No. 24-5034

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RALPH LOREN BARENZ II — PETITIONER
(Your Name)

vs.

STATE OF ALASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Ralph L. Barenz II
(Your Name)

Goose Creek Correctional Center
22301 W. Alsop Rd.
(Address)

Wasilla, AK 99623
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Has the Alaskan Legislature created an Unconstitutional Bill of Attainder when it raised the presumptive sentencing ranges for sexual offenders for past unverified sexual misconduct without judicial review of said counduct.

Has the Alaskan Legislature created an Unconstitutional Bill of Attainder when it raised the presumptive sentencing ranges for sexaul offenders for alledged low prospects of rehabilitation with almost no judicial review.

In doing the above stated actions, has the Alaskan Legislature created an Unconstitutional Irrebuttable Presumptions.

LIST OF PARTIES

[X] 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

Barenz v. State, 2019 Alas. App. LEXIS 67, appeal denied, Petition for hearing filed 7/17/2019, No. S-17487, denied 8/21/2019.

Barenz v. Alaska, 140 S. Ct. 880 (2020), writ of cert. denied.

Barenz v. State, 2023 Alas. App. LEXIS 140, appeal denied.

Barenz v. State, 2023 Alas. App. LEXIS 147, Petition for Rehearing denied.

Barenz v. State, Petition for Hearing in the Alaska Supreme Court, S-18957, denied.

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CASES:

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 _____ to the petition and is

[ ] reported at _____; 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[ ] is unpublished.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 _____ to the petition and is

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[ ] is unpublished.

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

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

[X] reported at Barenz v. State, 2023 Alas. App. 140; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Alaskan trial court appears at Appendix B to the petition and is

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[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, 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 4/15/2024. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, 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

USCS Const. Art. I, § 9, Cl 3. Bill of attainder—Ex post facto laws.

No Bill of Attainder or ex post facto Law shall be passed.

USCS Const. Amend. 14.

All persons born or naturlized 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 any person within its jurisdiction the equal protection of the laws.

Alaska Const. Art. I, § 7. Due Process.

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Alaska Const. Art. I, § 15. Prohibited State Action.

No bill of attainder or ex post facto law shall be passed. ...

Alaska Statute § 12.55.125. Sentences of imprisonment for felonies.

(i) a defendant convicted of

(1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), ... may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — AS 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(ii) 13 years of age or older, 20 to 30 years;

(3) ... sexual abuse of a minor in the second degree, ... may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following ranges, subject to adjustment as provided in AS 12.55.155 — AS 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

Alaska Statute § 12.55.165. Extraordinary circumstances.

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from the failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of a sentence with in the presumptive range, whether or not adjusted for aggravating or

mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony inder AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or
(2)A history free of unprosecuted, undocumented, or undetected sexual offenses.

Alaska Statute § 12.55.175. Three-judge sentencing panel.

(b) Upon reciept of a record of proceedings under AS 12.55.165, the three-judge panel shall consider all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The panel may hear oral testimony to supplement the record before it. If the panel supplements the record, the panel shall permit the victim to testify before the panel. If the panel finds that manifest injustice would result from failure to consider relevant aggravating or mitigating factores not specifically included in AS 12.55.155 or from imposition of a sentence within the presumptive range, whether or not adjusted for aggravating or mitigating factors, it shall sentence the defendant in accordance with this section. If the panel does not find that manifest injustice would result, it shall remand the case to the sentencing court, with a written statement of its findings and conclusions, for sentencing under AS 12.55.125.

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a setence within the presumptive range based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or
(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

STATEMENT OF THE CASE

On September 11, 2015 the petitioner was sentenced to 30 years with 5 suspended, 25 to serve, for first degree sexual assault, two third degree assaults, and second degree sexual abuse of a minor. The petitioner was sentenced under AS 12.55.125 (i). In 2006 the Alaska state legislature raised the presumptive sentencing ranges for all sexual offenses. The legislatures intent can be see in the case, Collins v. State, 287 P.3d 791, 795-797 (2012):

> the legislature amended the sentencing statutes to sharply increase the sentenc= ing ranges for sexual offenders. ... The legislature addresses the purpose and rationale behind its revisions to the sentencing ranges of sex offenders in a detailed letter of intent. The legislature explained that it had increased the presumptive sentencing ranges for sex offenders because they are serious crimes that are prevalent in Alaska and have far reaching negative impacts on victim's, victim's families, and society. But the legislature also declared that it had increased the sentencing ranges based on its findings that sex offenders usually have committed multipul sex offenses by the time they are caught, that they often do not respond to rehabilitative treatment, and therefore cannot be safely released into society. ... As th[e] court explained in Knight v. State, the presumptive sentencing sentencing ranges for any given class of criminal case represents the legislature's assessment of the "appropriate sentence for cases in the class," ... based on the structure and content of the presumptive statutes, we can reasonably add one further assumption: that the defendant's criminal history is adequately reflected by the defendant's status as a first, second, or third felony offender. ... But these assumptions about the presumptive sentencing ranges, and about which defendants should be subject to these presumptive ranges, do not apply to the presumptive sentencing ranges established by the legislature for sex offenses. As can be seen from the legislative history, the legislature enacted those presumptive sentencing ranges based on the assumption that defendants being sentenced for sex offenses have likely committed many other sex offenses before they were caught, and on further assumption that the defendants being sentenced for sex offenses are particulary resistant to rehabilitative efforts. ... That the [offenders] ... [have] a history of unprosecuted sexual offenses, or that the [offender] has [little] prosepects for rehabilitation.

In 2021 the Alaska court of Appeals affirmed that it was and is the legislature's intent that "sexual offender[s] may not contest [seek judicial review] 'unprosecuted, undocumented, or undetected sexual offenses.'" Or anything less than extraordinary prospects of rehabilitation. [See Collins v. State, 494 P.3d 60, footnote #4].

On 6/02/2022 the petitioner filed a "Motion for 35(a) Correction of illegal sentence", because he believes AS 12.55.125(i) has been an unconstitutional bill of attainder since the 2006 amendments of the statute (as seen above). The petitioner

also argued that sexual offenders have high prospects of rehabilitation because only 8% committ new sexual offenses after being imprisioned [R.734-738].

The State of Alaska opposed the petitioner's motion by stating that his sentence is legal and falls within the presumptive sentencing range that was in affect at the time of his sentence, and that the petitioner didn't have the right to argue rehabilitation because it wasn't discussed at his sentencing hearing [R.726-733].

The petitioner responded to the State's argument by pointing out that the state failed to discuss the constitutionality of AS 12.55.125(i) and that rehabilitation was discussed at his sentencing hearing [R.721-724].

On 6/22/2022 the trial court denied the petitioner's motion [R.720].

On 7/06/2022 the petitioner file an appeal with the Alaska Court of Appeals. On 9/16/2022 he filed his brief of appellant, in which he contested the trial court ruling and raised three issues, 1) AS 12.55.125(i) is an Unconstitutional Bill of Attainder; 2) Alaskans have a Constitutional Right to Rehabilitation, and 3) AS 12.55.125(i) violates due process

The State opposed the petitioner's appeal by arguing that, 1) the petitioner could not argue this issue under Criminal Rule 35(a); 2) that "the presumptive sentencing statute is not a bill of attainder because it does not permit the infliction of punishment without judicial trial. [That] Barenz had a proper jury trial before being sentenced in a manner consistent with the applicable presumptive sentencing statute."; 3) The State claims that the petitioner must present his rehabilitation claim to the legislature and not to the court, and that the current standards in place are correct. and 4) The State asserts, "the legislature recognized 'there may be the 'exceptional' case or circumstance that cries out for mercy,' and by 'application of existing statutory mitigating factors under AS 12.55.155, or by referral to the three-judge panel 'safety net' under AS 12.55.175, the courts of Alaska will be able to avoid manifestly unjust sentences in appropriate cases.'"

The Alaska Court of Appeals ruled against the petitioner, it stated: 1) "the legislature did not target any particular people or groups by name, and the punishment was tied to present conduct, as opposed to past conduct. The 2006 increase in sentencing ranges for sex offenders was thus not a bill of attainder."; 2) "We reasoned that the legislature esentially incorporated the chaney criteria into the criminal procedure code as the basis for determining a sentence and the sentencing court may refer the case to the three-judge sentencing panel. The legislature retained these provisions in its 2006 increase in presumptive sentencing ranges for sexual offenders. These aspects of the sentencing scheme are sufficient to safeguard the right of rehabilitation."; and 3) The "statutory penality generally passes due process muster 'as long as it bears any relation to a legitimate legislative goal.' Because rational inferences would allow the legislature to set the presumptive ranges it did, Barenz has not shown that the legislature violated due process when it increased the sentencing ranges." [Barenz v. State, 2023 Alas. App. 140].

On 11/28/2024 the petitioner file a "Petition For Rehearing" [Attached]. In it he pointed out that: 1) The legislature did target a particular group of people, sexual offenders, because AS 12.55.125(i) is only for sexual offenders, the 2006 increase speaks on sexual offenses and sexual offenders, so there is no other criminal offender this could be for and the sexual offender who is being sentenced for their current offense is also being sentenced for past offenses, just without any judicial process; 2) That the court of appeals statement that sexual offenders may seek review from a three-judge panel is wrong, in the 2021 Collins case put out by the Alaska Court of Appeals it is made very clear that sexual offenders do not get the option for the three-judge panel for anything less than extrodinary prospects for rehabilitation and that since this didn't help all sexual offenders it was unconstitutional

On 12/27/23 the petitioner file his Petition For Hearing in the Alaska Supreme Court [Attached]. In it he argued: 1) AS 12.55.125(i) is an Unconstitutional Bill of Attainder; 2) AS 12.55.125(i) Violates Due Process; and that 3) Alaskans have a Constitutional Right to Rehabilitation.

On 2/23/2024 the Alaska Supreme Court denied the petitioner's Petition For Hearing without putting out a decision.[Attached].

REASONS FOR GRANTING THE PETITION

This court should grant the petitioner's writ for the following reasons: 1) Alaska Statute 12.55.125(i) is a Bill of Attainder because it sentences sexual offenders for alleged past criminal offenses while sentencing offenders for their current offense without judicial review of the past criminal offenses; 2) Alaska Statute 12.55.125(i) violates due process because it has created an irrebutable presumption; and 3) Alaskans have a Constitutional right to rehabilitation and the states current system of review doesn't meet constitutional muster.

ARGUMENT

1) Alaska Statute is a Bill of Attainder because it sentences sexual offenders for alleged past criminal offenses while sentencing offenders for their current offense without judicial review of the past criminal offenses. We see this in the 2012 Collins decision when the court states, "the legislature also declared that it had increased the sentencing ranges [for sexual offenders] based on its findings that sex offenders usually have committed multipul sex offenses by the time they are caught," [Id at supra]. This increase to the presumptive sentencing ranges made it to were sexual offenders are now being punished for past conduct while being sentenced for current conduct. And in 2021 the Alaska Court of Appeals made it very clear that sexual offenders "may not contest" a history free of "unprosecuted, undocumented, or undetected sexual offenses." [Id at supra].

When making it's 2021 decision the Court of Appeals explaind that it was never the legislature's intent to allow review of "a history free of unprosecuted, undocumented, or undetected sexual offenses" [Collins, id at 494 HN1/Footnote 4; AS 12.55.165, (c) A court may not refer a case to [the] three-judge panel ... if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, ... (2) [has] a history free of unprosecuted, undocumented, or undetected sexual offenses; and under AS 12.55.175(f), A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range solely on the claim that the defendant, ... has ... (2) a history free of unprosecuted, undocumented, or undetected sexual offenses.]. The Court of Appeals explained that under the doctrine of "clarifying legislation", the legislature could say that it never intended to allow sexual offenders the ability to seek review of "a history free of unprosecuted, undocumented, or undetected sexual offenses" and that this would then under the doctrine allow the legislature to apply this standard from the 2006 increase to present times. [See discussion in Collins v. State, 494 P.3d 60, 63-65 (2021)].

By taking the review of past criminal conduct away from the judiciary the legislature has created a unconstitutional bill of attainder, USCS Const. Art. I, § 9, Cl 3; Alaska Const. Art. I, § 15.

> Article I, section 9 of the Constitution provides that "no Bill of Attainder ... be passed." U.S. CONST. art. I, § 9, cl. 3. This provision prohibits Congress from enacting "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." Nixon v. Adm'r of Gen. Servs., 433 U,S. 425, 468 ... (1977). As the Supreme Court explained in United States v. Brown, 381 U.S. 437, ... (1965), the Clause was intended to serve as "a general safeguard against legislative exercise of the judicial function, or more simply - trial by legislature." Id at 442. The infrequency with which the courts have relied upon this provision to invalidate legislation has not prevented its meaning from evolving to fulfill this purpose. See BellSouth Corp. v. FCC, 333 U.S. App. D.C. 253, ... (D.C. Cir. 1998).(BellSouth II).

Early in our country's history, a bill of attainder was seen to refer to a legislative act that sentenced a named individual to death without the benefit of a judicial trial. See BellSouth Corp. v. FCC, 330 U.S. App. D.C. 109, ... (D.C. Cir. 1998), cert. denied, 526 U.S. 1086, ... (1999)(BellSouth I). As early as 1810, however, the scope of the prohibition was extended to include so-called "bills of pains and penalties," or legislative acts that sentenced specified persons to penalties short of death, including banishment, deprivation of the right to vote, corruption of blood, or confiscation or property. See Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 138, ... (1810); see also Brown, 381 U.S. at 441-42; BellSouth I, 144 F.3d at 62. By 1866, the Supreme Court wrote that a forbidden attainder could embrace "the deprivation of any rights, civil or political, previously enjoyed," if the attending circumstances and causes of the deprivation demonstrated that the deprivation amounted to "punishment." Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 320, ... (1866). Decisions from the Supreme Court since the Civil War have invalidated as bills of attainder legislation barring specified persons or groups from pursuing various professions, where the employment bans were imposed as a brand of disloyalty. Nixon, 433 U.S. at 474-75.

Under the now prevailing case law, a law is prohibited under the bill of attainder clause "if it (1) applies with specificity, and (2) imposes punishment." BellSouth II, 162 F.3d at 683. The element of specificity may be satisfied if the statute singles out a person or class by name or applies to "easily ascertainable members of a group." United States v. Lovett, 328 U.S. 303, 315, ... (1946). As the Supreme Court made clear in Nixon, however, specificity alone does not render a statute an unconstitutional bill of attainder. See 433 U.S. at 469-73. Rather, a law may be so specific as to create a "legitimate class of one" without amounting to a bill of attainder unless it also satisfies the "punishment" element of the analysis. Id at 472. For this reason, we have upheld statutes against bill of attainder challenges even where the disputed statutes applied to specifically named parties. See Bell-South II, 162 F.3d at 684; BellSouth I, 144 F.3d at 63. Both "specificity" and "punishment" must be shown before a law is condemned as a bill of attainder. [Foretich v. United States, 351 F.3d 1198, 1217 (D.C. Cir. 2003)].

In the 9th Circuit case of, Seariver Mar. Fin. Holdings v. Mineta, 309 F.3d 662, 669-673 (2002), specificty is explained:

> The Supreme Court, and our case law, have established various guidepost to aid in determining whether legislation singles out a person or class within the meaning of the Bill of Attainder Clause. First, we look to whether the statute or provision explicitly names the individual or class, or instead, describes the affected population in terms of general applicability. ... Our second focus, intricately connected with the first is whether the identity of the individual or class was "easily ascertainable" when the legislation was passed. ... Third, we examine whether the legislation defines the individual or class by "past conduct [that] operates only as a designation of particular persons." ... Finally, we review whether the past conduct defining the individual or group consists of "irrevocable acts committed by them."

Using Seariver as a guidepost, we have, first, the Alaskan legislature's intent to target "sexual offenders" [Collins, 287 at 795] and AS 12.55.125(i) is written specificaly for sexual offenders. Second, the identity of the class

is easily ascertainable and was when the legislation was passed, which can be seen in the terms "sexual offender" and "sexual offense" that were used in the letter of intent and in the statute. Third, the legislation uses past conduct, as in prior undected sexual offenses, that designate particular persons, sexual offenders. And lastly, the past conduct that is defined is alleged "irrevocable acts committed" by sexual offenders that based on the legislture's actions can not be contested. Thus we see that the legislature's actions and AS 12.55.125(i) are specific and only affect sexual offenders.

To break down punishment we go back to Foretich.

> To ascertain whether a statute imposes punishment, the Supreme Court has instructed that a court should pursue a three-part inquiry: (1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, "viewed in terms of type and severity of burdens imposed, can reasonably be said to further nonpunitive legislative purposes"; and (3) whether the legislative record "envinces a congressional intent to punish. ... The Court has applied each of these criteria as an independent - though not necessarily decisive - indicator of punishment. ... [A] statute need not fit all three factors to be considered a bill of attainder; rather, those factors are evidence that is weighed together in resolving a bill of attainder claim. ... however, ... the so-called "functional test" - "invariably appears to be the most important of the three." ... the legislation may still be a bill of attainder under the functional test if no legitimate nonpunitive purpose appears. ... This ensures the Congress cannot "circumvent[] the clause by cooking up newfangled ways to punish disfavored indivuals or groups." [Foretich, 351 Id at 1218].

When it comes to punishment we see, first, AS 12.55.125(i) must fall within the historical meaning of legislative punishment because it is a statute designed soly for punishment. Second, when "viewed in terms of type" it is a sentencing statute, and when viewed in terms of "severity", the 2006 amendments increase the sentence of a sexual offender by 2.5 times more than what it was before. And even though the statute in question is also intended to protect the public, it must do so while protecting the constitutional and legal rights of the individuals adversly affected, [Nixon, 433 Id at 477]. And third, it is obvious that the legislative record "invinces a congressional intent to punish." [Appellee's Brief

pp. 11, The legislature issued a letter of intent; See also Collins, 287 Id at 796; Collins, 494 Id at HN1/Footnote 4; Ak. SB 22, Section 1].

Normally when a person is accused of a crime, they are arrested, indicted, go to trial, (and if found guilty) are sentenced for the offense; but for sexual offenders when they are sentenced for the arrested offense, they are also sentenced for all of thier "unprosecuted, undocumented, and undetected" offenses that the legislature presumes they have, [Collins, 287 Id at 797]. In essance they had a trial by legislature along with their criminal trial, and are being sentenced for both at the same time, just without judicial review of the "unprosecuted, undocumented, and undetected" sexual actions. This is what the bill of attainder clause was suppose to "safeguard" against, the legislative exercise of the judicial function.

> Sentencing is a discretionary judicial function. ... In Faulker v. State, it was said, determination of an appropriate sentence involves the judicious balancing of many oftimes competing factors [of which] primacy cannot be ascribed to any particular factor. [State v. Chaney, 477 P.2d 441, 444-445 (1970)].

"Unprosecuted, undocumented, and undetected" offenses were always a part of the judicial function. Sentencing judges may consider verified instances of, past antisocial behavor, [Nukapigak v. State, 562 P.2d 697, 701 (1977)]; Uncharged offenses or police contacts where they are verified by supporting data or information and the defendant is given the opportunity to deny the allegations and offer rebuttal evidence, [Pascoe v. State, 628 P.2d 547, 550 (1980)]; See also Takak v. State, 2022 Alas. App. LEXIS 66, 18-19; Davis v. State, 282 P.3d 1262, 1271 (2012)]. But it "is error for the sentencing judge to consider crimes not charged ... in fashioning an appropriate sentence." [Szeratics v. State, 572 P.2d 63, 65-66 (1977); See also Smith v. State, 369 P.3d 555, 557-560 (2016)].

In Federal Courts we see:

> Judges have long looked to real conduct when sentencing. Federal judges have long rlied upon a presentence report, prepaired by a probation officer, for

information (often unavailable until after the trial) relevant to the manner in which the convicted offender committed the crime of conviction. ... "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may recieve for the purpose of imposing an appropriate sentence." [United States v. Booker, 543 U.S. 220, 251 (2005)].

In the 11th Circuit Court of Appeals case of United States v. Bennett, 928 F.2d 1548, 1558 (1991) we see a dsicussion on bill of attainder in regards to the "Relevant Conduct Provision" of the Sentencing Reform Act. Bennett argues that the sentencing section that allows courts "to consider conduct other than that for which the defendant was indicted, is unconstitutional", "that through the relevant conduct provision the legislative branch has taken dsicretion in sentencing away from the judicial branch, forcing courts to consider a quanity of drugs, ... other than that for which he was convicted of distributing." The court ruled that "the consideration of all relevant conduct has been a traditional sentencing practice." That the provision isn't a bill of attainder.

So as we can see, conduct other than the criminal offense may be used during sentencing, as long as it is verified, and that there is judicial review. In the current sittuation sexual offenders use to have judicial review of "unprosecuted, undocumented, and undetected" offenses, but now they are being "deprived of these rights they previously enjoyed", judicial review of verified instances of anti-socal or criminalistic behavor. And now their sentence is 2.5 times higher than it was prior to the 2006 amendments.

2) Alaska Statute 12.55.125(i) violates due process because it has created an irrebutable presumption.

USCS Const. Amend. 14 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 enforece 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. [See also Alaska Const, I, § 7].

The Alaska Supreme Court has defined due process as:

> The term "due process of law" is not susceptible of presice definition or reduction to a mathematical formula. But in the course of judicial decisions it has come to express a basic concept of justice under law, such as "our traditional conception of fair play and substantial justice", the "protection of the individual from arbitrary action,""fundamental priniciples of liberty and justice," whether there has been a "denial of fundamental fairness, shocking to the universal sense of justice,""that whole community sense of decency and fairness that has been woven by common experiance into the fabric of acceptable conduct," and a "respect for those personal immunities which are so rooted in the tradition and conscience of the nation as to be ranked as fundamental; or are implicit in the concept of ordered liberty." [Green v. State, 462 P.2d 994 (1969)].

The Collins court made it clear in 2012 that while other criminal offenders "history is adequately reflected by the defendant's status as a first, second, or third felony offender. ... [That] these assumptions about presumptive sentencing ranges, and about which defendants should be subject to these presumptive ranges, do not apply to the presumptive sentencing ranges established by the legislature for sex offenses. As can be seen from the legislative history, the legislature enacted those presumptive sentencing ranges based on the assumption that defendants being sentenced for sex offenses have likely committed many other sex offenses before they were caught, and on the further assumption that the defendants being sentenced for sex offenses are particulary resistant to rehabilitative efforts." [Collins, 287 at 796-797]. Basically Alaska's legislture held a trial and looked evidence about sexual offenders and then came to the conclusion that they were guilty of "unprosecuted, undocumented, or undetected" sexual offenses, and because they cannot be rehabilitated they should do 2.5 times more in prison. Furthermore in 2021 the Collins court made it clear that it was the legislature's intent from the beginning to deny sexual offenders review of their sexual history

and alleged past sexual conduct or of prospects for rehebilitation that are any thing less than extraordinary.

Alaska's legislature has created irrebuttable presumptions when it made its 2006 amendments.

> A statue creating a presumption which operates to deny fair opportunity to rebut it violates the due process clause of U.S. Const. amend. XVI. A constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption anymore than it can be violated by direct enactment. The power to create presumption is not a means of escape from the constitutional restrictions. [Heiner v. Donnan, 285 U.S. 312, 329-330; See also Vlandis v. Kline, 412 U.S. 441, 446-454 (1973), Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clause of the Fifth and Fourteenth Amendments; Marshall v. United States, 414 U.S. 417, 435-440 (1974), "permanent irrebuttable presumptions have long been disfavored," ... The two-felony presumption of nonamendability to rehabulitation is also plainly contrary to fact.].

When the Alaska legislture raised the presumptive sentencing ranges for sex offenses and made it to where it no longer reflects the defendant's status as a "first, second, or third felony offender" based on an alleged past sexual history, and then stated that sexual offenders are unrehabilitatible, and then took away judicial review, it created a irrebuttable presumption and "indirectly" bypassed the U.S. Const. amend. XIV.

The United States Supreme Court has shot down states attempts to bypass the constitution. In Booker, 543 at 231, we see:

> The fact that New Jersey labeled [a] hate crime a "sentencing enhancement" rather than a seperate criminal act [is] irrelevant for constitutional purpose. ... As a matter of simple justice, it seemed obvious that the procedural safeguards designed to protect Apprendi from punishment for the possion of a firearm should apply equally to his violation of the hate crime statute. Merely using the label "sentence enhancement" to describe the latter did not provide a principle basis for treating the two crimes differently. [Citing Apprendi v. New Jersey, 530 U.S. 466, 476, 478 (2000)].

In Apprendi, "the defendant plead guilty to second-degree possession for a firearm for unlawful purpose, ... there-after. the trial court found that his conduct had violated New Jersey's 'hate crime' law because it was racially motivated," the Supreme Court "set aside the enhanced sentence. [It] held:

"Other than the fact of a prior conviction, any fact that increases the penalty for a crime behond the prescribed statutory maximum must be submitted to a jury, and proven behond a reasonable doubt." [Citing Booker, 543 at 231].

Alaska's legislature has bypassed this concept for sexual offenders, by writting into law that sexual offenders are guility of past unseen offenses, without any prior conviction or judicial review.

Due process is:

> At common law, the relationship between crime and punishment was clear. As discussed in Apprendi, "[t]he substantive criminal law tended to be sanction-specific," meaning "it prescribed a particular sentence for each offense." [Alleyene v. United States, 570 U.S. 99, 108-109 (2013)].

You are either a first, second, or third time felony offender, based on conviction and not assumption.

3) Alaskans have a Constitutional right to rehbailitation and the states current system of review doesn't meet constitutional must.

> Artical I, section 12 of the Alaska Constitution provides that "Criminal administration shall be based upon," among other interests, "the prinicple of reformation." We have held that this provision confers on prisoners a constitutionally protected right to rehabilitation that must be made "a reality and not simply something to which lip service is being paid." This right is fundamental. [Antenor v. State, 462 P.3d 1, 15 (2020)].

In the 2006 amendment to AS 12.55.125(i) the legislature made it very clear that part of the reason for making its decision was because sexual offenders have "very poor prospects for rehabilitation" [Collins, 287 at 797], and "that sexual offenders are four times as likely to reoffend as compared to non-sex crime offenders." [Petition for Hearing pp. 10:20-23].

The legislature used incorrect data when it made its decision in its 2006 amendment to AS 12.55.125(i). Based on the current studies of the "Alaska Justice Statistical Analysis Center" of U.A.A., sexual offenders are only 7.1% likely to committ new sexual offenses after imprisonment [Petition for Hearing

pp. 10:25-11:8]. The univeristy stated:

> As been found in previous studies of sex offender recidivism in Alaska and elsewhere, the culumative recidivism rate for Alaska sex offenders is demonstrably lower than what is found for those convicted of other types of crime. In Alaska, many (although not all) sex offenders are required to submit to repeated polygraph examinations in addition to more routine enhanced supervision reqirements. Thus, while sex crimes are not likely to be reported to police or other criminal justice officials, the commission of new offenses by convicted sex offenders are more likely to be detected than new offenses by individuals releases from prison for other offenses. The relative risk of Alaska sex offender recidivism declines over time.

This has been confirmed by the "National Association for Rational Sexual Offense Laws" (NARSOL), who also found in a 2019 study that only 7.7% of sexual offenders committ new sexual offenses after imprisonment [R. 739].

If we look at the statement, "As been found in previous studies of sex offender recidivism in Alaska and elsewhere," we see that the findings seen in the study are not new. So when the legislature made the amendments it made, with the information it used, they were wrong. Sexual offenders have good prospects of rehabilitation. At sentencing the petitioner's trial judge said, "I have no clue what Mr. Barenz's rehabilitative prospects are on this one. I guess we'll find out." [Tr. 781:18-19]. Well, now, when using the above seen studies, that represent past and current offender recidivism, we can safely say that the petitioner's prospects are good.

In Alaska the legislature has a constitutional duty to keep rehabilitation in mind when making or amending sentencing laws.

> The twin goals of sentencing are reformation of the offender and protection of the public. Both should be considered equally and punishment should not be emphized to the exclusion of rehabilitation potential. [Good v. State, 590 P.2d 420 (1979)].

As it stands right now, punishment far out waighs reformation, and all because the Alaska legislature used incorrect data. Basically sexual offenders are only getting "lip service". The legislature made this very clear in it's letter of intent for the 2006 amendment for AS 12.55.125(i) when it said, "that [sexual

offenders] often do not respond to rehabilitative treatment, and therefore cannot be safely released into society." [Collins, 287 at 796]. Which is contrary to the findings in the studies done. The state and it's courts assert that a sexual offender may seek a three-judge panel in exceptional cases, but this does not cover all sexual offenders.

> The legislature stated that it ha[s] not intended for sexual felony defendants to have their cases referred to the three-judge panel based on ... prospects for rehabilitation that are less than extraordinary ... [Collins, 494 at 64].

So there is no three-judge panel for rehabilitation for the average sexual offender. The United States Supreme Court has made it clear that if the exception, three-judge panel, is not available to all offenders or typical offenders, then the exception doesn't sastisfy the constitutional issue.

> The availability of a departure in specified circumstances does not avoid the constitutional issue, just as it did not in Blakely itself. The guidelines permit departures from the prescribed sentencing range in which the judge "finds there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." ... At first glance, one might believe that the ability of a district judge to depart from the guidelines means that she is only bound by the statutory maximum. Were this the case, there would be no Apprendi problem. Importantly, however, departures are not available in every case, and in fact are unavailable in most. In most cases, as a matter of law, the Commission will have adequately taken all relevant factors into account, and no departure will be permissible. In those instances, the judge is bound to impose a sentence within the Guidelines range. It was for this reason that we rejected a similar aregument in Blakely, holding that although the Washington statute allowed the judge to impose a sentence outside the sentencing range for "substantial and compelling reasons," that exception was not available for Blakely himself. [Booker, 543 at 235; cited in the petitioner's "Petition for Rehearing" and the petitioner's "Petition for Hearing"].

So why should this court decide this case? The Alaksa legislature has found "newfangled ways to punish disfavored indivuals or [a] group." That is sexual offenders, by adding past criminal behavior to the sentence imposed and taking out judicial review, by creating an irrebuttable presumption, and by giving sexual offenders "lip service" for review of their prospects of rehabilitation.

All of which violates the United States Constitution, USCS Const. Art. I, § 9, Cl 3; USCS Const. amend. XVI, and the Alaska Constitution, Alaska Const. Art. I, § 15; Alaska Const. I, § 7. It use to be the principle:

> that the "truth of every accusation" against a defendant "should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbor," ... and that "an accusation which lacks any particular fact which the law makes essebtial to the punishment is...no accusation within the requirments of the common law, and it is no accusation in reason," ... These principles have been acknowledged by the courts and treaties since the earliest days of graduated sentencing." [Blakely v. Washington, 542 U.S. 296, 302 (2004), citing Apprendi, 553 at 490]

But here it is clear that the Alaska legislature has determined guilt for past sexual offenses and raised the punishment based on that guilt. And it is clear that the legislature has excluded judicial review by taking away the trial courts ability to review issue that was always within the courts discretion. It should be the priniciple that when sentencing a criminal defandant:

> No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may recieve for the purpose of imposing an appropriate sentence. [Booker, 543 at 251].

But the Alaska legislature has bypassed this concept as well. And the Alaska legislature did this right after Apprendi, Blakely, and Booker were decided so as to inhibit sexual offenders from having historically what is seen as a proper sentencing hearing in front of the judiciary. This is the exact case and type of issue that this court should decide. This type of legislation is contrary to the constitution and it has substantial public imptortance. If it is allowed to stand then the implications are clear, anyone ever convicted of a crime could face this type of issue in the future.

The petitioner's request is that this court orders the petitioner's trial court to resentence the petitioner under the last legal form of AS 12.55.125(i), which would be the former 2005 version. Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 6/20/24