IN THE COURT OF APPEALS OF THE STATE OF ALASKA

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| LOREN J. LARSON JR.,<br><br>Appellant,<br><br>v.<br><br>JOE SCHMIDT, Commissioner of Corrections, *et alia*,<br><br>Appellee. | Court of Appeals No. A-12476<br>Trial Court No. 4FA-12-1083 CI<br><br>MEMORANDUM OPINION<br><br>No. 6657 — July 25, 2018 |

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

Appearances: Loren J. Larson Jr., *in propria persona*, Wasilla, for the Appellant. Nancy R. Simel, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

Loren J. Larson Jr. appeals the decision of the superior court dismissing his petition for writ of habeas corpus.

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[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Larson was convicted of a double homicide, and this Court affirmed his convictions on direct appeal. *See Larson v. State*, unpublished, 2000 WL 19199 (Alaska App. 2000). In the years since then, Larson has pursued numerous collateral attacks on his convictions, based on claims that the jurors at his trial engaged in improper deliberations, that certain jurors lied during jury selection, and that certain jurors became biased against him because he did not testify at his trial.

*See Larson v. State*, 79 P.3d 650 (Alaska App. 2003); *Larson v. State*, 254 P.3d 1073 (Alaska 2011); *Larson v. State*, unpublished, 2013 WL 4012639 (Alaska App. 2013); *Larson v. State*, unpublished, 2013 WL 6169314 (Alaska App. 2013); *Larson v. Schmidt*, unpublished, 2013 WL 6576742 (Alaska App. 2013); *Larson v. State*, unpublished, 2016 WL 191987 (Alaska App. 2016); and *Larson v. State*, 407 P.3d 520 (Alaska App. 2017) (and our accompanying unpublished order in Court of Appeals File No. A-12725).

At this point, all of Larson's claims have either been expressly resolved against him or they are otherwise barred by the doctrine of *res judicata* (because they could have been raised before).

In the present appeal, Larson raises several arguments as to why the doctrine of *res judicata* should not bar him from continuing to litigate his underlying claims of juror misconduct. We find no merit to any of these arguments.

Larson does, however, raise one argument that is not barred by *res judicata*, because it is based on a change in the law. (See the discussion of this point in *Perry v. State*, 429 P.2d 249, 253 (Alaska 1967): "Even if the same ground was rejected on [its] merits [in] a prior application, it is open to the applicant to show that ... an intervening change in the law [requires the granting of relief].")

In *Larson v. State*, 79 P.3d 650, 653, 655-59 (Alaska App. 2003), this Court held that Alaska Evidence Rule 606(b) barred much of the evidence that Larson wished

to present to support his claims of juror misconduct. (Evidence Rule 606(b) generally prohibits a party from attacking a jury's verdict with evidence of statements that jurors made during deliberations.)

Larson points out that last year, in the case of *Peña-Rodríguez v. Colorado*, __ U.S. __, __; 137 S.Ct. 855, 869; 197 L.Ed.2d 107 (2017), the United States Supreme Court held that the Sixth Amendment requires courts to make an exception to evidence rules like Alaska Evidence Rule 606(b) in cases where one or more jurors make "a clear statement" indicating that the juror(s) "relied on racial stereotypes or [racial] animus to convict a criminal defendant."

Based on the Supreme Court's decision in *Peña-Rodríguez*, Larson argues that this Court should also make an exception to Evidence Rule 606(b) in cases where jurors declare that they will draw, or have drawn, an adverse inference against a criminal defendant who (like Larson) did not take the stand at trial.

But the decision in *Peña-Rodríguez* was expressly grounded on the "unique historical, constitutional, and institutional concerns" presented by racial bias in our nation. *Id.*, 137 S.Ct. at 868. To the extent that a juror's decision to draw an adverse inference against a non-testifying defendant might be termed a "bias", it is not the same type of bias that the Supreme Court was trying to remedy in *Peña-Rodríguez*.

We therefore reject Larson's argument that Alaska Evidence Rule 606(b) must now be reinterpreted to allow the admission of the jurors' statements in his case.

The judgement of the superior court is AFFIRMED.