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IN THE SUPREME COURT FOR THE STATE OF ALASKA

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| DAVID S. HAEG,<br><br>Petitioner,<br><br>vs.<br><br>STATE OF ALASKA,<br><br>Respondent. | Petition for Review No.: A-09906<br>Appellate Court No.: A-09455<br>District Court No. 4MC-S04-024 Cr. |

**PETITION FOR HEARING**

VRA CERTIFICATION. I certify that this document & 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 & disclosure of the information was ordered by the Court.

COMES NOW Pro Se Petitioner, DAVID HAEG, in the above case & in accordance with Appellate Rule 302(a) files the following *Petition for Hearing* in the Alaska Supreme Court from the Court of Appeals 4/12/07 denial of *Petition for Review* A-09906.

**STATEMENT OF FACTS**

Starting on 3/29/04 the State of Alaska, utilizing search warrants that contained devastating perjury, seized property that was the primary means by which David & Jackie Haeg provided a livelihood for their daughters Kayla (5), & Cassie (3). Much of the property was entirely Jackie's & the rest she owned a 50%

interest. Virtually all property was seized from David & Jackie's home near Kenai, in the 3rd Judicial District.

No hearing or notice of the right to a hearing to contest or bond was ever given. David was charged over 7 months later for misdemeanor Fish & Game violations. No search warrant affidavit, search warrant, or information ever filed gave any notice of the State's intention, justification, or legal authority to forfeit any of the property. David went to trial in McGrath & was sentenced exactly 1-½ years after he & Jackie's property was seized – still with no notice of the right to contest or bond. Most of David & Jackie's property was forfeited at sentencing.

On 7/17/06, after David & Jackie realized the constitutional due process violations in the seizure, deprivation, & forfeiture of their property, they started filing Criminal Rule 37(c) motions for the return of property & to suppress as evidence. After sixteen (16) different motions filed over the course of 7 months both the district courts (Kenai & McGrath) & the Court of Appeals stated at the same time they could not rule because the other court had jurisdiction - even after David & Jackie pointed this paradox out to them. Because of this David & Jackie finally told the Court of Appeals they were physically going to get their property & were not returning home without it. After this the Court of Appeals remanded jurisdiction on 2/5/07 to the "district court" for "any proceedings necessary to decide this motion."

This remand order was distributed to Judge Margaret Murphy (Homer-who presided over David's trial & sentencing), Magistrate David Woodmancy (Aniak), & the Kenai Court (Kenai Judge David Landry, with whom the previous Rule 37(c) had been filed, has subsequently been removed from office for "inappropriately delegating judicial authority by handing out blank pre-signed orders to prosecutors").

Before David could write & file another motion in Kenai, Magistrate Woodmancy scheduled & held a status hearing on 3/13/07 in which he ruled David would have to file his motion in Aniak (4th Judicial District) & that there would be no evidentiary hearings, no confrontation of adverse witnesses, no witness testimony, no oral arguments, & no evidence presented – just "a couple of lines in writing why you should get each item back." In addition Magistrate Woodmancy set the following brief schedule: David's opening brief by 4/12/07, State opposition by 4/30/07, David's reply by 5/7/07 & the Court's ruling by 6/7/07.

David asked Magistrate Woodmancy to reconsider the orders that the motion was to be filed in Aniak, that there would be no evidentiary hearings, no witness testimony, no confrontation of adverse witnesses, no evidence presented, & no oral arguments. Additionally Magistrate Woodmancy refused David's request he set a swifter briefing schedule. David cited this court's rulings in *F/V American Eagle v. State*, 620 P.2d 657 (AK, 1980) & *Waiste v.*

*State*, 10 P.3d 1141 (AK 2000), U.S. Supreme Court in Goldberg v. Kelly & *Criminal Rule 37(c)* as basis for reconsideration.

When Magistrate Woodmancy refused to reconsider David filed an *Emergency Motion for Clarification* with the Court of Appeals on 3/16/07 asking that they make clear that David could file the Criminal Rule 37(c) *Return of Property & to Suppress as Evidence* motion in Kenai (the district in which nearly everything was seized & where nearly every witness lives), he was entitled to an **effective** hearing including confrontation of adverse witnesses, witness testimony, evidence presentation, & oral argument.

The Court of Appeals elected to treat the *Emergency Motion for Clarification* as a *Petition for Review*, requested a $150.00 filing fee, & asked the State for a response to the petition. The State filed a response on 3/27/07 & on 4/12/07 the Court of Appeals issued the order denying David's emergency motion for clarification/petition for review – without citing a reason.

**STATEMENT OF POINTS RELIED ON**

1. David & Jackie Haeg had, & still have, a constitutional right to an **effective** hearing "within days if not hours"[1], after the seizure over 3 years ago, to contest the deprivation of property, used as the primary means by which they both provided a livelihood. This hearing, to be effective, **must**

[1] *F/V American Eagle v. State,* 620 P.2d 657, 667 (Alaska 1980).

include an opportunity to subpoena & cross-examine adverse witnesses, and present witness testimony, evidence, & oral arguments. David & Jackie also had a right to know the case for the deprivation including authorization & justification for doing so. Just because the State failed to give David & Jackie any of this constitutional due process when it was due does not mean David & Jackie waived their right to it. [See motion for return of property & to suppress as evidence for case law]

2. David & Jackie had, & still have, a right to the hearing to be held in Kenai – where the property was seized, the property was used, where they live, & where virtually all the witnesses live. [See Ak Criminal Rule 37(c) & AS 22.15.080]

3. AS 16.05.190 & AS 16.05.195 are unconstitutional as written & as applied to the seizure, deprivation, & forfeiture of David & Jackie's property, used as the primary means of providing a livelihood. [See motion for return of property & to suppress as evidence for case law]

**STATEMENT OF CONCRETE REASONS FOR HEARING**

By denying David's petition for review the Court of Appeals has supported Magistrate Woodmancy's ruling that David & Jackie cannot have a hearing, cannot subpoena & confront adverse witnesses, cannot present witness testimony, cannot present evidence, cannot present oral argument, & cannot have anything whatsoever in the district in which they live, where almost all

witnesses live, or where almost all their business property was seized. In direct effect they are telling the State that if the State violates someone's constitutional right to a hearing &/or notice of a hearing, notice of case, authority, & justification for property deprivation or opportunity to bond, they will be **rewarded**. The reward is that not only will there likely never be a hearing required, the State will never have their witnesses cross-examined to expose the perjury used to seize & deprive people of property, never have evidence presented proving the perjury, & never have a impartial judge listen in person to sworn testimony refuting their claim to the property or even decide if the property can be bonded out. More importantly, by depriving a defendant of any chance to contest or even seek to bond his property out to make a livelihood, the State gets the uncontested right to bankrupt a defendant before he is even charged (over 7 months in David's case) or taken to trial (16 months in David's case).

The leverage the State gains by this procedure is absolutely devastating. They really don't even have to ever charge anyone to destroy a person's life. When, as David & Jackie have, people put everything they have into their business property yet still have to meet the immense overhead of payments, leases, bonding, permits, & insurance, they will soon crumble beyond hope when they are deprived of their property. After the defendant is

crushed into submission it is very easy to gain a conviction, most likely any conviction wanted, as was had in David's case.

This new procedure of **rewarding** the State prosecution for violating the publics constitutional rights is in direct conflict with a vast host of ruling U.S. & Ak Supreme Court decisions.

Because the Fish & Game statutes, AS 16.05.190 & AS 16.05.195, both facially & as applied, authorized the seizure, deprivation, & forfeiture of David & Jackie's property in violation of the due process clause in both the U.S. & Alaska constitutions, they are in direct conflict with a vast host of ruling U.S. & Supreme Court decisions.

It is clear that these issues are of substantial public importance to parties other than those in the present case & would have a significant consequence to others than the parties to the present case. [*Appellate Rule 304(a), (b), (c), & (d)*].

This gross & fundamental breakdown in justice is most clearly proven by how the State, through Andrew Peterson, opposed David's petition for review (See Peterson's opposition).

First, to oppose David's request to file in Kenai, Peterson claims Magistrate Woodmancy ordered David to file in "**McGrath** District Court – the location of the trial court & the court that issued the subpoenas [search warrants] that resulted in Haeg's property being seized." Yet Magistrate Woodmancy ordered the motion filed in **Aniak**, where David did **not** go to trial & from

which **no** search warrants issued (search warrants issued from Kenai District Court however). This is in direct conflict with:

> ***Criminal Rule 37(c)***: "Motion for Return of Property & to Suppress Evidence. A person aggrieved by an unlawful search & seizure may move the court **in the judicial district in which the property was seized or the court in which the property may be used** for the return of the property & to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."
>
> ***AS 22.15.080 Change of Venue***: The court in which an action is pending shall change the place of trial of the action from one place to another place in the same judicial district or to a designated place in another judicial district when the court finds **any** of the following: ...(2) **the convenience of witnesses & the ends of justice would be promoted by the change**;...(4) **the defendant will be put to unnecessary expense & inconvenience**, & if the court finds that the expense & inconvenience were intentionally caused, the court may assess costs against the plaintiff.

Even though nearly all the property was seized from David & Jackie's home near Kenai (3rd judicial district) & all of it was used there Peterson claims that the **McGrath** District Court (4th district) has jurisdiction & that Kenai District Court has **no** jurisdiction. This is in direct opposition to what Criminal Rule 37(c) clearly states. Peterson makes no mention of the fact that David, Jackie, & virtually all witnesses live in the 3rd judicial district & it is $700 RT/PP to Aniak where it is $200 PP per night hotel. AS 22.15.080 clearly states actions will be held in the judicial district **convenient to witnesses & justice** or the

judicial district where a defendant will not be put to **unnecessary expense & inconvenience**.

Peterson claims Magistrate Woodmancy has the "discretion" to rule on David's motion nearly **2 months** after filing it – **after** David & Jackie have already been deprived of their property for over **3 years**. Yet the U.S. & Ak Supreme Courts have both ruled when someone is deprived of property used to provide a livelihood they are **constitutionally guaranteed** a hearing "within days if not hours." How then can Magistrate Woodmancy, Peterson, or the Court of Appeals possibly justify adding another 2 months on top of 3 years?

Next, Peterson makes claims that are chilling beyond belief. He states David's "due process rights were satisfied ... [s]ince Haeg was served with the search warrant he had notice that the State had seized his property pursuant to warrant. Criminal Rule 37(c) provided a mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice." This claim by Peterson that the State, in depriving someone of their primary means of a livelihood, does not have to notify the person of their right to a hearing to contest the property deprivation or even to ask to just bond it out is in direct conflict with a vast host of ruling U.S. & Ak Supreme Court decisions. All these decisions recognize a

defendant may not know of his right to a hearing "& in order that they may enjoy **that** right they must first be notified." - *Fuentes v. Shevin*, 407 U.S. 67. This is notice of the right to a hearing – not notice the State had just made off with your ability to put food in your kid's mouths. You will be acutely aware of that fact because, as in David & Jackie's exact case, you will be so busy trying to come up with another way to make a livelihood you won't have time to look for some unknown hearing to contest. On the day most of David & Jackie's property was seized David asked Trooper Sergeant Glenn Godfrey "When can I get my plane back? I have clients coming in **tomorrow** & I have to set up bear camp." Godfrey answered, "Never". Would this lead anyone to believe they could contest or even seek to bond the property out or would this lead them to believe there was no hearing available?

Peterson next claims, "Once he was charged, Criminal Rule 12 applied. Rule 12(b)(3) specifically provides a mechanism for a defendant charged with a crime to suppress evidence on the ground that it was illegally obtained. Failure to move to suppress evidence constitutes a waiver."

Peterson leaves out the fact that the State waited for over 7 months, or until **after** the years work season was over before ever charging David, and then claims since Rule 12 provides that objections to **evidence** may be waived if not made before trial that David & Jackie waived their right to a hearing to contest

the deprivation of **property**. Peterson blatantly tries to confuse the issue of contesting the use of **evidence** at trial (which may be waived without being told you may do so) with the right to notice of a hearing to contest the deprivation of **property** (which **cannot** be waived before being told of your right to a hearing).

Peterson claims, "Apparently Haeg's attorney did not seek suppression & this court should not second guess the decision & now order an immediate hearing" & "It is also legally irrelevant whether Haeg personally assented to the attorneys tactical decision not to seek suppression". Peterson attempts to make it seem David and Jackie's attorney was told of the right to a hearing but fails to note that they didn't hire an attorney until weeks after the seizure of their property (they were trying to deal with clients without most of their business property) & that their attorney, once they hired one, testified under oath on tape before the Alaska Bar Association that the State never told him David & Jackie had the right to a hearing to contest the deprivation, that he didn't know David & Jackie could contest the deprivation, and that he didn't even know the property could be bonded out. It becomes very apparent why the State must provide notice of the right to a hearing "within days if not hours".

Peterson states that David & Jackie's position that Civil Rule 89 (which was originally declared unconstitutional for not providing "notice of hearing" in *Etheredge v. Bradley,* 502 P.2d

146 (AK 1972)), *F/V American Eagle v. State*, 620 P.2d 657 (AK, 1980), & *Waiste v. State*, 10 P.3d 1141 (AK 2000) support their claim is "simply misplaced". Yet a vast host of U.S. & Ak Supreme Court ruling cases, including those above, state **any** deprivation of property, in either the civil or criminal context, must be accompanied by notice of a hearing **before** the seizure or "within days if not hours" **after** the seizure.

Peterson next deletes the critical passages out of *F/V American Eagle v. State* & *Waiste v. State* to make it appear no notice of a hearing, hearing, authorization, or intent to forfeit or bond need be given to comply with due process.

In *F/V American Eagle* Peterson deletes these: "the seizure was pursuant to AS 16.05.190-.195" (statutes allowing forfeiture in fish & game cases – never given to David or Jackie so they would know to prepare a defense against forfeiture), "The state subsequently **filed a [civil] complaint for forfeiture**..."(which specifically, & in great detail, outlines all rights to hearings, deadlines for those hearings, deadlines for property deprivations, etc, etc, etc.), "The vessel was later released [through bonding] for local fishing", & "The other owners indicated they in fact received timely notice... for prior to the state's filing of a formal civil complaint...their attorneys mentioned the possibility of suing for release of the vessel."

Peterson then unbelievably states:

> "The court reviewed dicta in *American Eagle & State v. F/V Baranof*, 677 P.2d 1245 (Alaska 1984) & federal law to determine whether the Due Process Clause of the Alaska Constitution would require **more than a prompt post seizure hearing**. Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: '[W]e balance the State's interest in avoiding removal or concealment with the likelihood & gravity of error in the relevant class of cases, &, in so doing, we hold that a blanket rule of ex parte seizure comports with due process.' Id. at 1152. There was no lack of due process & appellants [Haeg's] motion should be denied."

Peterson's theory here is utterly fantastic & incomprehensible. The Alaska Supreme Court, ruling here against Waiste's claim that a **preseizure** hearing was required by due process before depriving someone of his or her property in a criminal case, determined that a **preseizure** hearing was not required by due process. The ruling, specifically cited by Peterson, clearly holds that a **prompt postseizure hearing was required** to comply with the Due Process Clause of the Alaska Constitution. **Neither David nor Jackie ever received a post seizure hearing - let alone a prompt post seizure hearing**. They never even received notice of such a hearing, notice of intent to forfeit their property, notice of the case, justification or authorization, notice of opportunity to bond, or any of the "ensemble of procedural rules" guaranteed by this court.

This Alaska Supreme Court clearly held that if the State seizes your property in a criminal investigation they do not have to warn you, with a **preseizure** hearing, **before** they do so.

But "within days if not hours" **after** seizure of property used to provide a livelihood, you **must** get a hearing, notice of a hearing, authorization, intention, and justification to at least know the reasons for being deprived, and opportunity to bond.

Peterson even states, "Forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration." To David this is fantastic because the State, **after** David had given a 5 hour interview & **after** he had placed nearly $1,000,000.00 in detrimental reliance upon a completed Rule 11 Plea Agreement in which the plane was not required to be given up, then "changed their mind", filed an amended information with far more severe charges than agreed to less than 5 business hours before the plea agreement was to be presented to the judge, & then told David to "give them the plane" if he wanted "the same deal". David refused; realizing he was being held hostage & that giving in would only encourage the State to demand more & more. In filing the never agreed to charges the State still used David's statements as the only probable cause for over half of the charges – & as primary probable cause for all the rest.

Peterson claims "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.' Again Magistrate Woodmancy has properly exercised his discretion in denying Haeg's

request for an evidentary hearing. However, Haeg has the option of filing a motion for reconsideration..." David had told Magistrate Woodmancy there were material issuses of fact (known & devastatingly prejudicial perjury on all search warrant affidavits), **requiring** the exact evidentary hearing Magistrate Woodmancy denied. Also, David had already asked Magistrate Woodmancy to reconsider & been refused – exhausting this option.

Of final interest is that Peterson continues to refuse to support his numerous false factual claims above with the affidavit **required** by Appellate Rule 503(b)(2) – even though he has been requested to do so by phone, fax, & mail weeks ago.(See copy) Thus he is immune to prosecution for his false statements.

Petition is supported by affidavits, motion to return property & to suppress as evidence, Magistrate Woodmancy & Court of Appeals orders, petition for review, & State's opposition.

RESPECTFULLY SUBMITTED on 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 party:

Andrew Peterson, Attorney, O.S.P.A.
310 K. Street, Suite 403
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(907) 269-6379

By: _____