadings: i.e. the affidavits used to obtain the property seizure warrants were based upon intentional perjury; the property taken was David's primary means to provide a

livelihood; no notice of opportunity to contest was given "within days if not hours"; no notice of the case for forfeiture was given "within days if not hours"; no notice of the opportunity to bond was given "within days if not hours"; and that Fish and Game forfeiture statutes AS 16.05.190-195 provide no standards to comply with the preceding due process requirements – both as written and as applied to David – and are thus unconstitutional.

This fraudulent motion was then placed in the U.S. mail for delivery by same. Again this is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment.

It is chilling the level of corruption and conspiracy that must exist in the Alaska Department of Law for them to be able to think they can lie like this in official documents, sent through the U.S. mail, with immunity. It really is not surprising at all they have never lifted a finger to prosecute the corruption in our State and Federal legislatures – the lawyers in the Department of Law are far more corrupt than the legislators.

On 9/17/07 David filed a motion to strike the State's opposition, citing all the above facts, citing the illegal motion and affidavit, citing the fact the State filed the opposition a week after the time to do so had expired, and that all this was done using the color of the law to continue illegally depriving David of the property he used as the primary means to provide a livelihood.

On or about 10/4/07, or 47 days after it was filed David called the Court of Appeals to express his concerns of having no ruling or acknowledgement whatsoever on his petition for review or on his motion for expedited consideration of his petition for review. Shannon Brown, the Court of Appeals clerk assigned to David's case, said they would have it out in 2 days.

On 10/11/07, or a week later, Brown called and informed David that the Court of Appeals would get a decision out the next day.

It is now 10/29/07, over two weeks after this last call, and *seventy two (72) days* since David filed his petition for review of his motion for return of his property and to suppress as evidence and his motion for expedited review – *still with no response whatsoever from this Court of Appeals.*

This is frightening when you carefully consider this with the *fact* that David filed *sixteen (16)* different motions *over nearly a year* in the *futile* attempt to have any court, including this Court of Appeals, decide this same motion – with this Court of Appeals only ordering the district court to decide it *after* David, having become so frustrated he was willing to die for this constitutionally guaranteed opportunity, told this Court of Appeals he would just go to the Trooper impound yard and physically take his property back that he used as the primary means to put food in his two (2) daughters mouths.

What an incredible saga to obtain the simple return of property taken in violation of constitutional rights that had to be provided "within days if not hours" – with Alaska's justice system *still* intentionally denying the return after almost four (4) years. *No one*

would have come as far as David has – in other words this is now an intentional and provable conspiracy within Alaska's justice system to deprive citizens of their property by violating their constitutional rights – by forcing them to first have to bet their very life to just get the ball started and then by costing them so much money and time they must give up before ever getting to the end. It is a cruel, effective, deceptive, unjust, and unconstitutional conspiracy that uses concepts not understood by the great majority of the public – and is thus able to be kept hidden from them. The public may realize they are somehow being unfairly deprived of property by the justice system but would never realize how or who is to blame or how to possibly begin to address it.

David files this motion with absolutely no expectation or hope of it ever being effectively addressed. Alaska's justice system has removed all hope of ever obtaining justice in this State. If it is address at all it will no doubt be remanded to some corrupt judge who, as Magistrate Woodmancy already has, will refuse to allow the constitutionally guaranteed cross examination of the adverse witnesses whom David could prove are committing perjury, refuse to allow the constitutionally guaranteed presentation of the overwhelming evidence in David's favor, refuse to allow the constitutionally guaranteed witness testimony that is also overwhelming in David's favor, and refuse to allow the constitutionally guaranteed oral argument so David could prove, point by point, the State has illegally taken and deprived him of his property he uses as the primary means of providing a livelihood for his family.

David will no longer wait patiently by as his life and the life of his family continues to be destroyed by this State's corrupt justice system. David is 41 years old, his wife Jackie is 42 years old, their daughter Kayla is 9 years old, and their daughter Cassie is 6 years old – *four (4) years* of their lives is too much to have allowed the State to have taken illegally and unchallenged. S*eventy two (72) days* is too long for a family to have to wait for a response to a motion for *expedited* consideration of a petition to get property back that is used as the *primary* means to put food in the families mouth – especially when this due process was first *required* to happen "within days if not hours" *four (4) years ago*. David's family is lucky they are not on death row with this Court of Appeals.

David will immediately file in federal court for relief from the never-ending injustice placed upon him and his family by this State – citing the massive and intentional deprivation of the equal protection of the laws in his entire criminal case. David demands this Court of Appeals continue to decide his motions, as is his constitutional right – no matter how untimely and unconstitutional these decisions are – until a federal court removes this responsibility from them.

MOTION TO SUPPLEMENT RECORD

While perfecting his federal civil rights complaint David has realized further plain error in his prosecution.

During the Fee Arbitration proceedings of 4/12 thru 4/13/06 and 7/11 thru 7/12/06 that David filed against attorney Brent Cole, both David's codefendant Tony Zellers and Zellers attorney Kevin Fitzgerald (Cole's one witness against David) testified under oath

that the reason Zellers cooperated with the prosecution was because of David's cooperation in giving a plea negotiation interview implicating Zellers. In addition, at the Fee Arbitration proceeding both Cole and Fitzgerald testified under oath that both David and Zellers had immunity agreements for their cooperation. In other words, since Zellers cooperation was a direct result of David's cooperation, both David's immunity agreement and Evidence Rule 410 would keep Zellers from participating in any prosecution of David.

Yet Zellers was the prosecutions primary witness against David at David's trial and his testimony was the primary evidence against David.

This is a direct violation of David's constitutional rights against self-incrimination, equal protection of law, and due process; is a direct violation of Evidence Rule 410; is incredibly prejudicial; and is thus *plain error*. As such it is David's constitutional right to have this issue included in his appeal.

Also uncovered during the perfection of David's federal civil rights complaint is that during the investigation by the Alaska Commission of Judicial Conduct into Judge Margaret Murphy's conduct, both Judge Murphy and Trooper Brett Gibbens perjured themselves. This perjury was in response to Executive Director Marla Greenstein's question of whether or not Judge Murphy had an unacceptable level of personal contact with Trooper Gibbens outside the courtroom – specifically whether Trooper Gibbens had given Judge Murphy rides to and from court during David's trial and sentencing. Both Judge Murphy and Trooper Gibbens testified that Trooper Gibbens had never given

Judge Murphy any rides until after David was sentenced. Trooper Gibbens had in fact given Judge Murphy every single ride to and from court during both David's 6-day trial and 2-day sentencing – every morning, noon, and night.

In ***Napue v. Illinois***, 360 U.S. 264 (1959) the U.S. Supreme Court held that perjury that went only to a witness's credibility was cause for reversal of a conviction. In David's case both David's pretrial, trial, and sentencing judge (Murphy) and the main Trooper witness against David at trial (Gibbens, who was also the primary investigator in David's case) have now committed perjury in a conspiracy to cover up their prejudicial conduct in front of David's jury during David's trial and sentencing. This is thus *plain error* and as such it is David's constitutional right to have this issue included in his appeal.

David hereby formally requests effective evidentiary hearings, including cross-examination of adverse witnesses, evidence presentation, witness testimony, and oral argument, to fully expose the above *plain error* in his prosecution. After the evidentiary value of these issues are fully developed David formally requests they be added to the record of his appeal.

Further, because of the following, David formally requests this Court of Appeals conduct these evidentiary hearings themselves.

During the perfection of his federal civil lawsuit it has come to David's attention that his timely motion, supported by affidavit, to recuse Magistrate David Woodmancy (because of evident bias) was not honored in direct violation of *AS 22.20.022*. This

remained unaddressed even after sitting judge Mark Wood (Woodmancy's superior) was apprised of this violation of the law and of David's constitutional rights.

Since he has remained assigned to David's case in violation of the law and David's rights Magistrate Woodmancy has made numerous decisions that are in direct conflict with all controlling law and principles so as to intentionally harm David – including his incomprehensible decisions refusing to allow David an effective hearing; refusing to return David's property, used as the primary means to provide his livelihood; refusing to suppress its use as evidence; and refusing to make decisions David must have for justice to prevail. Because of this *plain error* David requests this Court of Appeals conduct the evidentiary hearings necessary to develop the other plain error in his case.

In consideration of the ever-expanding plain error, constitutional violations, and fundamental breakdown in justice above, David respectfully asks this Court of Appeals immediately grant all his motions.

This motion is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this _____ day of _____2007.

_____

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the ____ day of _____ 2007,
a copy of the forgoing document by ___ mail, ___ fax, or
___ hand-delivered, to the following parties:
Andrew Peterson, Attorney, O.S.P.A., 310 K. Street, Suite 403, Anchorage, AK 99501

U.S. Department of Justice

By: _____