

ORIGINAL

Supreme Court Number 20060108
Cass County Number 06-C-00930

20060108

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

APR 28 2006

STATE OF NORTH DAKOTA

State of North Dakota,

Plaintiff/ Appellee,

vs.

Ronald R. Ernst,

Defendant/Appellant,

APPEAL FROM DISMISSAL OF POST CONVICTION MOTION TO THE COURT

BRIEF OF APPELLANT

Ronald R. Ernst, pro se
P. O. Box 5521
Bismarck, N.D. 58506
Phone: none

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FACTS OF THE CASE

The Appellant in this action was charged with an alledged act of indecent exposure, whereby he was exposes himself, or masturbatng in a garage. The N.D.C.C. 12.1-20-12.1, for which the Appellant was charged under, states: aperson with intent to arouse, appeal to, or gratify to, that person's lust, or sexual desire, is guilty of a Class "A" Misdemeanor if that person:

- a. Masturbates in a public place, or
- b. Exposes one's penis, vulva, or anus in a public place.

This alledged act took place on or about August 11, 2001. The statue in effect at that time was, the one presented above. In the previous reply by the State Attorney, he tried to circumvent the 2005 statue, as being the statue that the Appellant was charged and to which he pled guilty to.

The Appellant pled guilty to this underlying offense, through the understanding of a plea agreement that he was going to recieve by way of a particular sentence, with the guilty plea of all of the charged offenses. That is what his attorney, Steven Mottinger explained to him, that was the plea agreement. The Appellant never saw any paperwork, pertaining to the charged offense.

STATEMENT OF FACTS

The factual basis that Defendant agreed was applicable in this case can be found in the transcript of sentencing hearing on page 9 through page 11. (Transcript of Sentencing Hearing, p. 9, l. 21 through p. 11, l. 9). On August 11, 2001, Fargo Police were dispatched on a report of an individual exposing himself to a sixteen-year-old juvenile. (Tr. at p. 9, l. 21-25). The juvenile indicated she observed Defendant masturbating in a garage near her apartment building. (Tr. at p. 10, l. 1-8). A short time later, Defendant approached the juvenile and engaged in a brief conversation. (Tr. at p. 10, l. 9 - 12). The juvenile provided law enforcement with a description of Defendant. (Tr. at p. 10, l. 12-13). Law enforcement subsequently showed the juvenile a photo lineup, but the juvenile did not recognize any of the photos. (Tr. at p. 10, l. 13 - 14). Law enforcement put together a second photo line-up during an unrelated investigation.. (Tr. at p. 10, l. 22). This lineup included Defendant's photograph. (Tr. at p. 10, l. 22- 23). The juvenile was able to pick out Defendant as the individual she had observed masturbating in the garage of her apartment building. (Tr. at p. 10, l. 24 - 25).

At the change of plea hearing, the prosecutor presented the factual basis for the plea, after which the court asked Defendant if he agreed with the State's recitation of the facts. (Tr. at p. 16, l. 3 - 4). Defendant responded, "[y]es." (Tr. at p. 16, l. 5). Defendant was sentenced on the two files to serve his time at the State Penitentiary. (Appellee's Appendix A-2). As support for his motion, Defendant provided to the court copies of 2 grievances he has filed at the State Penitentiary. (Appellant's Appendix p. 8 & 9). In these, he alleges that female prison guards are allowed to view him showering. Id.

EXHIBIT
A

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

State of North Dakota,)
)
 Plaintiff,)
)
 vs.)
)
 Ronald Rudolph Ernst,)
)
 Defendant(s).)
)

INFORMATION
 09-02-K- 9072
 SA #02-CR-01546

The Cass County State's Attorney charges that the above-named defendant(s) committed the following offense in Cass County, North Dakota:

Count 1: INDECENT EXPOSURE in violation of Section 12.1-20-12.1, N.D.C.C. in that on or about August 11, 2001, the above-named defendant, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, the defendant masturbated in a public place or exposed his penis in a public place, to-wit: that on or about the above-stated date, the defendant, **Ronald Rudolph Ernst**, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, the defendant masturbated in a public place or exposed his penis in a public place, by masturbating or exposing his penis in a public place in the presence of K.J.M., dob 02/13/85, occurring in Fargo, Cass County, North Dakota.

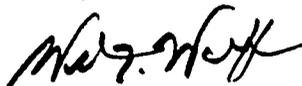
Against the peace and dignity of the State of North Dakota.

State's Witnesses:

Dated: June 17, 2002

Investigator Sherri Arnold
 Kayla R. Moen
 K.J.M., dob 02/13/85
 Investigator Charles Sullivan

Penalty Section:
 Count 1: 12.1-20-12.1
 Class A Misdemeanor
 (Upon a plea or finding of guilt, the defendant is required to register as a convicted sex offender pursuant to N.D.C.C. §12.1-32-15.)



Wade L. Webb, NDID #05326
 Assistant State's Attorney

EXHIBIT
 B

FILED-CLERK OF DISTRICT COURT

3:52 JUN 19 2002
 CASS COUNTY, ND

ARGUEMENT

The State brought forth this charge of N.D.C.C. 12.1-20-12.1 Indecent Exposure, for an alledged offense that was presumed to happen on August 11, 2001. The State's Attorney's office, had no probable cause to bring the charge to light, as the alledged offense was done in a garage, which is not a public place, as described by statue.

N.D.C.C. 12.1-20-12.1: A person with intent to arouse, appeal to, or gratify, that person's lust, or sexual desire, is guilty of a class "A" misdemeanor if that person:

- a. Masturbates in a public place, or
- b. Exposes one's penis, vulva, or anus in a public place.

The State also violated the due process of the Appellant, by bringing forth a charge, that was not present, according to statue.

In another action involving this same charge, the Assistant State Attorney, Trent W. Mahler stated in his reply brief, Supreme Court No. 20050395, Page (2) (STATEMENT OF THE FACTS), that a juvenile indicated that she observed Defendant masturbating in a garage near her apartment building. End of Quote. (Exhibit A).

In the arguement by Mahler, he states that the Statue in effect at the time of the alledged offense was different than the one present in 1991. He cites the Statue from 2005. This must fail as to go to a statue in the future is a violation, as that of the ex post facto violation. Mahler is trying to put in a statue that is describing an event that is not present in this case. The State had no probable cause to charge the Appellant, as a garage, or apartment are not public places. they are private dwellings, or property. On page 6, 7, Mahler

states the Criminal Statute from (2005 Supp.). The correct Statute is listed in the charging information, dated June 17, 2002, (Exhibit B). In this information, it clearly states that the offense must be in a public place.

The Court acted in an arbitrary, unreasonable or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law, State v. Tupa ND25 691 N.W. 2d 579 ¶(3) (N.D. 2005). The Court cannot rely on what the State Attorney says, as it has been proven by his comments are false, even though he swore under oath that they are true and correct, and his signature is at the end of said brief.

The Court did not read the statute as it is written. Its interpretation of the statute is wrong, Larsen v. North Dakota Department of Transportation ND51 693 N.W. 2d 39 (N.D. 2005). The Court is merely listening to what the Assistant State Attorney is saying, and not following the letter of the law. Mahler is stating a statute that came into effect, some four years, after the alleged offense. This must fail, as the statute in effect at the time of the offense must prevail.

N.D.C.C. 1-02-05, states the reasoning behind the proper interpretation of the statute and the legislature must of known what they passed into law, Larsen v. North Dakota Department of Transportation. The Court must read the statute as it is, and not what the State Attorney wants it to be. The charging information, clearly shows that the alleged offense was on August 11, 2001, and the statute in effect at that point of time, clearly states that the act "must" be in a public place. and a garage is not public, as the word "public" is described

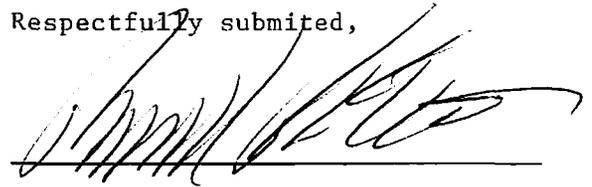
as a place where anyone can go to, whether invited, not invited, or on a whim enter into, and their own descretion. Black's Law Dictionary: Public; open or available for all to use, share, or enjoy.

Now, Black's law Dictionary, the word private; relating or belonging to an individual, as opposed to the public or the government. Therefore, the State cannot legally charge the Appellant with this alledged offense, as the statue in effect at the alledged time, and date is not what is described by statue. The legislature must have known what they were doing, in the passage of the law. If, not, it would not have become law.

Therefore, this conviction that the Appellant has been charged with, and whereby he pled guilty to, by way of a plea agreement that was not honored, must be vacated, as it was obtained through an illegal manner. Public, is just that, and private, is not public. The State relies on impermissible facters that are not present in the case, and the conviction, must be vacated.

Dated this 20TH day of APRIL 2006.

Respectfully submitted,



Ronald R. Ernst Pro se

N.D.S.P.

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Bismarck, N.D. 58506