

ORIGINAL

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

VS.

ON PETITION FOR A WRIT OF CERTIORARI TO

PETITION FOR WRIT OF CERTIORARI

(Phone Number)

QUESTION(S) PRESENTED

Whether The Appellate Court's Affirmance of The Trial Court's Conviction and Sentence of Violating a none-existing statute by deferring to The Supreme Court's Retro-active Construction of a jurisdictional Rule, to defeat the preclusive effect of an incurable defective jurisdictional fact - Denied Petitioner has Substantive and Constitutional Rights under The Due Process Clause of The 6th Amendment, given to The States, through The 14th Amendment to The U.S. Constitution and The Alaska Counter-part.

whether The State Supreme Court's Retro-active Construction of The 2003 Amendment, as Applied, may operate to impose a new obligation or duty of performance where none existed before - having declared Petitioner was exempt - is Constitutional.

LIST OF PARTIES

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

RELATED CASES

HBK-590-902 CR-
3PA-14-0333 CR,
3KV-21-01529 CR,
No. S-16171

(12)

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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☐ is unpublished.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☐ is unpublished.

☐ 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

- ☐ reported at NO. A-14161; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Petition for Certiorari court appears at Appendix B to the petition and is

- ☐ reported at S-19321; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 10/23/24.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: CERTIORARI - 2/26/25, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

14th Amendment: . . . "NOR shall any State deprive any person of life, liberty, or property, without Due Process of Law . . . Alaska Counter Part.

6th Amendment: "In all criminal prosecution, The Accused shall enjoy the right to a speedy and fair trial . . . Alaska Counter Part.

Ex post facto: ART. I, § 10 U.S. CONST. "No State shall Pass any Bill of Attainder, ex post facto law, or impairing the obligation of Contracts . . . Alaska Counter-Part. ART. I, § 15.

Statement of The Case

On April 5th, 2016, The State dismissed its SPA-14-0333CR. Indictment without prejudice, on jurisdictional grounds. The facts and circumstances of the dismissal - holding petitioner to answer, evidenced bad faith. The dismissal barred a speedy and public trial by the preclusive effect of the jurisdictional defeat.

Thereafter the State initiated a successive prosecution for the same conduct violation (Refusal to submit to DNA testing) in multiple count indictment, 3KN-21-01529CR. 7 1/2 years later, before a new judge and prosecutor, in a different venue, resulting in the ex post facto conviction and sentence of a none existing statute.

Previously, the State Supreme Court, issued its opinion, in Simmons v. DOC, 456 P.3d 1110 (AK 2018), in which it held, that under the 2003 Amendment, petitioner was required to submit a DNA sample, after having declared petitioner was not required to do so, under the original indictment, A.S. 44.41.035(b) (EPA date 1/1/96).; On that basis, the State initiated its second prosecution, well after the statute of limitations had lapsed - a time bar claim, which the courts ignored.

Reasons for Granting The Petition

The Reason why this case goes beyond petition
-er, if the States' Supreme Courts inconsistent decisions
were permitted to stand, because the Administra-
tive Agency (Parole Board) and the Courts, lacked
subject matter jurisdiction, the principle of vali-
dity is compromised; if the judgment remains in-
definitely subject to attack for a defect of juris-
diction, then the principle of finality is compro-
mised. The effective date notice clause, would have
no meaning, and this Court's instructions that "a
Court does not have the power by judicial fiat to ex-
tend its jurisdiction over matters beyond the scope
of authority granted to it by its creators....."

Argument

The State Concedes The fact that The State's Supreme Court declared That petitioner was exempt under A.S. 44.41.035(b) (Eff. date, 1/1/96), because his conviction pre-dated The Enactment of The Criminal Law. However, The State contends That The Amendment, Effective date of 7/1/03, Required Those individuals who had been convicted of a Qualifying offense and Remained incarcerated, before, on, or after its Effective date of July 1, 2003, must Submit a DNA Sample as a Condition of Parole, mandatory, OR discretionary.

Alaska Case law, and This Court's precedents Rejects The State's Contention. *Holt v. Powell*, 420 P.2d 468 (AK. 1966); *Denardo v. State*, 740 P.2d 453 (AK. 1987); *State v. Bromly*, 987 P.2d 183 (AK. 1999); *U.S. v. Cotton*, 535 U.S. 625, 620 (2002); *Arbaugh v. Y + H Corp.*, 546 U.S. 500, 514 (2006); *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). ("When a Court lacks Subject Matter Jurisdiction meaning it lacks The Statutory

OR Constitutional power to adjudicate a case, the Court must dismiss the Complaint, even *Sua Sponte* if necessary. The preclusive effect generated by the factual finding of the Jurisdictional fatal defect, leaves nothing to consider.

The DNA Law

The DNA Law is a Civil non-punitive Regulation and it has Substantive and Remedial provisions (characteristics). The Remedial provision serves the Regulatory purpose of promoting justice and protecting public safety.

Applying this procedural statute to a condition of existing litigation, even litigation involving an underlying dispute that arose from conduct occurring before the effective date of the new statute, involves no improper retroactive application because the statute addresses conduct in the future. Such statutes are not made retroactive simply because they draw from facts existing prior to their enactment, such

Statutes are actually prospective in nature since they relate to procedures to be followed in the future." *Aetna Casualty & Surety Co. v. Indus. Acc. Comm.*, 182 P.2d 159 (1947); *Hood v. State*, 574 P.2d at 813-814; *Matanuska Maid Inc. v. State*, 620 P.2d 182, 183 (AK. 1980); *Pan Alaska Trucking v. Crouch*, 773 P.2d 947 (AK. 1989); *Ex parte Collett*, 337 U.S. 55 (1949) ("Remedial statutes presumptively apply to pending cases").

Upon conviction of an underlying qualifying offense, it imposes a collateral legal disability, a separate and distinct consequence from the original prosecution adverse to the defendant beyond the expected sentence for his current offense, by operation of law. The Act is always prospective, by applying the procedural or remedial law in effect at the time of the legal proceedings. *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994).

The doctrine of *in pari materia* will not give an Amendment a retroactive effect to apply to and operate upon pre-enactment conduct, if it effects a substantive change in the law.

— Thus, An unconstitutional law can not serve as

As the foundation of a Court's Authority to try and imprison an individual for violating a ~~none~~ existing statute. Ex. parte Siebold, 100 U.S. at 376-77; *Frederick v. White*, 531 U.S. 223, 228-229 (2001) (per curiam), such a construction may not out of whole cloth create jurisdiction where none existed previously. *Hugh Aircraft v. Ex. Rel Schumaker*, 520 U.S. 939 (1997).

“Because an unconstitutional law is void, it is as no law and an offense created by it is not a crime. And a conviction under it is not only or merely erroneous, but illegal and void, ab initio and can not be a legal cause of imprisonment.” Ex. parte Siebold, 100 U.S. at 376-77 (1879).

Conclusion

The Regulation must have existed at the time of Petitioner's underlying Conviction, Case, HBF-590-902 CR, or subsequently, to any pending proceeding which had not gone beyond the procedural stage to which the statute pertains. : “If there is no operation of

law, There can be no obligation of law; or, "that quality by which the law becomes binding on a subject as a rule of his conduct." Hammond v. United States, 26 F. Cases, 96 (1801). Also, See,

Simmons v. DOC, S-16171 (3PA-14-01187CZ) at p. 7299 - last sentence - and foot-note, 58, at p. 7299 ("Simmons was criminally charged for his refusal to provide a DNA sample, but the state later dismissed the charges." State v. Simmons, No. 3PA-14-0333/r. [Alaska Super., dismissed April 5, 2016]).

"the legal effect of conduct is ordinarily assessed under the law existing at the time the conduct takes place." and, "an effective date is a part of an Agency's statement of general or particular applicability and of future effect." without an effective date, the rule is a nullity.

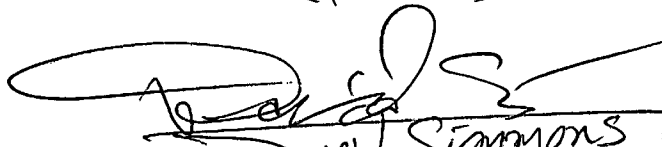
For these reasons, the Court of Appeals have a constitutional duty to make a finding of fact, or, to have confirmed the fact, declared by the Supreme Court. ■ STARE DECISIS address law, not facts - and the Supreme Court was constrained from exceeding its scope of authority, vested by statute, the Due Process, Speedy Trial and Ex Post Facto

Clauses.

Prayer

PETITIONER PRAYS THAT THIS COURT
GRANTS HIS PETITION.

Respectfully,


David Simmons PRO SE

Dated This, May 27th, 2025
Pet. for CERTIORARI, U.S. Supreme
Court-