

20120179

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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SUPREME COURT NO.20120179  
DISTRICT COURT NO.08-2012-CV-00202

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**Tilmer Everett**

**Plaintiff/Appellant,**

**Vs.**

**State of North Dakota**

**Defendant/Appellee,**

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**JUL 27 2012**

**STATE OF NORTH DAKOTA**

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**Appellant Everett's Reply Brief**

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**Appeal from Order Denying Post-Conviction Relief**  
**March 21, 2012**  
**South Central Judicial District**  
**Burleigh County Case No.08-2012-CV-00202**  
**Judge Bruce Romanick**

**Appeal from Order Denying Motion to Remove Judge**  
**March 21, 2012**  
**South Central Judicial District**  
**Burleigh County Case No.08-2012-CV-00202**  
**Judge Bruce Romanick**

**Tilmer Everett; Pro Se.**  
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**Box 5521**  
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## **Table of Cases**

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373 U.S. 83,87 (1963).

Kyles v Whitley,  
514 U.S. 419,453 (1995).

Liteky v U.S.,  
114 S.Ct. 1147,1162 (1994).

## **Statutes and other Authorities**

U.S.C.A. Consti Amendment 5, Due process

N.D.R.App.P. rule 28(b)(6) and (c)(4)

## **Statement of the Issues**

- I. Whether the trial court erred in denying Tilmer Everett's application for post-conviction relief.**
  
- II. Whether the trial court erred in refusing to acknowledge Tilmer Everett's affidavit as legal support with "new evidence" attached to the application for post-conviction relief.**
  
- III. Whether the trial court erred in refusing to acknowledge within his ruling that Tilmer Everett's due process rights had been violated concerning discovery issues when the State had Judge Donald Jorgensen illegally disqualified.**
  
- IV. Whether the trial court erred in denying Tilmer Everett's motion to remove judge Bruce Romanick from this case.**

## Reply Brief

### I. **The trial court did err in denying Tilmer Everett's application for post-conviction relief.**

That first argument stated within the brief shows how the State inexcusably failed to discuss with a legitimate argument and or reason as to "*why*" the trial court did not err in denying Tilmer Everett's application for post-conviction relief with issues to you the North Dakota Supreme Court as:

Ground One: Denial of a fair right to an appeal  
(*May 1, 2010, March 11, 2011, and April 5, 2011*)

Ground Two: New Evidence  
(*Index #329 & #367 were sent to me from District Deputy Clerk of Court Christine Harmon dated December 21, 2011*)

Ground Three: Two illegal judgment of dismissals were signed by judge Bruce Romanick  
(*As judge Bruce Romanick prejudicially failed to instruct*)

As the arguments made within the Appellee's brief to you the Supreme Court shows how State's Attorney Jeffery Ubben and Third Year Law Student Leslie Blumhagen are both in fact attempting to still use those three grounds that were taken out of context against me Tilmer Everett by judge Bruce Romanick's-as stated within pages 2 and 3 of "his" prejudicial and distorted memorandum opinion and order denying post-conviction relief dated March 21, 2012. See; Appellant's Appendix Supreme Court No.20120179 pages #111-112. State manipulatively and deceitfully attempting to use legal words such as "*res judicata*" and "*misuse of process*" against my three legitimate ground that I addressed above within pages 4-8 of my application for post-conviction relief dated January 27, 2012. See; Appellee's Brief Supreme Court No.20120179 pages 6-7. [Stating within page 7.lines, 2-6 as: "*Thus, the district court properly concluded*

*those issues were either fully and finally determined in previous proceedings and are res judicata or constitute misuse of process, because to the extent that this application differs in any relevant aspects, Everett has offered no excuse or justification for failing to raise those claims in prior proceedings.”]* District Court judge Bruce Romanick did not properly oversee my three issues for relief and I will note for the record that I did address relevant aspects within my arguments concerning the three issues named above to the district court. See; My Post-Conviction Relief Application pages 4-8 dated January 27, 2012 as stated to the district court in Appellant’s Appendix Supreme Court No. 20120179 pages #33-37.

Therefore making the States argument as an issue(s) made within the Brief against me Tilmer Everett under N.D.C.C. 29-32.1-12(1) and (2) to you the North Dakota Supreme Court lacking in factual support of no legal basis as to be frivolous. Constituting the act of prejudice by the State for there failure to recognize and or acknowledge that the trial court did err in denying Tilmer Everett’s application for post-conviction relief when judge Bruce Romanick completely distorted those three ground addressed above within my post-conviction application. As the State is also refusing to acknowledge that my rights were in fact violated from to a fair right to an appeal as addressed and declared in grounds one, two, and three.

I will state some concern that I do have with prejudice in regards to my appeal process with you the North Dakota Supreme Court. In no shape or form has the State ever tried to file a notice with me and or you the Supreme Court, that a Law Student name Leslie A. Blumhagen was going to take part in the States brief at all. I don’t want an innocent

individual getting involved with all the mess that the Burleigh County State's Attorneys Office has created on my life thus far. It just isn't very professional on the States part to actually involve a new student as a legal intern to face and answer to all the "mistakes" (violations) that the Burleigh County State's Attorneys Office has made throughout my trial and now even throughout my appeal process. (2010 and 2011)

**II. The trial court did err in refusing to acknowledge Tilmer Everett's affidavit as legal support with "new evidence" attached to the application for post-conviction relief.**

Again ~~the~~ State made a frivolous and pointless argument against me Tilmer Everett within the brief to you the North Dakota Supreme Court stating within page 7.lines,19-26 and page 8.lines,1-3 as: *"There is simply no newly discovered evidence raised by Everett in his latest application for post-conviction relief. The "new evidence" introduced by Everett in this proceeding should have been raised in the first application for post-conviction relief as these issues were either raised in previous proceedings or, if not raised previously, Everett has offered no excuse or justification for failing to raise those claims in prior proceedings. The district court properly concluded the "new evidence" could have been raised in the first application for post-conviction relief, and the "new evidence" was not actual "new evidence" as it was fully and finally determined in previous proceedings."* See; Appellee's Brief Supreme Court No.20120179 pages 7-8.

Now I want to point something out to you the North Dakota Supreme Court to see if what the State (*State's Attorney Jeffery Ubben and Third Year Law Student Leslie Blumhagen*) is telling *us* in there brief is true or not, about how judge Bruce Romanick really did address my nine page application for post-conviction relief within his

memorandum opinion and order denying post-conviction relief dated March 21, 2012 against me concerning the “*new evidence*” attached as legal support? See; Appellant’s Appendix Supreme Court No.20120179 pages #111-112.

That’s exactly what I thought, because there is nothing at all within that ruling (*pages #111-112*) stated by judge Bruce Romanick that relates to what has been addressed against me above in the Appellee’s brief. Therefore making that argument as an issue made within pages 7-8 in the brief against me by the State to you the Supreme Court so lacking in factual support or of no legal basis as to be frivolous. Constituting prejudiced, as the trial court did err in refusing to acknowledge Tilmer Everett’s affidavit as legal support with “new evidence” attached to the application for post-conviction relief.

For example: Please go back and see how the State is also attempting to manipulate the “*Statement of the Case*” within pages 2-6 of the Appellee’s Brief, as compared to how I had addressed my issues in the “*Nature of Case(s)*” within pages 2-4 of the Appellant’s Brief. As this just goes to show again how the State still wants to try and attempt to prejudicially distort and also manipulate my appeal process rights with you the Supreme Court concerning index #329 and #367 as documents that were illegally withheld from me by the State as addressed within Supreme Court No.20120179 and District Court No. 08-2012-CV-00202. I also call to your attention that under Rule 28(b)(6) N.D.R.App.P. Statement of the Facts had been addressed within Supreme Court No.20120179 Appellant Everett’s Brief from pages 5-16 and the Appellee’s Brief *has not* addressed any issues of “Statement of the Facts” within there brief under rule 28(c)(4) N.D.R.App.P. as to facts of why I am appealing the district court’s decision and is this considered a violation?

***There was no reason and or excuse made by the State for not doing it!***

**III. The trial court did err in refusing to acknowledge within his ruling that Tilmer Everett's due process rights have been violated concerning discovery issues when the State had Judge Donald Jorgensen illegally disqualified.**

The Appellee's brief to you the Supreme Court seems repetitious on the States part again, as State's Attorney Jeffery Ubben and Third Year Law Student Leslie Blumhagen are both attempting to try and deny with those same issues as arguments addressed above (*res judicata and misuse of process*), with stating that judge Bruce Romanick did not err in refusing to acknowledge that Tilmer Everett's due process rights concerning discovery had been violated by the State when Judge Donald Jorgensen had been illegally disqualified from my case file. As those arguments made by the State in the Brief to you the Supreme Court, shows how they are still trying to manipulate and use judge Bruce Romanick's illegal ruling(s) made against me as: "Everett fails to raise new issues in claiming that his due process rights had been violated concerning discovery." See; Appellee's Brief Supreme Court No.20120179 page 8.lines, 12-13. Now see; Appellant's Appendix page #112 stated as: "*Everett provides no reason for his failure to bring this issue before the Court in his previous application and appeals.*" If that's the argument that the State wants bring and make against me Tilmer Everett to you the Supreme Court, than please refer back to page 20 within the Appellant's Brief Supreme Court No.20120179 as circumstances told of how I had addressed a legitimate argument against judge Bruce Romanick's ruling dated March 21, 2012 concerning those false statement that he has made against me. See Appellant's Appendix pages #33-55 in reference to the new issues addressed within my application for post-conviction relief with a affidavit attached as legal support dated January 27, 2012 as addressed against both the District Court and the Burleigh County State's Attorneys Office.

And if that's not good enough than please go back and see how the State is in fact attempting to again to try and distort circumstances surrounding an illegal motion made to the district court in the Appellee's Appendix Supreme Court No.20120179 page #1 from June 19, 2006 to August 3, 2006 as evidence, as to "why" the State would have deceitfully taken-out and or disregarded my court proceeding held in front of Judge Donald Jorgensen dated July 31, 2006 from my case file and yet still show the motion Demand for Change of Judge dated August 11, 2006 as addressed by the State. *What's is the purpose and point of that?* Therefore again making the argument against me Tilmer Everett by the State to you the Supreme Court as: "*The trial court did not err in refusing to acknowledge that Tilmer Everett's due process rights concerning discovery had been violated by the State.*", sneaky and also prejudicial.

For the record, I will note that no protective order was made against me Tilmer Everett by the District Court from seeking evidence to Case No.06-9417 in the future, as this is the discovery will prove my innocence to Case No.06-9442. A complaint Brief and Appendix under Supreme Court No.20120179 was filed by "me" to you the Supreme Court and denied. (20120277) Even though circumstances had been addressed and shown to you the North Dakota Supreme Court within Appellant's Appendix B pages #141-166 as evidence (*probable cause*), that proves I Tilmer Everett had been in fact illegally and wrongfully accused by Bismarck police and F.L. (a witness) from one investigation into the other. (Case No.06-9417 first;Case No.06-9442 second)

**IV. The trial court did err in denying Tilmer Everett's motion to remove judge Bruce Romanick from this case file.**

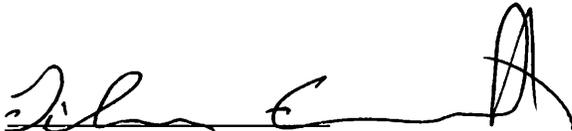
In the Appellee's Brief to you the Supreme Court it seems prejudicial to me that those arguments that I had made in the Appellant's Brief to you against judge Bruce Romanick are being disregarded as pointless and have no legal merit. See; Appellee's Brief page 9.lines, 15-22 as: *"In this case, Everett has raised nothing more than spurious or vague charges of impartiality. Simply because judge Romanick has denied several previous meritless motions filed by Everett in this case does not render judge Romanick biased so as to require disqualification. Moreover, since the facts and circumstances of this case do not require recusal, judge Romanick has a strong duty not to recuse himself from this case. Ultimately, the trial court did not err by denying Everett's motion to remove or recuse the honorable judge Bruce Romanick from this case."*

Well than if that's the case, than let me ask you the Supreme Court a question? "Why" hasn't the State ever tried to discuss head on within there brief to you the Court *if* it was or was not illegal at all for judge Bruce Romanick to have ruled against my motion that was filed against him. That's because they the State do know that it was wrong and illegal for judge Bruce Romanick to have done that, as this is evidence that proves that he did violate my due process again within my case file just like in 2011. Therefore this does in fact establishes and proves that the trial court did err in denying Tilmer Everett's motion to remove judge Bruce Romanick from this case file as no proper argument was made against it by the State.

## Conclusion

Based upon the foregoing, the Appellant simply requests that the Appellee's Brief be denied with prejudice in its entirety. And that an evidentiary hearing be granted by you the North Dakota Supreme Court on the legal merits addressed, also that judge Bruce Romanick be removed from this case file immediately because he was illegally obtained As the trial trial by the State and is in fact considered an illegal judge within my case file(s) right now for sure by law.

Dated this 27 day of July, 2012.



Tilmer Everett; pro se.

Box 5521

Bismarck, North Dakota

58506

**Certificate of Mailing**

I certify that 1 original Reply Brief to Supreme Court No. 20120179/District Court No.08-2012-CV-00202 order denying post-conviction relief and order denying motion to remove judge with 7 copies were deposited in the united states mail for delivery to Clerk of Court Penny Miller 600 East Boulevard Avenue Bismarck, North Dakota 58505-0530 and 1 copy of that Reply Brief was also sent to the Burleigh County State's Attorneys Office at 514 East Thayer Avenue Bismarck, North Dakota 58501 by mail from Tilmer Everett Box 5521 Bismarck, North Dakota 58506-5521 on July 27, 2012. I further certify that the Reply Brief was correctly addressed and postage.  
*I Tilmer Everett am unable to file an electronic copy of the Reply Brief to you the Supreme Court as this institution prohibits us from doing so.*

Date this 27 day of July, 2012.



Tilmer Everett; Pro Se.  
Box 5521  
Bismarck, North Dakota  
58506

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State of North Dakota    )  
  ) **SS. Verification**  
County of Burleigh        )

Subscribed and sworn before me on this 27 day of July, 2012.  
In the County of Burleigh, Bismarck, North Dakota.



Notary Public.

