20030345 ORIGINAL

In The Supreme Court
State of North Dakota

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP - 2 2004

STATE OF NORTH DAKOTA

Gerald Packineau,
Petitioner - Appellant
-vs-
State of North Dakota,
Respondent - Appellee

Supreme Court No
20030345

District Court No
08-02-K-2453

Brief of Reply - Appellant

Appeal from Order Denying Post-Conviction Relief
Dated October 6, 2003
Burleigh County District Court
South Central Judicial District
The Honorable Gail Hagerty, Presiding

Gerald Packineau
Prose
JRCC
2521 Circle Drive
Jamestown ND 58401

Petitioner - Appellant

Table of Contents

Introduction . . . . . page 1

Statement . . . . . page 2

Statement of Fact

NDRC Criminal Procedures

Arraigment Trial preparation Rule 11 (1) Rule (12)(2) page 3

Statement of Fact

(3) Rules of Professional Conduct NDRC . . . . . page 4

3a Rule 1.1 Competence

b Rule 1.2 Scope Representation

c Rule 1.3 Diligence

d Rule 1.4 Communication

Rules of Evidence

4. Article VII Opinion and Expert

4a. Rule 702

4b Rule 703

5. NDRC Professional Conduct

Preamble: A lawyers Responsibilities.

Statement of Facts . . . . . page 5

Statement of Facts

Conclusion - . . . . . page 6

Conclusion - . . . . . page 7

Introduction

I hereby submit these statment brief in reply to State's answer to my brief by South Central Judicial District of Burleigh County of North Dakota by Assistant State's Attorney Leann K Bertsch

Whether the trial Court erred is just another statment by the State's continuance to present their legal right to claim. Which they feel they didnot violate my Consitutional Right by Due Process of the Law to a Fair Trial; which now bring me befor the Supreme Court Magistrate. The error which Prosecution, Judge and Counsel claim that they did erred in the type of charge of complaint that was presented in court, Jury Trial and sentencing. My lawyers professional conduct that he exhibiting a courteous, conscientious, and generally to Judicial proceedings in a like manner, should have recogines such an error.

As unskilled lawyer Pro se, indigent, unskilled in the courts, proceedings and lack the training of education of law of professional lawyer I hereby apologize for my ignorance. I pray you understand why I'am presuant of my Right to fair trial according to the Rules of the N.D. Courts (RNDC) or (NDRC) My Consitutional Right to be fairly repersented by Council without prejudice and prejudicial proceedings.

Statement

My appeal has alway been based on the manner of how my council repersentation as a professional handel the proceedings of my case during trial, which affected my right to a fair Hearing, Sentencing and the Complaint of the charge itself. Not only stating the facts, but also the truth of the case itself without prejudice and prejudicial proceedings

The State has cited many cases and only very minimal of incertion of codes of North Dakota and nothing pretaining to the Rules of North Dakota Courts. The Failure to recognize the Rules that Govern product of the law and processed by the courts in which it is selective of proceedings, makes this case prejudice and prejudicial for Jury Trial, Sentencing and the Complaint itself. That each case itself has it own unque flaws and discrepancy, which make each case differ from one another. The Rules of the Court are established for fair and equal repersentation and interrupatation of Law for a fair Trial, Sentencing and the complaint of Charge. As layman to the law and my unprofessional skills I look to the Rules of the Court to base my funding on the Constitutional Rights and the Due process of the Law. For I do seek proper repersentation by council and a fair trial and of the complaint.

Statement of Fact

The professional conduct of council throughness and preparation and even to attempt to litigate or negotiate the nature of the charge of complaint Falls way below substandard of professional Conduct of lawyer. The NDRC The Rules of criminal Procedures Arraignment, Trial preparation "The Consequences which must be explain to the defendant" Explantory Note Quote

(1) Rule 11 Plea (b) Advice to defendant
(2) Notice of such Agreement Explantory Note (b)(2) of 11
Council professional conduct as lawyer should have known such procedures, to litigate or negotiate the Complaint forth right to the state prosecution and the Judge of the South Central District of Burleigh County. of the true nature charge of complaint and in good Faith to Client and state of North Dakota

(2) NDRC Rule 12 Rules of Criminal Procedures / Arraigment Trial Preparation. Rule 12 Pleading and motion befor Trial: Defenses objection (b) Pretrial Motion. (2) Defenses and objection. Preperation based on defects in the indictment information or complaint other than that it fails to show Jurisdiction in the Court or to a charge an offence which objection must be noticed by the Court at any time during proceedings pendency Subsection (3)(4)(5) Rule (16) Discovery and Inspections

Statement of Fact

The inspection of the complaint or Charge itself is the foundation and the principles bases of the appeal itself and the argument of Ineffectiveness

(3) assitance of Councel North Dakota Rules of the Court Professional Conduct / Client-Lawyer Relationship

a. Rule 1.1 Competence, 1. Thoroghness and Preperation
b. Rule 1.2 Scope of Repersentation
c. Rule 1.3 Diligence
d. Rule 1.4 Communication

(4) Rules of Evidence Article VII Opinion and Expert Testimony

The lack of Knowledge of preparing for DNA Evidence or Objection and seeking out professional advice, opinions of professional expert of Field with No traing by Lancel

a. Rule 702 Testimony by Expert
b. Rule 703 Bases of Opinion Testimony by experts

(5) North Dakota Rules of the Court Professional Conduct Preamble: A Lawyer's Responsiblities

While it is lawyer duty when necessary to challenge the rectitude of official action it is also a lawyers duty to uphold legal process. As a member of learned profession a lawyer should be minedful of deficiencies in the administration of justice and of those incapable of defending one's self or myself or interrupt for myself the law that I rely totally and in the utmost Good Faith that my lawyer will repersent me fairly and should therefore

devote professional time, civic influence in my Behalf It is not hindsight that one seek after the Fact on appeal when one knows nothing of the law prior to my Incarceration The professional conduct is to represent the Client according to the Rules of North Dakota Courts. That protects one's Consitutional Rights to Fair Trial Hearing. To Invoke these right through all proceedings of the Court.

It is by these Rules of the North Dakota Court that Govern the law of North Dakota Courts. The Administration of justice and the quality of service rendered by the legal system that must be upheld and abide by these Rules. That we the people are entitled to fair hearing without prejudice, that protect our Consitutional Rights by Due Process of the Law.

When ones comes to the Supreme Court Magistrate as Novice or even as layman unfamilar with the Law as professional qualified lawyer one must ask yourself? How does one seek to protect my rights and to proceed with professional of lawyer ability.

How can three qualified professional lawyer on different level of the law misintrrupt the law of the complaint and yet sentence you within the right guidelines of the law? I bring this amoot. Yet to proceed and continue to excuse

themselves of their negligence on their proceedings by claims of Clerical error which would be selective and convient to infrupt their action.

The Fact vs Truth. Fact have been presented but has the truth ever been established. When the Presentenc Investigation on Sex Crimes comes back a Negative -5 one of the lowest scores for a violent sex crime. Which contraclict the nature of violent crime of Rape as Class A Felow. or B Felow. Nothing was ever mention in trial of such behavior or Conduct. The editing or censorship of transcripts was not brought forth until after the fact that they were received. One could not tell or present until futher review and preparation for appeal

Conclusion

I knew nothing of the law pirov to my conviction and incarceration. I feel that stratgey and hind sight was never in my favorite except and to accept the Rules of the North Dakota Courts that Govern the Law of the Courts to fair Hearing without prejudice by council and State prejudicial proceedings. That my lawyer conflict of intrest to work for the State and to fairly repersent me shown here by his lack of action or objection to abide by the Rules of professional conduct NDRC.

Conclusion

That Packineau Pro se strongly feel that I understand the Rules of North Dakota Courts in which govern the law and procedures of of the courts that protect my constitutional Right to fair hearing, complaint, and sentencing of Due Process of the law. Which give equal protection of these rules without Bias of evidence and pretended offences to heard by impartail Jury. I Strongly AFFIRM my Right to fair hearing of trial, Sentencing and of the Complaint. Within the Rules of the Court, that the decision should be remended back into court for a proper Complaint Sentencing and Jury Trial. I hereby ask to be released forth with, with time served in option of these other conditions of the Supreme Court

Dated this 2nd day of September 2004

Gerald Packineau

Gerald Packineau Pro se

Gerald Packineau
JRCC
2521 Circle Drive
Jamestown ND 58401