In the North Dakota Supreme Court
Bismarck, North Dakota

20100238

Anthony Moore appellant | appellant's
v. | Brief
State of North Dakota |
appellee |

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUL 27 2010

STATE OF NORTH DAKOTA

Case No. 20100238

This is an appeal from the order denying the defendant's motion to order to review conviction and sentence that has been denied in the Cass County District Court in Fargo, North Dakota.

Anthony Moore
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Jurisdictional Statement

The jurisdiction of the North Dakota Supreme Court is under the North Dakota Rules of appellate procedure 4 and under the North Dakota Century Codes 29-28-06

(5) 28-27-02 (5)

Statement of the Issue

Whether the appeal is meritorious?

Statement of the Case

The nature of the case is a charge and conviction, as well as sentence for a grave sexual imposition. The course of the proceeding was a jury trial in November 27-28 2001, judgment of commitment was entered on January 17, 2002. Direct appeal was dismissed without any ruling on the merits of the appeal. Since then, the defendant has filed many pleadings seeking relief from the illegality of the conviction and sentence. So far, all of the defendant's efforts have been futile. The latest endeavor was a motion for order to reverse the conviction and sentence that was

denied on July 10, 2010. This appeal now follows that denial.

Statement of the Facts

(1) The essential element of the offense charged, for the jury instruction contained wrongfully in the third paragraph on page 14 of the trial court docket entry number 117.

(2) The victim testified to walking over voluntarily to the defendant's apartment on the night of the crime of passion. See trial transcript page 37 lines 4-12.

(3) The victim testified to being at the age of twenty on the night of the date rape. See trial transcript page 27 lines 6-17.

(4) The victim testified to no serious bodily injury inflicted on the night

of the sexual assault. see pages 50-60 of the trial transcript.

(5) The state attorney admitted at sentencing that the defendant has no prior convictions of rape. see the sentencing transcript page 14 lines 18-22 on the lower court docket entries number 664.

Argument

Whether the appeal is meritorious?

The evidence presented at trial is insufficient for a Class A felony gross sexual imposition under the North Dakota century code 12.1-20-03, the law operating at the time of the conviction that law provides in relevant part:

1. a person who engages in a sexual act with another, or who causes another to engage in a

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sexual act is guilty of an offense if:

a. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping to be inflicted on any human being.

d. The victim is less than fifteen years old; or

3. An offense under this section is a class A felony, if in the course of the offense the actor inflicts serious bodily injury upon the victim or if his conduct violates subdivision a or d of subsection 1. Otherwise the offense is a Class B felony.

The victim's testimony proves the insufficiency of the evidence. The victim is twenty-years old. See trial transcript page 27 lines 6, 7.

The victim admitted to voluntarily walking over to the defendant's apartment see page 37 lines 9-12 of the trial transcript.

The victim also testified to no serious bodily injury inflicted see pages 50-60 of the trial transcript.

In order for a conviction to be legal there must be force or threat of imminent death and serious bodily injury inflicted or kidnapping inflicted on the victim under the age of fifteen. Here force and threat of imminent death has been established by the victim. But, these elements fall short of the law to sustain a legal conviction for a class a felony Grass Sexual Imposition. That the defendant was convicted under.

The jury instructions are inaccurate

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for a class A felony sexual imposition under the North Dakota century code 12.1-20-03. The law in effect at the time of the trial. So willfully is not an essential element of the offense. See the jury instructions at the lower court docket entry number 117, page 14 paragraph 3.

The defendant was sentenced to a statute that by its very terms does not even apply to the offense but that is to register as a sex offender for life under the North Dakota century code 12.1-32-15 & 2-1-3. The law pertaining at the time of sentencing. The defendant has not been convicted upon two or more sex offenses nor is the victim under the age of twelve. See the sentencing transcript page 14 lines 18-22 whereas the state attorney admits to the defendant not meeting any of the requisite showings (at docket entry number 164.)

The sentence to lifetime registration as a sex offender is documented on the sentencing transcript page 20 lines 21-22 and at the Criminal judgment and commitment on page 2 number 6 (docket entries numbers 289,664.)

The North Dakota Century Code 12.1-32-15 8. c 111121 provides in pertinent part:

(c) For the life of the individual if that individual:

(1) On two or more occasions has pled guilty or nolo contendere to or been found guilty of a crime against a child or as a sexual offender or an equivalent offense of another state or the federal government If all qualifying offenses are misdemeanors this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1994.

(2) P leads guilty or nolo contendere to or is found guilty of an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12-1-20-03.1, or subdivision a of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under the age twelve or section 12.1-18-01, if the individual is an adult other than a parent of the victim, or an equivalent offense of another state or the federal government from another court in the United States, a tribal court, or court of another country; or.

Conclusion

The defendant ought not be unlawfully held for twenty-years nor ought the defendant be punished for something that he

has not been convicted upon. The defendant request that the supreme court modify the sentencing of commitment to a term of years under the past law and the sentence from twenty years to ten years.

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July 26 2010