IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG Appellant/Petitioner, vs. STATE OF ALASKA, Appellee/Respondent.	)	Case No.: A-09455

Trial Court Case #4MC-S04-024 CR.

Memorandum of Law

I. Opposition to Petition for Review

The State of Alaska, by and through Assistant Attorney General Andrew Peterson, hereby submits the State's Opposition to Haeg's petition for review in the above captioned case.

II. Introduction

This is David Haeg's second petition for review this year. Haeg previously filed a petition for review with the Court of Appeals on March 23, 2007. In Haeg's first petition, he argued that Alaska's criminal forfeiture statutes, as applied in fish and game cases, were unconstitutional and asked the Court of Appeals for an order declaring the forfeiture statutes unconstitutional. Haeg further asked that he be allowed to file his motion for return of property with the Kenai District Court as opposed to the McGrath District Court – the location of the trial court and the court that issued the subpoenas that resulted in Haeg's property being seized. Finally, Haeg demanded that the Court of Appeals order Magistrate Woodmancy to change the set briefing schedule and to allow

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both an evidentiary hearing and oral arguments to take place in Kenai. The State opposed Haeg's motion because he failed to demonstrate that such an order was justified under Alaska Rule of Appellate Procedure 402(b)(1)-(4). This Court denied Haeg's petition on April 12, 2007.

In Haeg's present petition, he is essentially asking for all of the same relief as he requested in his first petition filed in March of this year. Based on the following reasons, the State opposes the Haeg's petition for review.

III. Factual Background

David Haeg was convicted at jury trial for various misdemeanor offenses alleging violations of Title 8, 11 and 16, and regulations promulgated under those statutes. He was sentenced on September 30, 2005, by District Court Judge Margaret L. Murphy for the nine counts upon which he was found guilty. Counts I through V were convictions for Unlawful Acts by a Guide for Taking Game on the Same Day Airborne (AS 8.54.720(a) (15), Counts VI and VII for Unlawful Possession of Game (5AAC 92.140(a), Count VIII for Unsworn Falsification (AS 11.56.210(a)(2), and Count IX for Trapping in a Closed Season (5 AAC 84.270(14).

On April 16, 2006, Haeg moved for a stay of the forfeiture and his license suspension pending appeal in this Court. The State opposed his request and on May 16, 2006, this Court granted the stay of the order of the trial court imposing restitution, but denied the motion to stay the order of the trial court suspending appellant's guide license and forfeiture of his airplane.

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This Court issued an order on February 5, 2007, remanding jurisdiction to the District Court for the limited purpose of allowing Haeg to file a motion for the return of his property. This Court further ordered that the "District Court has the jurisdiction to conduct any proceedings necessary to decide this motion." On March 13, 2007, Magistrate Woodmancy conducted a status hearing and ordered a briefing schedule pertaining to Haeg's motion. Magistrate Woodmancy ordered Haeg to file his motion with respect to all property seized in the above captioned case and set a briefing schedule. Magistrate Woodmancy further denied Haeg's oral request for an evidentiary hearing and/or oral arguments. Magistrate Woodmancy also informed Haeg that the District Court was only authorized to consider his motion for the return of property and that no other issue would be considered. Haeg's first petition for review challenged Magistrate Woodmancy's decisions. This Court denied Haeg's first petition for review.

On July 23, 2007, Magistrate Woodmancy issued an order granting in part Haeg's motion for return of his property. Magistrate Woodmancy further denied Haeg's motion for the suppression and Haeg's motion to find the forfeiture statutes unconstitutional. Magistrate Woodmancy also denied Mrs. Haeg's motions on the grounds that she was not a party to the proceedings.

Haeg filed a motion for reconsideration and clarification on August 1, 2007. Haeg asked Magistrate Woodmancy for numerous findings which include, but are not limited to the following forms of relief: (1) to return all property and to suppress all evidence in the case; (2) to declare AS 16.05.190-195 unconstitutional; (3) to find that trooper Gibbins search warrant affidavit was misleading and based on perjury; (4) that Haeg is

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entitled to an evidentiary hearing regarding the return of his property; (5) to make the above findings immediately; and (6) to make written findings. Magistrate Woodmancy denied Haeg's motion for reconsideration on August 17, 2007.

IV. Legal Argument.

A. Haeg's petition for review should be denied for failing to justify the necessity of filing this petition as required under Rules of Appellate Procedure 402(b).

Haeg fails to demonstrate a single viable reason for this Court granting his petition for review. Haeg only makes unsupported statements about the alleged injustices he has suffered as a result of his conviction. All of Haeg's alleged injustices should be addressed as part of his appeal or post conviction relief motion. The State's opposition is based on Haeg's failure to demonstrate that the granting of his petition justified under Alaska Rule of Appellate Procedure 402(b)(1)-(4). Moreover, Haeg has failed to raise a single new argument in his second petition.

Specifically, Alaska Rule of Appellate Procedure 402(b) provides that:

> Review is not a matter of right, but will only be granted where the sound policy behind the rule requiring appeals to be taken only from final judgments is outweighed because:
>
> (1) Postponement of review until appeal may be taken from a final judgment will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship or other related factors; or
>
> (2) The order or decision involves an important question of law on which there is substantial ground for difference of opinion, and an immediate review of the order or decision may materially advance the ultimate termination of the

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litigation, or may advance an important public interest which might be compromised if the petition is not granted; or

(3) The trial court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative tribunal, as to call for the appellate court's power of supervision and review; or

(4) The issue is one which might otherwise evade review, and an immediate decision by the appellate court is needed for the guidance of the lower courts or is otherwise in the public interest.

In addition to arguing the merits of his case, which should be raised on appeal, Haeg attempts to argue that denial of this petition will result in enormous economic consequences, hardship and injustice. Haeg fails to support his accusations or give this Court any basis under the above identified statute for granting his petition. Haeg further alleges, again without support, that the granting of his petition will advance an important public interest. In fact, Haeg even fails to identify what important public interest will be advanced let alone support for granting the petition. Finally, Haeg alleges without any support that Trooper Gibbins committed perjury during his criminal trial and that Magistrate Woodmancy never intended to give Haeg a fair hearing. All of Haeg's claims should be raised as part of his appeal or post conviction relief motion, not in the pending petition for review.

B. Haeg was not Entitled to a Post Conviction Suppression of Evidence.

The District Court did not have authority to hear Haeg's motion for the post conviction suppression of evidence or to find that the forfeiture statutes were

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unconstitutional as applied in Haeg's matter. Specifically, this Court remanded Haeg's matter to the District Court for the limited purpose of allowing Haeg to file a motion for the return of his property. This Court's order did not authorize Haeg to file a motion for the return of his property or the suppression of evidence.

Haeg further fails to cite to a single case or statutory authority supporting his position that Magistrate Woodmancy has the legal authority to suppress evidence and/or find the forfeiture statutes unconstitutional following Haeg's trial.

Haeg attempts to support his claim by citing to Criminal Rule 37(c) and civil cases that talk about pre-judgment attachment. Criminal Rule 37 addresses search warrants. Subsection (c) provides:

> **Motion for return of property and to suppress evidence.** A person aggrieved by an unlawful search and 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 and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

Haeg was served with the search warrant and thus had notice that the State had seized his property pursuant to a 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. Once he was charged, Criminal Rule 12 applied. Subsection (b) regulates pretrial motions and permits a defendant to challenge the evidence which may be used against him at trial. Alaska Criminal Rule 12 (b) (3) specifically provides a mechanism for a

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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. Criminal Rule12 (e) provides:

> **Effect of failure to raise defenses or objections.** Failure by the defendant to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to section (c), or prior to any extension thereof made by the court, shall constitute waiver thereof but the court for cause shown may grant relief from the waiver.

Again, it is irrelevant whether the defendant chose to exercise his right or not. The law provided a mechanism for him to do so and his due process rights were satisfied. Apparently Haeg's attorney did not seek suppression and this court should not second guess the decision and now order an immediate hearing. It is also legally irrelevant whether Haeg personally assented to the attorney's tactical decision not to seek suppression. *Beltz v State*, 895 P.2d 513 (Alaska App. 1995); *see Cornwall v. State*, 909 P.2d 360 (Alaska App. 1996).

Haeg claims that the State was required to provide him with more process than this. He claims that the State was required to provide him with a hearing immediately upon seizure of his property. However, his argument fails because he relies upon the civil rules which necessarily do not apply to the criminal case. Specifically, his reliance on Alaska Rule of Civil Procedure 89 is misplaced. Civil Rule 89 pertains to prejudgment attachment, and the very first sentence states: "After a civil action is commenced, the plaintiff may apply to the court to have the property of the defendant attached under AS 09.40.010-.110 as security for satisfaction of a judgment that may be

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recovered." No civil action commenced and appellant's reliance on other portions of the rule is simply misplaced.

There was no lack of due process in Haeg's trial and there is no support for finding that the criminal forfeiture statutes are unconstitutional. This Court should therefore deny Haeg's petition.

C. The District Court did not abuse its discretion in denying Haeg's oral motion for an evidentiary hearing and/or oral arguments.

Haeg orally requested that Magistrate Woodmancy allow time for an evidentiary hearing and/or oral arguments. Magistrate Woodmancy denied this request and informed Haeg that he would make his decision based on the pleadings. Criminal Rule 42(f)(3) provides that "[o]ral argument shall be held only in the discretion of the court." This rule clearly gives Magistrate Woodmancy the discretion to deny Haeg's request for oral arguments. Moreover, Criminal Rule 42(e)(3) provides that "[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 evidentiary hearing. However, Haeg has the option of filing a motion for reconsideration on or before the date of his reply as opposed to seeking this petition for review. In any event, Haeg has still failed to provide this Court with a basis for granting his petition for review.

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Based on the aforementioned arguments and the failure of Haeg to establish any basis for granting his petition, the State asks that the Court deny Haeg's petition for review.

Dated at Anchorage, Alaska, this 7th day of September, 2007

TALIS J. COLBERG
ATTORNEY GENERAL

By _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

This is to certify that a copy of the foregoing is being mailed/faxed/delivered to:

David Haeg, PO Box 123, Soldotna, AK 99669

Sherry Mature 9-7-07
LOA ~~Clerk~~ Date

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