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-12876 Trial Court No. 4FA-96-3495 CR MEMORANDUM OPINION No. 6739 — November 28, 2018 as modified on rehearing

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. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats, Senior Judge.[*]

Judge MANNHEIMER.

In 1998, Loren J. Larson Jr. 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 *See Larson v. State*, unpublished, 2000 WL 19199 (Alaska App. 2000).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

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

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Larson v. State, 79 P.3d 650 (Alaska App. 2003); *Larson v. State*, 254 P.3d 1073 (Alaska 2011); *Larson v. State*, unpublished, 2013 WL 4012639 (Alaska App. 2013); *Larson v. State*, unpublished, 2013 WL 6169314 (Alaska App. 2013); *Larson v. Schmidt*, unpublished, 2013 WL 6576742 (Alaska App. 2013); *Larson v. State*, unpublished, 2016 WL 191987 (Alaska App. 2016); and *Larson v. State*, 407 P.3d 520 (Alaska App. 2017) (and our accompanying unpublished order in Court of Appeals File No. A-12725).

One of these collateral attacks, litigated in 2011-2012, took the form of a motion for a new trial. The superior court denied this new trial motion, both because the motion was untimely (it was filed more than 13 years after Larson was convicted), and also because the motion was based on claims of juror misconduct that were *res judicata* (since all of these claims either had been or could have been raised in Larson's prior collateral attacks on his convictions).

Larson appealed the superior court's denial of his motion for a new trial, and this Court affirmed the superior court's decision (on both bases) in *Larson v. State*, 2013 WL 4012639 at *4-5.

During this appellate litigation, this Court noted that Larson had litigated his new trial motion without the assistance of counsel. Acting *sua sponte*, we raised the issue of whether Larson had been entitled to counsel to assist him in the litigation of his motion for a new trial. But after considering this matter, we concluded that, given the circumstances, "Larson's lack of legal representation in the underlying superior court litigation was not an obvious error." *See* order dated January 28, 2013 in *Larson v. State*, File No. A-11281.

Nearly four years later, in March 2017, Larson filed another motion in his underlying criminal case, this time seeking to renew his earlier motion for a new trial. Larson argued that his earlier litigation of the new trial motion in 2011-2012 was void because he had not been represented by counsel (and because he had never expressly waived the assistance of counsel).

Superior Court Judge Paul R. Lyle, in a comprehensive and well-reasoned written order, denied Larson's 2017 motion on two bases. First, Judge Lyle ruled that Larson's claim regarding his right to counsel was *res judicata*.[1] Second, Judge Lyle ruled that Larson had no right to the assistance of counsel to help him litigate what was, in essence, a successive application for post-conviction relief.[2] In reaching this conclusion, Judge Lyle relied on federal cases holding that when a motion for a new trial is filed after the defendant's direct appeal has been resolved, the motion should be treated as a form of collateral attack on the defendant's conviction.[3]

We agree with the superior court's rulings on both of these issues. Larson's claim of error was *res judicata*. And Larson's motion to re-open the litigation from 2011-2012 was essentially a successive application for post-conviction relief, since it

---

[1] *See* page 2 of the superior court's order dated May 1, 2017 in *State v. Larson*, File No. 4FA-96-3495 CR.

[2] *See* pages 3-8 of the superior court's order dated May 1, 2017 in *State v. Larson*, File No. 4FA-96-3495 CR (no constitutional right to counsel under these circumstances) and pages 8-9 (no statutory right to counsel under AS 18.85.100, because Larson's motion for a new trial was, in substance, a successive application for post-conviction relief).

[3] *See United States v. Beam*, 635 Fed.Appx. 28, 29 n. 1 (3rd Cir. 2015); *United States v. Williamson*, 706 F.3d 405, 415-16 (4th Cir. 2013); *United States v. Harrington*, 410 F.3d 598, 600 (9th Cir. 2005). *See also Trenkler v. United States*, 268 F.3d 16, 20-21 (1st Cir. 2001); *United States v. Birrell*, 482 F.2d 890, 892 (2nd Cir. 1973); *United States v. Berger*, 375 F.3d 1223, 1226 (11th Cir. 2004); *United States v. Lee*, 513 F.2d 423, 424 (D.C. Cir. 1975).

was based on claims of error in the original criminal proceedings. As we noted in *Crawford v. State*, "the character of a pleading is determined by its subject matter and not its designation."[4]

Accordingly, the superior court's decision is AFFIRMED.

[4] *Crawford v. State*, 337 P.3d 4, 15 (Alaska App. 2014), quoting *State v. Moad*, 294 S.W.3d 83, 86 (Mo. App. 2009).