

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of the Application )  
For the Post Conviction Relief of: )  
 )  
MARVIN ROBERTS, Petitioner )  
\_\_\_\_\_ ) Case No. 4FA-13-2667 CI

In the Matter of the Application )  
For the Post Conviction Relief of: )  
 )  
GEORGE FRESE, Petitioner )  
\_\_\_\_\_ ) Case No. 4FA-13-2668 CI

In the Matter of the Application )  
For the Post Conviction Relief of: )  
 )  
KEVIN PEASE, Petitioner )  
\_\_\_\_\_ ) Case No. 4FA-13-2669 CI

In the Matter of the Application )  
For the Post Conviction Relief of: )  
 )  
EUGENE VENT, Petitioner )  
\_\_\_\_\_ ) Case No. 4FA-03-976 CI

**ORDER VACATING DECEMBER 11, 2015 HEARING  
AND HOLDING PROPOSED SETTLEMENT IN ABEYANCE**

The court issued an order on December 10, 2015 advising the parties that the above-referenced hearing would be cancelled if the parties did not file citations to authority along with their settlement documents. The parties have filed their settlement documents citing only Criminal Rule 43(a).

*IMO: Roberts, Frese, Pease & Vent*  
Case No. 4FA-13-2667 CI  
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Order Vacating December 11, 2015 Hearing  
& Holding Proposed Settlement in Abeyance

Under the parties' settlement agreement, the petitioners are withdrawing their claims of innocence, the State persists in its assertion that the petitioners are actually guilty beyond a reasonable doubt of the murder of John Hartman and the assault of Franklin Dayton (and other charges), and the parties agree to the immediate release of the petitioners (subject to the right of the State to prosecute them for the same crimes if the State discovers new evidence in the future), while the petitioners waive all claims for monetary compensation against various governmental units.

Trial judges have no desire to stand in the way of lawful settlements. However, the undersigned is unaware of the legal authority that would permit the immediate release of petitioners who have withdrawn their claims of innocence while the State continues to assert the validity of their convictions.

The State is free to grant clemency or pardons to the petitioners. In the absence of those options, trial courts are authorized to enter an appropriate order (including vacation of convictions and immediate release) under Criminal Rule 35.1(g) only if the judge finds in favor of the applicants on the substance of their claims. Such a finding might be appropriate if it is based on the stipulation of the parties that the petitioners have met their burden under AS 12.72.020, or that the State is no longer contesting the validity of the petitioners' claims. But, in the absence of such a stipulation—or a substantive finding to that effect after a full evaluation of the evidence and law—the undersigned is unaware of the legal authority the parties are relying

upon to vacate convictions where the State continues to insist that the convictions were properly entered.

Criminal Rule 43(a) applies after conviction to authorize the State to choose the offense for which a judgment of conviction and sentence will enter on counts merged under the double jeopardy clause.<sup>1</sup> The court, however, is specifically concerned that, once the Attorney General exercises his or her broad discretion to pursue settlements in civil actions<sup>2</sup>, he or she cannot, thereafter, vacate a criminal conviction on the basis of inherent authority where the convictions have been affirmed on merit appeal and the legislature has enacted statutes expressly governing under what circumstances affirmed convictions may be set aside.<sup>3</sup>

The parties are ordered to file a joint brief within ten days of the date this order is distributed by the clerk of court signed by all counsel who signed the settlements setting forth the legal authority they assert supports the immediate release of the petitioners who have withdrawn their claims of innocence while the State continues to assert their guilt. The briefing is limited to fifteen pages and must, at a minimum, address the cases cited herein. In the alternative, the parties are free to modify their settlement in a manner that permits the court to take immediate action under Criminal Rule 35.1(g).

The court is not disapproving the proposed settlement; it is, however, holding it in abeyance until the question of the court's authority to approve the settlement in its current form

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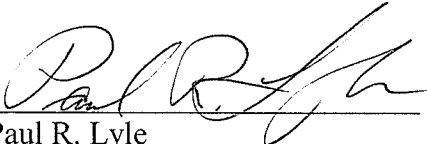
<sup>1</sup> *Hanson v. State*, 2010 WL 4138405 at \*4 & n. 22 (Alaska App. 2010) (*mem.*).

<sup>2</sup> *State v. First National Bank of Anchorage*, 660 P.2d 406, 420-21 (Alaska 1982).

<sup>3</sup> *See e.g. Hartley v. State*, 653 P.2d 1052, 1056 (Alaska App. 1982).

is resolved, or the settlement is revised in a fashion that permits the court to act under Criminal Rule 35.1(g).

Dated this 10<sup>th</sup> day of December, 2015, at Fairbanks, Alaska.



Paul R. Lyle  
Superior Court Judge

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**Clerk's Certificate of Service**

**I certify that on 12/10/2015 copy of the foregoing was distributed via email to:**

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