

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LOREN J. LARSON JR.,

Appellant,

v.

JOE SCHMIDT, Commissioner of Corrections, and JOHN C. TURNBULL, Superintendent of Spring Creek Correctional Facility,

Appellees.

Court of Appeals No. A-13835
Trial Court No. 4FA-12-01083 CI

SUMMARY DISPOSITION

No. 0339 — August 16, 2023

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Paul R. Lyle, Judge.

Appearances: Loren J. Larson Jr., *in propria persona*, Wasilla, Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellees.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

In May 2020, Loren J. Larson Jr. filed a motion for relief from judgment under Civil Rule 60(b) in his first post-conviction relief case (Trial Court No. 4FA-01-00511 CI), arguing that the Alaska Supreme Court's decision in *Alvarez-Perdomo v. State* changed the law on the privilege against self-incrimination and that this change

entitled him to relief.¹ The superior court rejected this argument, and we affirmed the superior court's ruling on direct appeal, explaining that *Alvarez-Perdomo* did not create a new rule that would entitle Larson to relief.²

In September 2020, Larson filed a nearly identical Civil Rule 60(b) motion in a related case (Trial Court No. 4FA-12-01083 CI). The superior court again rejected his argument and dismissed his motion. Larson now appeals that ruling. For the same reasons we explained in Larson's previous appeal,³ we conclude that *Alvarez-Perdomo* did not create a new rule that would entitle him to relief.

The judgment of the superior court is AFFIRMED.

¹ See *Alvarez-Perdomo v. State*, 454 P.3d 998 (Alaska 2019).

² *Larson v. State*, 2023 WL 2783943, at *1 (Alaska App. Apr. 5, 2023) (unpublished summary disposition).

³ *Id.*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

LOREN J. LARSON, JR.,)
vs.)
Applicant,)
vs.)
JOE SCHMIDT,) CASE NO. 4FA-12-1083 CI
Commissioner of Corrections,)
et al.,)
Defendants.)

)

ORDER DENYING RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT

This case concerns a 2014 petition for post-conviction relief filed by Loren Larson seeking relief from his judgment of conviction for a 1998 double homicide and first-degree burglary. Larson's amended petition asserted his conviction was void because certain jurors lied during jury selection, some jurors were biased against him, and because the jurors improperly deliberated. (For ease of reference, this order refers to Larson's claims as his "juror misconduct" claims.) This court dismissed Larson's petition in November 2015 on the basis that all of his juror misconduct claims had been previously litigated and were therefore *res judicata*.

Larson appealed the dismissal of his petition to the Alaska Court of Appeals, which affirmed the dismissal in July 2018. The court of appeals held: "At this point, all of Larson's claims have either been expressly resolved against him or they are otherwise barred by the doctrine of *res judicata* (because they could have been raised before)." *Larson v. Schmidt*, 2018 WL 3572449 at *1 (Alaska App. 2018) (unpublished);¹ see also *Larson v. Superior Court*, 2020

¹ The court of appeals held that Larson had raised one claim that was not subject to *res judicata*—his claim based on *Pena-Rodriguez v. Colorado*, 137 S.Ct. 855, 869 (2017). *Pena-Rodriguez* carved out an exception to Evidence Rule 606(b)'s prohibition on juror misconduct claims where the alleged misconduct concerns racial animus or racial stereotyping. The court of appeals held that *Pena-Rodriguez* did not apply to Larson's juror

WL 5946629 at *6 (Alaska App. 2020) (unpublished) ("[T]he doctrine of *res judicata* bars Larson from relitigating his underlying claims of juror misconduct.").

In September 2020, Larson filed his present motion for relief from the judgment dismissing his 2014 petition. He cites Civil Rule 60(b)(4) and Civil Rule 60(b)(6) as authority for the relief. Rule 60(b)(4) authorizes relief from a void judgment. Rule 60(b)(6) authorizes relief from a judgment for "any other reason justifying relief from the operation of the judgment." The State opposes the motion.

Larson asserts that the dismissal of his 2014 petition is now void under Rule 60(b)(4) or that relief from the judgment should be granted under Rule 60(b)(6) because his juror misconduct claims establish that there was structural error in his trial under the Alaska Supreme Court's decision in *Alvarez-Perdomo v. State*, 454 P.3d 998 (Alaska 2019).

Alvarez-Perdomo held that structural error is committed when a trial judge compels a criminal defendant to testify at his trial. *Alvarez-Perdomo*, 454 P.3d at 1008. Structural error requires "automatic reversal" of the conviction and a new trial. *Id.* The defendant in *Alvarez-Perdomo* equivocated when his trial judge asked him if he wished to testify. Because the defendant equivocated, the trial judge "directed a judicial services officer to escort Alvarez-Perdomo to the stand", called the jury into the courtroom, and required the defendant to testify. *Id.* at 1001-02.

Larson argues that the alleged misconduct of the jurors at his trial "forced Larson to testify or be found guilty." Motion at 2. Larson was not forced to testify at his trial; he exercised his Fifth Amendment privilege to remain silent. The holding of *Alvarez-Perdomo* does not apply to Larson and the facts alleged in his 2014 petition fall squarely within the prohibition of

misconduct claims. *Larson*, 2018 WL 3572449 at *2. Larson continues to rely on *Pena-Rodriguez* in his Rule 60(b) motion.

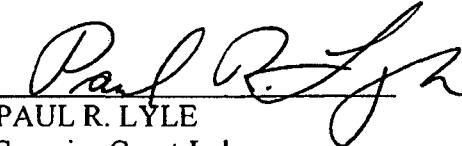
Evidence Rule 606(b). The holding in *Alvarez-Perdomo* does not establish that there was structural error in Larson's trial.

Because there was no structural error in Larson's trial under *Alvarez-Perdomo*, the dismissal of his 2014 petition is not void under Rule 60(b)(4), and *Alvarez-Perdomo* provides no "reason justifying relief from the operation of the judgment" under Rule 60(b)(6). Larson's juror misconduct claims continue to be barred by the doctrine of *res judicata*.

Conclusion

Larson's Rule 60(b) motion is denied.

DATED at Fairbanks, Alaska, this 19th day of April, 2021.



PAUL R. LYLE
Superior Court Judge

I certify that on 4/20/2021
copies of this form were sent to:

L. Larson
USA DA
CLERK: DA

In the Supreme Court of the State of Alaska

Loren J. Larson, Jr.,
Petitioner,

v.

**Joe Schmidt, Commissioner of
Corrections, and John C. Turnbull,
Superintendent of Spring Creek
Correctional Facility,
Respondents.**

Court of Appeals No. **A-13835**
Trial Court Case No. **4FA-12-01083CI**

Supreme Court No. **S-18875**

Order

Petition for Hearing

Date of Order: **12/26/2023**

Before: Maassen, Chief Justice, and Carney, Borghesan, Henderson, and Pate, Justices.

On consideration of the Petition for Hearing filed on **9/21/2023**, and the Response filed on **12/4/2023**,

IT IS ORDERED:

The Petition for Hearing is **DENIED**.

Entered at the direction of the court.

Clerk of the Appellate Courts



Meredith Montgomery

cc: Court of Appeals Judges
Trial Court Clerk

Distribution:

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