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

Created 8/19/06

IN THE DISTRICT COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
David HAEG,	)	Case No.: 4MC-S04-024 Cr.
	)	
Defendant.	)	
_____	)	

Appellate Court Case #A-09455.

MOTION FOR RECONSIDERATION OF RULING DENYING POST-CONVICTION RELEIF FILING IN THIS DISTRICT COURT

COMES NOW Defendant, DAVID HAEG, in the above referenced case and in accordance with *Alaska Rule of Criminal Procedure 42(k)(1)(A)&(B),* and hereby moves this court to reconsider Magistrate Woodmancy's ruling that he would not accept a post-conviction relief application in the court in which the underlying conviction is filed and that Haeg would have to file any application for post-conviction relief in the Court of Appeals. Haeg pointed out to Magistrate Woodmancy that the Court of Appeals could not provide post-conviction relief as provided for in *Criminal Rule 35.1* because of the Court of Appeals inability to investigate, produce evidence, or examine witnesses under oath. Haeg pointed out this is why virtually all claims of ineffective assistance of counsel or constitutional violations outside the record must be brought in the trial court through a post-conviction relief procedure. Haeg pointed out it is only through this procedure in trial court that evidence and testimony from outside of the record could be brought in and placed on the record. Haeg pointed out that if he is not allowed to file a

Rule 35.1 post-conviction relief application in the trial court he would likely be unable to prove ineffective assistance of counsel or violations of his constitutional rights with the Court of Appeals because that court would be restricted to proceedings and evidence placed on the record by the trial court.

Magistrate Woodmancy was unpersuaded and maintained that if Haeg wished to file a post-conviction relief application he would have to do so with the Court of Appeals. Haeg pointed out *Alaska Rule of Criminal Procedure 35.1(c)* "A [post-conviction] proceeding is commenced by filing an application with the clerk at the court location where the underlying conviction is filed." - again pointing out the only procedure provided by law for filing a post-conviction procedure was with the trial court and not with an appellate court. Magistrate Woodmancy remained unpersuaded - in effect denying Haeg to his constitutional right of post-conviction relief, due process, and equal protection under the law as guaranteed by the *U.S. Constitution Amendment V* and *Amendment XIV* and *Alaska Constitution Articles 1.1* and *1.7.*

Haeg further points out the constitution and U.S. Supreme Court rulings require all states to provide for post-conviction relief and if Magistrate Woodmancy is denying Haeg such he is in violation.

Haeg would also like Magistrate Woodmancy to consider the opinion of Mr. Chief Justice Marshall - who delivered the U.S. Supreme Court opinion in the seminal case of *Marbury v. Madison*, 5 U.S. 137 (1803):

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Is it to be contended that where the law in precise terms directs the performance of an act in which an individual is interested, the law is incapable of securing obedience to its

mandate? Is it on account of the character of the person against whom the complaint is made? Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained.

[W]hen the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

What is there in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim; ... directing the performance of a duty, ... on particular acts of congress and the general principles of law?

If one of the heads of departments commits any illegal act, under colour of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?

[W]here he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not ... forbidden; ... it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment, that right to be done to an injured individual...

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it...

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation...

This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions-a written constitution, would of itself be sufficient, in America where written constitutions have been viewed with so much reverence, for rejecting the construction.

The judicial power of the United States is extended to all cases arising under the constitution. Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises? This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

'No person,' says the constitution, 'shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.'

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to

impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.'

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

The above seminal case, which is cited by all courts to this day, firmly establishes that the constitution of the United States is the highest written law in the land. This case also establishes that upholding and obeying the constitution is the greatest judicial duty an officer of the court has. If this is true of the Untied States constitution it must also be true of the constitution of the State of Alaska. In other words, an officer of the court who ignores or deliberately breaks the constitution is violating their explicit mandate – and may be held responsible by those thus harmed.

RESPECTFULLY SUBMITTED this _____ day of _____, 2006.

Defendant,

_____

David S. Haeg

I HEREBY CERTIFY that a copy of the foregoing (including signatures & dates) was served on Roger Rom, OSPA, by fax on _____, 2006

By: _____