

# In the Court of Appeals of the State of Alaska

J.W., )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) Superior Court, )  
 )  
 ) Respondent. )  
 )

Court of Appeals No. A-12128

**Order**

Date of Order: 7/28/15

Trial Court Case # 4FA-13-02667/68/69CI/4FA-03-00976CI

[Before: Chief Judge Mannheimer and Judge Allard.]

In this petition, we are asked to review an evidentiary ruling of the superior court regarding the application of the attorney-client privilege.

The Petitioner, J.W., purportedly made certain statements to an investigator working for his attorney — statements which, if true, would tend to exculpate four defendants who were previously convicted of the same crime that J.W. described. According to the allegations in the superior court, J.W.'s attorney's investigator apprised a second investigator of J.W.'s statements, and this second investigator later revealed J.W.'s statements to other people in violation of J.W.'s attorney-client privilege. In particular, J.W.'s statements were reported to the attorneys representing the four defendants who are currently imprisoned for the same criminal offense.

These four defendants have now asked the superior court to allow them to use J.W.'s statements in support of petitions for post-conviction relief. The superior court has ruled that the attorney-client privilege still protects J.W. from any use of his

statements against him personally, but that J.W.'s purported statements could be admissible in other litigation — such as the defendants' petitions for post-conviction relief — to which J.W. is not a party.

We do not necessarily endorse all aspects of the superior court's ruling. Nor do we endorse the superior court's ruling as a general principle of law that would apply in all cases where the attorney-client privilege is breached.

However, we agree with the superior court that under the facts of this case — where J.W.'s statements have already been disclosed, and where these statements are asserted to be evidence tending to prove another person's factual innocence of a crime — J.W.'s attorney-client privilege does not prevent the four defendants from using these statements in support of their petitions for post-conviction relief.

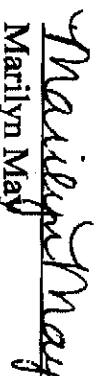
We therefore DENY the petition for review — thus letting stand the superior court's rulings (1) that J.W. has not waived his attorney-client privilege, and that he remains entitled to assert that privilege to prevent his statements from being used against him; (2) that J.W.'s attorney-client privilege does not bar the four defendants from relying on J.W.'s purported statements in support of their petitions for post-conviction relief; and (3) that J.W.'s attorney-client privilege does not bar the superior court from revealing these statements to the State of Alaska for the purpose of allowing the State to respond to the four defendants' petitions for post-conviction relief.

We caution the parties that our decision is limited to the issue of how J.W.'s attorney-client privilege applies to the facts of this case. We express no opinion as to whether other legal rules (such as the hearsay rule) may bar the admission of testimony

or other forms of evidence describing the content or nature of J.W.'s purported statements.

This order constitutes this Court's final order for purposes of Appellate Rule 303(a)(1) (petition for hearing to the supreme court) with respect to J.W.'s right to protest the use of his statements in the four defendants' post-conviction relief litigation.  
Entered at the direction of the Court.

Clerk of the Appellate Courts

  
Marilyn May

Distribution (by mail & email):

Jason Gazewood  
Gazewood & Weiner PC  
1008 16th Ave Suite 200  
Fairbanks AK 99701

William B Oberly  
Alaska Innocence Project  
P.O. Box 201656  
Anchorage AK 99520

Robert C Bundy/ Jahna Lindemuth/  
Katherine Demarest/John Fonstad  
Dorsey & Whitney LLP  
1031 West Fourth Avenue Suite 600  
Anchorage AK 99501

Colleen Libbey  
Libbey Law Offices  
604 W 2nd Ave  
Anchorage AK 99501