

20-8380
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID SIMMONS

(Your Name)

PETITIONER

SHANNON McCLOUD

— RESPONDENT(S)

vs.

FILED

JUN 02 2021

ON PETITION FOR A WRIT OF CERTIORARI TO

OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE SUPREME COURT FOR THE STATE OF ALASKA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID SIMMONS

(Your Name)

WILDWOOD CORRECTIONS COMPLEX

(Address)

10 CHUGACH AVENUE. KENAI, ALASKA 99611-7098

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE DISTRICT COURT ERRED IN FAILING TO GIVE DEFERENCE TO THE STATE SUPREME COURT'S DETERMINATION THAT PETITIONER'S ADMINISTRATIVE REMEDIES HAD BEEN EXHAUSTED.

WHETHER THE DISTRICT COURT ERRED IN REFUSING TO CONSIDER PETITIONER'S CONSTITUTIONAL CLAIM VIOLATIONS: THAT THE STATE SUPREME COURT'S RETROACTIVE CONSTRUCTION OF THE 2003 AMENDMENT TO THE ALASKA DNA I.D. REGISTRATION ACT, AS APPLIED TO PETITIONER, WHOSE CONVICTION PRE-DATED THE OPERATION OF THE DIRECTIVES OF THE STATUTE WHICH CAME INTO BEING AS AN EXISTING LAW, AND PUNITIVELY SANCTIONED NONE COMPLIANCE, WITHOUT OFFENDING THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT AND THE EX POST FACTO CLAUSES OF THE UNITED STATES CONSTITUTION-ART 1, SECTION 10.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

DAVID SIMMONS V. HAUSER,

D.C. No. 3:19-cv-00244JKS
District Court Of Alaska
No. 20-35605 Court Of Appeals
Judgment, Mar.4th, 2021

DAVID SIMMONS V. HAUSER,

D.C. No.3:19-cv-00244JKS
District Of Alaska
No. 20-35605 Court Of Appeals
Judgment, January 15th, 2021

DAVID SIMMONS V. HAUSER,

SUPREME COURT No. S-16171
Superior Court No. 3PA-14-02287CI
No. 7299-
Judgment September, 14th, 2018

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A NINTH CIRCUIT GEN. ORD. 611

APPENDIX B 2020 UUNITED STATES DIST. LEXIS 64689

APPENDIX C NO. 7299-SEPT., 14th, 2018 AK.

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

DUCKWORTH V. SERRANO, 454 U.S. 1, 3(1981)	5
FRALEY V. U.S.BP, 1 F.3d 924,925 (9th Cir. 1993).....	5
HARRIS V. REED, 489 U.S. 255,263 n.9 (1989)	5
JUSTICE OF BOSTON MUN.COURT V. LYNDON, 466 U.S. 302-03 (1984)5	
JONES V. MURRAY, 962 F.302 (4th Cir. 1992)(Cert., Den.) 506 U.S. 877 (1992)	10
SHEPARD V. HOUSTON, 289 Neb. 399 (Neb. 2008)	11
SOWINSKI V. WALKER, 198 P.3d 1134 (AK. 2008)	9
UNITED STATES V. HAMMOND, 26 F. CAS (1801)	7,8
WACHOVIA BANK, N.A. V. SCHMIT, 546 U.S. 303 (2006).....	12
WALKER V. STATE, DEP'T OF CORRECTIONS, 421 P.3d 74.81(AK.2018)6	

STATUTES AND RULES

A.S. 11.56. 760(a)(2)	6
A.S. 01.10.090	9
A.S. 44.41.035(b)	10,11
28 U.S.C. Sec. 2254 (e)(i)	5

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at 9th Cir., Gen. Order 6.11; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at 2020 U.S. Dist. Lexis 54689; 4/13/2018; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

reported at NO. 7299- Sept. 14, 2018; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was January 15th, 2021.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Mar. 4th, 2021, and a copy of the order denying rehearing appears at Appendix _____.
[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was Sept. 14th, 2018.
A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: Do not have legal files, and a copy of the order denying rehearing appears at Appendix _____.
[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTEENTH AMENDMENT

Sec. [Citizens of the United States] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside, No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

EX POST FACTO LAWS. Art. 1, Sec. 10 U.S. Constitution

No state shall pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Sec. 15, Prohibited State Action. AK Constitution Art. I, Sec. 15

No Bill of Attainder or ex post facto law shall be passed. No law impairing the Obligation of Contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

Sec. 18. Effective Date. Art. II, Sec. 18 Ak Constitution.

Laws passed by the legislature becomes effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

28 U.S.C. Sec. 2254(e)(i)

In a proceeding instituted by an applicant for a Writ Of Habeas Corpus by a person in custody pursuant to the judgment of a state court, a determination of a factual issue made by a state court shall be presumed to be correct, the applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

STATEMENT OF THE CASE

- 1) On or about Sept. 30th, 1990, petitioner was arrested on multiple felony counts.
- 2) On or about Sept. 20, 1995, petitioner was reconvicted.
- 3) On 1/1/96 Alaska DNA I.D. REGISTRATION ACT became operational.
- 4) On 1/14/14, petitioner was convicted in Disciplinary proceeding of disobeying a direct order of the court to provide a DNA test sample as a condition of parole.
- 5) On 2/8/14 petitioner was release on mandatory supervised parole , and arrested.
- 6) On 4/4/16 the State dismissed the fraudulent Indictment without prejudice.
- 7) On Dec. 14th, 2016, the Perole Board revoked petitioner's parole
- 8) On 9/14/18 th state Supreme Court determined that petitioner was exempted (Not Required) under the 1995 DNA LAW, to provide his DNA; petitioner had exhausted his disciplinary appeal; and, that the 2003 Amendment was retroactive, and applied to petitioner.
- 9) Discretionary review was denied.
- 10) In 2019, petitioner sought review in the District Court for the District Of Alaska of the State Supreme Court's decisions.
- 11) On 2/9.19 the Statute Of Limitations expired on the fraudulent criminal Indictment.
- 12) On 4/13/20 Judge Singleton, dismissed the petition for a Writ Of Habeas Corpus on procedural grounds, with prejudice.
- 13) petitioner sought reconsideration; requested a Certificate Of Appealability; appealed to the 9th Circuit; and requested an En Banc Hearing.
- 14) On 12/20/20 petitioner was transferred to WildWood Corrections Complex., and the Goose creek Corrections Center has refused all request to forward all personal and Legal Files and Documents.
- 15) On or about 5/27-28/21 petitioner requested and awaits the Clerk Of The Federal District Court, to forward that Court's Opinion issued on 4/13/20.

REASONS FOR GRANTING THE PETITION

A Judge is required to respect the will of Congress pursuant to 28 U.S.C. Sec. 2254(e)(i) and give deference to the factual findings of a State Highest Court.

the Exhaustion requirement is satisfied when the highest court in the state in which the petitioner was convicted has been given a full and fair opportunity to rule on petitioner's claim. JUSTICE OF BOSTON MUM.COURT V. LYNDON, 466 U.S.1,3 (1981)(per curiam); DUCKWORTH V. SERRANO, 454 U.S. 1,3 (1981).....

The Ninth Circuit and This Court have accepted the futility exception-FRALEY V. U.S. BP, 1 F3d 924, at 925(9th Cir.1993); HARRIS V. REED, 487 U.S. 255,at 263 n.9(1989)-where the decision of the highest court is adverse and it is unlikely the court would **reverse** itself on the same legal issue, a failure to exhaust is not a bar to Habeas review of a Constitutional claim.

The legal issues before both the Disciplinary Board and the Parole Board are the same. And, petitioner was denied Certiorari.

Parole Officer Thompson defaulted in his ministerial duty to notice the parole board within five working days to institute its anticipatory revocation process- in preference to the disciplinary chair-person's attendance in consideration of Art. III issues, for which he had no Institutional competence to determine.

Neither the chair-person nor the superintendent have the institutional competence to adjudicate constitutional claims- WALKER V. STATE, 421 P.3d 74,81(AK 2018).

Petitioner's immediate arrest on his mandatory parole supervised release date was a red herring. To intimidate and to coerce acceptance of an imposed un(constitutional) modification of his sentence, by threat of a new criminal charge and sanctions of up to five (5) years, under A.S. 11.56.760(a)(2).

The dismissal of the fraudulent Indictment on 4/4/16 with-out prejudice, was the functional equivalence of a dismissal with prejudice because the state could never reinstate the Indictment.

Such an equivalency operates on the merits and constitutes an acquittal-An absolute bar to a new prosecution.

Moreover, the statute of limitations expired in 2019.

EXCLUDED FOR WANT OF JURISDICTION

The Supreme Court ruled in This Case, that petitioner was not required to provide a DNA profile test sample under the 1995 DNA I.D. Registration Act because petitioner's conviction occurred on Sept. 20th, 1995, before operation of the directives of the statute which came into being as an existing law. i.e., on Jan. 1, 1996.

The Operation of the law, can be no more than the obligation of the law, or that quality by which the law becomes binding on a subject as a rule of his conduct.

The Operation of the law is a part of its very essence. UNITED STATES V. HAMMOND, 26 F.Case 96(1801). Therefore, if there is no operation, there is no obligation. By Operation of law petitioner owed no duty of performance; He is excluded from the class of individuals convicted of qualifying offences on or after 1/2/96, for want of jurisdiction.

"Not Required", means not under an obligation to do as the law require. "To exempt," means to free from an obligation or liability to which others are subject; release from or not subject to an obligation or liability. and "immunity," means freedom or exempt from a charge, duty, obligation, office, tax, imposition, penalty, service esp. as granted by law to a person or class of persons. Webster's Third International Dictionary (1993) ; Black's Law Dictionary (10th ed. 2014); Garner's Dictionary Of Language use 4327 (3d ed.2011)- these terms and their meanings lead to the following proposition: "If the Legislature pass a law (an act) whose operation may take effect on a future date, until that date arrives, it is not (does not become) a law, it is only an act which at a future day is to be come a law. If in the mean time, before its operation commence, a person does an act which would be contrary to the act of Congress if committed after the time limited for its commencement, still that person committe no crime, no offense, and has done nothing against the law." UNITED STATES V. HAMMOND, 26 F. Cas 96(1801).

Similarly, seventhough petitioner had been convicted before 1/1/96, the law was not operational, and petitione's pre-enactment convictions did not trigger an obligation to perform a duty by operation of law.

JUDICIAL CONSTRUCTION

Laws passed by Legislatures generally do not affect pre-enactment conduct. Alaska Constitution, Art.2, Sec. 18; SOWINSKI V WALKER, 198 P.3d 1134(AK 2008); A.S. 01.10.090:"No Statute Is Retroactive Unless Expressly Declared Therein."

A Statute is retroactive as applied if the event that triggered its application occurred before the statute came in to effect.

Thus, a retroactive application of a Civil Statute ordinarily transgress constitutional limitations on Legislative Power if the statute impairs vested rights, creates new obligation or impose new penalties.

The State Supreme Court held that the 2003 Amendment to A.S. 44.41.035(b) is applicable to petitioner without offending substantive due process under the Fourteenth Amendment nor the Ex Post Facto clauses under the State and U.S. Constitutions. Art 1 Sec. 10; Art.1 Sec. 15 AK. Const.

The 2003 Amendment States in part:

"The uncodified law of the State Of Alaska is amended by adding a new section to read as follows:

Applicability. This Act applies to all convictions and adjudications of delinquency included under A.S. 44.41.035(b) as amended by Sec. 5 of this act that occurred before the effective date of this act if the person is still incarcerated....."

The Construction of this language and the State Supreme Court's interpretation is in conflict with JONES V. MURRAY, 962 F.2d 302 (4th Cir. 1992)(Cert.,Den.) 506 U.S. 877 (1992) in JONES , The 4th Circuit struck down the language contained in 52.1-159 "Any person convicted of a felony who is in custody after July first, 1990, shall provide a blood sample prior to his release

(emphasis added-sic-), authorizes a modification of mandatory parole. We hold that these five words therefore are unconstitutional and may not be enforced to modify the mandatory prior."

In SHEPARD V. HOUSTON, 289 Neb. 399 (Supreme Court, 2014) a case nearly on all four corners. There the State Legislature Amended its DNA LAW to impose a new duty or obligation on SHEPARD ,where the amendment is similar in language as the language in the 2003 Amendment to Alaska DNA LAW. A.S. 44.41.035(b), i.e. "If the person is still incarcerated"-

If the individual refused, his good time credits were forfeited. These cases like others dealing with a Civil Regulatory Scheme offends the Ex Post Facto and Due Process Fair Notice and Reasonable Reliance Clauses of the Fourteenth Amendment-

It is the New Obligation after the fact, with punitive sanctions for non-compliance- In all these cases, it is the punishment that the ex post facto clause prohibits;

And, after the fact conditions with notice and the right to defend against, that the due process clause-A substantive change occurs where the new obligation imposes a modification of the sentence.

The 2003 Amendment added an enumerated list of felonies under Titles 11 & 28.35 of the Alaska Statutes; And,

makes clear that an individual who has been convicted after January First, 1996, and is still incarcerated before the effective date of July First, 2003, He, or She, is required to provide a DNA profile test sample, as a condition of parole.

Amendments are generally construed together with the original Act to which it relates so as to constitute one law.

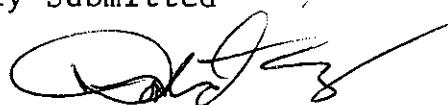
Under the In Pari Material Cannon of Statutory Construction , Statutes addressing the same subject matter generally should be read "as if they were one law". WACHOVIA BANK N.A. V.SCHMIT, 456 U.S. 303 (2006).

CONCLUSION

The Petition For A Writ Of Certiorari Should Be Granted.

Respectfully Submitted

Dated: June 1, 2021



David Simmons, Pro Se, #31806

(12)

Department of Corrections
Division of Administrative Services
P. O. Box 112000
Juneau, AK 99811-2000

Date: June 4th 2021

INMATE COPY

RE: Prisoner Account Statement Request

Under the authority of Alaska Statute 09.19.010(b)(2), I am requesting that certified copies of my prisoner account statements be provided for:

Prisoner Name: David Simmons

Offender Number: 31806

Current Facility: Wildwood Corrections Complex

I understand that I will be provided with the most current prior six months of statements available at the time this request is received.

Thank you for your immediate response to this request.

Sincerely,

X
Signature

WNCC #Blb. #10
Facility

10 Chugach, Ave.
Address

Kenai, AK 99611-7098
City, State
Zip



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department
of Corrections**

Division of Institutions
Wildwood Correctional Complex
10 Chugach Ave
Kenai, Alaska 99611
Main: 907.260.7200
Fax: 907.260.7208

MEMORANDUM

FROM: Casey DeSiena *WD*
Administrative Officer
Wildwood Correctional Complex

SUBJECT: Inmate request for statements change
FOR: Simmonds, David #31806

As of June 1, 2008 this office will no longer provide a calculated cover letter for statements. The court is now calculating these figures for you.

If you are a prisoner who is commencing a civil action, an appeal from a civil action, or an appeal from the final decision of an administrative agency, against the state or a present or former state officer, agent or employee, and you are requesting a filing fee exemption, you should submit this memorandum and enclosure to the court.

If you indicated that you would like an additional copy of your statements or requested statements older than six months these copies are available for \$0.15 each. You may request copies of these originals from your Institution through an OTA form.



State of Alaska Department of Corrections

STATEMENT OF ACCOUNT

WILDWOOD CC

Statement Date: 11/01/2021 To: 05/31/2021

ACCOUNT TRANSACTION DETAIL:

Offender No: 31806 Location WILDWOOD CC Cell: 232 B
Offender Name: SIMMONS, DAVID NMN

Account: CHECKING

Account -49.74

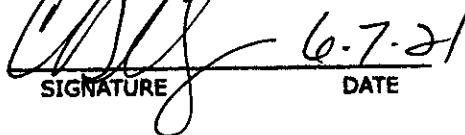
Trans ID	Trans Date	Transaction Description / Ref Doc	Debit	Credit	Account Balance
		Begining Balance			-49.74
		----No Transactions----			-49.74
		Ending Balance			-49.74

Account: SAVING

Account 0.00

Trans ID	Trans Date	Transaction Description / Ref Doc	Debit	Credit	Account Balance
		Begining Balance			0.00
		----No Transactions----			0.00
		Ending Balance			0.00

I certify this to be a true copy
of the original document


6-7-21
SIGNATURE DATE