ORIGINAL

Gerald Packineau
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FILED
IN THE OFFICE OF THE
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STATE OF NORTH DAKOTA

June 28, 2004

Supreme Court of North Dakota
Supreme Court Clerk
600 E Boulevard Ave. Dept 180
Bismarck ND, 58505-0530

Due to my Indigent status, my of knowledge and skills that require the professionalism of a lawyer I apologize for this I hereby submit this in the utmost good faith and to best of my knowledge and ability to the Supreme Court Magistrate of North Dakota

I also must state and bring forth the lack of legal resources, computer, computer disk available and the lack of adequate qualified legal assistance offered at the James River Correctional Center Law Library These are the Conditions and circumstances I must deal with and work with order to submit a satisfactory and adequate required brief to Supreme Court of North Dakota.

The James River Correctional Center (JRCC) Dose not allow or have access to computer or computer disk and we are not allowed to have computer disk here at the JRCC Law Library which lack all the adequate resources to submit a satisfactory brief to the North Dakota Supreme Court Magistrate I apologize for this, I hope and pray you understand my situation here and the inadequate resources available here at JRCC.

I pray you understand my predicament of my Indigent status, Resources available, computers, disk and the lack of qualified Legal assistance to file a well developed brief. I submit to you this letter and my statement for the record of my predicament and the circumstances. I Enter this statement in the utmost good Faith, Respectively and to the best of my Ability.

This I submit to you respectively and sincerly to thy Magistrate of Supreme Court of North Dakota

Sincerely: Gerald Packineau

Gerald Packineau.

State of North Dakota
v
Gerald Packineau

In Burleigh County Court
South Central Judicial Court

Burleigh Co. No. 02-K-02453
Supreme Court No. 20030345

To the North Dakota Supreme Court Magistrate, that Gerald Packineau, Pro se hereby appeal the decision of GSI Class A Felon of February 19, 2003 and Post-Conviction Admended Ruling on October 1, 2003 of the South Central Judicial Court of Burleigh County by Honorable Judge Gail Hagerty. I hereby take this action to submit my Brief to you Respectively and ~~IN~~ the utmost Good Faith

Dated June 27th 2004

Gerald Packineau Pro se
Gerald Packineau Pro se

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Constitutional Right.

It comes now Gerald Packineau Pro se submit this brief to the best of my ability and with the utmost Respect and in Good Faith to all the Magistrate of North Dakota Supreme Court.

That Gerald Packineau, Pro se will address the Ruling issues concerning the case of my conviction of GSI Class A Felon N.D.C.C. Section 12.1-20-03 Provision 12.1-32-01(2) on the 17th day of February 2003 and the Amended Ruling on October 1st, 2003 by the South Central Judicial Court of Burleigh County by the Honorable Judge Gail Hagerty.

Introduction

I bring these issues before the North Dakota Supreme Court Magistrate. The Ineffective assistance of Council which effected all proceedings thru the Courts. The Failure to disclose the true Nature of the Crime and charge which defendant was charge with. That which Conviction, Trial, Jury and the Sentence were all under false pretense. The right to fair Hearing and the Conflict of Intrest of Kent Morrow Council and the State's Assistant Attorney LeaNN K Bertsch to fairly repersent Gerald Packineau and the Due Process of the Law and violation of my 5th, 6th, 8th and 14th Admendment. By which Due Process and Sentencing and the repersentation of Council were violated under my Consitutional Right to fair Hearing.

Issue Presented

These are the issues that are brought Forth to the North Dakota Supreme Court Magistrate.

I. Ineffective Assistant of Council

(a) The Failure to disclose to Plaintiff Gerald Packineau the true Nature of the Charge a Class A Felow.

(b) The Failure to bring forth before the Court the nature of the Charge or dispute the Charge In which the Trial, Conviction, Jury and the Sentencing are all under false pretense.

(c) Failure to seek professional assistant or obtain legal consultant by a Professional DNA Interrupter or pathologist.

(d) Conflict of Intrest of working for the State and Repersenting the Client and Protecting My Right to a Fair Trial and Due Process of the Law by Council

II. The Illegal Modifications of Class A Felony Charge

(a) Clerical Error

III The Editing or Censorship of Trial & Post Convition Transcripts.

Presentation of Summary of Facts

It is for these reasons I feel that my Consitutional Rights have not been upheld or defended according to the 5th, 6th, 8th, and 14th Admendments. Due Process of the Law and Improper excessive of a sentencing of a crime or of a charge. My Right to a Fair Hearing, Repersentation by Council and the Equal Protection of the Law. Adequate repersentation and the Fundalmentals of protecting my Rights thur all proceedings within the Courts and Trial. The prejudice and the hinderance by these action by Council and the Burlergh County South Central Judicial System to a fair Hearing and the right to be treated equally and without prejudice. Which now brings me before the North Dakota Supreme Magistrate where I now Appeal my Consitutional Rights. The violation of these rights, repersentation by Council, equal Protection of Law and my Right to a fair Hearing, Trial and conviction by my peers by the Burleigh County South Central Judicial Courts.

Summary of Facts

I. It is for these facts that Counsel unfair, repersentation and prejudice of these proceeding by Kent Morrow and Hereby Submit the North Dakota Rules of the Court of Professional Conduct

Summary Facts

I Preamble, Scope and Terms / Rules of Professional Conduct

Preamble: A Lawyers Responsibilities

(a) Scope

Client - Lawyer Relationship

(a) Rule 1.1 Competence (Comment)

Thoroughness and Preparation

(b) Rule 1.2 Scope of Representation

By knowing the seriouness of the Charge Counsel repersentation of plaintiff was misleding and defraudent to plaintiff, Trial, Jury and Sentencing.

c. Rule 1.3 Diligence

d. Rule 1.4 (a)(b) Comment

e Rule 1.7 Conflict of Intrest

Counsel repersentation of plaintiff Gerald Parkineau and by working for State, Counsel did not adequatly repersent Client. By not disclose the true nature of the Charge to Plaintiff Gerald Parkineau which is Conflict of Intrest and In best Intrest of the Plaintiff Gerald Parkineau. Kent Morrow did not Grant Plaintiff a Fair Hearing, Trial Sentences and Right of a legal Conviction and Due Process of the Law.

1. Comment Loyalty & Client

The Repersentation by Council Kent Morrow and his lack of professionalism and knowledge of the Law and due Process of Protecting My Consitutional Right to Fair Hearing through out all proceeding of the Court and Trial.

Summary Facts

I The Failure to seek out Professional assistant or Interrupter of DNA pathologist that would dispute these alligation of the tainted or contaminated evidence The Incompentency and the failure to ask question or any question during cross-examination; compared to the State's questioning and State's repersentation of professional DNA pathologist. In which the Court Granted Councel to seek out professional assistant. "The North Dakota Rules of The Court"

a. Rules of Evidence
Article VII Opinions and Expert testimony
Rule 702 Testimony by Expert
Rule 705 Disclosure of Facts or data underlying Expert Opinion
Rule 706 Grant I Court Appointed Expert
(a) Appointment

The Failure to follow through or seek out Expert assistance or dispute any findings is a violation to a fair hearing of a trial and not dispute these findings during Cross-Examination Showed that Councel Lacked the skills and knowledge and the failure to disclose his incompetence in his preparing for Trial Rule 1.1 competence issues; and his failure to communicate his ~~Inadequacy~~ Rule 1.4 communication so that Plaintiff Gerald Parkineau would understand and be intitled to a Fair Hearing

II The Rules of Clerical Error in Post Conviction hearing held on October 1st, 2003 In the South Central Burleigh County Courts by Judge Gail Hagerty. The Admended Charge of Class A Felon to B Felon. Then stated it was and is Clerical Error

Summary Facts

II. According to the North Dakota Rules of the Court Rules of Criminal Procedures Rule 36 Clerical Error "That Burleigh County's State's Attorney Richard J Riha duly sworn under oath and read said Information and beleives that the Facts are set Forth are true and dated before him on 31st of July 2002 Class A Felony N.D.C.C. 12.1-20-03 Plenty Provision 12.1-32-01(2)"
It is for this reason that Plaintiff Gerald Packineau Pro se contest the Illegal Modification of a Sentence. Under Rules of North Dakota Criminal Procedures Clerical Mistake Rule 36 or error from oversight or omission dose not qualify under these Rules. The Professional conduct of the Judicial System of proceedings in the Burleigh County South Central Judicial District that an oath was taken and sworn that these Fact are true. Inaccordance to the North Dakota Rules of the Court of Criminal Procedures II Preliminary Proceedings Rule 3. The Complaint (a) General (b) Admendment. May Admend before a finding of verdict, Which these proceeding are illegal modification of Record or Sentence that violated My Consitutional Rights of the Law and Due Process and excessive punishment and Sentencing.

Summary Facts

II The state of North Dakota have three qualified professional Lawyer's who repersent South Central Judicial District of Burleigh County and are sworn by oath to uphold the Law and the public be treated fairly and equally and to protect the Law; Could not see that the Charge brought forth was No Class A Felon? Is this common practice of professional who are to defend and up hold our Consitutional Rights to have fair hearing through all proceedings. That during Trial Proceedings of Class A GSI Felon that no mention of violince or threats or any repeated offences of this nature and or against a minor was ever brought up or mentioned during Trial; and during Presentenced Investigation, that at the sentencing that Plaintiff Gerald Parkineau Scored -5 Sexual crime investigation showing and stating the fact of the Charge was grossly misleading. Itis for these reasons that these prejudicial issues and detriment of trial, Jury Sentencing and conviction were misleading and under false pretenses. My Right to a Fair Hearing and Due Process of the Law and inaccordance protecting my Consitutional Rights that Gerald Parkineau be Granted a New Trial or be released forth with time served for excessive of sentencing and Violation of my Consitutional Right to Fair hearing and Sentencing by Burleigh County South Judicial District Court.

III The issues I bring forth a moot to the North Dakota Supreme Court Magistrate is the editing or censorship of Trial and Post-Conviction Transcripts North Dakota Rules of the Court of Appellate Procedures Rule 10. The Record on Appeal (H)(2) The editing of curcial testimony addressing

Summary Facts

III DNA findings in relationship of Native Americans in General and the relationship to Native Americans of North Dakota of Fort Berthold Reservation was deleted from Trial Transcripts. Post-Conviction transcripts testimony was edited out of Post-Conviction testimony; Questioned asked by State If I knew or and understood of DNA findings by the expert testimony? That Plaintiff Gerald Packineau Testified "that I did not understand these finding" I said No". The States Surpression of testimony and hinderance to appeal to the Supreme Court Magistrate of North Dakota will not be known or can be questioned; Their Conduct to edit or censorship of carcial testimony in my favor is in violation of Due Process of Law and the detriment of one's right to a fair reading and interruptatation of my Right to appeal to the North Dakota Supreme Court Magistrate. To bring Forth testimony in my favor and the violation of My Consitutional Right to Appeal with out prejudice

Closing Statment

Enclosing I appeal to the North Dakota Supreme Court Magistrate. For all reasons stated herein my brief be true by Plaintiff Gerald Packineau, Pro se submit to you. Gerald Packineau respectfully request to the North Dakota Supreme Court Magistrate to reverse the order by South Central Judicial District of Burleigh County Court by Judge Gail Hagerty and grant a new hearing and or order vacate sentenced imposed with time served and be Released this I Appeal to you.

Conclusion

I pray that the North Dakota Supreme Court Magistrate understand why I presented my brief In this manner. The circumstance of my Indigent status and my lack of knowledge, skill, professionalism and the resources available at James River Correction Center My Right to a Fair Hearing without prejudice and the lack adequate Repersentation through out all my proceedings during arraignment, Trial by Jury, Conviction, Sentencing - and Post-Conviction Hearing. and prejudice of the proceedings denying my Right to Due Process of the Law and Repersentation by Council. The violation of my Consitutional Rights of the 5th 6th, 8th and 14th Admendments Excessive Sentencing, Due Process of the Law, and the Failure of Council to Repersent Plaintiff Fairly without Prejudice. I hereby Appeal to you North Dakota Supreme Court Magistrate

Dated June 28th 2004

Respectfully Submitted
by Gerald Parkinson
Gerald Parkinson

Gerald Packineau
2521 Circle Drive
JRCC
Jamestown ND 58401

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RE. Packineau vs. State
Supreme Court No. 20030345
Burleigh Co. No. 02-K-02453
Resubmit Brief 7 Copies Supreme Court
1 Copy Burleigh County State's Attorney
Leann K Bertsch

I Gerald Packineau, Pro se hereby submit my briefs to the North Dakota Supreme Court Clerk Penny Miller. I hereby State that do to my Indigent status; I hereby premit my sister Sara Gutierrez of Bismarck ND to and will deliver the necessary 7 copies to North Dakota Supreme Magistrate and too Assistant State's Attorney Leann K Bertsch of Burleigh County of South Central Judicial District and by certificate by mail before July 12th. 2003

Respectiuly: Gerald Packineau
Gerald Packineau

Gerald Packineau
JRCC 2521 Circle Drive
Jamestown ND, 58401

Supreme Court of North Dakota
Supreme Court Clerk/Magistrate
600 E Boulevard Ave Dept. 180
Bismarck ND, 58505-0530

Due to my Indigent status, my lack of knowledge and skills that require the professionalism of a lawyer. I hereby submit this statement and my brief proposal in the utmost good Faith and to the best of my knowledge and Ability to the Supreme Court Magistrates.

I have filed numerous motions and petitions to the Burliegh County Courts, with no response or acknowledgement to my motion. It is for this reason I submit this letter to you so that you may have abetter understanding of my circumstance. My Right to motion and petition for Appointment of Legal Council, In All Proceeding of North Dakota Courts. I hereby submit Rule 44 Rules of Criminal Procedures." Rules of North Dakota Courts.

It also must be stated and brought forth the lack of legal resources available and the lack of adequate qualified legal assistance offered at the James River Correctional Center. (JRCC) Law Library. These are condition and circumstances I must deal with and work with in order submit a satisfartory brief to the Supreme Court and

accordance to the Rules of the Courts of North Dakota.

I pray you understand my predicament of my Indigent status, Resources available and the lack of qualified Legal assistant to file a well developed brief on my behalf. I submit to you this letter and my statement for the record, of my situation and the circumstances, this I submit my brief to the Supreme Court magistrate and I enter this Statement in the utmost good Faith and to the best of my ability.

This I submit to you Respectivly and in all Sincerity to thy Magistrate of the Supreme Court of North Dakota

Thank you: Gerald Packineau

Gerald Packineau.