

20120002

SUPREME COURT NO. 20120002  
Morton County No. 01-K-2201

RECEIVED BY CLERK APR 17 2012  
SUPREME COURT

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

APR 16 2012

STATE OF NORTH DAKOTA

State of North Dakota,  
Plaintiff, Appellee,

vs.

David Leroy Thorson,  
Defendant, Appellant,

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STATEMENT OF ADDITIONAL GROUNDS

Under Rule 24 (Supplemental Brief of Indigent Defendant)

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Appeal from the Order, denying the Petition for Post-Conviction Relief (filed the 25th day of January, 2011) on the 17th day of November, 2011, arising out of a gross sexual imposition action against David Leroy Thorson, a defendant, in District Court, South Central Judicial District, Morton County, North Dakota; The Honorable Sonna Anderson, Presiding.

Submitted this 13th day of April, 2012.



David Leroy Thorson  
JRCC # 16007  
2521 Circle Dr.  
Jamestown, ND. 58401

ADDITIONAL - GROUND ONE

Appellant's Court appointed Counsel; Namely: Kent M. Morrow's, deficient performance fell below an objective standard of reasonableness and prejudiced the Appellant resulting in an unreliable or fundamentally unfair outcome in the Post-Conviction Relief proceeding. (Ineffective Assistance of Counsel).

SUPPORTING FACTS OF ADDITIONAL - GROUND ONE

1. David Leroy Thorson ("Appellant") filed an Application for Post-Conviction Relief ("Application") on the 25th day of January, 2011, Kent M. Morrow ("Counsel") was appointed as Counsel for Appellant for this Matter.

2. The main issue raised in this Application involves the fact that Appellants Trial Counsel, failed to obtain a copy of the Form 960.

3. Appellant's Counsel during the Application proceeding also failed to obtain a copy of this Form 960.

\* Counsel failed to contact or subpoena the Burleigh County Social Service, at 415 East Rosser, Suite 113, Bismarck, ND. 58501 (701) 222-6622, to produce the Form 960 which was drafted or produced in their office on the 28th day of August, 2001. (See Trial Tr. P. 40 at L. 1-2).

\* Counsel failed to contact or subpoena the Mandan Police Department, 205 1st Ave NW. Mandan, ND. 58554, to produce the Form 960 which was received or routed to the Mandan Police Department from the Burleigh County Social Service, on the 10th day of September, 2001. (See Trial Tr. P. 39 at L-14-25) (See also Mandan Police Department Incident Report P. 5 at paragraph 2; David Thorson Appendix 1).

4. That if Counsel would have produced this Form 960 and introduced this Form 960 at the Application Hearing, the contents of the Form 960 coupled with the alleged victim's trial testimony would have shown the Court that the alleged victim was lying under oath, and that this matter was the result of a vindictive action by the Mother, and the resulting outcome of this Application Hearing would have been different. (See Order Filed the 18th day of November, 2011, by Judicial Officer Sonna M. Anderson, Judge of the District Court, P. 7 at Paragraph 5 L. 2-3; P. 8 at Paragraph 3 L. 3-5; David Thorson Appendix 2).

\* That if Counsel would have introduced this Form 960 coupled with the Stipulation offered by the Mary Stark School Counselor, which was introduced at the Application Hearing, and which was the school the alleged victim attended in April, 2001, would have shown the Court that the alleged victim had knowingly made false testimony at Trial, while testifying that she had informed the Counselor at Mary Stark School; Namely: Linda Becker, a mandatory Reporter of Abuse, that she had been touched inappropriately. See Trial Tr. P. 24 at L. 23-25; P. 25 at L. 1-18; P 27 at L. 11-12; P. 30 at L. 3-19; P. 32 at L. 19-24; P. 33 at L. 1-5). Linda Becker the Mary Stark School Counselor at the time the alleged victim attended this school in April, 2001, has offered a Stipulation at the Application Hearing, that states: "That no report of sexual abuse requiring her to report such abuse was ever filed by the alleged victim." This Stipulation together with the Form 960 never presented at the Application Hearing would have been powerful evidence of Appellant's Innocence.

5. Appellant's Counsel clearly understood how important this Form 960 was at this Application Hearing. See Post-Conviction Relief Tr. P. 10 at L. 12-25; P. 11 at 1-5) ( See also Appellant Brief Prepared and filed by Counsel at Paragraph 26-29).

6. Appellant's Counsel failed to find Appellant's original file, which was with Mr. Goter. See David Thorson Appendix 3).

\* That in a letter dated March 16th, 2012, Counsel states " I am enclosing a copy of the Linda Becker stipulation and copies of my file." but no stipulation or copies of Mr. Morrow's file on me were enclosed.

7. Appellant's Counsel failed to subpoena or call to testify alleged victim's Mothers, ex-husband and alleged victim's father, at this Application Hearing, whom would have testified that the alleged victims mother "would easily do something like this (make up a story of sexual abuse) to get someone in trouble." Counsels failure to subpoena or call to testify this ex-husband; Namely: Ronald Thompson, severely lessened the impact of any theory of knowingly false testimony.

\* Counsel failed to investigate the background of Ronald Thompson, to clear up cunfusion of this Ronald Thompson from other Ronald Thompsions.

8. Appellants Application Counsel failed to subpoena or call to testify the alleged victim's mother; Namely: Stacy Thompson, and this would have shown the Court that Ms. Thompson failes to support the sexual abuse allegations by Appellant in her day

to day journal or her day to day life, and failed to even inform the alleged victim's Father of this suspected sexual abuse. this would have shown the Court clearly the theory of knowingly false testimony raised by Appellant.

9. Appellant's Court appointed counsel at this Application for Post-Conviction Relief proceeding; namely: Kent M. Morrow, failed to investigate, or even properly prepare for the hearing, and is clearly ineffective.

#### ARGUMENT AND LAW

Appellant has established that his claim of ineffective assistance of counsel has merits, and that his Counsel's deficient performance prejudiced his theory of Knowingly false testimony by alleged victim. "To establish his claim of ineffective assistance of counsel, [The Defendant] must prove that his attorney's performance was deficient and that the deficient performance prejudiced his defence." Sinistera v. United States, 600 F.3d 900,906, (8th Cir. 2010) (citing Strickland v. Washington, 466 U.S. 688,687, 104 S. Ct 2052, 80 L. Ed 2d 674 (1984)).

Appellant has clearly established prejudice, and has shown that there is more than a reasonable probability that if his Counsel had performed competently the result of the proceedings would have been different. to establish prejudice, the Petitioner must show, " That there is a reasonable probability that the result of the proceedings would have been different if his lawyer had performed competently." King v. United States, 595 F.3d 844,852 (8th Cir. 2008). The right to counsel includes the right to effective counsel; and ineffective, incompetent, or inadequate representation is the same as having no counsel at all. State v. Keller, 59 ND 645, 223 NW 698 (1929).

Appellant's Fifth, sixth and Fourteenth amendments to the United States Constitution have been violated, and Appellant's rights under Federal Law, State Law and the North Dakota State Constitution have been violated.

This Court must reverse and remand this matter to the Morton County District Court for further proceedings.

Copies of the foregoing documents have been served by the United States Mail Upon:

Kent M. Morrow  
Po Box 2155  
Bismarck, ND. 58502-2155

Brian Grosinger  
Assistant States Attorney  
Morton County Courthouse  
210 2nd Ave. NW.  
Mandan, ND. 58554

Dated this 13th day of April, 2012.



David Leroy Thorson  
JRCC #16007  
2521 Circle Dr.  
Jamestown, ND. 58401

CERTIFICATE OF SERVICE

Supreme Court No. 20120002

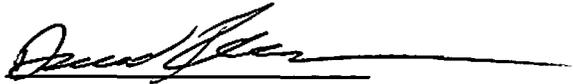
Morton County Case No. 01-K-2201

Copies of the foregoing documents have been served by the United States Mail upon:

Kent Morrow  
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Bismarck, ND 58502-2155

Brian Grosinger  
Assistant States Attorney  
Morton County Courthouse  
210 2nd Ave. NW.  
Mandan, ND 58554

Dated this 13th day of April, 2012.



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