

(a) The decision of the intermediate appellate court is in conflict with a decision of the Supreme Court of the United States or the supreme court of the state of Alaska, or with another decision of the court of appeals.

(b) The intermediate appellate court has decided a significant question concerning the interpretation of the Constitution of the United States or the Constitution of Alaska, which question has not previously been decided by the Supreme Court of the United States or the supreme court of the state of Alaska.

(c) The intermediate appellate court has decided a significant question of law, having substantial public importance to others than the parties to the present case, which question has not previously been decided by the supreme court of the state of Alaska.

(d) Under the circumstances, the exercise of the supervisory authority of the court of discretionary review over the other courts of the state would be likely to have significant consequences to others than the parties to the present case, and appears reasonably necessary to further the administration of justice.

In addition to arguing the merits of his case, which should be addressed to the trial court (i.e., the McGrath District Court), Haeg argues four distinct issues. First, that he should be allowed to file his motion in Kenai as opposed to McGrath. Second, that that this Court should set a timelier motions deadline. Third, that Haeg is entitled to an evidentiary hearing and/or oral arguments. Fourth, that Haeg's ability to earn a living is being impaired due to the forfeiture of his property. Haeg's arguments fail to establish that this Petition for Hearing is necessary due to a conflict of law issued, the need for a ruling interpreting the Constitution of the United States or Alaska, an issue of law of substantial public importance or circumstances suggesting that the ruling of the Court of

Appeals will have significant consequences to individuals other than the parties to the present case. Thus this Court should deny Haeg's Petition for Hearing.

B. McGrath is the appropriate venue for Haeg's motion.

Haeg's first argument attacks Magistrate Woodmancy's order that Haeg file is motion for return of his property in McGrath. The McGrath District Court has jurisdiction over Haeg's motion for return of his property due to the fact that the McGrath District Court issued the search warrants to seize Haeg's property and the McGrath District Court was the location of Haeg's trial and ultimate conviction. The Kenai District Court has no jurisdiction over Haeg's criminal matter. If Haeg insists upon filing his claim in Kenai, he always has the option of filing a civil claim in Kenai District Court for the return of his property. Haeg has failed in this Petition for Hearing to establish any basis upon which this Court should overrule Magistrate Woodmancy's decision or the decision of the Court of Appeals to deny Haeg's Petition for Review. Thus this Court should deny Haeg's petition.

C. Magistrate Woodmancy has discretion under Rule of Criminal Procedure 42(c)(2) to set response deadlines that differ from the rule.

Rule of Criminal Procedure 42(c)(2) provides that "[u]nless a different time is specified by these rules or is ordered by the court, responses to motions shall be filed within 10 days after service of the motion." Haeg failed to cite to a single case supporting his position that this Court should overrule Magistrate Woodmancy's motion scheduling order. Rather, Haeg cites to Criminal Rule 37(c) and civil cases that talk

about pre-judgment attachment to support his claim that he is entitled to a hearing sooner than that scheduled by Magistrate Woodmancy.

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.

Since Haeg was served with the search warrant he 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 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

Rule 12 (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 to challenge the State's seizure of his property or not. The law provided a mechanism for him to do so and his due process rights were satisfied. Apparently Haeg's trial 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 he is currently being provided. 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 recovered." No civil action commenced and appellant's reliance on other portions of the rule is simply misplaced.

Because Haeg misconstrues the procedural rules, his reliance on the case law is also misplaced. Haeg relies upon two cases in support of his argument: *F/V American Eagle v. State*, 620 P.2d 657(Alaska 1980) and *Waiste v. State*, 10 P.3d 1131(Alaska

2000). Both of these cases indicate that the procedural protections granted by the criminal rules satisfy a defendant's right to due process.

In *F/V American Eagle* the court recognized that both the Alaska and Federal Constitutions require notice and an opportunity for hearing at a meaningful time when property is seized. In that case the court found that the owners of the vessel were provided sufficient due process because the vessel was seized pursuant to a judicially authorized warrant, the vessel owners were formally notified of the State's action, and the vessel owners had "an immediate and unqualified right to contest the State's justification for the seizure before a judge under Criminal Rule 37 (c)." *F/V American Eagle*, 620 P.2d at 677.³

In *Waiste* the court revisited some of the issues raised in *F/V American Eagle* including seizure and forfeiture of a fishing vessel where the criminal charges resulted in acquittal, but the State could proceed with a civil forfeiture. The court reviewed dicta in *American Eagle* and *State v. F/V Baranof*, 677 P.2d 1245 (Alaska 1984) and 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 and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of *ex parte* seizure comports with due process." *Id.* at 1152.

³ A review of the file suggests that 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.

Finally, it should be noted that this Petition for Hearing by Haeg is further delaying a decision on his motion for return of property as the McGrath District Court has stayed the pending motion deadline until this Court rules on Haeg's Petition for Hearing. Haeg has failed to establish a lack of due process or any legal basis for this Court to grant his Petition for Hearing. Thus this Court should deny Haeg's Petition.

D. 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 Hearing. Alternatively, Haeg can file an appeal following Magistrate Woodmancy's decision if he believes there are legal grounds to support his claim. In any event, Haeg has again failed in this Petition for Hearing to establish any basis upon which this Court

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should overrule Magistrate Woodmancy's decision or the decision of the Court of Appeals in denying Haeg's Petition for Review.

E. Haeg has never been prevented from filing a motion for the return of his property.

Finally, Haeg argues that the State and/or the court system are hindering his ability to earn a living by prohibiting Haeg from having a hearing for the return of his property. There is no basis for this Court to grant Haeg's Petition for Hearing since the Court of Appeals already remanded this issue to the trial court in order to allow Haeg the opportunity to raise his claim for the return of his property.

Based on the aforementioned arguments, this Court should deny Haeg's Petition for Hearing and order Haeg to file his motion for return of his property before Magistrate Woodmancy in McGrath and to follow any reasonable motions deadlines issued by Magistrate Woodmancy.

Dated at Anchorage, Alaska, this 2nd day of May, 2007

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

David Haeg, PO Box 123, Homer

Sherry Matano 5-2-07
Clerk Date

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Opposition to Petition for Hearing, A-09455
David Haeg v. State of AK, 4MC-04-00024CR;
Supreme Court Case No. S-12695.

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