APPENDIX A

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

RALPH LOREN BARENZ II, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-14018 Trial Court No. 3PA-14-02277 CR SUMMARY DISPOSITION No. 0353 — November 22, 2023

Appeal from the Superior Court, Third Judicial District, Palmer, Jonathan A. Woodman, Judge.

Appearances: Ralph Loren Barenz II, *in propria persona*, Wasilla, Appellant. RuthAnne Beach, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Ralph Loren Barenz II was convicted, following a jury trial, of first-degree sexual assault, and this Court affirmed his conviction on direct appeal.[1] He subsequently filed a *pro se* motion to correct an illegal sentence, arguing that the legislature's 2006 increase in the presumptive ranges for sexual offenses was invalid and that he should

[1] *Barenz v. State*, 2019 WL 2157362 (Alaska App. May 15, 2019) (unpublished); former AS 11.41.410(a)(1) (2014).

be resentenced under the pre-2006 sentencing range for first-degree sexual assault.[2] The superior court denied the motion. Still proceeding *pro se*, he now appeals.

Barenz first argues that the 2006 increase in presumptive sentencing ranges for sexual offenses violated the prohibitions in Article I, Section 10 of the United States Constitution and Article I, Section 15 of the Alaska Constitution against bills of attainder. A bill of attainder, as safeguarded against in these constitutional provisions, is a "legislative punishment, of any form or severity, of specifically designated persons or groups."[3] Barenz notes that, when the legislature passed the increase in presumptive sentencing ranges, one of the stated reasons for doing so was that sex offenders typically have committed many offenses before being caught.[4] He argues that increasing the presumptive sentencing ranges was a legislative punishment for the specific class of sex offenders. But 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.[5] The 2006 increase in sentencing ranges for sex offenders was thus not a bill of attainder.

Barenz next argues that the 2006 increase in presumptive sentencing ranges for sexual offenses violates the right to reformation in Article I, Section 12 of the Alaska Constitution.[6] A statutory sentencing scheme may violate the right to

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[2] *See* SLA 2006, ch. 14.

[3] *United States v. Brown*, 381 U.S. 437, 447 (1965).

[4] *See* 2006 Senate Journal 2207-09; *see also Collins v. State*, 287 P.3d 791, 795 (Alaska App. 2012) ("[The] legislative history makes clear that the current sentencing ranges are based on legislative findings that the typical sex offender is a repeat offender with very poor prospects for rehabilitation.").

[5] *See, e.g., Communist Party of the U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 86-87 (1961) (concluding that an act was not a bill of attainder, in part, because "[t]he incidents which it reache[d] [were] . . . present incidents").

[6] *See Antenor v. State, Dep't of Corr.*, 462 P.3d 1, 14 (Alaska 2020) ("We have held that this provision confers on prisoners a constitutionally protected right to rehabilitation

reformation by unreasonably restricting judicial sentencing discretion.[7] In *Nell v. State*, we rejected the argument that the presumptive sentencing scheme adopted by the legislature as part of the Revised Criminal Code violated Article I, Section 12 of the Alaska Constitution's principle of reformation.[8] We reasoned that the legislature essentially 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.[9] The legislature retained these provisions in its 2006 increase in presumptive sentencing ranges for sexual offenses.[10] These aspects of the sentencing scheme are sufficient to safeguard the right to rehabilitation.

Finally, Barenz argues that the 2006 increase in presumptive ranges for sexual offenses violated due process because the decision to increase the range was based on faulty findings and was poorly reasoned. But a statutory penalty generally passes due process muster "as long as it bears any rational relation to a legitimate legislative goal."[11] Because rational inferences would allow the legislature to set the

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that must be made 'a reality and not simply something to which lip service is being paid.'" (quoting *Abraham v. State*, 585 P.2d 526, 533 (Alaska 1978))).

[7] *See Nell v. State*, 642 P.2d 1361, 1369-70 (Alaska App. 1982).

[8] *Id.*

[9] *Id.* (discussing *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970), AS 12.55.005, and AS 12.55.175).

[10] *See* former AS 12.55.005 (2006); former AS 12.55.175 (2006); *see also King v. State*, 487 P.3d 242, 249-52 (Alaska App. 2021) (remanding for reconsideration of whether referral to the three-judge sentencing panel was appropriate in a case where the defendant was convicted of multiple sexual offenses).

[11] *State v. Niedermeyer*, 14 P.3d 264, 267 (Alaska 2000).

presumptive ranges it did, Barenz has not shown that the legislature violated due process when it increased the sentencing ranges.[12]

The judgment of the superior court is AFFIRMED.

[12] As part of his argument that the increase in sentencing ranges was poorly reasoned, Barenz notes that other crimes besides sexual offenses are often committed many times before being caught. To the extent that this argument can be construed as an equal protection challenge to the sentencing ranges, this challenge fails under Alaska's three-part, sliding-scale equal protection analysis. *See Anderson v. State*, 904 P.2d 433, 436 (Alaska App. 1995). The individual right purportedly infringed is "the relatively narrow interest of a convicted offender in minimizing the punishment for an offense," while the State "has a strong and direct interest in establishing penalties for criminal offenders and in determining how those penalties should be applied to various classes of convicted felons." *See id.* (quoting *Maeckle v. State*, 792 P.2d 686, 689 (Alaska App.1990)). There is "no marked deficiency in the challenged statute's approach to fulfilling the state's legitimate interest in punishing criminal offenders." *Id.*

APPENDIX B

In the Court of Appeals of the State of Alaska

Ralph Loren Barenz II,
Appellant,

v.

State of Alaska,
Appellee.

Trial Court Case No. **3PA-14-02277CR**

Court of Appeals No. **A-14018**

Order
Petition For Rehearing

Date of Order: **12/4/2023**

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

On consideration of the Petition for Rehearing filed by Ralph Barenz on 11/28/2023,

IT IS ORDERED: The Petition for Rehearing is **DENIED.**

Entered at the direction of the Court.

Clerk of the Appellate Courts

M. Montgomery

Meredith Montgomery

cc: Judge Woodman
Trial Court Clerk – Palmer
Publishers (Summary Disposition No. 353, 11/22/2023)

Distribution:

Mail:
Barenz , Ralph Loren

Email:
Beach, RuthAnne

APPENDIX C

IN THE DISTRICT\SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA,

Plaintiff,

vs.

RALPH L. BARENZ, II
DOB: 05/09/1981
APSIN ID: 6788259
DMV NO.: 6788259 AK
ATN: 114628716

Defendant.

No. 3PA-14-02277CR (Ralph L. Barenz, II)

ORDER

JUN 23 2022

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

This court, having considered the Defendant's Motion to Correct Illegal Sentence and the State's Opposition, hereby orders that the Defendant's motion is DENIED.

Dated at Palmer, Alaska, this 22 day of June, 2022.

By: [signature]
Superior Court Judge
J. Woodman

I certify that on 6/22/2022 a copy of this document was sent to
☒ Deft/Atty ☒ DA ☐ DPS ☐ AOO
☐ MSASAP/AASAP ☐ DMV ☐ FWP
☐ MSPT ☐ Anch Jail ☐ Other Barenz
Deputy Clerk JHankins

APPENDIX D

In the Supreme Court of the State of Alaska

Ralph Loren Barenz II,
Petitioner,

v.

State of Alaska,
Respondent.

Supreme Court No. **S-18957**

Order
Petition for Hearing

Date of Order: **4/15/2024**

Court of Appeals No. **A-14018**
Trial Court Case No. **3PA-14-02277CR**

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

On consideration of the petition for hearing filed on 12/27/2023, and the response filed on 2/23/2024,

IT IS ORDERED:

The petition for hearing is **DENIED.**

Entered at the direction of the court.

Clerk of the Appellate Courts

Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Court of Appeals Judges
Judge Woodman
Trial Court Clerk – Palmer

Distribution:

Mail:
Barenz , Ralph Loren

Email:
Beach, RuthAnne

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Ralph Loren Barenz II, PETITIONER

vs.

State of Alaska, RESPONDENT

AFFIDAVIT IN SUPPORT OF NO OPPITION FOR REHEARING IN THE ALASKA SUPREME COURT

I Ralph L. Barenz II, depose and state:

1. I am a pro se litigant in the above stated case;

2. According to Alaska R. App. Proc. 303. Procedure on Petition for Hearing.

(e) Petition for Rehearing. -- A petition for rehearing may not be filed in connection with the grant or denial of a petition for hearing.

Further your affiant sayeth naught.

Ralph L. Barenz II
Pro se litigant

SUBSCRIBED AND SWORN to before me on 20 June, 2024

In Wasilla Alaska

Notary Public in and for Alaska
My commission expires: with office

W. LEBEOUF NOTARY PUBLIC STATE OF ALASKA

APPENDIX E

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RALPH L. BARENZ II,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-14018
Superior Court No. 3PA-14-02277CR

CERTIFICATE OF SERVICE

I certify that this PETITION FOR REHEARING was sent on the 11-28-23 to the following parties:

RuthAnne Beach
Office of Criminal Appeals
310 K Street, Suite 702
Anchorage, AK 99501

The Alaska Court of Appeals
303 K Street
Anchorage, AK 99501-2084

Ralph L. Barenz II

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RALPH L. BARENZ II, Appellant, vs. STATE OF ALASKA, Appellee.	Court of Appeals No. A-14018 Superior Court No. 3PA-14-02277CR

PETITION FOR REHEARING

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript and disclosure of the information was ordered by the court.

Intorduction

Tha appellant, Ralph L. Barenz II, comes now in the capacity of propria persona, asks now for this court to consider his Petition for Rehearing of his sentence appeal which this court denied on November 22, 2023.

Statement of facts

On November 22, 2023, this court denied the appellant appeal of his sentence. The first reason this court stated was that because 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." The courts decision is erronuous. As this court has stated in Collins v. State, 287 P.3d 791, 795-797, the Alaskan legislature "enacted [its] presumptive sentencing ranges" for sexual offenders

"on the assumption that defendants being sentenced for sex offenses have likely committed many other sex offenses before they were caught,". This statement in and of it self shows that sexual offenders is the group targeted by name, and that sex offenders presumptive range (time being sent to prison) was being raised for undocument, unprosecuted, and undetected sexual offnses. This means that they are being punished for both the current offense and past offenses, but only being given judicial review of the current offense. This courts decision is falls under Alaska R. App. Proc. 506 (a), because it (1) overlooks its own decision that controlls this issue. Furthermore in this courts decision in Collins v. State, 494 P.3d 60 (2021), it stated that is is the legislatures intent that "sexual offenders may not contest 'unprosecuted, undocumented, or undetected sexual offenses.'" It therefore again has "overlooked its own decision that controlls this issue. Thus AS 12.55.125 (i) is an unconstitutional bill of attainder, It punishs a specific group, sexual offenders, and it has taken away judicial review of unprosecuted, undocumented, and undetected sexual offenses, and raised the time an offender does.

This court also rejected the appellants argument on rehabilitation. It stated that "the sentencing court may refer the case to the three-judge panel", but again this court is wrong. In the 2021 Collins case it was determind that sexual offenders with normal prospects of rehabilitation can not go to a three-judge panel. Also as the appellant argued in his reply brief, if an average offender can not seek judicial review, then the exception

of a three-judge panel is not available for him, then this is not a real option and does not pass the United States Supreme court standard as seen in Untied States v. Booker, 543 U.S. 220, 235 (2005).

> 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 that 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 bound only 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 argument 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.

Thus as you can see this courts decision "misconceived a proposition of law" as decidied by the United States Supreme Court and therefore its decision is contrary to Alaska R. App. Proc. 506 (a)(2).

Conclusion

This courts decision is erronuous and AS 12.55.125 (i) is an unconstitutional bill of attainder. According to Alaska R. App. Proc. 506 (a)(1) and (2) this court should grant the Petition for Rehearing and reverse the appellants sentence and remand for resentencing.

Ralph L. Barenz II

APPENDIX F

IN THE SUPREME COURT OF THE STATE OF ALASKA

RALPH LOREN BARENZ II, Petitioner, vs. STATE OF ALASKA, Respondent.	Trial No. 3PA-14-02277CR Appeal No. A-14018 Supreme No. S-18957

PETITION FOR HEARING

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

Prayer for Review

The petitioner, Ralph L. Barenz II, comes now in the capacity of propria persona, asks now for liency and relaxsation of the Alaska Rules of Court as allowed under Civil Rule 94 and Criminal Rule 53. Also "pleadings and documents filed by pro se litigants ... however inartfully pleaded must be held to less stringent standards than formal pleadings drafted by lawyers." [Erickson v. Pardus, 551 U.S. 89, 94 (2007)]. The petitioner's prayer for review is that this court will decided this issue for all sexual offenders.

Statement of Facts

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 we see in Collins v. State, 287 P.3d 791, 795-797 (2012); that the Alaska Court of Appeals ruled:

> the legislature amended the sentencing statutes to sharply increase the sentencing ranges for sexual offenders.... The legislature addresses the purpose and rationale behind its revisions to the sentencing ranges of sex offenses 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 Alask 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 range 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] prospects for rehabilitation.

Currently it has been held in, Collins v. State, 494 P.3d 60 (2021), that it is the legislature's intent that the average "sexual offender may not contest 'unprosecuted, undocumented, or undetected sexual offenses.'" Or anything less than extraordinary prospects of rehabilitation.

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. 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 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 filed 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) is an Unconstitutional Bill of Atainder; 2) Alaskans have a Constitutional Right to Rehabilitation, and 3) AS 12.55.125 (i) violates due process [Appellant's Brief pp. iii].

The State opposed the petitioner's appeal by arguing that, 1) the petitioner could not argue this issue under Criminal Rule 35 (a), 2) The State argues 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 presumtpive sentencing statute.", 3) The State claims that the petitioner must present his rehabilitation claim to the legislature and not the court, and that the current standards in place are correct., and 4) The State asserts, "the legislature recognized 'there mav 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 sentence in appropriate cases.'" [For the State's argument see Appellee's Brief].

The Alaska Court of Appeals ruled against the petitioner's appeal because,

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 lond as it bears any rational 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].

The State of Alaska, by and through its legislation, the Department of law, and the Alaska Court of Appeals, is wrong.

Statement of Points

AS 12.55.125 (i) is an Unconstitutional Bill of Attainder.

In 2006 when the Alaska legislature made sexual offenders guilty of "unprosecuted, undocumented, and undetected sexual offenses" by legislatuive enactment, without judicial review, it created an unconstitutional bill of attainder, USCS Const. Art. I, § 9, Cl 3; Alaska Const. At. I, § 15.

> Article I, section 9 of the Constitution provides that "no Bill of attainder ... shall be passed." ... This provision prohibits Congress from enacting "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provisions of the protections of a judicial trial." ... the clause was intended to serve as "a general safeguard against legislative exercise of the judicial function, or more simply - trial by legislature." ... the prohibition...

was extended to include so-called "bills of pain and penalties," or legislative acts that sentenced specified persons to penalties short of deat, ... 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." ... 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." ... The element of specificty may be satified if the statute singles out a person or class by name or applies "easily ascertainable members of a group." ... Both "specificty" and "punishment" must be shown before a law is condemned as a bill of attainder. [Foretich v. United States, 351 F.3d 1198, 1217 (2003)].

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

> 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 wiht 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 affected individual or group consists of "irrevocable acts committed by them."

If we use Seariver as a guidepost, we have, first, the legislature's intent was to target "sexual offenders" [Id at Supra 2:1-3] and AS 12.55.125 (i) is writen specificaly for sexual ofenses. Second, the identity of the class is easily ascertainable and was when the legislation was passed because of terms "sexual offender" and "sexual offense" that were used in the letter of intent and in the statute. Third, the legislation does use past conduct, prior sexual offenses, that designates particular persons, sexual offenders. And lastly, the past conduct that defines sexual offenders is "irrevocable acts committed" by them that we cannot contest. AS 12.55.125 (i) is specific, and it only affects 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 that 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, (1) AS 12.55.125 (i) must fall within the historical meaning of legislative punishment because it is a statute designed to punish. (2) 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. Even though the statute in question is also intented to protect the public, it must do so while protecting the constitutional and legal rights of the individuals adverly affected, [Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 477 (1977)]. And (3) it is obvious that the legislative record "invinces a congressional intent to punish." [Appellee's Brief pp. 11, The legilsture issued a letter of intent; See also Collins, 287 Id at 796; Collins, 494 Id at Supra 2:15-17; Ak. SB 22, Section 1].

Normally when a person is accused of a crime, they are arrested, indicted, then go to trial, (and if found guilty) are sentenced for the offenses, but for sexual offenders when they are sentenced for the arrested offense, they are also sentenced for all of their "unprosecuted, undocumented, and undetected" offenses theat legislature presumes they have, [Collins, 287 Id at 797]. In essance they had a trial by legislature along with their criminal trial and are be sentenced for what the legislature has found them guilty of. This is what bill of attainder is suppose to "safeguard" against, the legisl-

ative 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 part of the judicial function. Sentencing judges may consider verified instances of, past antisocal 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 defendand 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 the Federal Court we see:

> Judges have long looked to real conduct when sentencing. Federal judges have long relied upon a presentence report, prepaird by a probation officer, for information (often unavailable after the trial) relevant to the manner in which the convicted offender committed the crime of conviction. [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 discussion on bill of attainder in regard 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 discretion 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 pratice." That the provision isn't a bill of atainder.

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. Sexual offenders use to have judicial review of "unprosecuted, undocumented, and undetected" offensesbut now they are being "deprived of these rights they previously enjoyed", [Id at Supra 2:15-18], judicial review of verified instnaces of antisocal or criminalistic behavor. And now their sentence is 2.5 times higher than before the 2006 amendments.

AS 12.55.125 (i) Violates Due Process.

Alaska Const. Art. I, § 7 states:

> No person shall be deprived of life, liberty, or property, without due process of law. Th right of all persons to fair and just treatment ... shall not be infringed. [See also USCS Const. Amend. 14].

In Alaska we see:

> The term "due process of law" is not suspceptible of precise 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 principles of liberty and justice," whether there has been a "denail of fundamental fairness, shocking to the universal sense of justice,""that whole community sense of decency and fariness that has been woven by commen 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)]

When the legislature made its 2006 revision to AS 12.55.125 (i), it said in its letter of intent that the presumptive sentence for sexual offenders was being increased because of the multipul "unprosecuted, undocumented, and undetected" sexuall offenses they have and the fact that sexual offenders have "poor prospects for rehabilitation". And in Collins (2012), the court made it clear that while other criminal offenders sentences are based on the fact that their criminal history is seen in the fact that they are first, ,

second, or third time felony offenders, and this is what determines their presumptive sentencing ranges, but that sexual offenders do not get this kind of review for they are automatically found guilty of multipul sexual offenses even though their criminal history doesn't relflect this. Furthermore in Collins (2021), the court affirmed that it is the legislature's intent to deny sexual offenders judicial review of their alledged past sexual conduct or to seek review of prospects for rehabilitation that are less than extra-odinary, by dening sexual offenders any chance to go to a three-judge panel.

Alaska's legislature has created an irrebuttable presumption.

> A statute creating a presumption which operates to deny fair opportunity to rebut it violates the due process clause of U.S. Const. amend. XIV. 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 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 rehabilitation is also plainly contrary to fact.].

In Booker, 543 Id 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 possession 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 principled 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 proved behond a reasonable doubt." [Booker, 543 Id at 231].

Here in Alaska the legislature has bypassed this concept for sexual offenders, by writing into the law that sexual offenders are guility of the above stated 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]. You are either a first, second, or third time felony offender, based on conviction, not assumption.

Alaskans have a Constitutional Right to Rehabilitation.

Alaskans have a right to rehabilitation (Reformation), Alaska Const. Art. I, § 12.

> 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 Id at 797], and "that sexual offenders are four times as likely to reoffend as compared to non-sex crime offenders. [Appellee's Brief pp. 12 quoting 2006 Senate journal at 2208].

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 [http: //hdl. handle.net/11122/73442 Pp. 27; Attachment 1-2]. The univeristy stated:

> As been found in previous studies of sex offender recidivism in Alaska and elsewhere, the culumative recidivism rate of 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 requirements. Thus, while sex crimes are not likely to pe 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 committed by individuals released from prison for other offenses. The relative risk of Alaska sex offender recidivism declines over time. [Attachment 1-2].

This has been confirmed by the "National Association for Rational Sexual Offense Laws" (NARSOL), how 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 prosepects are on this one. I guess we'll find out." [Tr.781:18-19]. Well now when using the above seen studies, we can safely say that Barenz's prospects are good.

The legislature has a constitutional duty to keep rahabilitation in mind when making or amendind 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 weighs reformation, and all because the Alaska legislature used incorrect data. Basically sexual offender's are only getting, "lip service".

Why do these issues have importance beyond the Petitioners Case and why do they require a decision by this court.

> I begin with a premise that is fundamental rule of law: ... the rule gives substance to that constitutional ideal of due process which affords every member of society the right to be given notice and opportunity to be heard before being punished for a crime. [Mill v. State, 585 P.2d 546, 553 (1978)(Citing Chambers v. Missippi, 410 U.S. 284, 294 (1973); Cole v. Arkansas, 333 U.S. 196, 201 (1948); Alto v. State, 565 P.2d 492, 495 (Alaska 1977))].

In this case two of the issues argued by the petitioner deal directly with this ideal, 1) whether or not AS 12.55.125 (i) has been turned into a bill of attainder when the Alaska legislature amended the presumptive sentencing ranges of all sexual offenses to include a legislative presumed past sexual history, without judicial review, and 2) whether this is a due process issue because the Alaska legislature created an irrebuttable presumption when it changed the way sexual offenders are seen in the essance of first, second, or third felony offender, again without judicial review. It is the petitioners argument that sexual offenders have not been given notice of their presumed past sexual history, nor are they given the opportunity to be heard on the subject prior to sentencing, thus being punished.

And lastly, did Alaska's legislature violate Alaskans rights to rehabilitation when it put punishment over rehabilitation when it raised the presumptive sentencing ranges for sexual offenders based on faulty data.

All of the issues raised in this petition have been classified by this court as fundamental rights (Alaska Const. Art. I, § 15; USCS Const. Art. I, § 15; See Johnson v. State, 328 P.3d 77, 84-85 (2014); Alaska Const. Art. I, § 7; USCS Const. Amend. 14; Mill v. State, 585 P.2d 546, 553 (1978); Alaska Const. Art. I, § 12; Antenor v. State, 462 P.3d 1, 15 (2020).), and raise serious constitutional questions (that have never been decided by this court). So even though this argument is being raised late, because the

legislature made its amendments in 2006 and the petitioner was sentenced in 2015, this court should still grant "full appellate review".

> Because of the fundamental requirement that a criminal conviction [and sentence] be made pursuant to a valid law, the Supreme Court of Alaska has long granted full appellate review to all late-raised claims that a criminal prohibition is unconstitutional. ... "fundamental" modifies the claimed right, not the size or nature of the error deviating from the claimed right. [Johnson v. State, 328 P.3d 77, 84-85 (2014)].

In order to create a proper record for review, and follow the proper procedure, the petitioner started this process in the trial court under Criminal Rule 35 (a).

> The purpose of procedural rules like our Criminal Rule 35 (a) is to confer continuing jurisdiction on a sentencing court to correct illegal sentences, even if the claimed error was not raised at the time of sentencing or in the defendants direct appeal. [Fletcher v. State, 532 P.3d 286, 324 (2023)(Citing Lockuk v. State, 153 P.3d 1012, 1018 (2007))]

As this court can see, the trial court denided the petitioner's claim, and now so has the Alaska Court of Appeals. The Court of Appeals claims that the legislature has not targeted "any particular people or groups by name, and the punishment was tied to present conduct, as opposed to past conduct." That "the sentencing scheme [is] sufficient to safeguard the right of rehabilitation." And lastly that "Barenz has not shown that the legislature violated due process when it increased the sentencing ranges." But as we can see in the above stated argument, the court is wrong.

Both the State and the Court of Appeals assert that a criminal defendant may seek a three-judge panel in exceptional cases, but this is not true, and exceptional does not grant relief for the typical offender, so they have no relief.

> 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 or a history free of unprosecuted, undocumented, or undetected sexual offenses. [Collins v. State, 494 P.3d 60, 64 (2021)].

So there is no three-judge panel for a history free of sexual offenses and if the offenders prospects are less than extraordinary there is no three-judge panel as well. The United States Supreme Court has made it clear that if the exception, three-judge panel in this case, is not available to all offenders or typical offenders, then the exception doesn't sastify the constitutional issue, [Booker, 543 Id at 235; See Appeallant's Reply Brief pp. 12].

So why should this court decide this case, in the current issue, the Court of Appeals has decided significant questions concerning the interpretation of the US and Alaska Constitutions, which this court has not yet decided. And the Court of Appeals has decided a significant question of law, which has substantial public importance to all Alaskans and criminal defendants being sentenced for sexual offenses. Which also has not been decided by this court, [Alaska R. App. Proc. 304 (b)(c)].

Conclusion

It is the petitioner's belief that AS 12.55.125 (i) is a bill of attainder and that legislature has created a irrebuttable presumption when it raised the presumptive sentencing range to include prior sexual offenses that are not reflected in a sexual offenders criminal history. Furthermore it is the petitioner's assertion that the legislature violated the constitutional requirement of rehbilitation when it raised the presumptive sentencing range partially for the fact that sexcual offenders have poor prospects for rehabilitation when studies actually show that sexual offenders are very rehabilitable. In this sittuation legislature has put punishment over reformation. The petitioner's hope is that when this court sees these constitutional issues it will grant the petitioner relief and resentence him under the last constitutional version of AS 12.55.125 (i), the 2005 version. This would

affect both of his sexual offenses. The SA 1 would be in the range of 8-12 and the SAM 2 would be 2-4. With everything being merged as it was the first time, the petitioner's sentence would be no more than 12 years to serve. Thank you for your time.

Respectfully,

Ralph L. Barenz II
Pro se litigant

Attachment 1

The between-group criminal history analysis also included a comparison of prior sex offense arrests and prior sex offense convictions. No statistically significant differences emerged among any of the groups.

Conclusions

1. **Nearly half of all convicted sex offenders in Alaska are not rearrested or reconvicted within seven years of being release from prison.** With a specific focus on the *recidivism* of sex offenders, it can be easy to overlook the extent to which sex offenders successfully desist from crime, in general, and sex offending in particular. While this study did find that more than half (55.4%) of Alaska sex offenders were rearrested (for any offense) within seven years of being release from prison, it also found that nearly half (44.6%) of sex offenders *were not rearrested for any offense* within seven years of being released from prison.
2. **Alaska sex offenders are infrequently rearrested or reconvicted for the commission of new sex offenses.** This conclusion is related to #5 below. This study found that just 7.1 percent of all Alaska sex offenders released from prison commit a new sex offense within seven years, and only a small portion of those are convicted of new sex crimes. Considering the harm sex crimes inflict upon victims and communities, a cumulative recidivism rate of 7.1 percent is certainly not inconsequential, nor is it trivial. Nevertheless, a 7.1 percent cumulative recidivism rate for sex offenses provides important empirical context for objectively assessing sex offense recidivism risk.
3. **Sex offenders in Alaska recidivate at different rates.** The GTM model results presented here clearly show that the post-release offending behaviors of Alaska sex offenders vary in both frequency and intensity. All Alaska sex offenders do not present the same recidivism risk. Many do not recidivate at all within seven years and, among those sex offenders who do reoffend following release from prison, there are objective differences in their *rates* of reoffending.
4. **Rates of sex offender recidivism in Alaska vary over time.** The GTM model results also show that in addition to differing overall rates of reoffending, Alaska sex offenders' recidivism rates change over time. Such change was particularly pronounced for one recidivism trajectory group (Group 4), but was also observed (albeit to a lesser extent) for other recidivism trajectory groups as well. This suggests that desistance from crime is a *developmental process*, not simply the binary yes-no outcome that is so often described in recidivism research.
5. **Alaska sex offenders are not crime "specialists."** The analysis of Alaska sex offender criminal histories and post-release recidivism clearly evidence a generalization – not a specialization – in criminal offending. While each member of the analysis sample used in this study was a "sex offender" due to one or more convictions for sex offenses, it is important to also understand that sexual offending constitutes only a small portion of the crimes Alaska sex offenders commit.
6. **The cumulative recidivism rate for sex offenders in Alaska is markedly lower than the cumulative recidivism rates of those convicted of other offenses.** As has been found in previous studies of sex offender recidivism in Alaska and elsewhere, the cumulative recidivism rate of Alaska sex offenders is demonstrably lower than what is found

Attachment 2

for those convicted of other types of crime. An important aspect of sex offender recidivism is the well-known fact that sex offenses are among the least reported of all crimes. That sex crimes are among the least likely to come to the attention of police or other authorities is a fact that should be kept in mind when contemplating the results of sex offender recidivism studies – particularly those that rely on official data sources. Nevertheless, it is also important to consider the intensity of post-release supervision regimes for sex offenders. Sex offenders are subject to a much higher level of supervision and surveillance by both the government and local communities. In Alaska, many (although not all) sex offenders are required to submit to repeated polygraph examinations in addition to more routine enhanced supervision requirements. 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 committed by individuals released from prison for other offenses.

7. **The relative risk of Alaska sex offender recidivism declines over time.** Most recidivism studies focus primarily (and often exclusively) on cumulative recidivism rates. A significant limitation of such rates as that they often exaggerate recidivism risk over time because they continue to increase until such time as no additional offenders recidivate. In contrast, the calculation of relative risk statistics provide an accurate assessment of recidivism risk for any given time period. The relative risk results presented in this study show a continuous decline in the relative risk of recidivism for Alaska sex offenders. In other words, the proportion of sex offenders who commit new crimes following their release from prison steadily decreases over time.