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STATE OF NORTH DAKOTA

20100281 (1)

In The North Dakota State Supreme Court.
In Burliegh County, at Bismarck.

Kenneth Murchison, pro sé, Appellant, Vs.	Appellant Brief, In, Amicus Curiea.
The State Of North Dakota, Judge; Gail Hagerty, ex. al., Appellee.	Sprm. Crt. Case No. 20100281 Dist. Crt. Case No. 03-K-2562

Comes now the Appellant, in pro sé, and Amicus-Curiea, Kenneth Murchison, and hereby, respectfully submit this Brief, pursuant to the Constitution Of The United States Of America, and the State Constitution, of North Dakota. The Appellant, will then so, attempt to abide, and provide this Brief, in accordance to the Fed. Rules of Appellant Procedure, Rule 3.2, and Rule 26. (b) and (c). And will proceed accordingly.

And The Appellant,

Also the Petitioner, is hereby filing this Appeal, from a conviction, out of the Southcentral District Court, and Judgement, of the presiding Judge, Judge; Gail Hagerty. All the date's, thereof, are in, and of the Record, and the Appellant, will request, that the Court's Clerk, forward a copy of the Record, to, the Justice's.

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[redacted]) Certificate Of Service, By Mail. Hereto attached.

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Authorities

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All The Issue's, Envolved + Raised.

1) Violation Of Speedy Trial Rights.

2) Abuse Of Discretion, by the Judge.

3) Ineffective Assistance of Counsel.

4) Violation Of Due Process.

Questions Presented

1) Did the Appellant's Rights, to a fast and speedy Trial, start running by the timing, When He signed the Request for Disposition, or after it was returned, sometime afterward, of the Clerk's filing it? If so, then is 93 days in violation, and the Court lost juridiction?

2) Did the Judge of the District Court, create a Conflict Of Interest, in this Case, and abuse Her authority, and descretion, by not recusing Herself, after discovering, or it was brought to Her attention, that She had previously prosecuted the Appellant, as a State Prosecutor, on another case? And now, a more obvious situation, of ruling, and deciding, and hearing, this Post Conviction Relief Application, after in the initial appeal, Her Judgeship was brought into question? For denying the Appellant, therefor, a Fair and Unbias Trial?

3) Was the Attorney handling the initial appeal, in violation of the Law, and of Ethics, by agreeing with the prosecution, to not appear, and to not, then send, a representitive, to represent Himself, and the Appellant, on the day of Hac, or Oral Arguements, in

Questions Presented Continued

this most Honorable Court? And or, by not affording the Appellant, a copy of the Brief, that Attorney filed, or the Opinion, or Decision, this Court rendered, on the Appeal, in otherwords, just completely quit, on the Appellant's behalf, without prior notice, or permission, by the Court, to withdraw? Is that ineffective assistance of Counsel, or by any standard, incompetence?

4) Does the Process, used in this case, judging by the Court Records, and Files, meet the lawful, ethical, and moral muster, to justify Due Process, or the Constitutional Clause, in which is suppose to be provided? Look at the scheduling, of the Hearings, times, dates, ect., and then answere this important, and ethical question, in good conscience?

Arguement's, And
The Statement Of The Facts
Issue 1

On 7/29/2003 the Appellant was served, with a Complaint, Information, and a Detainer. And upon that date, the Appellant signed a Inmates Request, For Disposition Of Indictments, Informations Or Complaints, and a Notice Of Place Of Imprisonment and For A Fast And Speedy Trial, under the Inter-State Compact Agreement On Detainer(s). Please see No. #5 of the Register Of Actions, or Docket Sheet, by the Court Clerk.

This Court, the Supreme Court of Appeals, for the State of North Dakota, in State Vs. Gary Ripley, and in State Vs. Walter Olsen III, opinion, decision, and ruling, ruled; that the time-clock started running, immediately, when the Appellant signed the Disposition Request/Act.. Not when time or date, permit's, the return to the Clerk of Court, or, the Clerk Log's it. But instead, when the Appellant's, both, signed the Paper. So there is no reasonable way, "Judge Hagerty," could, by mistake, misconstrue that Law. It was cold calculated, miscarrage of Justice, entended to do harm. Because looking at the date on the Docket Sheet, and calculating the date of the holding of the Prelimenary Hearing, Arraignment, and Trial all in the same day. Which has never been heard of, less ever being done, anywhere, or time, in the History of America. She and this Panel, can see, the 90 days for the Trial to be held, had run out... by 3 days, or more. See; Chapter 29-33 + 34 N.D.C.C. IAD Law.

Issue 2

This Court ruled that Judge Hagerty did not commit, any error's. When there is no doubt, based on sound Law, that Judge Hagerty, abused, Her given descretion, and manifested, a Conflict Of Enterest, in this case, and upon the Rights of the Appellant, at Pre-trial, at Trial, + Pre-initial-direct-appeal. And it-then, ruled, that it could not, or did not, see, or recognize, those facts. So the Court now, here, has already ruled, on that issue, on that much of the case. But now, the Court must review, the District Court's rulings, of Judge Hagerty's, post-initial direct appeal, and upon now, the Appellant's Application For Post Conviction Relief, and Motions For Appointment Of Attorney, to represent this Appeal. When actually, the Attorney; Wayne Coter, is still the Attorney of Record, but is ineffective/incompetent, and cant be reached.

The Court, though, should be able to detect, in these rulings, ect., the malice, and almost hidden animosity, and hatred, displayed by Judge Hagerty, personally. Based on either the Appellants Race, or Religeon, or lack of the latter, unknown. This Court, must in good conscience, recognize, the obvious, the Conflicts Of Enterest, further created, and the Abuse's Of Descretion, heapened upon the case, and the Appellant's Rights, to a fair and unbias prosecution, and redress. But, by the same Judge, who as a Prosecutor; Prosecuted the Appellant, once. And now, too, as Judge, preside over a deluded case, and then also rule, on the post-appeal, after the Appellant

has cited, the same Judge, as a, or the, covert Accomplice, of ententionally deluding the Case. For presedence, see: Rebecca Graves Vs. Board Of Law Examiners, and the North Dakota Code of Judicial Conduct, Canon 3, Subsection E. And also see, the United States Constitutional Amendments... Amendment I and VI of the Constitution, of the United States.

Issue 3

The Appellant although never being recieved, or afforded, a copy of the Brief, said to have been filed in this Court, and this Case, by the Appellants previous Attorney; Mr. Wayne Goter. Nor any copies, of the Court's decision's or opinion, to acknowledge, that Mr. Goter, did not properly raise these issue's. And that only by notification, by the Court's Clerk, did the now pro sé Appellant, know that He, Mr. Goter, did not appear before the Court, for Oral Arguement's, or "Pro Hac Vice"... as Court Appointed Attorney's, are required to do. That alone, not withstanding, the empotency, and failure's, to be forthcoming, in notification, and informing the then Defendant, of issue's, complications, or the decisions, enrolving the Case. That's not only just ineffective assistance, but down right open, and erroneous, incompetence. So see, of the information

Issue 3 Continued

filed here, by the Appellant, in an Appendix, attached hereto, too, the Application For Post Conviction Relief, itself, in, and upon, the Crt. Records, and Files. Also see; Judge; Hagerty's decisions, and rulings, along with the Appellees' Prosecutor, Mr. Turner's, answere, to the Application, Stating, that because neither side sent a Rep-resentitive, it was not ineffective assistance, or incompetence, on behalf of Mr. Goter. I see no other reason, for the "State", to defend Mr. Goter's action, other than, the fact, that obviously, it was all prearranged, between the two side, to conspire, to squander, the Appellant's opportunity, before this Court, for justice, to possibly be served. And this file, speak's for itself. An actual travesty, miscarrage, of anything even resembling Justice. Or a fair, and unbias, due process of proceedings, as required by the Constitution, and or, Laws of Judicial Conduct.

Issue 4

The entire Process, used, to prosecute and execute this Case, has never been used, or executed, in no-other case, that the Appellant can find, to cite, or call upon, to use as a presedence, to bare upon the Case. Where as Prelimenary Hearing is held, without the present's of some type of Counsel, or Defendant, Court-

Issue 4 Continued

Appointed Representitive, for a indigent, encarcerated, "Accused". Also, then later, holding a second, and seperate, Preleminary Hearing, Arraignment, and Trial, all on the same day, at that time, and the same Judge, and same Court Room. Within actual minute's, of each other. And is said, to be actually, "Due Process", "of Law". By Constitutional Standards, of Court Procedure, it's not only a open violation, of that Right, but also of ethic's. It would be un-ethical, to conduct Court, that way. That's why, it's never been done, anywhere else, other than, now, North Dakota, Southcentral District Court. Now this is a definate, miscarrage, and manifestation, of a travesty, and injustice, that's unpresedented. This Court should see this Case, not through Rose Colored Glasses, but the embarrassment, it truly is. And too, then so, deal with this Case, on the State Level, rather than ignor the obvious. And for Authority to do so, the Appellant cite's; the United States Constitutional Amendiment V and VI, that assure's the Appellant these Rights, that has infact, been violated.

Conclusion

The Appellant, in this Case, has hence now broughtforth, this Brief, on Appeal, and too, before this Honorable Court, in Amicus Curiea, and for the purpose, of correcting a manifested injustice, and miscarrage thereof, in the eye's of the Law, as it is written.

Therefore, the Appellant, pray's, that this Court, use's this opportunity, to act in accordance, to the Law, and grant the Appellant relief, so saute, by following the letter of the Law, and Remand, this Case, back to the lower Court, for dismissal, based on the merit's, and facts, set-out in this Appeal.

The Appellant, then so, respectfully now submit, this Brief, before this Honorable Court, on this 3rd day of November, 2010.

Respectfully Signed; Kenneth Murchison

Kenneth Murchison
Reg. #06500-059
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Talladega, Al. 35160

In The North Dakota State Supreme Court.
In Burliegh County, at Bismarck.

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I, Kenneth Murchison, the Appellant, hereby solemnly swere, that I am a United States Citizen, over the age of 21 years old, and on this day, of our Lord; November 3rd, 2010. I did so serve, the attached Documents, upon the following persons, by placing a clear and accurate copy, of said, in the Mail Box, at the Talladega Federal Correctional Institution, with sufficient postage affixed, thereto, in an envelope, addressed as so follows, to the correct addresses, to the best of the Appellants knowledge.

To; Mr. Tyrone Turner
Burliegh County States Attorney
514 E. Thayer Ave.
Bismarck, N.D. 58501

To; Ms. Penny Miller, Clerk
Supreme Court of N. D.
600 E. Boulevard Ave.
Bismarck, N.D. 58505-0530

Respectfully Signed; Kenneth Murchison
Kenneth Murchison
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Talladega, Al. 35160

John B. Bennett 11-03-2010

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr 11, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS