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-12945 Trial Court No. 4FA-01-00511 CI SUMMARY DISPOSITION No. 0055 — July 31, 2019

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Michael P. McConahy, Judge.

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

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

Loren J. Larson Jr. appeals the superior court's denial of his Alaska Civil Rule 60(b)(6) motion. Larson sought relief from the 2001 judgment dismissing his first application for post-conviction relief. Larson's 2001 application was summarily

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

dismissed because the only evidence supporting Larson's claims of juror misconduct were juror affidavits that were not admissible under Alaska Evidence Rule 606(b). This Court affirmed the judgment of the superior court in *Larson v. State*, 79 P.3d 650, 660 (Alaska App. 2003).

In 2017, Larson filed a motion in the superior court asserting that he was entitled to relief from the 2001 judgment because the United States Supreme Court in *Peña-Rodriguez v. Colorado* created an exception to the "no impeachment" provision of rules like Alaska Evidence Rule 606(b).[1] Larson basically contended that because *Peña-Rodriguez* created a constitutional exception to rules like Alaska Evidence Rule 606(b) for evidence of racial basis, then equal protection required a similar exception for other forms of bias.[2] The superior court rejected this equal protection theory and ruled that Larson was not entitled to any relief.

On appeal, Larson renews his claim that he is entitled to relief under *Peña-Rodriguez*. Larson argues that even though his criminal convictions were not tainted by racial bias, he is nonetheless entitled under equal protection to the benefit of the new rule announced in *Peña-Rodriguez*, because he has a right to an impartial jury at his criminal trial. To that end, Larson contends that based on this new rule, evidence of any type of juror bias is admissible under an equal protection theory, despite the prohibition of Evidence Rule 606(b). In his case, Larson claims that the jurors at his criminal trial were biased against him in two ways — because he exercised his right not to testify, and because his wife was absent from the courtroom.

But we have already rejected the basis of Larson's equal protection argument. In *Larson v. Schmidt*, Larson argued (among other things) that we should

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[1] *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 869 (2017).

[2] *See* Alaska Const. art. I, § 1 (the Alaska equal protection clause).

expand the exception created in *Peña-Rodriguez* to include cases where there is evidence that jurors drew an adverse inference against a defendant who did not take the stand and testify at trial.[3] We disagreed with Larson's argument, stating that: "[T]he decision in *Peña-Rodriguez* was expressly grounded on the 'unique historical, constitutional, and institutional concerns' presented by racial bias in our nation."[4] We pointed out that "[t]o 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-Rodriguez*."[5]

Although Larson did not specifically make an equal protection argument in *Larson v. Schmidt*, we implicitly rejected the equal protection argument Larson is now raising in his current appeal. In particular, we stated that the type of juror bias Larson claims he suffered in his criminal trial was not the same as the racially motivated juror bias that resulted in the *Peña-Rodriguez* exception. In other words, in *Larson v. Schmidt*, we concluded that the *Peña-Rodriguez* exception did not apply to Larson because Larson and Peña-Rodriguez were not similarly situated.

Our conclusion is supported by the decision in *Peña-Rodriguez*. In *Peña-Rodriguez*, the Supreme Court discussed the distinction between the juror racial bias the Court wanted to remedy, and other types of juror bias that the Court recognized can occur during a trial.[6] The Supreme Court concluded, among other things, that unlike other types of bias, discrimination on the basis of race, "odious in all aspects, is

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[3] *Larson v. Schmidt*, 2018 WL 3572449, at *2 (Alaska App. July 25, 2018) (unpublished).

[4] *Id.* (quoting *Peña-Rodriguez*, 137 S.Ct. at 868).

[5] *Id.*

[6] *Peña-Rodriguez*, 137 S.Ct. at 866-68.

especially pernicious in the administration of justice."[7] As for other types of bias that can arise during trial, the Court explained that the right to an impartial jury is safeguarded by voir dire, observation of juror demeanor and conduct during trial, juror reports before the verdict, and nonjuror evidence after trial.[8]

Because of these safeguards, the Supreme Court stated that nonracial biases do not require an exception to the "no impeachment" rule, even if those already-existing safeguards are not always sufficient.[9] The Supreme Court also explained that it had created only a narrow exception to the "no impeachment" rule because of the rule's long history and its critical importance to jury deliberations.[10] In short, the Supreme Court foreclosed Larson's argument that evidence of any type of juror bias is admissible despite the prohibition of "no impeachment" rules like Alaska Evidence Rule 606(b). In doing so, the Supreme Court implicitly concluded that equal protection was not violated by allowing a narrow exception to "no impeachment" rules for juror racial bias.

Because Larson does not claim that the jurors at his criminal trial were racially biased, Larson does not fall under the narrow exception created in *Peña-Rodriguez*. Although both Peña-Rodriguez and Larson had a right to an impartial jury, the two men were not, based on the potential biases each faced, otherwise similarly situated. Accordingly, Larson is not entitled under the Alaska equal protection clause to set aside the 2001 dismissal of his post-conviction relief application.[11]

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[7] *Id.* at 868 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)).

[8] *Id.* at 866.

[9] *Id.* at 868-69.

[10] *Id.* at 863-65, 869.

[11] *See, e.g.*, *Burke v. Raven Electric. Inc.*, 420 P.3d 1196, 1205 (Alaska 2018) (for a (continued...)

The decision of the superior court is AFFIRMED.

[11] (...continued)
viable equal protection claim to exist, similarly situated groups must be treated differently); *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 275 (Alaska 2001) (federal and state equal protection clauses generally "require equal treatment only for those who are similarly situated") (citation omitted); *Lauth v. State, Dep't of Health & Soc. Servs., Div. of Pub. Assistance*, 12 P.3d 181, 187 (Alaska 2000) (generally, a legal conclusion that "two classes are not similarly situated necessarily implies that the different legal treatment of the two classes is justified by the differences between the two classes" (quoting *Shepherd v. State*, 897 P.2d 33, 44 n.12 (Alaska 1995))).