

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

In the Matter of the Application)
for Post Conviction Relief of:)

David S. Haeg)
(Name of Applicant))

FOR COURT USE ONLY
CASE NO. _____ CI

APPLICATION FOR POST CONVICTION
RELIEF FROM CONVICTION OR
SENTENCE (CRIMINAL RULE 35.1)

CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

I, David S. Haeg, hereby apply for relief under Criminal Rule 35.1.

PART A

(Please type or print neatly. Also, if possible, please attach a copy of your judgment of conviction.)

The conviction (sentence) from which I seek relief is as follows:

1. Full original case number: 4MC-04-024CR
Case name: State of Alaska David Haeg
(plaintiff) (defendant)
2. Court which imposed sentence: District Court Superior Court
Court Location: McGrath Name of Judge Margaret Murphy
3. Date shown in clerk's certificate of distribution on the judgment: 10-05-05
4. Date of sentencing and terms of sentence: 9-30-05 (see copy of Judgment)
5. Crime or crimes of which I was convicted: AS 8.54.720 (a)(15) Unlawful Acts a Guide; Same Day Airborne; 5AAC 92.140(a) Unlawful Possession of Game; AS 11.56.210(a)(2) Unsworn Falsification; 5 AAC 84.270 (14) Trapping in Closed Season

6. I am now not in custody in custody at
7. Mailing address: P.O. Box 123 Soldotna Alaska 99669
8. The finding of guilty was made after a plea of
 guilty not guilty nolo contendere
9. Finding was made by a jury a judge
10. Name and address of my lawyer: Brent Cole 821 N. St. Suite 208 Anchorage AK 99501; Arthur Robinson 35401 Kenai Spur Hwy, Soldotna AK 99669; Mark Osterman 105 Trading Bay Dr. Suite 105 Kenai, AK 99611.
- I was not represented by a lawyer.
11. Lawyer was employed by me appointed by the court
12. Did you appeal your conviction (or sentence)? Yes
13. If you answered "yes" to question No. 12 above, state the following:
- a. the name of each court to which you appealed: Alaska Court of Appeals; Alaska Supreme Court; United States Supreme Court
- b. the result in each court to which you appealed and the date of such result: Conviction affirmed on 9/10/08; review denied on 12/1/08; review denied on 4/27/09
- c. Did a lawyer represent you on the appeal(s)? At first.
State the name(s) and address(es) of your lawyer(s) on the appeal(s):
Arthur Robinson 35401 Kenai Spur Hwy, Soldotna AK 99669
Mark Osterman 105 Trading Bay Dr. Suite 105 Kenai, AK 99611
- Lawyer was: employed by you appointed by the court
14. Have you filed a previous application for post conviction relief in this case? No
15. Did you seek any other review of or relief from this conviction or sentence (for example, by filing a motion to modify or correct the sentence, or a petition for habeas corpus or coram nobis in this court or any other state or federal court)? Yes

16. If you answered "yes" to No. 14 or No. 15, state the following:

a. each ground for relief which you previously presented:

That my sentence revoking my hunting guide license was illegal and not
allowed by law.

b. the proceedings in which each ground was raised:

Motion to Alaska Court of Appeals when I was appealing my conviction.

c. the results of each proceeding and the date of such results:

Sentence was modified to a suspension of my hunting guide license on
September 10, 2008.

d. the name and address of lawyers(s), if any, who represented you in these proceedings (separately for each proceeding) None

e. lawyer was employed by me appointed by the court

PART B

I believe I have grounds for relief from the conviction and sentence described in Part A.

1. My grounds for relief are as follows: (State which parts of Criminal Rule 35.1(a) you believe apply to your case.)

(1) That Haeg's conviction and the sentence was in violation of the Constitution of the United States and the constitution and laws of this state;

(4) That there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of Haeg's conviction and sentence in the interest of justice;

(9) That Haeg was not afforded effective assistance of counsel at trial or on direct appeal.

2. The specific facts which support each of the grounds set out above are: (Put in specific references to the record) Legend: TR-trial record; AR-appellate court record; MR-motion record; RH-representation hearing

A. Hunting guides Haeg and Zellers were permitted to help the State of Alaska (SOA) conduct the WCP (WCP) that used the extremely controversial practice of shooting wolves from airplanes. The WCP by law prevented permittees from being charged with hunting or guiding violations. (See 5AAC 92.039(h) and 92.110(m)) Just prior to Haeg's March 2004 permitted participation in the WCP, Ted Spraker, a member of the Alaska Board of Game (the government agency that created and ran the WCP), told Haeg at a Board of Game meeting in Fairbanks, Alaska: (1) the WCP was in jeopardy of being shut down because it was ineffective; (2) Haeg had to take more wolves so the WCP would not be shut down because it was ineffective; and (3) if Haeg ended up taking wolves outside the WCP area to claim they were taken inside the area. Spraker also told Haeg he couldn't believe people weren't poisoning wolves, what poison worked best, and how to obtain it. Spraker later stated, "it was absolute bullshit [Haeg was] charged as a guide."

B. The SOA then prosecuted Haeg and Zellers for taking wolves outside the WCP area, but falsified all wolf kill evidence locations to Haeg's hunting guide area, locations that were material to the charges filed. [See all trial court record, search warrant affidavits, and search warrants.]

C. The SOA used the materially false evidence locations, falsely moving the evidence to GMU 19C, on affidavits to obtain search and seizure warrants for Haeg's home and property. [Exhibit 1]

D. The SOA used materially false warrants to search and seize Haeg's property. [Exhibit 1]

E. The SOA failed to provide a hearing “within days if not hours” after seizure of Haeg’s property he used as his primary means to provide a livelihood. [Exhibit 2]

F. The SOA told Haeg “never” when Haeg asked, “When can I get my plane back because I have clients coming in tomorrow and I have to set up bear camp?” [Exhibit 3]

G. Weeks after property seizure Haeg hired attorney Brent Cole, who told Haeg: (1) Haeg’s case was going to be huge, animal rights activists would be threatening Haeg, and that “immense pressure” was being applied to Haeg’s prosecutor and judge to make an example of Haeg because he jeopardized the WCP; (2) Haeg could do nothing about the SOA falsifying all evidence of wolf kill locations to Haeg’s hunting guide area – after Haeg specifically asked Cole what could be done; (3) Haeg could do nothing about all the search and seizure warrants which falsified the evidence location to Haeg’s hunting guide area – after Haeg specifically asked Cole what could be done; (4) Haeg had no right to a postseizure hearing – after Haeg specifically asked Cole what could be done; (5) there was no way to ask for or bond the property out – after Haeg specifically asked Cole what could be done; (6) Alaska law prevented Haeg from getting the property back – after Haeg specifically asked Cole what could be done; (7) it was not a legal defense that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – after Haeg specifically asked Cole what could be done; (8) Haeg should tell no one that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – after Haeg specifically asked Cole what could be done; (9) Haeg should be charged with hunting and guiding charges; (10) Haeg had no defense to hunting and guiding charges – after Haeg specifically asked what could be done; (11) Haeg should make a plea agreement to hunting and guiding charges; and (12) **the SOA was giving Haeg immunity in order to compel a statement from Haeg and that Haeg was to be “king for a day” for this statement.** [Exhibit 4]

H. On June 11, 2004, Cole present, Haeg gave an immunized statement to the SOA (prosecutor Leaders and trooper Gibbens). This statement implicated Tony Zellers, referred to all of Haeg’s actions that he was later prosecuted for, and produced a map, marked by Haeg of where all the wolves were that he and Zellers had killed. [Exhibit 5] **This same map was used against Haeg at trial.** [TR 280-286, 331-612, 645-646, 914]

I. The SOA used Haeg’s compelled and immunized statement in numerous ways to investigate and build their case against Haeg. The SOA directly and indirectly obtained witnesses, evidence, and testimony. [See all record.]

J. **On June 23, 2004, because Haeg’s statement implicated him, Zellers gave a statement to the SOA (prosecutor Leaders and trooper Gibbens) and agreed to cooperate with them.** [Exhibit 6] The SOA showed Zellers the map upon which Haeg had marked the locations of the wolves he and Zellers had taken outside the WCP area and asked Zellers to confirm that Haeg’s locations were correct. [Exhibit 7]

K. During their statements both Haeg and Zellers evidenced to the SOA (prosecutor Leaders and trooper Gibbens) the SOA had falsified the evidence locations to Haeg's hunting guide area. Cole was present during this. [Exhibit 5 and 7]

L. In August 2004 Cole billed Haeg for finalizing a PA that only required a 1-year loss of guide license and in September 2004 billed Haeg for scheduling the PA to be presented to Court on November 9, 2004. [Exhibit 8]

M. Because Cole told him prosecutor Leaders promised to give credit for it, Haeg cancelled the 2004 fall and the 2005 spring hunting guide season. [Exhibit 4]

N. On November 4, 2004 prosecutor Leaders filed an information containing the PA charges agreed to - charges allowing Haeg to receive the 1 year guide license suspension. **The information specifically used Haeg's statement as probable cause for all charges.** [Exhibit 9]

O. On November 8, 2004, over Cole's objection, Haeg submitted to the Court and SOA a written statement of what his PA testimony would be the next day in McGrath. This statement explained what the SOA had told Haeg just before Haeg's participation: that the WCP was in jeopardy of termination if more wolves were not taken; that Haeg had to take more wolves so this did not happen; that if Haeg took wolves outside the area to claim they were taken inside the area; that they could not believe people were not poisoning wolves; what kind of poison worked best, and where to obtain it. The statement also evidenced Haeg had done all required for the PA. [Exhibit 10]

P. On November 8, 2004 Haeg drove to Anchorage to meet with Cole and to fly to McGrath on November 9, 2004 to finalize the PA. Haeg had flown PA witnesses in from as far away as Illinois because Cole said they were required. [Exhibit 4]

Q. When Haeg and witnesses arrived Cole stated he "just received bad news" and showed everyone an amended information, dated November 8, 2004 1 PM, that changed the charges so they required a minimum 3-year guide license loss, violating the PA that only required a 1-year loss. No reason was given for increasing the severity of the already filed charges. [Exhibit 4 and 11]

R. **All amended informations specifically used Haeg's statement as probable cause for the new and more severe charges that violated the PA.** [Exhibits 11 and 12]

S. The information, nor any that was ever filed against Haeg, gave notice the SOA would seek forfeiture of Haeg's property. [Exhibits 9, 11, and 12]

T. Repeatedly Haeg and the witnesses asked Cole what could be done. Repeatedly Cole told Haeg and the witnesses: (1) **the only thing he could do about prosecutor**

Leaders breaking the PA was to “call Leaders boss, a lady I used to work with” and that he called her, left a message, and she never called back; (2) it was legal and ethical for the SOA to break Haeg’s PA after Haeg had already given up a year of guiding and flown in all the witnesses for it; (3) the SOA could use Haeg’s compelled statement against Haeg and there was nothing he could do about it; (4) “I can’t piss Leaders off because I have to be able to make deals with him after you’re done”; (5) “just suck it up”; and (6) “when Leaders screwed you he really screwed me.” [Exhibit 4]

U. Sometime after November 8, 2004 Haeg’s statement, documenting the SOA had told and induced him to do what they then prosecuted him for, was removed from the Court record while proof documenting it was submitted remained in the record. [Exhibit 13] Years after, when discovered, Haeg asked the Court of Appeals to reconstruct the record with the statement before his appeal brief was due. Although the SOA did not oppose, the Court of Appeals, for reasons never explained, failed to do so.

V. Haeg’s immunized and incriminating statement was released to the press, where it was printed in the Anchorage Daily News and numerous other state and national papers. [Exhibit 14] Cole told Haeg it was legal and ethical for the SOA to do this and that there was nothing that could be done about it. [Exhibit 4] The SOA stated in the news articles Haeg was just “a bad apple” and that the SOA had nothing to do with Haeg taking wolves outside the WCP area and claiming they had been taken inside. [Exhibit 14]

W. Haeg fired Cole and hired attorney Arthur Robinson, who told Haeg: (1) nothing could be done about anything Cole had done – when Haeg specifically asked what could be done; (2) there was nothing Haeg could do about the SOA falsifying all evidence locations to Haeg’s hunting guide area – when Haeg specifically asked what could be done; (3) there was nothing Haeg could do about all the search and seizure warrants which falsified all evidence locations to Haeg’s hunting guide area – when Haeg specifically asked what could be done; (4) Haeg had no right to a prompt postseizure hearing; (5) Haeg had no right to bond the property out; (6) it was no defense that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside – when Haeg specifically asked what could be done; (7) Haeg could tell no one that the SOA told and induced Haeg to take wolves outside the WCP area but claim they were taken inside; (8) Haeg could get nothing for all he had done for the PA – when Haeg specifically asked what could be done; (9) the SOA did not have to honor the PA or the charges they had agreed to – when Haeg specifically asked what could be done; (10) the SOA could use Haeg’s statement against Haeg – when Haeg specifically asked what could be done; (11) Haeg would lose at trial because Cole had given the SOA everything; (12) because the SOA did not support the informations with an affidavit Haeg should go to trial where he would lose, but then would “no doubt win on appeal” since this deprived the Court of jurisdiction; and (13) Haeg should tell no one about the PA and all Haeg had done for it because this would “admit” to the Court they had jurisdiction over Haeg. [Exhibit 15]

X. Prosecutor Leaders and trooper Gibbens, the very people who compelled Haeg to give them an immunized statement, were people who then prosecuted Haeg at trial for the same actions they required Haeg to refer to and incriminate himself for in his immunized statement. [See all record] Gibbens was a primary trial witness against Haeg and chauffeured Judge Murphy everywhere during Haeg's prosecution. [Exhibit 16 – TR 1262-63]

Y. On May 6, 2005, Robinson, in a reply to the SOA's opposition to Robinson's motion that never brought up Haeg's statement use, claimed prosecutor Leaders was, by reciting Haeg's statement to support the informations, violating Evidence Rule 410 - which prohibits any use of statements made during plea negotiations if a plea negotiations do not end in a plea agreement. Robinson did not also protest Haeg's statement had been compelled by a grant of immunity. Robinson did not protest the innumerable other ways Haeg's immunized statement was being used against Haeg – just the obvious use which, if he did not also protest other use like Zellers testimony, would do absolutely nothing – it would only cover up the written acknowledgement Haeg's statement was being directly used. Although this reply and affidavit was given to both the Court and to prosecutor Leaders nothing was done about the irrefutable violation of Haeg's constitutional right against self-incrimination. [Exhibit 17]

Z. Even though the SOA's argument was "the great economic benefit Haeg received by killing wolves where he guides" Robinson never told Haeg's judge or jury that this argument was a fruit of the SOA's falsified evidence locations and that not a single wolf was killed where Haeg guides. Robinson never told Haeg's judge or jury the SOA told and induced Haeg to take wolves outside the area but claim they were taken inside the area. Without ever knowing any of this Judge Murphy ruled that Haeg should be charged with hunting and guiding violations instead of WCP violations and granted the SOA's protection order that Haeg be prevented from arguing at trial he could not be convicted of hunting violations because the WCP law specifically prevented these charges. [See all record – especially TR 21-84]

AA. From his opening statement on prosecutor Leaders trial case was based almost entirely upon Haeg's immunized statement. The argument for conviction was: Haeg's intent in killing the wolves was to benefit Haeg's business, how much Haeg charges for a moose hunt, how many hunters Haeg took each year, how successful Haeg was on moose hunts, and how Haeg killing wolves that killed the moose he sold to clients benefited Haeg. And that because Haeg's intent was to benefit his hunting guide business Haeg should be found guilty of hunting/guiding crimes. [See all record]

BB. The SOA, through prosecutor Leaders questioning trooper Gibbens, falsely testified at trial that the evidence was found in GMU 19C (the GMU in which Haeg guided and which Gibbens had placed on all search and seizure warrants). Only at Haeg's instance was Gibbens cross-examined on this, where he admitted the evidence was all found in GMU 19D, the GMU in which the WCP was taking place

- a GMU in which Haeg was not allowed to guide. In other words the SOA had known all along the evidence locations were being falsified to where Haeg guided - supporting their hunting/guiding case against Haeg. [Exhibit 18 – TR 418-479]

CC. Robinson never demanded a mistrial for trooper Gibbens proven perjury – or for the fact Judge Murphy had made numerous prior decisions based entirely on the SOA’s now admitted false evidence locations – from issuing search and seizure warrants (upon Gibbens falsified affidavits) to deciding Haeg should be charged with hunting and guiding violations instead of WCP violations. No one, including Robinson, ever explained to Haeg’s judge or jury Haeg was not allowed to guide in GMU 19D - and that this meant Haeg’s intent in killing the wolves could not have been to benefit his business. Robinson never told Haeg’s judge or jury the SOA told and induced Haeg to take wolves outside the area yet mark them as being taken inside the area. Robinson never protested that the SOA’s entire case was based upon material false evidence locations. [See all record]

DD. The SOA used Haeg’s immunized statement against him at trial to devastating effect – without Robinson preventing this. **All main witnesses, testimony, and evidence used against Haeg at trial were obtained through the use of Haeg’s statement. Tony Zellers and his attorney testified Zellers cooperated and testified against Haeg at trial because of Haeg’s statement. Prosecution witness Toby Boudreau proved beyond any doubt his testimony had been tainted by Haeg’s immunized statement – repeatedly and mistakenly referring to “Tony Lee” instead of “Tony Zellers”. Before Haeg’s statement neither the SOA nor Boudreau knew a “Tony Lee” was involved. Trial witness trooper Gibbens and trial prosecutor Leaders were the very people who took Haeg’s immunized statement. Trial exhibit #25 was a map on which, during his immunized statement, Haeg marked the locations of all wolf kills that he was now being prosecuted for. This map and marks on it were specifically and repeatedly referred to throughout Haeg’s entire trial. When Haeg again asked if the SOA could use his statement Robinson again told Haeg they could use, and were using, his statement against him at trial and that since the SOA would only present the prejudicial portions of his statement Haeg had to testify at trial to bring in the exculpatory parts of his statement.** Afterward Robinson stated Haeg should not have testified. [Exhibits 5, 6, 7, and 19 - TR 280-286, 331-612, 645-646, 914]

EE. Haeg was convicted and before sentencing he researched Robinson’s “jurisdiction” tactic and found this was last successful in two 1909 cases: Salter and Ex. Parte Flowers. Since then it has been held a prosecutors oath of office sufficed to verify informations. When confronted Robinson said two “fresher” cases supported his tactic: Gerstein v. Pugh and Albrecht. Haeg researched and proved they irrefutably proved the Court had jurisdiction. When confronted Robinson admitted the Court may have “personal jurisdiction” but claimed the Court would not have “subject-matter jurisdiction”. Haeg researched subject-matter jurisdiction and found subject-matter jurisdiction is

provided by statute and since he was charged with misdemeanors in district court AS 22.15.060 irrefutably provided the court with subject-matter jurisdiction. [Exhibit 15]

FF. Haeg told Robinson he did not want to throw away all he had done for the PA and asked Robinson to subpoena Cole and Fitzgerald (Zellers attorney) to testify at sentencing about the PA that guaranteed lesser charges, all Haeg had done for it, and that Cole claimed it could not be enforced. [Exhibit 15] Robinson stated since Cole knew more of the PA reliance Haeg should just subpoena Cole and not Fitzgerald. [Exhibit 15]

GG. Haeg paid for a subpoena, witness fees, airline ticket, and hotel room for Cole to travel to, and testify in, McGrath. [Exhibits 4 and 15] Haeg typed up and delivered to Robinson 56 questions he demanded Robinson ask of Cole while he was on the witness stand. Haeg also typed up and delivered to Robinson questions he demanded be asked of the witnesses that were present when the SOA broke the PA. [Exhibit 20] The questions were almost exclusively of all Haeg had done for the PA and how Cole said it could not be enforced after prosecutor Leaders broke it.

HH. Cole never showed up to Haeg's sentencing in response to the subpoena, airline ticket, and witness fees. [Exhibit 15] When Haeg asked what could be done Robinson told Haeg there was nothing that could be done about Cole not appearing in response to the subpoena. [Exhibit 15]

II. At sentencing the SOA testified they did not know why Haeg had not guided for a year previous, yet Cole testified on tape and under oath that the SOA had previously agreed that this year was being given for the PA and that Haeg would get credit for it . [Exhibit 21 – TR 1335] This was why Haeg subpoenaed Cole to testify at his sentencing. Although Robinson knew all this he did not object or cross-examine the SOA on this false testimony. At Haeg's sentencing Robinson refused to ask Haeg's witnesses anything about all Haeg had done for the PA, how the SOA broke it, or how Cole said nothing could be done about it. Robinson refused to ask these questions even though he had agreed to do so when he had went over all these typed questions with Haeg and the witnesses the night before. Robinson refused to do so even when Haeg, sitting next to Robinson at sentencing, asked him to. [See all TR]

JJ. The SOA's specific justification for asking for a severe sentence: "Haeg's intent through taking of the wolves was an intent to eliminate wolves from his guiding area, an attempt to eliminate wolves that directly preyed upon the game populations that he hunted in order to better enhance his prospects as a guide and those of his clients." [TR 1382] Although the SOA had previously admitted under oath this was false Robinson never protested or proved again this was false. [See TR]

KK. When Haeg's property was forfeited without constitutionally adequate notice in the charging information Robinson did not protest. [See TR] When the Court's specific justification for Haeg's severe sentence was: "since the majority, if not all the wolves were taken in 19C – where you were hunting" [Exhibit 22 - TR 1437-1441]

Robinson did not protest – even though he knew this was completely false and **even though the SOA had admitted under oath at trial cross-examination this was false – after claiming it to be true for years on all search warrant affidavits, search warrants, and during their trial testimony.** [See TR] The other reasons the Court gave for Haeg’s severe sentence were “the politics involved” and “the effects to the wolf kill program”. [TR 1441]

LL. Robinson told Haeg: “I was barely there by like 11 [PM]” but failed to object to Haeg being sentence at nearly 2 AM. The Court failed to give Haeg the notice he could appeal his sentence - as required by Alaska Rule of Criminal Procedure 32.5 and Appellate Rule 215(b). [See TR and AR] When Haeg asked if he could appeal his sentence Robinson told Haeg he could not appeal his sentence.

MM. Robinson filed an appeal docketing statement on which he checked the box “conviction only” instead of “conviction and sentence” – even though Haeg had asked if he could appeal his sentence. [See TR and AR]

NN. When Haeg asked if they should appeal the fact the SOA’s entire case was based upon the false evidence location and on Haeg’s immunized statement Robinson told Haeg that the only issue worth appealing was that the court lacked subject-matter jurisdiction. [Exhibit 15] Robinson then filed a statement of points on appeal that “the court lacked subject-matter jurisdiction” – without mentioning Haeg’s immunized statement was used to prosecute Haeg or that the SOA’s whole case was based upon the fact they falsified all evidence locations to Haeg’s guiding area – and that even Haeg’s Court specifically used the false location as justification for Haeg’s sentence. [Exhibit 23 -see AP]

OO. Haeg told Robinson he found a defense called ineffective assistance of counsel (IAOC) and asked if Cole gave him IAOC. Robinson admitted that Cole giving false advice was IAOC – but claimed Haeg was not paying him (Robinson) for an IAOC defense and he had no obligation to use this defense for Haeg. [Exhibit 15]

PP. Robinson told Haeg the troopers and prosecutor Leaders could lie with immunity to convict and sentence Haeg because they were in “the fold... the good old boys system... the group they protect and don’t do anything against... in the good boy network you have not only the prosecutors and the cops, but you also have the judges and magistrates... the old boy system – they take care of their own.” [Exhibit 15]

QQ. Haeg asked Robinson why Cole didn’t show up at sentencing as subpoenaed and Robinson replied, “there was no need to call him because what he had to say is not relevant to your guilt” [Exhibit 15] (Haeg had subpoenaed Cole to his sentencing, not trial where guilt is determined). Haeg, “It would have been relevant to my sentence and you know it”. **Robinson, “Why would it have been relevant to your sentence David?” Haeg, “Because we had a deal that I had given up a year of my freaking guide license for... and I wanted that man to be asked that and I wanted him to be**

asked why he never stood up for my deal and I wanted that judge to know that I'd been sold down the river. And it never happened and I paid for it. Robinson, "Well David I think that you obviously think that I was ineffective so we have a conflict of interest so I am goanna have to withdraw from your case." [Exhibit 15] **Haeg said he was going to sue his attorneys; Robinson said Haeg could not, that Alaska law prevents convicted defendants from suing attorneys.** [Exhibit 15]

RR. Haeg's business attorney (former criminal attorney Dale Dolifka), who had followed Haeg's case from the very beginning, told Haeg that Alaska's criminal defense attorneys were banding together against Haeg and that Haeg must hire an attorney from outside Alaska. Because of this Haeg fired Robinson and tried hiring numerous attorneys outside Alaska. When the situation was explained all refused. Against Dolifka's advice Haeg looked for another attorney inside Alaska. Nearly all said, "big State, small attorney pool" and refused to represent Haeg after Haeg told them what his first 2 attorneys had done.

SS. Alaska attorney Mark Osterman, after looking at Haeg's file for a week, told Haeg it was the biggest "sellout" of a client he had ever seen, that a motion to suppress should have been filed and would have been granted because of the falsified evidence locations on all search warrants/affidavits, that Haeg's PA should have been enforced, and that it was an illegal conviction because Haeg's immunized statement was used. Osterman told Haeg the Court of Appeals would immediately reverse Haeg's conviction when they seen the sellout and he and Haeg would sue Robinson and Cole for millions – **that Haeg didn't know his first attorneys "were goanna load the dang dice so the State would always win."** [Exhibit 24]

TT. Osterman told Haeg that he charged \$3000 to \$5000 per point on appeal but that he would just charge Haeg a fixed sum of \$12,000 for the entire appeal, that he wanted it all up front because he didn't want Haeg to run out of money halfway through the appeal, and that he wanted Haeg to help write the appeal brief after Haeg requested he be allowed to help. Haeg paid Osterman the entire \$12,000 up front. [Exhibit 24]

UU. After Haeg hired him Osterman refused to let Haeg help write or even see the brief until just before it was due and Haeg threatened to fire him. When Haeg examined the brief he found nothing that Osterman had agreed was the "sellout". **Osterman said this was because he could do nothing that would affect the livelihoods of Haeg's first 2 attorneys and that if Haeg claimed his attorneys "sold him out" the Court of Appeals "would laugh like hell and through out the appeal"**, and that Haeg already owed him another \$24,000 because he charged \$8000 per point on appeal plus expenses. [Exhibit 24]

VV. Haeg fired Osterman and moved to represent himself. [TR and AR] At the representation hearing Osterman testified under oath that he told Haeg he charged \$8000 per point on appeal with no fixed cost and that Haeg owed him another \$24,000 on top of the \$12,000 already paid. [Exhibit 24 and RH] Only after Haeg sought to admit

tape recordings of Osterman did Osterman admit that his prior sworn testimony was false. Osterman did not refute telling Haeg he had been “sold out” by his own attorneys, that he was going to use this for Haeg’s appeal, and that later he told Haeg he could not use the “sell out” because he could not do anything that would affect the livelihoods of Haeg’s first two attorneys. [Exhibit 24 and RH]

At Haeg’s August 15, 2006 representation hearing the SOA specifically admitted they used Haeg’s immunized statement against Haeg at trial [Exhibit 25 and RH]

The SOA filed a 14-page opposition to Haeg representing himself. [Exhibit 26 and MR]

The Court stated Haeg had delusions of conspiracy, was “out in the ozone”, and ordered a psychological examination. [Exhibit 27 and RH] Psychologist Tamara Russell concluded Haeg had no deficits and there was almost certainly a conspiracy to deny Haeg fair proceedings. [Exhibit 28] Court granted self-representation. [RH]

WW. While on appeal Haeg filed fee arbitration against Cole with the Alaska Bar Association. **Cole testified the SOA gave Haeg immunity to compel the statement from Haeg and for this statement Haeg was made “king for a day.”** [Exhibit 4]

To justify not filing motions Cole testified that for the PA he promised prosecutor Leaders he would not file any motions to suppress - but never sought to file these motions after prosecutor Leaders broke the PA - and that he never told any of this, or that a motion to suppress could ever be filed, to Haeg. [Exhibit 4] In other words Cole, without telling Haeg and in return for absolutely nothing, threw away the incredible defenses that the SOA was falsifying evidence to manufacture a case against Haeg, was using false warrants to search and seize Haeg’s property, and was using Haeg’s immunized statement against Haeg. [See TR]

In response to Haeg’s question, “Did you think my airplane was important for my livelihood?” Cole testified under oath, **“You thought so. I didn’t.”** [Exhibit 4]

Cole testified “I thought [Haeg] was goanna commit suicide” when the SOA took Haeg’s airplane and that Haeg had no right to a postseizure hearing or to bond the airplane out in order to continue to make a living before trial. When it was proved Haeg had to be provided a prompt postseizure hearing and that Haeg had an absolute right to bond his property out Cole testified that “the time to make these decisions was in the beginning” and that Haeg was “almost comatose because you were so depressed about the State walking in and taking all this stuff.” [Exhibit 4] **In other words Cole, knowing the law allowed Haeg to get his property back and the pressure the loss of property had on Haeg, would rather have seen Haeg commit suicide than to inform Haeg that he could get his property back.**

Cole testified that the SOA had used immense pressure to make an example of Haeg; that the SOA thought Haeg should not be a guide anymore; that it is almost impossible

for a guide to come back after a 5-year license loss; **that the SOA had promised to give Haeg credit for the year guiding if Haeg cancelled the fall 2004 and spring 2005 hunts; and then testified prosecutor Leaders never gave Haeg credit for this year at sentencing - and that because of this Haeg effectively lost his license for 6 years instead of 5.** [Exhibit 4]

Fitzgerald, Zellers attorney, testified to that both Haeg and Zellers were required to give statements **and that both had “transactional immunity” for the statements.** [Exhibit 29] This meant, just as State of Alaska v. Gonzalez, 853 P2d 526 (1993) and AS 12.50.101 hold, that Haeg and Zellers could not be prosecuted for anything referred to during their statements – as happened. In addition, Fitzgerald testified that the last thing a defense attorney would do is make an enemy out of a prosecutor and trying to enforce a PA or advocate for a client would make an enemy out of a prosecutor. [Exhibit 29]

Finally, Cole testified his “tactic” for Haeg’s defense was **“we were falling on our sword.”** [Exhibit 4]

XX. Haeg sought affidavits from Cole, Robinson, Osterman, Fitzgerald, Gibbens, Leaders, Malatesta, Burger, Rom, Fayette, Doerr, Godfrey, Spraker, SA Seale, Greenstein, Dolifka, and Murphy to include in his PCR application as required by Criminal Rule 35.1(d). These people refused to provide affidavits.

YY. **On September 8, 2006, the SOA specifically used Haeg’s immunized statement to oppose Haeg’s appeal:** “In June 2004 both hunters [Haeg and Zellers] were interviewed by troopers and admitted they knew nine wolves were shot from the airplane while outside the permit area. Both men were charged with various criminal accounts. Zellers case resolved by way of a plea agreement and Haeg proceeded to jury trial where he was convicted.” [Exhibit 30 – MR and AR]

In deciding his appeal the Alaska Court of Appeals ruled Haeg’s attorneys “waived” or “forfeited” numerous claims before trial, at trial, and on appeal by not asserting them in the correct way or in a timely manner: (1) Haeg’s right to challenge, by motions to suppress, the SOA’s falsification of evidence locations on all search and seizure affidavit/warrants; (2) Haeg’s right to challenge, by motions to dismiss, the SOA’s use of known false testimony at trial and sentencing; (3) Haeg’s right to challenge, by motions to enforce, the SOA breaking his PA; (4) Haeg’s right to challenge, by motions to suppress, the SOA’s use of his immunized testimony; (5) Haeg’s right to challenge, by motions to dismiss, the SOA’s and court’s failure to give the required jury instruction that Zellers testimony against Haeg was a required as part of his PA; (6) Haeg’s right to challenge, by motions to enforce, Cole’s failure to obey a subpoena; and (7) Haeg’s right to challenge, by motions for return of property, the lack of due process after the seizure of his property. As shown the erroneous and inadequate advice by Haeg’s attorneys did not just prejudice him pretrial, trial, and sentencing - it has now prejudiced him on appeal. [Exhibit 31 – AR]

The Court of Appeals decided they could not address Haeg's IAOC claim (that his attorneys gave him false counsel and had conflicts of interest that prejudiced Haeg's case) on appeal because there might have been a legitimate tactic for this – that Haeg would have to develop the record in a post conviction relief hearing so his attorneys could explain their actions. The Court of Appeals also claimed Robinson's reply protest that prosecutor Leaders was using Haeg's statement in violation of his rights did not have to be addressed because the Court can disregard issues first raised in a reply – that Robinson should have filed a new motion asking that this be addressed. In other words the Court of Appeals ruled Robinson failed to protest the violation of Haeg's constitutional right against self-incrimination in an "effective" way. [Exhibit 31 – AR]

After witnessing the Court of Appeals oral arguments the Anchorage Dailey News wrote an article expressing concern about the corruption in Haeg's case. [Exhibit 36]

Haeg appealed to the Alaska Supreme Court and later to the United States Supreme Court – both who so far declined review, apparently relying on the Court of Appeals ruling that Haeg's claims must first be addressed during this post conviction relief proceeding. [AR]

ZZ. Haeg talked to Special Agent Colton Seale of the Federal Bureau of Investigation in Anchorage, Alaska about the evidence of corruption in Haeg's case. SA Seale told Haeg that the FBI has investigated a "number of complaints nearly identical" to Haeg's involving judicial corruption and "in every case the investigation expanded rapidly and implicated more and more people until a call came from D.C. to pull the plug." Haeg supplied this and other evidence to the Department of Justice in Washington D.C. and they agreed to investigate.

AAA. Haeg filed a complaint about trooper Gibbens chauffeuring Judge Murphy everywhere during Haeg's prosecution. Marla Greenstein of the Alaska Commission on Judicial Conduct dismissed the complaint and stated that both trooper Gibbens and Judge Murphy testified this never happened – even though the official record documented this happened. [Exhibit 32]

BBB. Haeg filed a complaint with the Alaska Bar Association about prosecutor Leaders conduct – including using Haeg's immunized statement. Prosecutor Leaders, in a certified response, testified that Haeg provided the SOA a statement that could not be used against Haeg. [Exhibit 2] Prosecutor Leaders testified the SOA did not use Haeg's statement [Exhibit 2] and the proof of this was that if it was used Haeg's attorneys would have filed a motion to suppress evidence. [Exhibit 2] Prosecutor Leaders testified that Haeg had no right to an immediate hearing after the seizure of Haeg's property, used as the primary means to provide a livelihood. [Exhibit 2] Prosecutor Leaders testified that it was correct that the court would be "usurping executive authority " by allowing Haeg to bond his property out before trial. [Exhibit 2] Prosecutor Leaders testified the fact Haeg's attorneys never filed a motion to enforce Haeg's PA was proof the SOA never

violated the PA. [Exhibit 2] Prosecutor Leaders testified the PA required only a 1-year suspension of Haeg's guide license. [Exhibit 2]

Yet Robinson's reply brief, certified it was copied to prosecutor Leaders, proved that prosecutor Leaders used Haeg's statement [Exhibit 17] – alone making Leaders sworn response proven perjury.

CCC. The Alaska Big Game Commercial Services Board stated they would likely be additionally suspending Haeg's guide license for between 0 and 100 years. In addition, the BGCSB told Haeg that since a guide license must be renewed every 4 years and cannot be renewed while they are suspended, Haeg would have to start all over at the bottom in order to get a license because of his 5-year suspension. In other words a 5-year "suspension" is in reality a revocation. Also, because of a guide use concession system that will be implemented in the near future, Haeg will almost certainly be excluded from guiding as, without a license and with a guiding conviction, he will not be able to apply for, or be qualified to receive, a concession to guide. In other words Haeg, after he receives his guide license in approximately 56 years (approx. 50 years from the BGCSB and the 6 already taken), will own a hunting lodge but will not have a concession to guide on the land around it.

DDD. Haeg's attorneys actively represented interests in conflict with Haeg's: the SOA's interest in not jeopardizing the WCP; the SOA's interest in making an example of Haeg; the SOA's interest in concealing that they had told and induced Haeg to do exactly what they afterward charged Haeg with doing; the SOA's interest in fabricating, by falsifying the evidence locations, the motive that Haeg took wolves where he guides to benefit his business – in order to justify hunting/guiding charges; the SOA's interest in falsifying affidavits and warrants in order to illegally search Haeg's home and illegally seize Haeg's property; the SOA's interest in preventing Haeg from a prompt postseizure hearing so he could protest the illegal search, seizure, and being put out of business before being charged, convicted, or sentenced; the SOA's interest in not allowing Haeg to bond his property out to make a livelihood before being charged, convicted, or sentenced; the SOA's interest in being able to unjustly and illegally forfeit many thousands of dollars of property; the SOA's interest in compelling Haeg to give a statement and then use it to prosecute him; the SOA's interest in getting Haeg to give up making a livelihood for a PA; the SOA's interest in breaking the PA after they had already got the year of livelihood from Haeg; the SOA's interest in denying that Haeg had given the year of livelihood for a PA; their own interest in not jeopardizing their future relationship with the SOA; their own interest in not being questioned as to how they represented Haeg; and their own interest in not being found to have committed IAOC – which is "prima facie" evidence of malpractice. [See all exhibits and records]

EEE. A summary of the basic rights that Haeg's attorneys deprived him of when Haeg specifically asked to be advised of these basic rights and his attorneys affirmatively misinformed him:

(1) **The right to due process**, when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement; when Haeg's attorneys told him it was not a legal defense that the SOA told and induced him to do exactly what he was charged with; there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg; there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; that there was nothing that prevented hunting/guiding charges; there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it; there was nothing Haeg could do about the SOA using his immunized statement to prosecute him; there was nothing Haeg could do about his attorneys not obeying subpoenas; and that Haeg could not appeal his sentence.

(2) **The right against unreasonable searches and seizures**, when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

(3) **The right that no warrants shall issue, but on probable cause, supported by oath or affirmation**, when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

(4) **The right against self –incrimination**, when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

(5) **The right to compel witnesses in your favor**, when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

(6) **The right against double jeopardy**, when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

(7) **The right to be informed of the nature and cause of the accusation**, when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

(8) **The right to the equal protection of the laws**, when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement

and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

(9) **The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,** when Haeg's attorneys told him the SOA could do all of the above.

3. I have personal knowledge of the following facts among those listed in paragraph 2: (false statements with regard to facts stated upon your personal knowledge are subject to penalties for perjury.)

I, David S. Haeg, have personal knowledge of facts A through EEE listed in paragraph 2 and swear, under penalty of perjury, that they are true.

4. What evidence, other than your own statements, do you have to prove the facts you stated in paragraph 2 above? (You must attach all affidavits, records or other evidence supporting your allegations or state why they are not attached.)

A. I have tape recordings of my attorneys that prove facts A through EEE are true.

B. I have tape recordings of the SOA that prove facts A through EEE are true.

C. I have affidavits from witnesses that prove facts in A through EEE listed are true.

D. I have court records that prove facts in A through EEE are true.

E. I have billing statements that prove facts in A through EEE are true.

F. I have letters and emails that prove facts in A through EEE are true.

G. I have the record made during Fee Arbitration, which includes sworn testimony from attorneys/witnesses involved, that prove facts in A through EEE are true.

H. I have sworn Grievance responses that prove facts in A through EEE are true.

I. I **DO NOT** have the affidavits required from attorneys and some of witnesses above because they refused to provide them when asked. I **DO** have affidavits from some witnesses. [Exhibit 37]

5. I, David S. Haeg, request a hearing so that I may subpoena attorneys and other witnesses, who refused to provide affidavits, to prove facts in A through EEE. Nichols v. State, 425 P2d 247 (AK 1967); Steffensen v. State, 837 P2d 1123 (AK 1992)

6. I, David S. Haeg, waive attorney-client privilege and MAY wish to have assistance of counsel ONLY as co or standby counsel and ask that a hearing be held, with the right to subpoena witnesses, so the Court can determine if I willingly, intelligently, and knowingly forgo my right to representation or if I may benefit from the assistance of counsel.

I certify under penalty of perjury I have personal knowledge of the facts above and that the foregoing is true and correct. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

Executed on _____ in Browns Lake, Alaska.

David S. Haeg
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