

ORIGINAL (copy)
IN THE SUPREME COURT

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SUPREME COURT JAN 10 2006

OF THE STATE OF NORTH DAKOTA

20050419

Supreme court No. _____

Darrell w.Clifford,) Rolette County No.40-80-1796,
)

Petitioner/Appellant)

V.)

Warden Don Redmann,)
James River Correctional Center)

Respondent(S)/Appellees,)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JAN - 9 2006

STATE OF NORTH DAKOTA

Appellant; Brief on Appeal

Darrell Wayne Clifford
JAMES RIVER CORRECTIONAL CENTER
2521 CIRCLE DRIVE
Jamestown, North Dakota. 58401

Mary K. O'Donnel
Rolette County State'S Attorney
P.O. BOX 1070
Rolla, North Dakota. 58367
701-477-3169

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a table of authorities--cases (alphabetically arranged statute, and other authorities--with references to the pages of the brief where they are cited;

in an application for the exercise of original jurisdiction, a concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, including citations of authorities;

a statement of the issues presented for review;

a statement of the case briefly indicating the nature of the case, the course of proceedings, and disposition below;

a statement of the FACTS relevant to the issues submitted for review, which identifies facts in dispute and includes appropriate references to the record (see Rule 28 (e));

the argument, which must contain;

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

a short conclusion stating the precise relief sought.

I

TABLE OF CASES, STATUTE AND RULES

Darrell w.Clifford. Petitioner,
vs. Warden Don Redmann, Respondent(S)
Case No.40-80-1769, Respondent(S)
MEMORANDUM AND ORDER DISMISSING APPLICATION
FOR WRIT OF HABEAS CORPUS AND POST-CONVICTION
RELIEF.PAGE #

APPLICATION OF GAULT 387 U.S. 20 cite as 87 s.ct,
at page 1439, (1967) at [2].....PAGE #

STATUTE AND RULE

North Dakota Century Code; 29-32.1-01 (b).....
North Dakota Century Code; 29-32.1-01.(e).....
North Dakota Century Code; 29-32.1-01.[H].....
North Dakota Century Code; 32-22-03,(1) (4).....PAGE #
North Dakota Century Code; 32-22-14,.....PAGE #
North Dakota Century Code; 32-22-17,.....PAGE #
North Dakota Century Code; 27-20-34,(1).....PAGE #
North Dakota Century Code; [1](b)(3).....PAGE #
North Dakota Century Code;PAGE #
North Dakota Century Code; 27-20-12.,(2).....PAGE #
North Dakota Century Code; 27-20-13.,(2).....PAGE #
at page (7) A Ground one at (f).....PAGE #
at page (7) B Ground two at (g).....PAGE #
at page (7) C Ground three on the APPLICATION FOR
POST-CONVICTION RELIEF.....PAGE #
North Dakota Century Code; 32-22-17.,(2).....PAGE #

STATEMENT OF THE ISSUES

North Dakota Century Code; 29-32,1-01 (b)

The conviction was obtained Under a Statute that is in violation of the Constitution of the United States & The Constitution of North Dakota,& that the Conduct for which the applicant was prosecuted is Constitutionally protected;

North Dakota Century Code; 29-32.1-01. (e)
Evidence, not previously presented and heard,
exist requiring vacation of conviction and sentence(S) in the interest of justice;

North Dakota Century Code; 29-32.1-01.[H]
N.D.C.C. 29-32-.1-01. Remedy--To whom available---Conditions.
1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this chapter upon the grounds that;
[H] The conviction or sentence is otherwise subject to collateral attack upon any grounds of alleged error available before July 11,1985, Under any common law,statutory or other WRIT, motion, proceeding, or REMEDY

North Dakota Century Code; 32-22-03,(1)(4) APLLICATION FOR THE Writ must be made by petition signed by the person for whose relief it is intended and must specify;
(1).that I Darrell w.Clifford.,in whose behalf the writ is applied for is imprisonment at the James River Correctional Center in the city of Jamestown, North Dakota. and restrained of the preson's liberty. and the officer or prison by whom the person is so confined is Warden Don Redmann,of the James River Correctional Center.in the city of Jamestown, North Dakota. and the place where,naming all the parties if they are known or discribing them if they are not known.
(4). if the imprisonment is alleged to be illegal.the petition shall state in what the illegality consists. the petition must be verified by the oath or affirmation of the person making the application.

North Dakota Century Code; 32-22-14,When hearing must be had the court before whom the Writ is returned. immediately after the return or within five days thereafter, must proceed to hear and examine the return. and such other matters as may be submitted properly to its consideration.

North Dakota Century Code; 32-22-17.,cause for discharge of person restrained. if it appears on the return of the writ that

III

the party is in custody by virtue of process from any court of this state. or any Judge. or officer thereof. such person may be discharged in any of the following cases, subject to the restrictions of section 32-22-03;

(2). When imprisonment was at first lawful. but by some act. omission. of event which has taken place afterward. the party has become entitle to a discharge.

(3). When the process is defective in some matter of substance required by law rendering such process void.

North Dakota Century Code; 27-20-34., (1)

(1). After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the Laws. including local ordinances or **RESOLUTIONS OF THIS STATE**, the court before hearing the petition on its merits may transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if;

a. The child is over sixteen or more years of age and request th transfer,

North Dakota Century Code; 34-20-34., Transfer oto other courts.

[1] (b)(3) Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardians, or other custodian at least three days before the hearing.

North Dakota Century Code; 27-20-34., at [3], No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age. may be prosecuted for an offense previously committed Unless the case has been transfered as provided in this section.

A. Ground one; (f) Conviction obtained by the Unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

B. Ground two; (g) Conviction obtained by a violation of the protection against double jeopardy.

C. Ground three; as Stated on the continue page of # (1) AT Number (3) North Dakota Century Code; 27-20-34., at [3] within the APPLICATION FOR POST-CONVICTION RELIEF

STATEMENT OF THE CASE

I Darrell w.Clifford.Petitioner/Appellant,State to the Court.
What I have discover within the content of Docket No.44,includes
on the front uper center of this page # 1, two separate criminal
Docket Number(S) Stating; 1796," + 1800," Stating
(STATE OF NORTH DAKOTA) In District Court,(COUNTY OF ROLETTE)
(NORTHEAST JUDICIAL DISTRICT: IN THE INTEREST OF DANIEL DENOYER,
JR." AND DARRELL W.RED PAINT, CHILDREN BRYANT MUELLER.PETITIONER,
-VS- et al., RESPONDENT(S)

"TESTIMONY OF JAMES METCALFE."

The above entitled matter came on for hearing before this court,
at the Courthouse, in the city of Devils Lake, North Dakota.
on The 23rd, Twenty Third, day of July 1980, the HON.Douglas
B. Heen, Judge. Presiding. Appearing is Arne F. Boyum,State'S
Attorney, ROLETTE County, Rolla, North Dakota. Counsel for the
Petitioner, also appearing is the RESPONDENT Daniel Denoyer,
JR.": and his Attorney Neil Thompson of Devils Lake,
North Dakota; Darrell w,Clifford and his Attorney, Dave Garcia
of Devils Lake, North Dakota. The following is a transcript
only of the testimony of James Metcalfe, given in the above
matter at Devils Lake, North Dakota. on July 23, 1980.

I Arnold strand, a duly appointed official court reporter,
DO HEREBY CERTIFY THAT I recorded in short-hand the foregoing
proceedings had and made of recorded at the time and place
indicated. I DO HEREBY FURTHER CERTIFY THAT THE FOREGOING
AND ATTACHED SIX-TYPEWRITTEN PAGES CONTAIN AN ACCURATE
TRANSCRIPT OF MY SHORTHAND NOTES then and there taken.Dated

page # 1

at Devils Lake, North Dakota,

This 10th, day of September, 1980. Arnold Strand, Official-Court Reporter.

I Darrell w. Clifford. Petitioner/Appellant, would like to bring to the attention of the court Relevant facts that these alleged commencement of proceedings; should have been brought (13) Thirteen days before the date of July 23rd, 1980, on about the date of July [10th,] 1980. before I Darrell w. Clifford. turn of adult age on the 11th, day of July 1980.

STATEMENT OF THE FACT(S)

Relevant to the issues submitted for review, which identifies facts in dispute and includes appropriate references to the record (See Rule 28 (e)):

I Darrell w. Clifford. Appellant, would like to bring to the Court(S) Attention; Docket No. 44 forty four, Testimony of- James Metcalfe Defendant(S) EXHIBIT # 1

I Darrell w. Clifford. Appellant, had been (17) Seventeen years of age at the time while being place in the Rolette County jail on the date of May 23rd, 1980. and in approximately (49) forty nine days on the date of July 11th, 1980.

I Darrell w. Clifford, became of adult age (18) eighteen years old.

argument

Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

I Darrell w. Clifford. relies on what is provided Under the

Uniform juvenile court Act.of the State of North Dakota;

N.D.C.C. 27-20-34.,(1)Transfer to other court(S)

After a petition has been filed alleging delinquency based on conduct which is designed a crime or public offense under the Laws,

including local ordinances or Resolution of this State

the court before hearing the petition on it merits may transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if;

Under the Uniform juvenile court Act.,of the state of North Dakota, N.D.C.C. 27-20-34.,(3) no child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed Unless the case has been transferred as provided in this section.

I Darrell w.Clifford.,Appellant. would like to state on the date July 11th, 1980.

I Darrell w.Clifford.Appellant, turn age of (18) years old. Under the Uniform juvenile court Act.,of the state of North Dakota, N.D.C.C. 27-20-12.,(2),

Transfer to another juvenile court within the state.

(2)., Certified copies of all legal and social documents and records pertaining to the case in file within the clerk of the court must accompany the transfer.

I Darrell w.Clifford.,would like for the court to known of this one legal documention Stating."

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OGLALA SIOUX TRIBE

DEPARTMENT OF ENROLLMENT

BOX H

PINE RIDGE, SOUTH DAKOTA 57770-2070

Phone 605-867-1321

FEBRUARY 10th, 1999.

I hereby certify that Darrell wayne Clifford is listed on the pine ridge Indian reservation census ledger, established 1908. (revised 1956), an official record of this agency, as being 3/4/ degree OGLALA SIOUX INDIAN BLOOD, with rol number U 25090 and was born July 11, 1962.

Joan Decher

Enrollment Director.

Under the Uniform juvenile court Act., of the state of North Dakota. N.D.C.C. 27-20-13. Taking into Custody.

2. Taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of North Dakota or Constitution of the United States.

at number (7) A Grounds on (f) Conviction obtained by the Unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant

Supporting FACTS (state briefly without cite cases or law)

I Darrell w. Clifford. Petitioner, would like to state. I NEVER RECEIVE ANY NOTICE WITHIN THE UNITED STATES POST OFFICE IN THE CITY OF DEVILS LAKE, North Dakota.

(B) Ground two (g) Conviction obtained by a violation of the

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protection against double jeopardy.

Supporting FACTS (state briefly without citing cases law)

I Darrell w.Clifford.Petitioner.beleive it would be wrong and Unlawful to go back to court and be reconvicted and resentence for an previously trial, and now my conviction(S) and sentences would be in violation of the protection against double jeopardy

C. Ground three; as Stated on the continue page # () at line [] North Dakota Century Code; 27-20-34, at [3]

Supporting FACTS (state briefly without citing cases or law)

I Darrell w.Clifford Petitioner, turn of adult age of eighteen years of age on the date of July (11th,1980, and as Arnold Strand, a duly appointed official court reporter STATES ON docket No.44 forty four, on page ONE (1) The above entitled matter came on for hearing before this court,at the Courthouse in the city of Devils Lake, North Dakota.on the 23rd Day of July 11th,1980.the hon. Douglas B.Heen, Judge, Presiding.

page # 5

APPLICATION OF GAULT 387 U.S.20 cite as 87 s.ct,at page 1439,
(1967) at [2] Failure to observe the fundamental requirements
of due process has resulted in instance,which might have been
avoided.

of unfairness to individuals and inadequate 20
or inaccurate findings of facts and unfortunate prescriptions
of remedy.

Due process of law is the primary and indispensable foundation
of individual freedom. It is the basic and essential term in
the social compact which defines the rights of the individual
and delimits the power which the state may exercise 26

CONCLUSION

OF APPLICATIONS FOR WRIT OF HABEAS CORPUS AND POST-CONVICTION
RELIEF.

I Darrell w.Clifford.Petitioner/Appellant," would like to state
to the Court. I would like to be release from incarceration and
confinement and imprisonment here at the Department of
Corrections & Reahabilitations, for the State of North Dakota.
Under the North Dakota Century Code; 32-22-17., (2)
(2). when the imprisonment was at first lawful, but by some
act. omission. of event which has taken place afterward, the
party has become entitled to discharge.

I Darrell w.Clifford.Petitioner, Request Relief to be Granted.
Respectfully Submitted. on this _____ Day of November 2005.

(signature of Petitioner PRO SE)

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CERTIFICATE OF SERVICE BY MAIL
DEPARTMENT OF CORRECTION & REHABILITATION
PRISONS DIVISION
JAMES RIVER CORRECTIONAL CENTER

STATE OF NORTH DAKOTA)
) SS:
COUNTY OF STUTSMAN)

The undersigned, being duly sworn under penalty of perjury, deposes and say; I am over the age of eighteen years and 3:00 PM on the 5 Day of January 2006 PM, I mailed the following;

Darrell W, Clifford petitioner/appellant

VS

warden Don Redmann, James River Correctional Center
Respondent (S)/appellee

~~appeal~~ appellant, Brief on appeal, and appendix in the Supreme court of the State of North Dakota.

By placing it/them in a prepaid envelope and addresses as follows;

penny miller clerk
supreme court of north Dakota
600 East Boulevard ave Dept 180
Bismarck north Dakota, 58505-053

and depositing said envelope in the mail, at the James River correctional center, 2521 Circle Drive, Jamestown, North Dakota, 58.401

AFFIANT

Darrell W Clifford
P.O. BOX 2521 Circle Drive/
Jamestown, North Dakota, 58441

SUBSCRIBED AND SWORN TO BEFORE ME THIS 5 DAY OF January 2006
Statsman County
Notary Public

MY COMMISSION Expires on

Jason Komrosky

JASON KOMROSKY
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JULY 5, 2007