

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA, PLAINTIFF/APPELLEE SUPREME COURT NO. 2014317

VS.

JOAN LESLIE GATES, DEFENDANT/APPELLANT RENVILLE NO. 38-2012-CR-CR-00108

**APPEAL FROM THE ADDITIONAL RESTITUTION AND THE CRIMINAL JUDGMENT
ENTERED BY THE DISTRICT COURT FOR THE NORTHEAST JUDICIAL DISTRICT THE
HONORABLE MICHAEL STURDEVANT PRESIDING ON OCTOBER 16, 2013 AND THE
ADDITIONAL RESTITUTION HEARING JUNE 25, 2014**

BRIEF OF APPELLANT

BY: JOAN LESLIE GATES, APPELLANT, PRO SE

PO BOX 149

SHERWOOD, NORTH DAKOTA 58782

NO PHONE, EMAIL IS: joanleslegates2014@yahoo.com

TABLE OF CONTENTS

Table of Contents	Pg 2, 3, 4
Table of Authorities	Pg. 5
Statement of the Issues	Pg 6 & 7
Statement of the Case	Pg 8
Facts of the Case	Pg 8
Law and Argument Jurisdiction	Pg 9, 10

Issues:

- 1. Petitioner Gates was sentenced on October 16, 2013 with restitution set at \$23,537. (appendix 10) and then on June 25, 2014 a hearing was held to add an additional Restitution of ½ Million dollars (appendix 11,12,13). Attorneys who were never hired by the State of North Dakota presented this additional restitution. This is a certiorari petition as per US Sixth Amendment and as per the US Fourteenth Amendment filed under NDCC 29-32.1(a). This is also a Champertous gain violation.**
- 2. Petitioner Joan Leslie Gates was never allowed to present witness Wells Fargo Minot Bank Manager Jared Sanborn as a witness at the October 9 and 10, 2013 trial. This Witness had been served and issued a court subpoena; Therefore, Petitioner Gates Never was allowed to present receipts for the questioned estate expenditures. This Witness would also have had evidence on the violations of National Banking Laws Concerning the Wells Fargo Estate of Lela Gates bank accounts by individuals other Than Petitioner Joan Leslie Gates who was the only individual authorized to sign on The Lela Gates Estate account.**
- 3. The Renville County Court has failed to return the \$10,000.00 cash bail money and/or Has failed to apply the cash bail money to the Defendant/Petitioner's restitution.**
- 4. At the October 9 & 10 trial State appointed Prosecutor Attorney Marvin Madsen Presented \$23,537. Of questioned bank payments made by Petitioner Joan Leslie Gates. Those very same questioned bank payments are again presented by Attorney Steinberger as improper expenditures of Estate funds and requested under additional Restitution by Attorney Steinberger on June 25, 2014. The amount of \$37,757.72 is**

Presented by Attorney John Steinberger Jr. as improper expenditures of estate funds. This is the original amount that States Attorney Marvin Madsen presented to the jury And to Defendant/Petitioner Joan Leslie Gates. Then the difference between \$37,757.72 And \$23,537. was removed by States Attorney Marvin Madsen as not eligible for Restitution. This is double jeopardy and/or res judicata. Petitioner Joan Leslie Gates Is being charged twice for the same questioned bank payments made by Petitioner Gates.

5. Stock sale deposits totaling \$46,857.51 (Appendix 6,7,8, 9) were deposited in the Estate Wells Fargo checking account and used to pay Estate liens. The Judge stated they were not deposited and that the Petitioner used them personally. The bank Statements indicate stock deposits and the payments made. The largest lien was for \$35,572., which was for Inheritor Glen Gates' child support. So Inheritor Glen Gates Is paying this amount as a deduction from his inheritance and Petitioner Gates is paying this amount again. This amount has been presented in many probate hearings. It is double jeopardy and/or res judicata. The amount of \$46,857.51 was never used Personally by Defendant/Petitioner Joan Leslie Gates.

6. Misappropriated oil checks from the crooks Oil Well (on Pg 2, Order setting Restitution, Appendix 14, 15) were received monthly by Petitioner Gates during her One year and 10 months as Personal Representative, and the amount equaled \$2742. These monthly checks were deposited by Petitioner Gates and all of the bank records Indicate the amounts. It was the only amount going into the estate on a monthly basis And it was the only amount available to pay monthly bills on the Mohall estate house. Did the Judge ever look at the bank statements before he made a decision on the Additional restitution??? The Petitioner definitely did not use this money personally.

The petitioner is paying all of the bills on the Estate for the entire time she was Personal Representative of the Estate of Lela Gates. And the amount of \$93,257.74 was more than the Estate ever took in during Petitioner Gates' time as Personal Representative.

7. The Additional Restitution amount of \$93,257.74 (Appendix 14, 15) was added after the \$23,537 (Appendix 10) and the Petitioner is paying both amounts. The restitution of \$23,537. was filed on record (after the jury examined this amount) at the October 16, 2013 sentencing and is being paid by Petitioner Gates. It is deducted from Joan Gates' wages as Law Librarian at the Department of Corrections.

8. Petitioner Gates was charged with Theft of Property, Misapplication of Entrusted Property, a Class B Felony, in Violation of NDCC 12.1-23-07 which states the amount of the theft is between \$10,000. and \$50,000. Since Judge Sturdevant set the additional Restitution at \$93,257.74 (August 21, 2014, Appendix 14, 15) plus the October 16, 2013 Sentencing restitution at \$23,537., this additional amount establishes the total Restitution at \$116,794.74 which doesn't fit the crime that Petitioner Joan Leslie Gates Was charged with; Therefore, this entire case should be dismissed with prejudice.

Conclusion _____ Pg. 10

TABLE OF AUTHORITIES

CASES

BLAKELY V. WASHINGTON (159 L. ED2d 403, 2004) _____ Pg 9

APPRENDI, JR V. NEW JERSEY (147 L.ED.2d 435) _____ Pg 9

STATUTORY MATERIALS AND RULES OF PROCEDURE

N.D.C.C. 12.1-23-07 _____ Pg 3,6,7

2(b) CLASS B FELONY IF THE VALUE OF THE PROPERTY MISAPPLIED EXCEEDS TEN THOUSAND DOLLARS, BUT DOES NOT EXCEED FIFTY THOUSAND DOLLARS

N.D.C.C. 29-32.1-01(a) _____ Pg 3, 5

CERTIOTARI PETITION AS PER U.S. SIXTH AMENDMENT _____ Pg 3, 5

(USCA CONST. AMEND. 6)

CHAMPERTOUS GAIN _____ Pg. 2, 5

DOUBLE JEOPARDY _____ Pg 2

DUE PROCESS CLAUSE IN THE 14TH AMENDMENT _____ Pg 5

RES JUDICATA _____ Pg 2

(1. AN EARLIER DECISION OF THE ISSUE, 2. A FINAL JUDGMENT ON THE MERITS, AND 3. THE INVOLVEMENT OF THE SAME PARTY OR PARTIES IN PRIVITY WITH THE ORIGINAL PARTIES)

SUBPOENA, RULE 45, ND RULES OF CIVIL PROCEDURE _____ Pg 2, 5

STATEMENT OF THE ISSUES

Petitioner Gates was sentenced on October 16, 2013 with restitution set at \$23537.

By a jury (Appendix 10) and then on June 25, 2014 a hearing was held to add an

Additional ½ Million Dollars (Appendix 11,12,13). The jury did examine the \$23537.

But the jury never did examine any of the items presented by the Attorneys who

Requested the additional ½ Million Dollars. Attorney Steinberger, Mark Westereng

And Attorney Temanson were never hired by the State of ND for this criminal case.

This is a Certiorari Petition as per the US Sixth Amendment and the 14th Amendment

And filed under NDCC 29-32.01(a), Post- Conviction Procedure Act. This is also a

Champertous Gain Violation by the Attorneys that were not hired by the State of ND.

The Renville Court has failed to return the \$10,000.00 cash bail money to the Petitioner

And/or has failed to credit the Petitioner's restitution.

Petitioner Gates was never allowed to present Witness Wells Fargo Minot Bank Manager

Jerod Sanborn at the trial on October 10, 2013. This witness had been served and issued

A court supoena. Gates had spoken with this witness many times before the trial. As a

Result of this trial act Gates was not allowed to present all of the receipts for all of the

Questioned estate expenditures. This additional evidence would definitely have made the

Trial verdict NOT GUILTY. It should also be noted here that Petitioner Gates didn't spend

Estate money for her personal use and these receipts would have made the evidence not

Sufficient to sustain the guilty verdict. Wells Fargo Manager Sanborn would also have

Pointed out some fraudulent estate account activity done by Michael Gates and John

Steinberger, Jr.

Monthly oil checks from Crooks Oil well were received and always deposited in an Estate Account; and that money was used to pay all of the monthly bills. It was the only money received on a monthly basis and it was definitely needed for bills.

Lela Gates Estate stock sales (Appendix 6,7,8,9) were deposited in the estate checking at Wells Fargo and used to pay liens against the Estate. Judge Sturdevant stated that they were never deposited and the Petitioner used them personally. The Wells Fargo Bank statements indicate the deposits were made and the amounts used to pay the estate liens. The largest Estate lien was \$35,572, , which was for Inheritor Glen Gates' child support. So Inheritor Glen Gates is paying this amount as a deduction from his estate inheritance and Petitioner Joan is also being required to pay this amount. This is double jeopardy and/or res judicata.

The amount of the restitution being charged the Petitioner is more than the Estate ever took in the entire time that the Petitioner was Personal Representative of the Lela Gates Estate. In that one year and 10 months the Lela Gates Estate was never \$116,794.74.

Petitioner Joan Gates was charged with Theft of Property, Theft of Entrusted Property, a Class B Felony in violation of NDCC12.1-23-07 which states the theft is between \$10,000 and \$50,000. Since Judge Sturdevant set the additional restitution at \$93,257.74 on August 21, 2014 and the October 16, 2013 sentencing restitution at \$23,537. , this additional restitution Set the total amount at \$116,794.74 which doesn't fit the crime (NDCC12.1-23-072b which is A Class B Felony if the value of the property misapplied exceeds \$10,000 and is no more then \$50,000) that Joan Gates was charged; therefore this case should be dismissed with Prejudice.

STATEMENT OF THE CASE

This is an appeal from the additional restitution of ½ Million Dollars proposed by Attorneys (who were not hired by the State of ND) at the June 25, 2014 hearing. On August 21, 2014 Renville County District Judge Michael Sturdevant ordered the additional restitution of \$93,257.74 added to the October 16, 2013 sentencing restitution of \$23,537. Which brings The total restitution to \$116,794.74. Petitioner Gates has already made payments from her Monthly pay from the Department of Corrections. These payments have been made monthly Since January, 2014. This increase in restitution has put this case which is Theft of Property, Misapplication of Entrusted Property (between \$10,000 and \$50,000) a class B Felony, in Violation of NDCC 12,1-23-07 an amount of restitution not in the category of the Crime; Therefore, this case should be dismissed with prejudice.

FACTS OF THE CASE

Petitioner Joan Gates was appointed Personal Representative of the Lela Gates estate in March 2009. The last will and testament of Lela Sylvia Gates stated that Lela Gates wanted Daughter Joan Gates as Personal Representative of her will. If Joan could not serve Lela Appointed Michael Gates as successor; and if he could not serve then Son Glen Gates would Be appointed. At present none of Lela Gates' children are Personal Representative as she Stated in her will (Appendix 16, 17,18,19,20).

As Personal Representative Petitioner Joan Gates did follow North Dakota Probate law. She Paid all of the bills (even if she had to use her own money) as per the procedure set out in ND probate law.

LAW AND ARGUMENT

JURISDICTION . Appeals shall be allowed from decisions of lower court to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, ND legislature enacted NDCC 29-32.1-01 (a) which provides as follows:

“A person who has been convicted of sentenced for a crime may institute a proceeding Relief under this chapter upon the ground that: a. The conviction was obtained or the Sentence was imposed in violation of the laws or the Constitution of the United States or Constitution of North Dakota.”

And under NDCC 29-28-03 which provides that an appeal may be taken by the Defendant From: “ 5. An order made after judgment affecting an substantial right of the party.”

Petitioner Gates files a Certiorari petition as per the US Sixth Amendment as addressed in Blakely, Jr V Washington (159 L. ED.2d 403, 2004). The US Supreme Court decision states “That any fact that increases the penalty for a crime beyond the prescribed statutory max Must be submitted to a jury, and proved beyond a reasonable doubt.” Apprendi, Jr v New Jersey (147 L.ED2d 435) states the Sixth Amendment right to trial by jury is no mere procedural Formality, but rather, is a fundamental reservation of power in our Constitutional Structure meant to ensure the people’s ultimate control in the judiciary (USCA Const Amend. 6). The US Sixth Amendment and the Framers’ paradigm for criminal justice is the common law ideal Of limited state power accomplished by strict division of authority between judge and jury that Can be preserved without abandoning determinate sentencing and at no sacrifice of FAIRNESS to the Defendant (pp2540-2543). Both of these cases state exactly what has been violated in this case. On October 9 & 10, 2013 a jury examined \$23537. Of questioned Estate bills that were paid by the Petitioner. And then on June 25, 2014 three people who were never hired or Paid by State of ND demanded ½ Million Dollars more restitution. This violated the US Sixth

Amendment, US Fourteenth Amendment and is Champertous Gain.

And since the amount of the restitution went beyond the Crime (NDCC 12.1-23-07) that
The Petitioner was charged with Petitioner Gates is requesting dismissal with Prejudice.

CONCLUSION

On June 25, 2014 when Attorney John Steinberger, Jr, Mark Westereng and Attorney Paul
Temanson demanded ½ Million Dollars of Restitution be added onto the October 16, 2013
Sentencing restitution they violated the US Sixth Amendment and the Due Process Clause
in the US Fourteenth amendment. And since none of the three were ever hired by the ND
State they violated Champertous Gain.

When the State of ND Judge Sturdevant added the additional restitution of \$93,257.74 on
August 21, 2014 to the October 16, 2013 sentencing restitution of \$23,537, the total of the
Restitution equals \$116,794.74 and this amount is far above the amount for the crime that
Petitioner Gates was charged. The Petitioner was charged with Theft of Entrusted Property,
A Class B Felony in Violation of NDCC 12,1-23-07 if the value if the value of the property is
more than \$10,000 but under \$50,000. This case should be dismissed with Prejudice.

Also please note that the \$10,000.00 cash bail was never returned or credited to the
restitution.

Respectfully submitted 12-18, 2014.

Joan Leslie Gates, Pro Se
Joan Leslie Gates, Pro Se

PO Box 149

Sherwood, North Dakota 58782

No Phone, Email is: joanlesliegates2014@yahoo.co



CERTIFICATE OF SERVICE
NORTH DAKOTA SUPREME COURT
 SFN 17268 (GN-9) (Rev. 03-2006)

RECEIVED BY CLERK
 SUPREME COURT
 DEC 23 2014

SERVICE BY MAIL

Date of Mailing: DECEMBER 18, 2014			
Name of forms/documents which were mailed (copies must be attached): APPEAL OF PETITIONER/ APPELLANT			
I certify that on the above date, I mailed a copy of the documents identified above (copies are attached), prepaid, to the following:			
<input type="checkbox"/> The attorney for the respondent:			
Name of attorney: PRO SE			
Address:	City:	State:	Zip Code:
<input checked="" type="checkbox"/> The petitioner:			
Name of petitioner: JOAN LESLIE GATES PROSE			
Address: PO BOX 149	City: SHERWOOD	State: ND	Zip Code: 58782
<input type="checkbox"/> The respondent's parents (if the respondent is a minor):			
Name of parents:			
Address:	City:	State:	Zip Code:
<input type="checkbox"/> The superintendent of the hospital or treatment facility in which the respondent is hospitalized or being treated:			
Name of superintendent:			
Address:	City:	State:	Zip Code:
<input type="checkbox"/> The spouse of the respondent:			
Name of spouse:			
Address:	City:	State:	Zip Code:
<input type="checkbox"/> The guardian of the respondent:			
Name of guardian:			
Address:	City:	State:	Zip Code:
<input checked="" type="checkbox"/> The state's attorney of the county in which the proceedings are initiated:			
Name of state's attorney: ATTORNEY MARVIN MADSEN			
Address: PO BOX 398	City: MOHALL	State: ND	Zip Code: 58761

SERVICE BY MAIL (Continued)

<input type="checkbox"/> The respondent:			
Name of respondent:			
Address:	City:	State:	Zip Code:
<input type="checkbox"/> Other Persons determined by the court:			
Name:			
Address:	City:	State:	Zip Code:
Name:			
Address:	City:	State:	Zip Code:
Name:			
Address:	City:	State:	Zip Code:
Name:			
Address:	City:	State:	Zip Code:
Name:			
Address:	City:	State:	Zip Code:

x Joan Vestie Hake
 Signed

PERSONAL SERVICE

Date of Service:	Time of Service: <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Name of Respondent:	City:
Name of forms/documents which were delivered (copies must be attached):	
<p>I certify that on the above date and time, I delivered a copy of the documents identified above (copies are attached) to the above named respondent.</p>	

x _____
 Name