IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LOREN J. LARSON JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-10981 Trial Court No. 4FA-96-3495 CR MEMORANDUM OPINION No. 5986 — November 20, 2013

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

Appearances: Loren J. Larson Jr., *in propria persona*, Seward, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger, Judges.

Judge MANNHEIMER.

Loren J. Larson Jr. appeals the superior court's dismissal of his motion for relief from his criminal judgement, a motion filed under Alaska Civil Rule 60(b). Larson's underlying claim is that the jury's decision in his criminal case was flawed by juror misconduct. In particular, Larson claims that two of the jurors who decided his

case engaged in misconduct by improperly inferring, from Larson's failure to take the stand at trial, that Larson was probably guilty.

Larson concedes that the superior court was correct to dismiss his motion for relief from judgement, but he argues that the superior court committed plain error when it failed to *sua sponte* convert his motion into a petition for writ of habeas corpus under Alaska Civil Rule 86, and to allow Larson to litigate his underlying claim of juror misconduct using habeas corpus procedure.

As we explain in this opinion, Larson's claim of plain error rests on three legal assertions, and not one of these three assertions is undebatably true. Accordingly, we conclude that Larson has not shown plain error, and we affirm the superior court's ruling.

Underlying facts: the litigation that preceded Larson's motion for relief from judgement

The facts recited here are drawn, for the most part, from the supreme court's decision in *Larson v. State*, 254 P.3d 1073, 1075-76 (Alaska 2011) (*Larson III*):

A jury convicted Larson of two counts of first-degree murder and one count of first-degree burglary. Larson was sentenced in 1998 to two consecutive 99-year terms for the murder counts and a 10-year concurrent term for the burglary count.

In 2000, this Court affirmed Larson's convictions on direct appeal. *See Larson v. State* (*Larson I*), unpublished, Alaska App. Memorandum Opinion No. 4171, 2000 WL 19199 (January 12, 2000).

About a year later, Larson filed an application for post-conviction relief, relying on affidavits from jurors and alternate jurors which alleged that there had been juror misconduct prior to, and during, the deliberations at Larson's trial.

Specifically, Larson asserted that several jurors violated the trial judge's instructions by (1) forming and announcing opinions about Larson's guilt before the case was submitted to the jury, (2) discussing the merits of the case with other jurors before the case was submitted to the jury, and (3) relying on their own personal knowledge (rather than evidence presented at trial) concerning how loud a shot from a .22 caliber rifle would be, and concerning the breakage characteristics of glass used in construction vehicles.

In addition, Larson asserted that some jurors improperly declared, or apparently agreed with other jurors' statements, that (4) Larson's wife's absence from the courtroom was an indication that she believed Larson was guilty, and that (5) Larson's decision not to testify was an indication that he was guilty. *See Larson v. State* (*Larson II*), 79 P.3d 650, 652 (Alaska App. 2003).

The superior court dismissed Larson's petition for post-conviction relief because the court concluded that none of the jurors' affidavits were admissible — that the admission of these affidavits was barred by Alaska Evidence Rule 606(b). [1]

Larson appealed the dismissal of his petition for post-conviction relief, arguing that the juror affidavits were admissible because Evidence Rule 606(b) did not

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[1] Alaska Evidence Rule 606(b) states that when a court is asked to conduct an inquiry into the validity of a verdict, "[no] juror may ... be questioned as to any matter or statement occurring during the course of the jury's deliberations or [as] to the effect of any matter or statement upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment". The rule then adds, "Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes."

prohibit the introduction of juror affidavits if those affidavits described misconduct committed *before* the jury commenced its formal deliberations.

In *Larson II*, this Court affirmed the superior court's dismissal of Larson's petition for post-conviction relief. In reaching this decision, we rejected Larson's interpretation of Evidence Rule 606(b); instead, we held that the juror affidavits describing alleged pre-deliberation misconduct were not admissible under Rule 606(b) because "the admissibility of juror affidavits under Rule 606(b) turns on the *type* of impropriety they describe, not the timing of that impropriety." *Larson II*, 79 P.3d at 653.

Because Larson's offer of proof included affidavits from alternate jurors as well as affidavits from some of the jurors who ended up deciding his case, this Court had to address the question of whether Evidence Rule 606(b) applied to evidence offered by alternate jurors. In their briefs, both Larson and the State assumed that Rule 606(b) applied to alternate jurors, but this Court adopted a more cautious approach. We stated:

> Because Larson relies in part on the affidavits of two alternate jurors, one additional question is potentially raised by Larson's case: whether Evidence Rule 606(b) applies to evidence offered by alternate jurors as well as evidence offered by the jurors who ultimately decide the case. Both Larson and the State assume that Rule 606(b) applies to alternate jurors, and our limited research on this issue supports the parties' position. *See State v. Reiner*, 731 N.E.2d 662, 670-73 (Ohio 2000). We therefore assume, for purposes of this case, that Evidence Rule 606(b) governs testimony or affidavits supplied by alternate jurors.

Larson II, 79 P.3d at 655.

Following this Court's decision in *Larson II*, Larson filed a petition for hearing in the supreme court. Larson asked the supreme court to review this Court's decision that Evidence Rule 606(b) precluded the admission of juror affidavits or other

evidence tending to show that jurors engaged in misconduct *before* the jury commenced its formal deliberations. But Larson did not ask the supreme court to review this Court's decision (or assumption) that Evidence Rule 606(b) applied to alternate jurors as well as regular jurors. The supreme court denied Larson's petition for hearing.

Several years later, in January 2010, Larson filed a civil complaint which named this Court (*i.e.*, the Alaska Court of Appeals, as an agency of state government) as the defendant. Larson alleged that this Court violated its "duties to establish rules of law and declare what legal rights a citizen has according to that rule" when this Court assumed, without formally deciding, that Evidence Rule 606(b) applied to testimony and affidavits from alternate jurors.

The superior court dismissed Larson's civil complaint. The superior court concluded that, to the extent Larson was asserting a claim against the judges of this Court, that claim was barred by judicial immunity. The superior court further concluded that, to the extent Larson was seeking a re-examination or reversal of this Court's holding on the Evidence Rule 606(b) issue, Larson's claim was *res judicata*.

Larson then appealed the superior court's dismissal of his civil complaint. This appeal led to the Alaska Supreme Court's decision in *Larson III*: *Larson v. State*, 254 P.3d 1073 (Alaska 2011).

In *Larson III*, 254 P.3d at 1077, the supreme court agreed with the superior court that, "[t]o the extent Larson seeks [to re-litigate the scope of Evidence Rule 606(b)] as an indirect attack on his original conviction or [an indirect attack on the] denial of his subsequent post-conviction relief petition, ... the doctrine of *res judicata* applies ... [because a] prior judgment extinguishes [any right] of the plaintiff to remedies against

the defendant with respect to all or any part of the transaction ... out of which the action arose." [2]

The supreme court noted that Larson's underlying claim in his civil action — the alleged juror misconduct in his underlying criminal trial, and the admissibility or non-admissibility of juror affidavits under Evidence Rule 606(b) to prove this claim — arose out of the same transaction as the claim he presented in his earlier post-conviction relief litigation — the litigation that led to this Court's decision in *Larson II*. And the proceeding between Larson and the State resulted in a final judgement on the merits — *i.e.*, this Court's decision in *Larson II* holding that Larson's juror and alternate juror affidavits were not admissible under Evidence Rule 606(b) to show juror misconduct in order to attack the jury's verdict. *See Larson II*, 79 P.3d at 653.

The supreme court also noted that, to the extent Larson's claim might be slightly different from the ones he raised earlier, the doctrine of *res judicata* "precludes relitigation by the same parties, not only of claims [that were] raised in the [earlier] proceeding, but also [any] relevant claims that could have been raised." *Larson III*, 254 P.3d at 1077. [3]

In other words, the supreme court held that if Larson had wished to argue that the prohibition codified in Evidence Rule 606(b) did not apply to alternate jurors, he needed to have raised that claim in the earlier post-conviction relief litigation. Because Larson did not raise this claim — even when he petitioned the supreme court to review this Court's decision in *Larson II* — Larson was now precluded from further litigation of his juror misconduct claim. "Accordingly," the supreme court declared, "the

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[2] Quoting *Weber v. State*, 166 P.3d 899, 903 (Alaska 2007), and *Nelson v. Jones*, 787 P.2d 1031, 1033-34 (Alaska 1990).

[3] Quoting *DeNardo v. State*, 740 P.2d 453, 456 (Alaska 1987).

superior court correctly applied the doctrine of *res judicata* as a ground to dismiss Larson's [civil] suit." *Larson III*, 254 P.3d at 1078.

Underlying facts: Larson's subsequent motion for relief from judgement

In June 2010, while the *Larson III* appeal was still pending before the Alaska Supreme Court, Larson filed a motion for relief from judgement in his criminal case. In this motion for relief from judgement, Larson raised several of the claims that he had already litigated in his petition for post-conviction relief — claims that this Court addressed and rejected in *Larson II*.

Specifically, Larson claimed that jurors in his case had engaged in misconduct by (1) falsely asserting that they would keep an open mind until they had heard all of the evidence, by (2) failing to set aside their preliminary opinions as to Larson's guilt or innocence, and by (3) drawing an adverse inference from the fact that Larson failed to take the stand at trial.

Larson asserted that he had never before had a fair opportunity to litigate this juror misconduct claim, even though he had raised this same claim (as well as others) in the petition for post-conviction relief that he filed several years earlier. Larson contended that this earlier post-conviction relief litigation should not foreclose him from re-asserting his juror misconduct claim, because (according to Larson) the superior court's denial of his earlier petition for post-conviction relief was flawed by procedural error.

Based on his argument that he never had a full opportunity to litigate his jury misconduct claim in the earlier post-conviction relief litigation, Larson again asked the superior court to examine the transcript of the jury voir dire, and to compare the jurors' answers during voir dire to the contents of the post-trial juror affidavits. Larson

alleged that, with respect to two jurors, the contents of the post-trial juror affidavits proved "that the answers [these jurors] gave to Larson's [defense] attorney [in] voir dire were deceitful."

The superior court denied Larson's motion for relief from judgement because the court concluded that Larson was legally barred from pursuing his claim, either in a motion for relief from judgement or in a petition for post-conviction relief.

First, the superior court noted that this Court has already held that a criminal defendant is not allowed to collaterally attack a criminal conviction by filing a motion for relief from judgement under Civil Rule 60(b). *See McLaughlin v. State*, 214 P.3d 386, 387 (Alaska App. 2009).

Second, the superior court noted that if Larson had attempted to file his claim in a second petition for post-conviction relief, Larson's petition would be barred under three separate provisions of AS 12.72.020(a): first, because the petition would have been filed more than one year after this Court decided Larson's direct appeal;[4] second, because Larson's claim had already been decided on its merits in an earlier proceeding (*i.e.*, the earlier post-conviction relief litigation, and this Court's decision in *Larson II*);[5] and third, because Larson had previously litigated another petition for post-conviction relief.[6]

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[4] AS 12.72.020(a)(3)(A).

[5] AS 12.72.020(a)(5).

[6] AS 12.72.020(a)(6).

Larson's arguments in the present appeal

In his brief to this Court, Larson essentially concedes that the first part of the superior court's ruling was correct: *i.e.*, that it was improper for Larson to raise his claim of jury misconduct in a motion for relief from judgement under Civil Rule 60(b). As the superior court noted, this Court decided this issue of procedural law in *McLaughlin*, 214 P.3d at 387.

Larson's brief does not mention the second part of the superior court's ruling — *i.e.*, the superior court's conclusion that even if Larson had presented his claim in a petition for post-conviction relief, that petition would have been subject to dismissal on three different grounds. However, by failing to attack this second portion of the superior court's ruling, Larson has waived any argument that this portion of the court's ruling was incorrect. [7]

Rather than attack either portion of the superior court's ruling, Larson argues instead that it should have been clear to the superior court, from the contents of Larson's motion for relief from judgement, that even though Larson had chosen the wrong procedural vehicle for his claim of jury misconduct, Larson would obviously be entitled to relief — in the form of a writ of habeas corpus under Alaska Civil Rule 86 — if his claim was proved. Larson's argument on this point requires a little explication.

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[7] *See Bobby v. State*, 950 P.2d 135, 138 (Alaska App. 1997) (the defendant's failure to mention the trial court's adverse findings of fact meant that the defendant had failed to meet his burden, as the appellant, of showing error); *Garcia v. State*, 947 P.2d 1363, 1364 n. 1 (Alaska App. 1997) (the defendants failed to preserve a point on appeal because they "presented a ... conclusory argument" that "fail[ed] to address [pertinent] legal authorities"); *State v. Hiser*, 924 P.2d 1024, 1025-26 (Alaska App. 1996) ("Hiser's pointed refusal to address controlling decisions of the supreme court must be interpreted as a tacit concession that [those decisions] are dispositive of his case.").

In *McCracken v. Corey*, 612 P.2d 990, 992 (Alaska 1980), the Alaska Supreme Court noted that "the historical essence of [the writ of] habeas corpus [is] to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void." The supreme court also stated in *McCracken* that, "[h]istorically, [the doctrine of] *res judicata* did not operate as a bar to [a petition for writ of] habeas corpus." *Id.* at 992.

Invoking these statements in *McCracken*, Larson argues that the alleged misconduct of the two jurors in his case rendered the judgement against him completely void (not just attackable). According to Larson, the jurors' misconduct meant that he was not tried by an impartial jury, and that this was a jurisdictional flaw, tantamount to a complete denial of his right to jury trial.

Larson next argues that, if his judgement would be void if he proved his claim of juror misconduct, then he should be able to attack the judgement through a petition for writ of habeas corpus.

The last step in Larson's argument is that, because he is entitled to pursue his claim of jury misconduct in a petition for writ of habeas corpus, it does not matter that he already litigated this claim in the post-conviction relief litigation that led to this Court's decision in *Larson II*. Larson relies on the statement in *McCracken* that the doctrine of *res judicata* does not apply to habeas corpus proceedings.

Why we reject Larson's claim of plain error

As explained in the preceding section of this opinion, Larson asserts that he should prevail in this appeal based on an argument that was never presented to the superior court — an argument that, Larson asserts, should have been obvious to the judge who denied his motion for relief from judgement.

Because Larson's claim of plain error involves three separate legal assertions, Larson must show that the truth of each of these three legal assertions would have been obvious to any competent judge. But as we explain here, none of Larson's three legal assertions are obviously true.

Larson's first assertion is that, if he could prove that two members of his jury engaged in misconduct (*i.e.*, that they viewed Larson's failure to take the stand as an indication of his guilt), then this would be tantamount to a complete denial of Larson's right to trial by jury, rendering the judgement against him completely void.

Although this Court has not confronted that precise issue before, we did decide an analogous claim in *Brockway v. State*, 37 P.3d 427 (Alaska App. 2001). The defendant in *Brockway* was subject to an increased penalty because of prior convictions. In the sentencing proceedings, Brockway tried to collaterally attack a prior conviction, arguing that he had received ineffective assistance of counsel in that earlier case, and thus the prior conviction should be treated as void. This Court rejected Brockway's contention because we concluded that the law draws a distinction between a complete denial of the assistance of counsel and, on the other hand, assistance of counsel that was incompetent in one or more ways:

> The only recognized exception to this rule [forbidding a collateral attack on a prior conviction during the sentencing proceedings for a later crime] is that a defendant can attack a prior conviction if the defendant was completely denied the right to counsel in the prior proceeding — either because the defendant asked for counsel and was denied one or (more likely) because the defendant proceeded without counsel and the trial judge did not obtain a knowing waiver of the right to counsel. All courts allow this kind of collateral attack because, as we recognized in *Flanigan v. State*, [3 P.3d 372, 376 (Alaska App. 2000),] when a defendant is completely deprived of the right to counsel, it is equivalent to a lack of

> jurisdiction. [*See ibid; see also Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1930).] However, this exception is strictly construed — it does not apply to instances where the defendant had counsel but now claims that his attorney was ineffective.

Brockway, 37 P.3d at 430.

Larson's case is similar to the facts of *Brockway*, in that Larson was not completely denied his right to trial by jury. His case was, in fact, decided by a jury. Larson's claim is that this jury included two members who engaged in misconduct. By analogy to our holding in *Brockway*, this alleged juror misconduct might mean that Larson's conviction was attackable, but it would not render his conviction void.

Based on *Brockway*, we conclude that Larson's first assertion — that the alleged juror misconduct would render the judgement against him void — is probably incorrect. Larson has therefore failed to show plain error. [8]

Larson's second assertion is that, if we assume that the alleged juror misconduct *would* render his judgement void, then he would be entitled to pursue his jury misconduct claim in a petition for writ of habeas corpus under Alaska Civil Rule 86, as opposed to a petition for post-conviction relief.

But Civil Rule 86(m) declares that the habeas corpus remedy has been superseded by the post-conviction relief procedure specified in Criminal Rule 35.1:

> This rule [*i.e.*, Civil Rule 86] does not apply to any post-conviction proceeding that could be brought under Criminal Rule 35.1. The court shall treat ... a complaint [for writ of habeas corpus] as an application for post-conviction

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[8] *See Simon v. State*, 121 P.3d 815, 820 (Alaska App. 2005): "If a claim of error is reasonably debatable — if reasonable judges could differ on what the law requires — then a claim of plain error fails."

> relief under Criminal Rule 35.1 and, if necessary, transfer the application to the court of appropriate jurisdiction for proceedings under that rule.

As this Court explained in *Grinols v. State*, 10 P.3d 600, 605 (Alaska App. 2000), Civil Rule 86(m) codifies this Court's earlier decision in *Wood v. Endell*, 702 P.2d 248 (Alaska App. 1985). *Wood* was a case where a prisoner filed a petition for writ of habeas corpus to collaterally attack his criminal conviction. Based on the Alaska Supreme Court's discussion in *Donnelly v. State*, 516 P.2d 396, 398 n. 2 (Alaska 1973), this Court concluded in *Wood* that the post-conviction relief procedures codified in Criminal Rule 35.1 were intended to supersede the habeas corpus remedy, and thus a habeas corpus petition attacking a criminal conviction should normally be deemed a petition for post-conviction relief. *Wood*, 702 P.2d at 249 n. 1.

In other words, if a claim for habeas corpus relief could be brought as a claim for post-conviction relief, then Alaska law *requires* that it be brought as a claim for post-conviction relief. And Larson's claim of juror misconduct obviously could be brought as a claim for post-conviction relief. Indeed, Larson already *did* raise this juror misconduct claim in a petition for post-conviction relief — the earlier litigation that led to this Court's decision in *Larson II*.

For this reason, Larson's second assertion (that Alaska law allowed him to pursue his juror misconduct claim in a petition for writ of habeas corpus) appears to be meritless. Thus, the truth of this second assertion would not have been obvious to all competent judges.

Larson's third assertion relates to the doctrine of *res judicata*. As we explained in our statement of the underlying facts, Larson's offer of proof concerning the alleged juror misconduct hinges on the admissibility of post-verdict affidavits submitted

by several jurors and alternate jurors. Larson relies on these affidavits as proof that two of his jurors drew an adverse inference from his failure to take the stand at trial.

But as we also explained in our statement of the underlying facts, this Court held in *Larson II* that these juror affidavits are *not* admissible — that they are barred by Alaska Evidence Rule 606(b). And when Larson later tried to attack that ruling in his 2010 civil lawsuit against this Court, the Alaska Supreme Court held in *Larson III*, 254 P.3d 1073 (Alaska 2011), that Larson's arguments were barred by the doctrine of *res judicata* — because of the earlier post-conviction relief litigation that led to this Court's decision in *Larson II*.

Thus, even if Larson tried to raise his juror misconduct claim in a new petition for writ of habeas corpus, the doctrine of *res judicata* would apparently bar him from litigating this claim, and bar him from relying on the post-verdict juror affidavits to prove this claim. But Larson asserts that the doctrine of *res judicata* does not apply to habeas corpus litigation, and thus he is free to re-litigate his juror misconduct claim even though he already litigated this claim (and lost) in the post-conviction relief litigation that led to our decision in *Larson II*.

It is true that our supreme court declared, in *McCracken v. Corey*, that "[h]istorically, [the doctrine of] *res judicata* did not operate as a bar to [a petition for writ of] habeas corpus." 612 P.2d at 992. But courts do not interpret this rule to mean that a defendant can employ habeas corpus litigation to repeatedly raise the same claim, even after that claim has been rejected on its merits in a prior adjudication. Rather, the rule is normally interpreted to mean that, in habeas corpus litigation, a defendant is entitled to collaterally attack a criminal conviction by raising *new* claims, even though the defendant ostensibly had the opportunity to raise those claims either on direct appeal or in earlier post-judgement litigation.

Thus, in *Brown v. State*, 803 P.2d 887, 888-89 (Alaska App. 1990), this Court held that the doctrine of *res judicata* applied to post-conviction relief actions, and that a defendant is barred from re-litigating a claim in post-conviction relief litigation if the merits of that claim were already decided against the defendant on direct appeal.

It is true that *Brown* involved a petition for post-conviction relief rather than a petition for writ of habeas corpus. But as we explained earlier, under Alaska law the post-conviction relief remedy has superseded the habeas corpus remedy as a method for collaterally attacking a criminal conviction.

Moreover, even in jurisdictions where criminal convictions can be collaterally attacked in habeas corpus litigation, courts generally hold that defendants are barred from litigating a claim for a second time if that claim was fully litigated and decided against the defendant in earlier litigation. (Some jurisdictions make an exception for instances where the law has changed, or where the defendant relies on newly discovered evidence.)

The federal law on this point is explained in Wayne R. LaFave, Jerold H. Israel, Nancy J. King, and Orin S. Kerr, *Criminal Procedure* (3rd ed. 2007), § 28.5(c)-(d), Vol. 7, pp. 231-240.

For state cases on this issue, *see Johnston v. State*, 63 So.3d 730, 747 (Fla. 2011) (holding that a defendant's habeas corpus claims were procedurally barred because they either were raised, or could have been raised, in his earlier post-conviction motion); *Knight v. State*, 923 So.2d 387, 395 (Fla. 2005) (holding that claims litigated in a post-conviction motion cannot be re-litigated in a later habeas petition); *People v. Terry*, 965 N.E.2d 533, 539-540 (Ill. App. 2012) (claims that have already been raised and decided in a prior habeas corpus proceeding are barred by *res judicata*); *State ex rel. Harsh v. Sheets*, 970 N.E.2d 926 (Ohio 2012) (*res judicata* bars a defendant from using habeas corpus litigation to obtain successive appellate review of the same claims); *State ex rel.*

Brantley v. Ghee, 685 N.E.2d 1243, 1244 (Ohio 1997) (the doctrine of *res judicata* precludes the filing of successive habeas corpus petitions when the earlier habeas corpus petition was fully litigated); *Losh v. McKenzie*, 277 S.E.2d 606, 611 (W.Va. 1981) (once a defendant has received a full habeas corpus hearing, and a decision on the merits of the defendant's claim has been rendered, the decision in that habeas corpus proceeding is *res judicata* as to all matters actually raised, and also as to all other matters known to the defendant or which the defendant could have known about with reasonable diligence).

See also McClendon v. Commissioner of Correction, 888 A.2d 183, 185 (Conn. App. 2006) (although the doctrine of *res judicata* does not strictly apply to habeas corpus proceedings, when a successive habeas petition is premised on the same legal grounds and seeks the same relief, the second petition is subject to summary dismissal unless the defendant shows that the supporting factual allegations were not reasonably available to the petitioner at the time of the earlier petition).

For these reasons, it appears that the doctrine of *res judicata* does indeed apply to habeas corpus litigation of the type that Larson wishes to pursue — *i.e.*, habeas corpus litigation in which a defendant proposes to re-litigate a claim that has already been litigated and resolved on its merits. Accordingly, Larson has not shown plain error.

Conclusion

Larson claims that the superior court committed plain error by not *sua sponte* converting his motion for relief from judgement into a petition for writ of habeas corpus, and allowing him to litigate his claim of juror misconduct in that fashion. But Larson's claim of plain error rests on three separate assertions about the law, and all three assertions are questionable at best. Accordingly, Larson has not shown plain error, and the judgement of the superior court is AFFIRMED.