

**IN THE DISTRICT/SUPERIOR COURT OF THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT IN MCGRATH**

DAVID HAEG,)	
)	
Applicant,)	
)	
vs.)	
)	POST-CONVICTION RELIEF
STATE OF ALASKA,)	CASE NO. 4MC-09-00005 CI
)	and 3HO-10-00064CI
Respondent.)	
)	
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Trial Case No. 4MC-04-00024CR		

**6-14-10 OPPOSITION TO STATE’S MOTION FOR MODIFICATION OF
JUDGMENT; MOTION FOR PROTECTION ORDER PREVENTING DISPOSAL
OF DISPUTED PROPERTY PRIOR TO POST CONVICTION RELIEF; AND
MOTION FOR THESE TO BE DECIDED BY THE PCR COURT**

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 Applicant, DAVID HAEG, in the above referenced case and hereby files this Opposition to State’s Motion for Modification of Judgment, which the State asked for so they can sell a Piper PA-12 airplane, N4011M, to an innocent purchaser just prior to Haeg’s Post Conviction Relief decision, which will determine if the State must release possession of N4011M to its legal owner. Haeg also asks for a protection order preventing the State of Alaska from selling or disposing of N4011M and other disputed property prior to the outcome of Haeg’s PCR; and for these two motions be decided by the PCR court, as it will decide whether the property is to be released.

Prior Proceedings

On 4-1-04 the State of Alaska seized N4011M, a highly modified Piper PA-12 airplane that was owned by, and registered to, Bush Pilot, Inc., a legal entity under Federal Identification Number 92-0158289. To seize N4011M the State claimed, in warrants and affidavits that falsified evidence locations from the Game Management Unit in which the Wolf Control Program was taking place to David Haeg's guiding GMU, that David Haeg had committed the guiding violation of taking wolves same day airborne – even though Haeg's Wolf Control Program permit allowed this and the State had told and induced Haeg to do exactly what they charged Haeg with doing.

In the 18 months before charges, conviction, or judgment against David Haeg the State successfully opposed all attempts to release N4011M on bond – filing briefs that if N4011M were released on bond there was nothing prevent it from being “sold to an innocent purchaser” and frustrating the State from again obtaining physical possession.

At different points Jackie Haeg filed motions and affidavits that, as an owner/officer of Bush Pilot, Inc., she must have a hearing to protect her and Bush Pilot, Inc.'s interest in N4011M. Yet no hearings were ever held and the court ruled, “Mrs. Haeg's Motions are **Denied** as she is not a party to this action.”

Citing basic federal constitutional violations by the State, including the forfeiture of N4011M without trial, hearing, or judgment against those who owned interests in it, David Haeg has pursued all avenues. This has culminated in Haeg's recent filing for PCR, held by the appellate courts as the proper venue for Haeg's claims. Briefing by Haeg and the State was just recently finished on 4-7-10, with a decision expected soon.

The State just attempted to register, with the Federal Aviation Administration in Oklahoma City, that N4011M was now owned by the State of Alaska, in order to sell it. The FAA in Oklahoma City refused, stating that the judgment presented by the State as proof of ownership of N4011M, that David Haeg was found guilty and was ordered to forfeit N4011M to the State, did not prove ownership of N4011M transferred from Bush Pilot, Inc. (the owner of N4011M registered with the FAA) to the State of Alaska. Oklahoma City then put the State in contact with Howard Martin, Chief Legal Officer for Alaska's FAA, so he could tell the State what was required for ownership of N4011M to transfer from Bush Pilot, Inc. to the State of Alaska. Chief Legal Officer Martin informed the State that only a judgment specifically against Bush Pilot, Inc., ordering forfeiture of N4011M to the State of Alaska, could legally prove ownership had been transferred.

No charges or complaints have ever been filed against Bush Pilot, Inc. and no prosecution or trial has ever occurred against Bush Pilot, Inc.

On 6-4-10, over 6 years after seizure and nearly 5 years after the judgment against David Haeg, the State has now filed a motion, without citing any authority whatsoever, for an order to "modify" Haeg's judgment with the following:

"IT IS HEREBY ORDERED the ownership interest in one Piper PA-12 registered to Bush Pilot, Inc., N-number N4011Mm, serial number 12-2888, was forfeited to the State of Alaska on September 30, 2005." See State's proposed order.

The State's justification for "modification of judgment" is:

"The State of Alaska is in the process of selling the Piper PA-12 airplane, but the FAA will not reregister the plane to the State of Alaska without a modified judgment. First, the Piper PA-12 plane in question was registered to Haeg's corporation Bush Pilot, Inc. Consequently, the FAA requires that the judgment

reflect this fact. The State's request to modify the judgments in this case will not limit Haeg's remedies in the pending PCR application, but will allow the State to register the plane as being owned by the State of Alaska in accordance with the original judgments." See State's justification.

On 6-8-10 and 6-9-10 Haeg talked extensively with FAA Deputy Regional Administrator Greg Holt and FAA Chief Legal Officer Howard Martin about what the State needed in order to register N4011M in the State's name so they could sell it. The FAA stated that a judgment specifically against the Bush Pilot, Inc. was needed, and that the State had been specifically told this.

I

The State cites no authority allowing a criminal judgment to be "modified", nor can Haeg find authority in any Rule or Statute to allow a criminal judgment to be "modified". The only modification of judgment allowed is under Alaska Statute 25.24.170, which concerns alimony and child support after a divorce. In addition, even a sentence cannot be "modified" nearly 5 years after imposition and since this time limit is jurisdictional, the court has no jurisdiction to grant the State's motion.

Criminal Rule 32.5 states that a person convicted of a crime in district court, as Haeg was, must appeal a judgment of conviction within 15 days of the judgment.

Criminal Rule 34 states that a motion in arrest of judgment must be made within 5 days after verdict or finding of guilt.

Alaska Statute 12.55.088 and Criminal Rule 35 state that the court may modify or reduce a sentence within 180 days of the original sentencing, and that **a court may not relax by more than 10 days the time period in which the request must be filed.** Haeg

was sentenced on September 30, 2005 and the State's motion was filed on June 4, 2010, exactly 1708 days after.

Even if the State just wanted to modify Haeg's sentence, instead of the judgment itself, they have missed the 180-day deadline by 1528 days, or over 4 years.

In addition, since the time limit prescribed in Rule 35 is jurisdictional the Court lost jurisdiction to modify Haeg's sentence over 4 years ago. See *United States v. Stump*, 914 F.2d 170 (9th Cir 1990):

The time limit prescribed by Rule 35 'is jurisdictional, and 'unless the 120 day requirement is met, the court has no jurisdiction or power to alter sentence.' " *Minor*, 846 F.2d at 1189 (quoting *United States v. United States District Court*, 509 F.2d 1352, 1354-55 (9th Cir.), cert. denied sub nom. *Rosselli v. United States*, 421 U.S. 962, 95 S.Ct. 1949, 44 L.Ed.2d 448 (1975)). **The government's motion was filed more than five months after Stump's sentence was imposed, well after the time limit set by Rule 35.2**

II

In its motion the State has falsified what the FAA requires. The FAA told the State that to register N4011M to the State of Alaska there would have to be a judgment specifically against N4011M's owner, Bush Pilot, Inc., forfeiting N4011M to the State of Alaska. The State, in its motion, claims the FAA requires "a modified judgment" against David Haeg to "reflect" that the Bush Pilot, Inc. owned N4011M. This is not true; the FAA told the State that they needed a judgment against Bush Pilot Inc., not a "modified judgment" against David Haeg. A "modified judgment" against David Haeg claiming N4011M was registered to Bush Pilot, Inc. would only make it appear to the ignorant that there was now a judgment against Bush Pilot, Inc.

Even more incredible, is the order the State proposes states “IT IS HEREBY ORDERED **the** ownership interest in one Piper PA-12 registered to Bush Pilot, Inc., N-number N4011M, serial number 12-2888, was forfeited to the State of Alaska on September 30, 2005.” This makes it seem that **all** those with an “ownership interest” in N4011M were charged, convicted, and sentenced when this is completely false – as the Bush Pilot, Inc. owns N4011M and it was never charged, convicted, or sentenced.

The State is trying to make it seem there is now a judgment against Bush Pilot, Inc. without the charges, prosecution, trial, or criminal act of Bush Pilot, Inc. required to obtain such a judgment. They are doing so by trying to modify David Haeg’s judgment, in the sentencing section only, to include Bush Pilot, Inc.’s name as having registration of N4011M and falsely stating the ownership interest in N4011M was forfeited to the State - hoping this will somehow suffice for the FAA’s requirement there must be a judgment against Bush Pilot, Inc. Only if there was a case “State of Alaska v. Bush Pilot, Inc.”, and this exact designation was on the court document forfeiting N4011M, does it represent the FAA required “judgment” against Bush Pilot, Inc., the owner of N4011M.

How can Bush Pilot, Inc. be included in a judgment obtained years ago against someone else when Bush Pilot, Inc. was never named as a defendant anywhere in the case from the charging documents to actual judgment - and thus never defended itself?

In addition, Jackie Haeg had filed motions and affidavits that, as an owner/officer of Bush Pilot, Inc., she must have a hearing to protect her and Bush Pilot, Inc.’s interest in N4011M. Yet no hearings were ever held and the court ruled, “Mrs. Haeg’s Motions

are **Denied** as she is not a party to this action.” Now the State wants an order that all interest in N4011M was forfeited to the State of Alaska.

It is as if Bush Pilot, Inc. and Jackie Haeg are parties when the State wants their property but are not parties when they want to be heard so they may defend themselves.

The refusal by the FAA to recognize the State’s ownership of N4011M, without a judgment against Bush Pilot, Inc., is further proof that both Bush Pilot, Inc. and Jackie Haeg have been unjustly deprived of their interest in N4011M, without hearing, for over 6 years. It seems inconceivable that a court should now unjustly punish them further by assisting the State’s efforts to fraudulently forfeit their interest in N4011M without the required and asked for charges, hearings, trial, and/or judgment needed to do so.

III

Before obtaining a judgment against Haeg the State’s specific on-record reason for preventing N4011M from being released on bond was that there was the **possibility** the plane may be sold to an innocent purchaser, preventing the State from again obtaining N4011M if they prevailed. Now that the situation is reversed, and Haeg is close to obtaining a judgment that the State must release N4011M, the State has stated it is now **actually** trying to sell N4011M to an innocent purchaser, which would prevent N4011M’s release if Haeg prevails. The State claims it needs the court to “modify” Haeg’s judgment to sell N4011M and then incredibly claims “this will not limit Haeg’s remedies in the pending PCR application”, when this is exactly what the State is seeking to do - as one of Haeg’s PCR remedies is the release of N4011M.

To prevent this injustice and appearance of vindictiveness, Haeg asks the court for a protection order preventing the State from selling or disposing of N4011M or other disputed property pending the outcome of Haeg's PCR proceedings against the State.

IV

On June 23, 2009, in a certified return receipt letter, Haeg requested that Alaska Attorney General Daniel Sullivan preserve everything related to Haeg's case. Mr. Sullivan's office promised that everything would be preserved so it would be available for any post conviction proceedings. Haeg asks the court to hold the State to its promise.

V

The fraudulent and illegal actions taken by the State in Haeg's case, including those now being taken to prevent N4011M from being returned to Bush Pilot, Inc., will be carefully documented for the coming lawsuits and criminal complaints.

If the court actually grants the State's motion to fraudulently "modify" Haeg's judgment to include a judgment against Bush Pilot, Inc., Haeg believes this would be a criminal conspiracy and will litigate it thoroughly.

If the Federal Aviation Administration actually accepts a fraudulent "judgment" against Bush Pilot, Inc., which the State is seeking with its current motion, Haeg believes this would be a criminal conspiracy and will litigate it thoroughly.

For the FAA to better understand the size of the coming lawsuits and criminal prosecutions Haeg recommends reading the PCR filings by both the State and Haeg, located on the website www.alaskastateofcorruption.com

The first filing, sent to the U.S. Department of Justice, resulted in a call to Haeg from FBI Assistant Special Agent in Charge David Heller – who insisted personal meetings must take place between Haeg and Alaska Attorney General Daniel Sullivan. Heller told Haeg that to insure the meetings took place Haeg could tell Sullivan that it was FBI Assistant Special Agent in Charge David Heller who recommended the meetings. AG Sullivan still refused any and all meetings.

Conclusion

Because there is no authority to “modify” a judgment at all Haeg asks the court to deny the State’s motion. Because the court lost jurisdiction to modify even Haeg’s sentence over 4 years ago Haeg asks the court to deny the State’s motion. Because a judgment against Haeg cannot be “modified” to be a judgment against Bush Pilot, Inc., a legally separate entity Haeg asks the court to deny the State’s motion. Because a judgment depriving interest cannot be made against a person or corporation without the charges, trial, and conviction they are entitled to before doing so, Haeg asks the court to deny the State’s motion.

Because it would be incredibly unjust to allow the State, apparently vindictively, to sell or dispose of N4011M and other property after they promised not to do so and just prior to a judgment that may return the disputed property to rightful owners, Haeg asks the court for a protection order preventing the State from selling or disposing of N4011M and other disputed property prior to resolution of Haeg’s PCR.

Because it is the PCR court that is charged with making all coming decisions concerning the disputed property, Haeg asks that the PCR court decide the State’s motion

and the motion for a protection order preventing sale or disposal of N4011M and other disputed property prior to PCR judgment.

I declare under penalty of perjury the forgoing is true and correct. Executed on _____ . 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.

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Certificate of Service: I certify that on _____ a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; U.S. Department of Justice; Superior Court Judge Joannides; FAA Chief Legal Officer Howard Martin; FAA Deputy Regional Administrator Greg Holt; and FAA Administrator J. Randolph Babbitt

By:_____