

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

ORIGINAL

FEB 23 2006

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20050376

20050377

20050378

STATE OF NORTH DAKOTA

Supreme Court No. _____

20050379

David Robert Kunze,
Petitioner Appellant,

vs.

Ronald E. Greenwood, Judge
of District Court;

H. Jean Delaney, Asst., State's
Attorney, Barnes County;

William A. Mackenzie, Attorney
Attorney of Petitioner's
Respondents.

State Supreme Court Nos. 20050376,
20050377, 20050378, and 20050399

Barnes Co., Nos. 99-K-57, 99-K-58,
99-K-130, and 99-K-167

APPELLANT'S BRIEF AND AFFIDAVIT

AND

APPEALING Judge John E. Greenwood's
Order Denying Appointment of Counsel
and Denying Motion For Evidentiary -
Hearing & To Vacate Said Judgments

STATE OF NORTH DAKOTA]

]SS.

APPELLANT'S BRIEF AND AFFIDAVIT

COUNTY OF BURLIEGH]

I, David Robert Kunze, states under oath as follows:

1. I swear and affirm upon penalty of perjury, that the statements made, in this Appellant's Brief And Affidavit are true and legally correct.

2. I am of legal age and on upon this of day of Tuesday, January 24th,2006, and I state here as Appellant, that I am able to show good cause why these actions should not be dismissed by the said Supreme Court of North Dakota. Also, noted pointed out here. The Clerk of Supreme Court, Penny Miller, did advise me, "that legally we had to submit Appellant Brief and an Appendix which are due in this matter, on December 13, 2005; however, to date the Appellant's Brief and Appendix have not been filed,"[UNQUOTE] here. Also, we note for these Supreme Court Justices, we have no legal idea what-~~so-ever~~, on how to submit a correct filing of said Appellant's Brief, nor do we know what an Appendix even looks like, much less legally in fact file this Legal paper work that should be file in this matter, and so we bring our legal issue's for Honorable Court's attention, and we offer this as a legal example as to what is going on here? Also, we had an attorney at this District Court in Jamestown, North Dakota, Stutsman County, but after this court appointed in was fact Attorney, for legal point here? This attorney William A. Mackenzie refused to do any thing to represent this case that we had legally filed with this Clerk of Court at Barnes County, Valley City, North Dakota. And these matters were in in fact filed on with Clerk of Court, & marked as filed on October 2, 2005. And, so on October 17th,2005. District Judge Greenwood sent on Order denying my right -

for Evidentiary Hearing and To Vacate Said Judgments, and the state had filed, in fact response to this motion. But, this Assistant Barnes County State's Attorney, H. Jean Delaney had stated nothing in her response to my Motion For Evidentiary - Hearing And To Vacate Said Judgments. And so, Appellant's Legal argument is this and point this out for this Honorable North Dakota State Supreme.

Petitioner-Appellant (hereafter"Appellant") has filed a said Legal Document Caption as for said "Motion To Vacate these said Judgments here above and Legal - Request for an Evidentiary Hearing, first of all. It is, also note here to...this sitting Supreme Court and I do as this Appellant-Petitioner inform this Court and to which is this Legally this:

This Motion To Vacate in fact these above illegal-Judgments; has...nothing to do with this said Post-Conviction Relief Petition and to which, this..District Court at Jamestown, North Dakota, Stutsman County, and which this same Court..had wrongly denied this Post-Conviction Case. And so, this Appellant had filed his in fact Motion than for an Evidentiary Hearing and To Vacate Said Judgments. It's so here noted therefore, and Appellant does cite in his legal support in this Petition and it's this case cite as UNITED STATES vs. GORDON, cite as 172 753 (10TH Circuit 1999): NOTE: It was this 10TH Circuit Court's legal opinion which was in fact this and I so quote their stated Legal Opinion: "Due Process and Inffective-Assistance of Counsel raised in Motion To Vacate were not addressed on direct Appeal, and therefore is no [procedurally barred], and this 10TH Circuit Court of Appeals had stated [UNQUOTED]. Also, quoting this Barnes County Asst., State's - Attorney, H. Jean Delaney and where she state's in her response by Respondent and we here quote once again as to her statement which she says this: "As to the request for an evidentiary hearing, this Court has already granted the Motion of the Respondent (hereafter "the State") to dismiss and/or for summary disposition...in this post-conviction matter. An evidentiary hearing was not required.- See, N.D.-C.C. §§ 29-32.1-06(2), 29-32.1-09(1)," [UNQUOTED, said State's Attorney Delaney.

ARGUMENT

Noting for this Honorable Court: As to this Legal Request to ("Vacate Said illegal-Judgments") stated here above, & also this Legal Request For Evidentiary- Hearing, first of all," [UNQUOTED]. Appellant, once again, states these Legal Cases which were all legally heard by the Federal Courts. And, here is what their- opinions' had all stated, concerning, such a Evidentiary Hearing, and to...Vacate Sentences. A. See-FIELDS v. UNITED STATES, cite as F.2d 105 [6TH Circuit Court 1- 992): They stated, "Pro se Petitioners Motion to Vacate Sentences is entitled to generous construction, under Law.

B.

SANCHEZ v. UNITED STATES, cite as 50 F.2d 1448 (9TH Circuit Court 1995): Court said; 1.) Defendant challenging voluntariness of Guilty Plea in Motion, to Vacate may assert BRADY v. Maryland Claim.

C.

DOE v. UNITED STATES, cite as 51 F.2d 693 (7TH Circuit Court 1995). Court stated: "Petitioner, seeking to [VACATE Sentenced] is entitled to an Evidentiary - Hearing on his [Claim's], if he alleges facts that, if proven, would entitle him to relief," [UNQUOTED]! And so, it is here therefore so noted. This, Appellant-Petitioner is citing [FACTS]!! And, the facts are these!! This Appellant Petitioner, does Legally have 12-Witnesses of who are all able to give testimony, on this night in question, that the State's Attorney Robin Huseby of Valley City, Barnes County, had illegally and wrongly charged the wrong person in some alleged crimes she had stated, "had taken place, and on the night of Saturday, January 30, 1999, and/or in the early morning hours of Sunday, January 31st, 1999, for--an example here and point this part out to this Supreme Court. And so, pointing out, here concerning this time factor that crimes were stated by State Attorney to have taken place therefore? It is impossible for this Appellant to have been involved in these alleged crimes. Why?? Because, legally speaking this Appellant was as a matter of fact, already at Kansas City, Missouri Truck Stop along side in North Kansas City, Missouri, and along side of Interstate 435 South and having coffee & roughly at this same time zone, where these crimes were alleged to have take place, at this very same time this Appellant was in the State Of Missouri. And, their never was any question of this, what-so-ever we remind this Supreme Court.

Also, seriously and legally speaking. When, it comes down to having been I point out, represent by some legal counsel for example? This Appellant never fact was, was ever legally represented by legal counsel at any time during whatever so called process had taken place, we remind this Court. So, from a legal point here this what the 6TH Amendment has to say, what is the ["Due Process"] in this Appellant's Case legally speaking? Well, first of all the 6TH Amendment says this:

Sixth Amendment To The United States Constitution, does so state: "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned, for any offense, whether classified as petty, misdemeaor, or Felony, unless he ["was"] represented by Legal-Counsel, and ["at"] his trial," [UNQUOTED]!!

CONCLUSION: It is, therefore this Appellant Legal-Request:

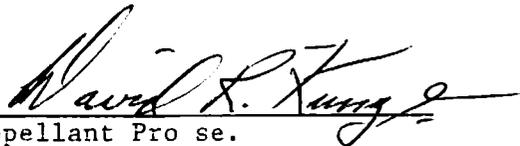
That this State Supreme Court, would make their ruling on this Case, by using this Appellant's filed Petitioner's Response To Respondent's, Concerning Said Motion To Vacate Of— These Four Illegal Judgments And This Request For Evidenti-

ary Hearing On These [Court] Court File Nos.: 99-K-57, 99-K-58, 99-K-130, & 99-K-167
And Which Were All Illegally Had thereof. Also, with this filing of this Brief, &
Appellant is submitting other such legal papers which had come from this Judge Gr-
eenwood Court. And, such legal paper's of his ruling and where he does not legally
state any such legal-findings and/or conclusion's upon which, his ruling could..be
state a Legal conclusion in this matter now before this State Supreme. And, there-
fore, Appellant does offer this Legal-Case cited as UNITED STATES v. FLORES, as
cited 135 F.3d 1000 (5TH Circuit Court 1998). Court stated: "In denying Motion..TO
Vacate Sentence," this Court had Ruled. "District Courts should state findings and
/or conclusions upon---which their ruling are based upon," [UNQUOTED]. And so, it
is so noted this Stutsman County District Court, fact is did not do any such thing
from a legal stand point, but which it should have we state for this ["RECORD"].

So thus, from a Legal stand point. This Appellant does request Legally speak-
ing, that these above mention (4) four ORIGINAL JUDGMNETS and which are so numbe-
red as was stated here above. It is therefore request of Appellant that all stated
judgments be so [REVERSED], this reasoning is based on this Case cite as:

D. HOWARD v. UNITED STATES, cite as 135 F.3d 506 (7TH Circuit Court Appe-
als 1998). This Court stated as does this Appellant: "Motion To Vacate is avail-
able for Case[s] in which petitioner[argues]that for which he was convicted did,
never rose---Federal level," nor did this case against Appellant ever raise to...a
state level to try this Appellant-Petitioner and pointing out here, Legally speak-
ing. So, it is Appellant's Legal request, that these Cases which were filed agai-
nst this here Appellant, be so remanded back to this sentencing Judge, Honorable,
John E. Goodman, **and these proceedings should be to have all these illegal Judgme-
nts, legally DISMISSED and that Appellant be discharged thereof!**

Dated this 20th day of Monday, February, 2006.

Signature Of Appellant By: 

Appellant Pro se.
Mr. David R. Kunze
Post Office Box 5521; #19272
Bismarck, N.D. [58506-5521]