

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20040117

STATE OF NORTH DAKOTA,
PLAINTIFF/ APPELLEE,

V.

RONALD R. ERNST,
DEFENDANT/ APPELLANT,

SUPREME COURT NO. 20040117

CASS COUNTY NO. 09-02-K-01810

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 24 2004

STATE OF NORTH DAKOTA

REPLY TO APPELLEES BRIEF

APPEAL FROM DISTRICT COURT, TO ALLOW PLEA WITHDRAWAL

TRENT W. MAHLER (NDID #05817)

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PRO SE

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STATE OF NORTH DAKOTA

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PLAINTIFF/APPELLE,]	SUPREME COURT NO. 20040117
]	
V.]	CASS COUNTY NO. 02-09-K-01810
]	
RONALD R. ERNST,]	
DEFENDANT/APPELLANT,]	
]	

APPELLANTS REPLY BRIEF

THE ABOVE DEFENDANT, RONALD R. ERNST, PRO SE, REPLIES TO THE BRIEF SUBMITTED BY THE APPELLE, AND STATES:

FACTS OF THE CASE

THE APPELLANT IS HEREBY CHALLENGING THE CONDITIONS OF PROBATION, INSTITUTED BY THE SENTENCING COURT, AS HE, (ERNST) FEELS THAT THEY ARE NOT CORRECT, WITH THE CONVICTION OF THE APPELLANT, AND THE NON-ORAL CONDITIONS, THAT WERE SENT TO THE APPELLANT AT THE NORTH DAKOTA STATE PENITENTIARY.

ARGUEMENT

THE APPELLANT ARGUES THAT THE TRIAL COURT, ABUSED ITS AUTHORITY, TO IMPOSE CONDITIONS TO PROBATION, IN VIOLATION OF STATE LAW, STATE V. OSTAFIN ND 102, 564 N.W. 2d. 616 (N.D. 1997). THE TRIAL AND SENTENCING COURT, ONLY STATED THAT THE DEFENDANT WOULD BE ON PROBATION, AFTER RELEASE FROM SERVING HIS SENTENCE.

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AT NO TIME IN THE SENTENCING HEARING, DID JUDGE McGUIRE MENTION ANY CONDITIONS THAT WOULD BE APPLIED TO THE PROBATION. IF, ERNST WOULD HAVE KNOWN ABOUT THESE CONDITIONS, HE IN NO WAY WOULD HAVE PLED GUILTY TO THE CHARGES, AS WAS TOLD BY HIS ATTORNEY, STEVEN MOTTINGER. MOTTINGER, TOLD ERNST TO ACCEPT THE DEAL OF FIVE YEARS, WITH TWO SUSPENDED. AT NO TIME WAS IT EVER MENTIONED IN COURT ABOUT THE DEAL. ERNST BELIEVED THAT HE WAS GOING TO BE SENTENCED TO THE FIVE YEAR PERIOD.

IF, ERNST KNOWINGLY WOULD HAVE BEEN ADVISED BY COUNSEL OF THESE POSSIBLE CONDITIONS, AND AFTER BEING SENTENCED, ERNST, DEFINATELY WOULD HAVE REVERSED HIS PLEA. THE COURT WOULD HAVE TO ACCEPT THE REVERSAL, AS THE DEFENDANT DID NOT KNOWLY, PLEAD TO THE CHARGES, BECAUSE OF THE NON-COMPLIANCE OF THE COURT, TO ORALLY GIVE THE CONDITIONS OF PROBATION TO THE DEFENDANT.

THE ARGUMENT TO CORRECT A MANIFEST OF INJUSTICE, STEMS FROM THE FACT THAT THE SENTENCING COURT DID NOT ACCEPT THE DEAL, THAT WAS WORKED OUT BETWEEN THE STATE ATTORNEY, AND THE DEFENDANTS ATTORNEY, STEVEN MOTTINGER, AND THE NON-ORAL ADVISEMENT OF THE PROBATION CONDITIONS, ALLOWS THE DEFENDANT, (ERNST) TO WITHDRAW HIS PLEA OF GUILTY, STATE V. VONDAL ND 188, 585 N. W. 2d. 129, N.D. 1998. THE REVERSAL MUST BE GRANTED BY THE COURT, STATE V. GOUDIN 156 ARIZ. 337, 751 P. 2d. 997 (ARIZ. 1988), AND MATTER OF WILLIAMS 21 WASH. APP. 238, 583 P. 2d. 1266 (1978).

APPELLEE, IN HIS BRIEF TO THE SUPREME COURT, HAS TRIED TO MISLEAD THE COURT BY TELLING LIES TO THE COURT, THAT JUDGE McGUIRE MENTIONED CERTAIN CONDITIONS IN COURT. THIS IS FALSE, AS THE COURT DID NOT ADDRESS ONE CONDITION.

THE APPELLEE, IS TRYING TO COVER FOR THE COURT. MAHLER, KNOWS THAT IF ERNST IS ALLOWED TO WITHDRAW HIS PLEA, ERNST WILL BE FOUND NOT GUILTY OF THE OFFENSES CHARGES. ERNST ONLY PLED TO THE CHARGES AS HIS ATTORNEY, MOTTINGER LIED ABOUT WHAT THE STATE WOULD DO, IF HE (ERNST), DID NOT PLEAD GUILTY. MOTTINGER STATED THAT IF THERE WAS NOT A PLEA MADE TO THE DEAL, THE STATE WOULD TRY TO ENHENCE THE INDECENT EXPOSURE CHARGE TO THE FELONY LEVEL, AND THEN ERNST WOULD BE SENTENCED TO THE MAXIMUM SENTENCE OF 14½ YEARS, FOR ALL OF THE CHARGES. SO, ERNST TOOK THE DEAL.

BUT, THE DEAL WAS NOT ACCEPTED BY THE COURT. IN APPELLES BRIEF, MAHLER HAS TOLD MANY LIES TO DECIEVE THE COURT. THIS MUST BE THE NORM, AS IT HAPPENS IN ALL OF THE PAPERS FILED WITH THE SUPREME COURT, THAT ERNST IS INVOLVED WITH. IT HAS CAUSED ERNST TO KEEP ASKING FOR MOTIONS OF REMOVAL, AND THE FILING OF CIVIL ACTIONS, FOR THIS MALICIOUS ABUSE OF PROCESS. MAHLER KEEPS ADDING STATEMENTS THAT ARE NOT TRUE. THE POLICE REPORTS TELL ONE THING, AND MAHLER TELLS A DIFFERENT STORY. AND THESE STATEMENTS ARE WAY OUT OF BOUNDS, THAT EVEN A NORMAL INDIVIDUAL CAN LOOK THROUGH THE FALSE STATEMENTS. THIS CONDUCT BY MAHLER, IS A VENGEFUL ACT, AGAINST THE APPELLANT, AND A CORUPT ACTION TO DECIEVE THE SUPREME COURT, INTO BELIEVING THAT ERNST DOES NOT MEET THE CRITERIA, FOR A WITHDRAWAL OF HIS PLEA, TO CORRECT THE MANIFEST OF INJUSTICE.

IN MAHLERS STATEMENT THAT ERNST PLACED ITEMS INSIDE THE VICTIMS CAR, THAT WOULD CONSTITUTE ANOTHER CHARGE, OF BREAKING AND ENTRY. THE ONLY CHARGE TO THIS ACTIVITY, WAS THE CHARGE OF DISORDERLY CONDUCT, FOR PLACING THE ITEMS ON THE CAR.

ERNST OFFERED NO EXPLANATION TO THE COURT ON THE CHARGES, AS

HE BELIEVED THAT HE WAS GOING TO RECIEVE THE "DEAL".

THE GUILTY PLEA BY ERNST, WAS NOT VOLUNTARY, AS HE DID NOT KNOW OF THE MANY AND ABSURD CONDITIONS OF PROBATION. KNOWING OF THESE CONDITIONS, ERNST WOULD HAVE MADE THE INTELLIGENCE CHOICE BY GOING TO A JURY TRIAL, AS HE HAD NOTHING TO LOSE. THE CONDI- TIONS ARE A TRUE VIOLATION OF THE CHARGES FILED AGAINST ERNST.

RULE II OF THE NORTH DAKOTA RULES OF ~~CRIMINAL~~ PROCEDURE, MAKES IT MANDATORY THAT THE COURT LET ERNST REVERSE HIS PLEA, SINCE IT DID NOT ACCEPT THE "DEAL", AND ORALLY GIVE THE CONDITIONS OF PROBATION. MAHLER, STATES IN HIS BRIEF, ON THIS ARGUEMENT, THAT (BEFORE A COURT CAN ACCEPT A GUILTY PLEA THE COURT MUST INFORM AND DETERMINE THAT THE DEFENDANT UNDERSTANDS: (4) THAT IF THE DEFEN- DANT PLEADS GUILTY THERE WILL NOT BE A FURTHER TRIAL OF ANY KIND. THE COURT ABUSED THAT DESCRETION, BY ADDING CONDITIONS TO THE SENT- ENCE, AFTER DEFENDANT LEFT THE COURTROOM, AND THE SENTENCING HEAR- ING. QUOTE: THE COURT SHALL ALSO INQUIRE AS TO WHETHER THE DEFEN- DANT'S WILLINGNESS TO PLEAD GUILTY RESULTS FROM PREVIOUS DISCUS- SION BETWEEN THE PROSECUTING ATTORNEY AND THE DEFENDANT OR THE DEFENDANT'S ATTORNEY. THIS QUESTION NEVER CAME UP BY THE COURT. THE DEFENDANT MUST BE INFORMED OF ALL " DIRECT CONSEQUENCES" OF HIS PLEA. GIVEN THAT HE WAS UNAWARE OF THE COLLATERAL CONSEQUENCES OF PROBATION CONDITIONS, ERNST'S PLEA MUST BE REVERSED.

MAHLER FUTHER FALSELY STATES THAT A REVIEW OF THE CHANGE OF PLEA HEARING SHOWS THAT DEFENDANT WAS AWARE THE TRIAL COURT WAS NOT BOUND BY THE RECOMENDATION. I, ERNST WANT TO KNOW WHAT, WHERE, AND IN FRONT OF WHOM, THIS HEARING WAS PERFORMED, AS ERNST WAS NEVER AT A HEARING FOR PLEA WITHDRAWAL, OR EVEN EVER KNEW OF ONE. TRIAL COURT, OR THE STATE ATTORNEY, OR ERNST'S ATTORNEY MENTIONED

ANY "DEAL", IN THE SENTENCING HEARING. THE COURT DID NOT INFORM THE DEFENDANT OF ALL OF THE "DIRECT CONSEQUENCES" OF HIS PLEA.

A REVIEW OF STATUTORY LAW, STATE V. VONDAL, THE CONDITIONS MUST BE GIVEN ORALLY. THE DIRECT OMMISION OF THE NON-COMPLIANCE OF THE ORAL PRONOUNCEMENT AND THE CONDITIONS SET FORTH, THAT HAVE NO BEARING ON THE CONVICTIONS, IS A VIOLATION OF ERNST'S DUE PROCESS RIGHT'S, STATE V. AUNE ND 176, 653 N.W. 2d. 53, N.D. 2002. A PERSON MUST RECIEVE ACTUAL NOTICE, AS THE COURT DID NOT GIVE THE DEFENDANT ANY NOTICE OF PROBATION CONDITIONS, DAVIS V. STATE ND 85, 625 N.W. 2d. 855 (ND 2001).

THE DUE PROCESS VIOLATION OF NOT BEING ABLE TO BE HEARD BY THE TRIAL COURT, AS TO CONDITIONS SET FOR PROBATION, VIOLATES THE PROVISION OF ERNST, NOT HEARING ABOUT ITEMS THAT HE IS SUPPOSE TO ADHERE TO, THAT ARE NOT IN DIRECT CORALATION TO THE CRIMES CHARGED, STATE V. EHLLI ND 133, 667 N.W. 2d. 635, (N.D. 2003). THE COURT SET CONDITIONS, THAT EVOLVE THE COMMISSION OF SEX ACTS, AND THE LURING OF MINORS, ON THE INTERNET. THE DEFENDANT HAS NO CHARGES IN HIS LIFE DEALING WITH ANY TYPE OF LURING, AND THE SEXUAL CHARGES OF 4th DEGREE SEXUAL ASSAULAT, A MISDEMEANOR, OF TOUCHING A COLLEGE STUDENT ON CAMPUS, IN 1978, AND THE ATTEMPTING TOUCHING OF A CHILD IN 1984, DO NOT SEEM TO BE A CONTINUEING COURSE OF CONDUCT, AS THE STATE IS TRYING TO CLAIM. IN MAHLER'S CLAIM, WHICH IS VERY VAGUE, HE IS TRYING TO SHOW TO THE COURT, THAT ERNST EXPOSED HIMSELF TO A MINOR, WHO WAS 16 YEARS OLD, AND NOT AT THE AGE OF A SMALL CHILD LIKE THE STATE IS TRYING TO SHOW.

THE CONDITIONS OF PROBATION ARE NOT FOR THE INDECENT EXPOSURE CHARGE, BUT ARE FOR THE BURGLARY CHARGE. AND THERE WAS NO SEXUAL

NATURE, OR INTENT OF THE DEFENDANT, TO PURSUE ANY SEXUAL CONTACT WITH A VICTIM, AS THERE WAS NO ONE PRESENT, IN THE APARTMENT, AS POLICE RECORDS SHOW. IN STATE V. SHEPARD, HIS ADMITTED ACTION, WAS TO KNOCK THESE INDIVIDUALS OUT, AND THEN PERFORM SEXUAL ACTS UPON THEM. IN ERNST'S BURGLARY CHARGE, IT IS NOTED THAT HE IS CHARGED WITH THE TAKING OF PERSONAL CLOTHING, AND PUTTING THEM ONTO THE VICTIMS CAR. THERE IS NO INDICATION OF ANY SEXUAL ACTS, OR ATTEMPTS TO PURSUE THEM. IT ALSO STATES THAT THE DEFENDANT LEFT THE AREA, AFTER, THE BREAKIN. THIS BREAKIN, AT ONE BUILDING, AND THE SITING OF DEFENDANT ERNST AT ANOTHER BUILDING, SOME THREE HUNDRED YARDS AWAY, IS NOT THE SCENE OF A PERSON ATTEMPTING TO APPLY SEXUAL ACTS UPON AN INDIVIDUAL.

THE CONDITIONS THAT THE COURT GAVE THE DEFENDANT IN WRITTEN MANNER, SHOWS THAT THE DEFENDANT CANNOT HAVE CONTACT WITH MINORS, GO TO MALLS WHERE CHILDREN ARE PRESENT, GO NEAR SCHOOLS, OR ARCADES OR OTHER PLACES WHERE MINORS ARE PRESENT, IS A COMPLETE VIOLATION OF THE DEFENDANTS FREE MOVEMENT RIGHT. ERNST HAS HAD PERSONAL CONTACT WITH HIS MINOR GRANDCHILDREN, IN THE PAST, AND IS GOING TO KEEP THAT CONTACT OPEN. THIS TYPR OF LIMITING CONDITION, WILL NOT STOP THE DEFENDANT FROM CRIMINAL BEHAVIOR, BUT ONLY PROMOTE MORE VIOLENT BEHAVIORS, WHEREBY THE STATE IS TRYING TO LIMIT THE FREE LIVING OF THE DEFENDANT, IN A SUPPOSEDLY FREE SOCIETY.

THESE CONDITIONS BEAR NO FRUIT TO THE BURGLARY CHARGE. THE DNA SAMPLE, AS ORDERED BY THE COURT, DOES NOT COMPLY WITH THE STATUATORIAL SCHEME SET DOWN BY THE NORTH DAKOTA LEGISLATIVE BODY IN LABELING INDIVIDUALS TO SUPPLY THIS SAMPLE, IN VIOLATION OF THIER CONSTITUTIONAL RIGHT;S, OF FREE FROM ILLEGAL SEARCH AND SIEZURE, U.S.C.A. 4th AMENDMENT. THE LEGISLATIVE BODY OUTLINED

THE CRIMES OF CONVICTION, THAT WARRANT THE SUPPLYING OF THE SAMPLE, AND ERNST DOES NOT HAVE ANY OF THOSE CONVICTIONS. FEDERAL LAWS GO SO FAR, AS TO GAUNTEE THE PERSONAL RIGHT OF AN INDIVIDUAL, AGAINST INTRSION OF A GOVERNMENT BODY, TO VIOLATE THE CIVIL RIGHT'S OF THAT INDIVIDUAL.

THEREFORE, THE SUPREME COURT, MUST ORDER THE REVERSAL OF ERNST'S GUILTY PLEA, TO CORRECT THE MANIFEST OF INJUSTICE, THE VIOLATION OF DUE PROCESS, AND THE TRIAL COURT'S ABUSE OF DISCRETION, IN TRYING TO ATTACH RESTRICTIONS UPON THE DEFENDANT, WHICH THE COURT HAD NO AUTHORITY TO IMPOSE, AND DOING SO, BY SECRET ACTION BY SENDING THE RESTRICTIONS TO DEFENDANT AT THE PRISON, IN-STAED OF ORALLY PRONOUNCING THEM IN OPEN COURT, IN FRONT OF THE DEFENDANT, UNDER THE COLOR OF LAW.

THE COURT CAN ORDER THE DEFENDANT TO PARTICIPATE IN THE SEX OFFENDER TREATMENT PROGRAM IN PRISON, FOR THE INDECENT EXPOSURE CHARGE, BUT NOT FOR THE BURGLARY CHARGE. THE TRIAL COURT IS TRYING TO GROUP TOGETHER THE TWO SENTENCES, EVEN THOUGH, THE DEFENDANT WAS SENTENCED TO CONSECUTIVE TERMS. THE TRIAL COURT FEELS THAT IT CAN DO AS IT FEELS, AND IS VIOLATING THE DUE PROCESS OF THE DEFENDANT, BY TRYING TO ADD THIS CONDITION TO THE BURGLARY, PROBATION.

HENCEFORTH, THE DEFENDANT, ERNST, REQUEST'S THE TRIAL COURT RO GRANT THE MOTION TO REVERSE THE GUILTY PLEA BY THE DEFENDANT.

DATED THIS 23rd DAY OF SEPT. 2004.



RONALD R. ERNST PRO SE

