

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20060250
20060251

RONALD R. ERNST,

APPELLANT,

VS.

STATE OF NORTH DAKOTA,

APPELLEE,

] SUPREME COURT NOS. 2006251&2006250
]

] CASS COUNTY NOS. 02-K-1810&02_k_2032
]
]
]

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STATE OF NORTH DAKOTA

BRIEF OF APPELLANT

APPEAL OF DISTRICT COURT DENIAL FOR CORRECTION OF SENTENCE

THE HONORABLE STEVEN E. McCOUGH, JUDGE OF DISTRICT COURT

BIRCH BURDICK

RONALD R. ERNST

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES.....	(aa)&(aaa)
QUESTION OF LAW.....	(c)
FACTS OF THE CASE.....	(d)
ARGUMENT.....	1-11

TABLE OF AUTHORITIES

CITATIONS	PAGE
N.D.C.C. 12.1-32-02, (2).....	1
STATE V, KUNZE 350 N.W.2d 36, (N.D. 1984).....	2
WHITEMAN V. STATE 2002 ND 77, 643 N.W.2d 704 (2002).	2 & 8
STATE V, SHUMACHER 452 N.W.2d 345 (N.D. 1994).....	2
STATE V. WILKA ND 33 N.D. 1998, 574, 831 PAR. 1.....	2 & 8
N.D.C.C. 12.1-32-02-(3).....	3
STATE V. BOUSHEE 459 N.W.2d 552 (N.D. 1990).....	3
STATE V. VONDAL ND 188, 1998, 585 N.W.2d 129, PAR. (14)	3
STATE V, SHEPARD 554, N.W.2d 821 (N.D. 1996).....	3
STATE EX REL PERRY V. GARECHT 70 N.D. 599, 297 N.W.2d 132 (1940).....	4
DAVIDSON V. NYGAARD 78 N.D. 141, 48 N.W.2d 578 (1951)	4
STATE V. CUMMINGS 386 N.W.2d 468 (N.D. 1986).....	5
N.D.C.C. 31-13-03.....	6
N.D.C.C. 12.1-22-02.....	6
ADAMS COUNTY BOARD V. GREATER N.D. ASS'n 529 N.W.2d 830 (N.D. 1995).....	6
HOUGUM V. VALLEY MEMORIAL HOMES ND 24 1998, 574 N.W.2d	812, 6
N.D.C.C. 12.1-33-02.....	6
STATE V. BENDER 576 N.W.2d 210 ND 72 (1998).....	6
N.D.C.C. 12.1-32-07 (3).....	6
STATE V. KUNKEL 455 N.W.2d 213 (2) N.D. 1990.....	6
STATE V. PERBIX 331 N.W.2d 14 N.D. 1983.....	6
STATE V. DOBSON 671 N.W.2d 825, ND 187 (N.D. 1994)...	7

STATE V. GUNWALL 522 N.W.2d 183 (N.D. 1994).....	7
N.D.C.C. 12.1-32-07 (5).....	7
STATE V. BREINER 1997 ND 71, 562 N.W.2d 565.....	7
TALBERT V. N.D. DEPT. OF TRANSP. 560 N.W.2d 883)N.D. 1997).	7
N.D.C.C. 12.1-32-11 (1).....	7
STATE V. WOELHOFF 537 N.W.2d (N.D. 1995).....	7
STATE V. LAWSON 356 N.W.2d 893 (N.D. 1984).....	7
N.D.C.C. 12.1-32-07- (1) N.D.R. CRIMP. 11.....	7
STATE V. ABDULLAHI 200 ND 39, 607 N.W.2d 561.....	9
STATE V. KENSMOE ND 190, 636, N.W.2d 183 (N.D. 2001), (2), (11), (1, 2) (¶7).	9
STATE V. DAVENPORT 200 ND 218, 620 N.W.2d 164 (N.D. 2000).	9
STATE V. LEPPERT 2003 ND 15 656 N.W.2d 718 (N.D. 2003.	10
14th AMEND. OF U.S.C.A. ART. 1, §§ 21, 22.....	10

QUESTIONS OF LAW

1. DOES THE APPELLANT HAVE TO SERVE TIME IN JAIL AND NOT RECEIVE CREDIT FOR THIS TIME ON THE SENTENCE IMPOSED?
2. CAN THE SENTENCING COURT ADD CONDITIONS TO THE PROBATION THE SENTENCING HEARING WAS COMPLETED, AND THE INMATE HAD BEEN TAKEN TO PRISON, AND THE COURT ADDING MORE CONDITIONS?
3. CAN THE SENTENCING COURT VIOLATE THE STATUES IN EFFECT BY ORDERING THE APPELLANT TO PERFORM DEEDS THAT ARE IN VIOLATION OF HIS CONSTITUTIONAL RIGHT'S, TO BE FREE FROM INTRUSION BY THE GOVERNMENT, LIKE ORDER A DNA SAMPLE WITHOUT A CONVICTION OF ANY STATUE LISTED OFFENSE?
4. CAN THE SENTENCING COURT PUT CONDITIONS ON THE BURGLARY PROBATION THAT HAVE NOTHING TO DO WITH THE CRIMINALITY?
5. CAN THE APPELLANT BE SUBJECTED TO MULTIPLE PUNISHMENTS FOR THE SAME CRIMINALITY, AND NOT BE TREATED LIKE ALL OTHERS IN A SIMILAR CLASS?
6. CAN THE COURT AND THE DEPARTMENT OF CORRECTIONS CHANGE A SENTENCE AFTER THE SENTENCE HAS BEGUN TO TOLL?
7. DOES THE APPELLANT HAVE TO SIGN AND ACCEPT THE CONDITIONS OF PROBATION AT THE SENTENCING HEARING?
8. DOES THE COURT HAVE TO ORALLY ANOUNCE ALL OF THE CONDITIONS OF PROBATION AT THE SENTENCING HEARING?
9. CAN THE COURT ORDER PROBATION LONGER THAN THE SUSPENDED TIME ON THE SENTENCE IMPOSED?

FACTS OF THE CASE

APPELLANT ERNST WAS ARRESTED IN THE STATE OF MINNESOTA FOR A WARRANT THAT CAME FROM THE STATE OF NORTH DAKOTA, ON JUNE 3, 2002. ERNST ENDED UP WAIVING THE EXTRADITION AND WAS TRANSFERRED TO FARGO, N.D. ON OCTOBER 28, 2002, ERNST PLED GUILTY TO THE CHARGES OF THEFT-TWO COUNTS, STALKING, BURGLARY, DISORDERLY CONDUCT, CRIMINAL MISCHIEF, AND A MISDEMEANOR CHARGE OF INDECENT EXPOSURE.

THE CASS COUNTY DISTRICT COURT GAVE ERNST CREDIT FOR 142 DAYS OF PRE-SENTENCE CREDIT FOR TIME SERVED IN THE CASS COUNTY JAIL. THAT BROUGHT THE CREDIT BACK TO JUNE 8, 2002. WITH THIS CALCULATION, THE CASS DISTRICT COURT STILL OWES ERNST (5) DAYS OF CREDIT, WHICH THE APPELLANT HAS BEEN TRYING TO RECIEVE FROM THE COURT, BY WAY OF MOTIONS.

ANOTHER ASPECT OF THIS CASE, IS THAT THE COURT DID IN PART, ORALLY ANOUNCE SOME CONDITIONS OF THE BUGLARY PROBATION. HOWEVER, ERNST WAS NEVER INFORMED OF ALL OF THE CONDITIONS, UNTIL AFTER HE WAS TAKEN TO PRISON. BY STATUE, THE COURT MUST ANOUNCE ALL OF THE CONDITIONS ORALLY AT THE SENTENCING HEARING. IT, THE COURT CANNOT ADD CONDITIONS LATER TO HIDE THEM FROM THE INMATE, IN AN ATTEMPT TO BE DECIEFUL, AS THE COURT KNEW THAT THE INMATE WOULD NEVER ACCEPT THE SENTENCE, HAD HE KNOWN ABOUT THE FULL EXTENT OF THE CONDITIONS.

ANOTHER CLAIM IS THAT SINCE THE COURT DID SENTENCE ERNST TO SERVE A ONE YEAR SENTENCE ON THE EXPOSURE CHARGE, WHEN IT, THE COURT SENTENCED ERNST ON THE OTHER SIX CHARGES ON OCTOBER 28, 2002, THE COURT LATER CHANGED THE SENTENCE TO SERVE ON THE EXPOSURE CHARGE, FROM CONCURRENT, TO CONSECUTIVE. ONCE THE SENTENCE BEGINS TO TOLL, THE COURT CANNOT AMEND THE SENTENCE LEGALLY. ALL OF THE SENTENCES BEGAN TO TOLL ON OCTOBER 28, 2002, BUT THE CASS DISTRICT COURT AMENDED THE EXPOSURE CHARGE SOME FIVE DAYS AFTER ERNST WAS TAKEN TO PRISON. ERNST MUST BE PRESENT FOR A COURT TO AMEND ANY SENTENCE.

ARGUMENT

THE DISTRICT COURT ABUSED IT'S DESCRETION, WHEN IT PERFORMED MANY ERRERS IN TRYING TO SENTENCE THE APPELLANT, (ERNST). ERNST WAS SENTENCED BY THE CASS COUNTY DISTRICT COURT ON OCTOBER 28, 2002. JUDGE MICHEAL MC GUIRE AT FIRST GOT INVOLVED WITH THE PLEA AGREEMENT BY ACCEPTING THE PROPOSED "DEAL", AS THE STATE ATTORNEY SENT THE AGREEMENT TO HIM, THREE WEEKS PRIOR TO THE SENTENCING HEARING. THIS PROCEDURE ERROR, CONSTITUTES THE REVERSAL OF THE PLEA, AS IT WAS A MANEFEST OF INJUSTICE.

THE COURT SENTENCED ERNST TO EIGHT YEARS, WITH THREE SUSPENDED FOR FIVE YEARS. THE COURT ALSO SENTENCED ERNST TO TERMS OF ONE YEAR, TO THIRTY DAYS ON THE REMAINING MISDEMEANORS, THAT ALSO INCLUDED THE INDECENT EXPOSURE CHARGE.

ALL OF THESE SENTENCES STARTED ON OCTOBER 28, 2002. THE COURT DID GRANT ERNST 142 DAYS CREDIT FOR TIME SPENT IN CUSTODY PRIOR TO SENTENCING. HOWEVER, SINCE ERNST WAS ARRESTED IN THE STATE OF MINNESOTA ON JUNE 3, 2002, FOR THIS WARRANT THAT CAME OUT OF NORTH DAKOTA, THE COURT MISCALCULATED THE AMOUNT OF TIME THAT WAS SPENT IN JAIL, BEFORE SENTENCING. N.D.C.C. 12.1-32-02, (2), SO STATES THAT EVERY PERSON "SHALL" BE CREDITED WITH ALL TIME SPENT IN CUSTODY BEFORE SENTENCING. THE DISTRICT COURT STILL OWES ERNST A CREDIT OF FIVE DAYS ON THE SENTENCE IMPOSED.

AT THE SENTENCING HEARING JUDGE MC GUIRE SENTENCED ERNST TO A TERM OF ONE YEAR ON THE EXPOSURE CHARGE. THAT SENTENCE STARTED TO TOLL ON OCTOBER 28, 2002. HOWEVER, AFTER FURTHER REVIEW AND THE INQUIRY FROM THE DEPARTMENT OF CORRECTIONS ABOUT WHETHER THIS CASE WAS CONCURRENT OR CONSECUTIVE, JUDGE MC GUIRE DECIDED TO CHANGE THE SENTENCE TO CONSECUTIVE. THIS IS A VIO-

LATION OF LAW AS THE COURT CANNOT CHANGE OR AMEND A SENTENCE, ONCE IT HAS STARTED TO TOLL, STATE V. KUNZE 350 N.W. 2d 36 (N.D. 1984). ANOTHER ASPECT IS THAT THE APPELLANT WOULD HAVE TO BE PRESENT FOR AN AMENDED SENTENCE, WHITEMAN V. STATE 2002 ND77, 643 N.W. 2d 704 (2002). THEREFORE THE SENTENCE THAT WAS IMPOSED OF ONE YEAR BEGAN TO ACCUMALATE TIME AS OF OCTOBER 28, 2002. THAT SENTENCE WOULD END ON AUGUST 28, 2002, WITH THE GOODTIME CREDIT AUTHORIZED BY STATUE.

THE DISTRICT COURT ALSO FAILED TO STATE A MINIMUM AMOUNT OF TIME THAT ERNST WOULD HAVE TO SERVE ON THE BURGLARY CHARGE. THE COURT DID STATE THAT IT WAS A MAXIMUM, AS IT OCCURED AFTER DARKNESS, BUT NEVER STATED THAT THERE WAS A MINIMUM. ERNST FOUND THIS OUT IN SEPTEMBER 2006, FROM HIS CASE WORKER AT THE JAMES RIVER CORRECTIONAL CENTER. HAD ERNST KNOWN THAT HE HAD TO SERVE AT LEAST THREE YEARS, HE WOULD HAVE NOT PLED GUILTY, AS HIS ATTORNEY, STEVEN MOTTINGER TOLD ERNST THAT HE WOULD BE A TURNAROUND, AS IT WAS A NON-VIOLENT CRIME, AND WOULD BE KICKED OUT OF THE DEPARTMENT OF CORRECTIONS, SHORTLY AFTER BEING RECEIVED AND GONE THROUGH ORIENTATION. THIS PROVED TO BE FALSE. SINCE THE COURT FAILED TO PROVIDE THE MINIMUM TERM, ORALLY IN THE SENTENCING HEARING, IT CONSTITUTED A MANIFEST INJUSTICE, THAT REQUIRES THE COURT TO PROVIDE THE APPELLANT, ERNST, TO WITHDRAW HIS GUILTY PLEA, TO CORRECT THE ABUSE OF DESCRETION, AS IT IS TO MEET THE INTERESTS OF JUSTICE, STATE V. SCHUMACHER 452 N.W. 2d 345 (N.D. 1994).

THE SENTENCING CHANGE ON THE EXPOSURE CHARGE WAS CONTRARY TO STAUE PROVISIONS AND IS ILLEGAL, STATE V. WILKA ND 33 N.D. 1998 574, 831 PAR. 1. THE COURT COULD NOT AMEND IT AS IT WAS ALREADY RUNNING, AND THEREFORE ILLEGAL AND ALREADY SERVED.

THE COURT SENTENCED ERNST TO EIGHT YEARS, WITH THREE YEARS SUSPENDED ON THE BURGLARY CHARGE. BUT THE COURT PUT ERNST ON FIVE YEARS OF PROBATION FOR THE THREE YEARS SUSPENDED. N.D.C.C. 12.1-32-02 (3) EXPLICITLY STATES THAT THE PROBATION WILL BE FOR THE TERM OF SUSPENSION. THE APPELLANT DOES NOT HAVE TO PAY RESTITUTION, AS THE COURT FAILED TO ORDER A RESTITUTION HEARING. SO, THE COURT CANNOT EXTEND THE PROBATION LONGER THAN THE THREE YEARS THAT ARE SUSPENDED.

THE MINIMUM SENTENCE THAT THE COURT SHOULD HAVE ANOUNCED, STATE V. BOUSHEE 459 N.W. 2d 552 (N.D. 1990), AND THE AMENDED SENTENCE WHERE ERNST WAS NOT PRESENT, REQUIRE ERNST TO REVERSE HIS PLEA, TO CORRECT THE MANIFEST OF INJUSTICE.

THE COURT FAILED TO ORALLY ANOUNCE ALL OF THE CONDITIONS TO PROBATION. THE COURT DID STATE A FEW IN OPEN COURT, BUT AFTER ERNST WAS TAKEN TO PRISON, ADDED NUMEROUS OTHERS THAT ARE IN VIOLATION OF STATUE, AND THE APPELLANT'S CONSTITUTIONAL RIGHTS. THE COURT ORDER TO GIVE A DNA SAMPLE VIOLATES THE 4TH AMENDMENT OF THE U.S. CONSTITUTION OF ILLEGAL SEARCH AND SIEZURE. ERNST HAS A CONSTITUTION RIGHT TO BE FREE OF GOVERNMENT INTRUSION, AND TO BE LEFT ALONE. THE COURT MUST ORALLY ANOUNCE ALL CONDITION TO PROBATION, OTHERWISE SENTENCE IS CONTRAY TO STATUE PROVISION, STATE V. VONDAL ND 188 1998, 585 N.W. 2d 129, PAR. (14), AND ANOUNCED PAR. (18).

THE COURT ALSO PUT CONDITIONS ON THE BURGLARY THAT HAVE NOTHING TO DO WITH THE BURGLARY CHARGE, STATE V. SHEPARD 554, N.W. 2d 821 (N.D. 1996). THE DISTRICT COURT ASSUMED THAT ERNST WAS INVOLVED WITH THE BURGLARY AT NIGHT, LIKE IN SHEPARD, BUT IT IS ONLY AN ASSUMPTION. ERNST PROVED THAT NO ONE WAS AT HOME, BEFORE ENTERING THE RESIDENCE.

IN THE SHEPARD CASE, THAT INMATE TOLD THE COURT THAT IT WAS HIS INTENTION TO RAPE THE WOMEN THAT WERE IN THE DWELLING. ERNST HAD NO INTENTION TO TOUCH ANYONE, AS HE MADE SURE THAT NO ONE WAS HOME, BEFORE ILLEGALLY ENTERING THE DWELLING.

NOW, THE CONDITIONS THAT THE COURT STATED IN COURT, ONLY INVOLVED THE ATTENDANCE IN THE SEX OFFENDER TREATMENT WAS BEING IN THE STATE PRISON SYSTEM. IT WAS DONE AS ERNST HAD A PREVIOUS CONVICTION FOR A SEX RELATED OFFENSE, AND NEVER HAD ANY TREATMENT ON THIS CASE. HOWEVER, THE COURT DID NOT ADD OTHER CONDITIONS THAT WERE SEXUAL IN NATURE, UNTIL AFTER ERNST WAS TAKEN TO PRISON. THIS IS IN VIOLATION OF STATUE LAW, STATE EX REL PERRY V. GARECHT 70 N.D. 599, 297 N.W. 2d 132 (1940), AND DAVIDSON V. NYGAARD 78 N.D. 141, 48 N.W. 2d 578 (1951). AND THESE CONDITIONS MUST BE ORALLY GIVEN AT THE SENTENCING HEARING. THE COURT RELIED ON AN IMPERMISSIBLE FACTOR IN DETERMINING CONDITIONS, CITE STATE V. SHEPARD. IN THE APPENDIX "A", WHICH THE COURT SENT TO ERNST AFTER HIS WAS INCARCERATED IN THE NORTH DAKOTA PRISON SYSTEM, JUDGE MC GUIRE ADDED OTHER CONDITIONS ON THE BURGLARY PROBATION THINGS LIKE: a. REGISTER AS SEX OFFENDER, b. NOT HAVE CONTACT DIRECTLY OR INDIRECTLY WITH THE VICTIM IN THE UNDERLYING OFFENSE, WHICH IS STANDARD, c. CONTACT WITH CHILDREN BY NOT INIATING, ESTABLISH, OR MAINTAIN CONTACT DIRECTLY OR INDIRECTLY WITH ANY CHILD UNDER THE AGE OF 18. THE VICTIM IN THIS BURGLARY WAS 25. ANOTHER PART OF c. WAS NOT TO GO TO OR LOITER NEAR SCHOOL YARDS, PARKS, PLAYGROUNDS, ARCADES, SHOPPING CENTERS OR OTHER PLACES PRIMARILY USED BY CHILDREN UNDER THE AGE OF EIGHTEEN. WHY AM I BEING NUMBERED OUT FOR THE YOUNGER AGE, WITHOUT A CONVICTION AGAINST THESE MINORS, WHEN THE CRIME I PLED TO WAS BURGLARY, AND THE VICTIM WAS AGE 25? OTHER ASPECTS

OF THESE ILLEGAL CONDITIONS THAT HAVE NOTHING TO DO WITH THE BURGLARY CONVICTION, AND WHAT THE PROBATION IS A PART OF, INCLUDE ACTIVELY PARTICIPATE IN SEX OFFENDER TREATMENT, FOLLOW ALL PROGRAM RULES AND REQUIREMENTS, AND REMAIN IN SUCH TREATMENT AT THE DIRECTION OF YOUR PROBATION OFFICER. ALSO, TO SUBMIT TO ANY PROGRAM OF PSYCHIATRIC ASSESSMENT AT THE DIRECTION OF YOUR PROBATION OFFICER, INCLUDING PENILE PLETHYSMOGRAPH, WHEREBY THE PROBATION OFFICER HAS BEEN DESIGNATED AS THE PROFESSIONAL OF ALL OFFENSES. OTHERS, INCLUDE NOT POSSESS ANY SEXUALLY STIMULATING OR SEXUALLY ORIENTED MATERIAL. THIS PUTS ME INTO A CLASS OF DEVIANTS WHO USE THESE PICTURES TO OFFEND, WHICH IS THE FARTHEST FROM THE TRUTH. THIS HAS NOTHING TO DO WITH THE BURGLARY. OTHER CONDITIONS ARE: NOT UTILIZE 900 NUMBERS, AND REFRAIN FROM THE INTERNET. I HAVE NEVER USED 900 NUMBERS, OR BEEN ON THE INTERNET. BUT, IF I WERE TO EVER NEED TO CIRCUMVENT THESE AS PART OF MY JOB, OR FOR LEISURE, WHERE I AM NOT A PREDATORY OFFENDER, AS IT SEEMS THAT THE COURT IS LABELING ME, I FEEL THAT THESE DO NOT BELONG IN THE BURGLARY PROBATION.

ANOTHER BIG ISSUE, IS THE DNA SAMPLE. THIS BURGLARY CHARGE IS NOT LISTED IN THE STATUTE AS A CRIME THAT REQUIRES THE GIVING OF THE SAMPLE IN STATE V. CUMMINGS 386 N.W. 2d 468 (N.D. 1986), THE COURT ALSO ABUSED ITS DISCRETION.

THE NORTH DAKOTA LEGISLATURE PASSED THE LAW, THAT HAD THE CONVICTIONS LISTED, AS THOSE THAT THEY FELT A CONVICTED PERSON SHOULD SUBMIT THE SAMPLE, AND BURGLARY IS NOT ONE OF THOSE. THE LEGISLATURE HAS BEEN CHALLENGED BY THE STATE, AND THE NORTH DAKOTA SUPREME COURT HAS RULED THAT THEY MUST KNOW WHAT THEY ARE DOING IN THE ENACTMENT OF THE STATUTES.

N.D.C.C. 31-13-03: PERSONS TO BE TESTED INCLUDE AND ARE LISTED BY CHARGE OR CONVICTION, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 7 12.1-20-11. WITH THESE NUMBERS, THERE IS NOT N.D.C.C. 12.1-22-02, BURGLARY AMONG THEM. SUPREME COURTS PRIMARY PURPOSE IS TO ASCERTAIN THE INTENT OF THE LEGISLATURE, WHICH MUST BE SOUGHT FROM THE LANGUAGE OF THE STATUE, ADAMS COUNTY BOARD V. GREATER N.D. ASS'N. 529 N.W. 2d 830 (N.D. 1995). THE MEANS OF THE INTRUSION DEMONSTRATED A PRECONCIEVED & INTENTIONAL EFFORT TO INTRUDE UPON THE PRIVACY OF ANOTHER BY A METHOD THAT SERVED NO LEGITIMATE PURPOSE & WAS OBJECTIONABLE TO A REASONABLE PERSON, HOUGUM V. VALLEY MEMORIAL HOMES ND 24 1998 574 N.W. 2d 812. THE LEGISLATURE DID PASS ANOTHER AMENDMENT TO THE REQUIREMENT TO GIVE A DNA SAMPLE, AND THAT WAS IF A PERSON WAS CONVICTED OF A FELONY OFFENSE AFTER JULY 31, 2005. IN THIS CASE, ERNST WAS NOT CONVICTED AFTER THAT DATE, BUT BEFORE, AND IN)CTOBER, 2002.

THE COURT IS OBLIGATED TO ANOUNCE ALL OF THE CONDITIONS IN COURT ORALLY AT THE SENTENCING HEARING, STATE V. VONDAL, PAR (14), AND PLEA MUST BE REVERSED IF NOT IN ACCORDANCE WITH THE PROVISIONS, PAR (18). ALSO THE APPELLANT MUST SIGN THE PROBATION AGREEMENT IN COURT WHEN THE CONDITIONS HAVE BEEN SET. THIS PROCEDURAL ERROR BY THE COURT VIOLATES RIGHTS RETAINED BY A CONVICTED PERSON, N.D.C.C. 12.1-33-02, & STATE V. BENDER 576 N.W. 2d 210 ND 72 (1998). PROBATION CONDITIONS ARE MANDATORY UNDER N.D.C.C. 12.1-32-07 (3). AND THERE MUST BE A FORMAL NOTICE OF ALL CONDITIONS, STATE V. KUNKEL 455 N.W. 2d 213 (2), N.D. 1990.

WHEN THESE CONDITIONS ARE NOT RELATED TO THE CRIMINALITY, THEY MUST FAIL, STATE V. PERBIX 331 N.W. 2d 14 N.D. 1983, QUOT-

THE DISTRICT COURT DID NOT PROVIDE A LINK TO THE CRIMINALITY OF THE BURGLARY CHARGE, TO WARRANT CONDITIONS THAT HAVE NOTHING TO DO WITH THAT CHARGE, STATE V. DODSON 671 N.W. 2d 825 ND 187 N.D. 2003.

ALL OF THE PROCEDURAL ERRORS BY THE DISTRICT COURT CREATED A MANIFEST INJUSTICE. THE COURT ABUSED ITS POWERS, AND ERNST MUST BE ABLE TO REVERSE HIS PLEA, STATE V. GUNWALL 522 N.W. 2d 183 (N.D. 1994), AND IN STATE V. BENDER.

THE PROBATION CONDITIONS MUST MEET STATUE LAW N.D.C.C. 12.1-32-07 (5), AND RELY ON STATE V. BREINER 1997 ND 71, 562 N.W. 2d 565. THE FINDINGS OF FACT ARE SUPPORTED BY THE PREPOND-ERANCE OF EVIDENCE, SUPREME COURT TO AFFIRM, TALBERT V. N.D. DEPT. OF TRANSP. 560 N.W. 2d 883 (N.D. 1997).

WHEN ERNST WAS SENTENCED ON THE INDECENT EXPOSURE CHARGE OF OCTOBER 28, 2002, THAT SENTENCE WAS TO BE SERVED IN CONJUNC-TION WITH THE REMAINING SENTENCES. N.D.C.C. 12.1-32-11, §1), STATES THAT WHEN A SHORTER SENTENCE IS IMPOSED WITH A LONGER ONE, THEY SHORTER SHALL BE SERVED CONCURRENT TO THE LONGER ONE. SINCE JUDGE MCGUIRE SENTENCED ERNST TO A ONE YEAR SENTENCE ON THE EXPOSURE CHARGE AT THE SAME TIME AS THE OTHER SIX (6) CHARGES IT HAD TO BE SERVED CONCURRENT. MCGUIRE VIOLATED THAT STATE, WHEN AS TIME WAS TOLLING ON THIS SENTENCE, HE DECIDED TO AMEND THE SENTENCE TO BE SERVED CONSECUTIVELY, IN VIOLATION, STATE V. WOELHOFF, 537 N.W. 2d (N.D. 1995). THE SENTENCE IMPOSED WAS NOT AN ILLEGAL ONE, STATE V. LAWSON 356 N.W. 2d 893 (N.D. 1984). A PERSON MUST BE PRESENT FOR THE COURT TO AMEND A SENTENCE, IN WHICH ERNST WAS NEVER PRESENT FOR THIS AMENDED SENTENCE, CITE:

WHITEMAN V STATE 2002 ND 77, 643 N.W.2d 704 (2002). IN THE AP-
PENDIX IS A COPY OF THE SENTENCE IMPOSED, OR SHOULD I SAY AMENDED
BY THE COURT IN VIOLATION OF STATUE. THE DATE IS WRONG AS JUDGE
MCGUIRE TIED TO HIDE THIS FACT AS IT WAS NOT CHANGFD UNTIL SOME
MANY MONTHS HAD PASSED, AS THE NORTH DAKOTA DEPARTMENT OF CORRECT
IONS ASKED WHETHER IT WAS CONCURRENT OR CONSECUTIVE, AS IT WAS
NOT IN THE SAME TIMEFRAME AS THE BURGLARY, I WOULD PRESUME. THE
COURT REALIZED THAT IT MADE A MISTAKE, BUT TRIED TO HIDE THIS
FACT BY LISTING A DATE THAT WAS CLOSE TO THE ACTUAL SENTENCING
DATE. HOWEVER, THE BURGLARY SENTENCE WAS SIGNED ON NOVEMBER
5, 2002, MCGUIRE SIGNED THE AMENDED SENTENCE, WHERE ERNST WAS
NOT PRESENT, ON NOVEMBER 11, 2002. THE SENTENCING TRASCRPT
WILL SHOW THAT JUDGE MCGUIRE DID IN FACT SENTENCE ERNST TO THE
ONE YEAR SENTENCE ON THAT CHARGE, AND DID SO ON OCTOBER 28,
2002. HE DID NOT SAY THAT IT WAS TO BE SERVED CONSECUTIVE TO
THE BURGLARY SENTENCE.

A SENTENCE THAT IS IMPOSED CONTRARY TO STATUARY PROVISION IS
ILLEGAL, STATE V. WIKA ND 33 N.D. 1998 574, N.W.2d 831 PAR. (1)
WHEN THE COURT CANNOT CHANGE THE SENTENCE IMPOSED AFTER IT HAD
BEGUN TO TOLL.

THE PROBATION CONDITIONS THAT THE COURT IMPOSED ARE FOR
BOTH THE BURGLARY CHARGE, AND THE INDECENT EXPOSURE CHARGE. SO,
SINCE THE COURT ADDED THESE CONDITIONS TO INCORPORATE THE MIS-
DEMEANOR SEX CHARGE INTO THE BURGLARY, IT IS ONLY FITTING THAT
THEY BE SERVED CONCURRENTLY.

SUMMARY

THE PROCEDURAL ERRORS BY THE COURT, STATE V. ABDULLAHI 200 ND 39, 607 N.W.2d 561, WHEREBY ERNST DID NOT SIGN THE PROBATION AGREEMENT IN COURT, AND THE COURT DID NOT ORALLY ANOUNCE THE NUMEROUS PROBATION CONDITIONS, AND THE ILLEGAL AMENDING OF THE SENTENCE, EVEN WITHOUT THE APPELLANT BEING PRESENT, AND IT BEING MANDATORY AS IN THE RULES CRIM PROC. RULE 11, GAVE RISE TO THE FACT THAT ERNST DID NOT PLEAD TO THE PROPER CIRCUMSTANCES AS HE DID NOT FULLY KNOW OF WHAT WAS INVOLVED WITH HIS PLEA.

THE COURT MUST FOLLOW ALL OF THE RULES AS THE COURT IS TO ADVISE ALL CONSEQUENCES THAT ARE PRESENT BEFORE A PERSON IS SENTENCED, OR THE PLEA MAY BE WITHDRAWN. JUDGE MCGUIRE, MADE SURE THAT ERNST COULD NOT WITHDRAW HIS PLEA, AS HE, JUDGE MCGUIRE CREATED THE MANIFEST INJUSTICE AFTER ERNST LEFT THE COURTROOM, BY MAKING THE CHANGES, NOT IN ERNST'S PRESENCE.

DISTRICT COURT ABUSES ITS DISCRETION IF IT ACTS 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. KENSMOE ND 190, 636, N.W.2d, 183 (N.D. 2001), (2), (11), (1,2) (¶7).

TO CORRECT THE MANIFEST OF WHICH THE COURT FAILED TO ADVISE OF THE CONSEQUENCES THAT I SMANDATORY RULE 11 (b), FALLS UNDER STATE V. DAVENPORT 200 ND 218, 620 N.W.2d 164 (N.D. 2000).

UNDER CITE, STATE V. BREINER THE COURT ALSO ABUSED ITS DISCRETION BY NOT INFORMING THE APPELLANT OF THE CONDITIONS OF PROBATION.

IN THE DNA AREA, THE STAUES ARE CONSTRUED AS A WHOLE TO

DETERMINE LEGISLATIVE INTENT, BECAUSE THE LAW NEITHER DOES NOR REQUIRE IDLE ACTS, STATE V. LEPPERT 2003 ND15 656 N.W.2d 718, (N.D. 2003), WHERE LEPPERT CLAIMED EQUAL PROTECTION FOR THE GIVING OF A DNA SAMPLE FOR A NON SEXUAL OFFENSE. ERNST IS CLAIMING THE SAME CHALLENGE. THE LEGISLATURE DID PASS LAWS FOR THE APPLICATION OF THE SAMPLE, AND INCLUDED OFFENSE THAT REQUIRED THAT CERTAIN OFFENDERS MUST BE TESTED, AND THE CHARGE OF BURGLARY IS NOT ONE OF THOSE LISTED. THEREFORE, ERNST SHOULD NOT BE FORCED TO GIVE A DNA SAMPLE, JUST BECAUSE JUDGE MCGUIRE ORDERED THAT ERNST GIVE ONE, THAT IS IN VIOLATION OF ERNST'S CONSTITUTIONAL RIGHT OF SEARCH AND SEIZURE, AND THE EQUAL PROTECTION CLAUSE OF THE 14th AMENDMENT OF U.S.C.A. ART. 1, §§21,22.

THE GOVERNMENT ON A FUNDAMENTAL RIGHT CANNOT BE AN INTRUSION THAT CAN BE TAKEN LIGHTLY. THERE IS NO ROOM FOR THESE ERRORS OR ORDERS BY THE COURT THAT VIOLATE THE PERSON FREEDOMS. IN AN ADDRESS BY PRESIDENT BUSH, ON OCTOBER 25, 2006, THE PRESIDENT STATED THAT ALL GOVERNMENT OFFICIALS MUST BE LIABLE FOR THEIR ACTIONS IF THEY ARE WRONG. THAT IS WHAT MAKES THIS COUNTRY, THE COUNTRY THAT THE CONGRESS AND SENATE ENVISIONED. ANYTHING OTHER, WOULD MAKE THIS JUST ANOTHER PIECE OF LAND.

IN LEPPERT, ¶ 5, THE COURT HAS RULED THAT THE DISTRICT COURT CANNOT VIOLATE THE EQUAL PROTECTION ANALYSIS, AS THE CHARGE THAT WAS LODGED AGAINST ERNST WAS NOT A SEXUAL CHARGE. ERNST ALSO DID NOT PLEAD GUILTY TO A SEXUAL CHARGE THAT IS A FELONY, AS IS WRITTEN BY STATUE. SO, THE DNA SAMPLE CANNOT BE ORDERED BY THE COURT

THE ILLEGAL AMENDED SENTENCE BY THE COURT SHOULD BE REVERSED AS THE COURT ABUSED ITS DECRETION, AND IMPROPERLY AMENDED IT TO THE WISHES OF THE DEPARTMENT OF CORRECTIONS. THEY FELT THAT

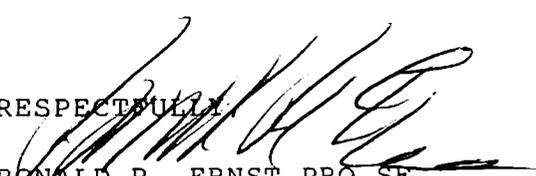
SINCE IT WAS NOT OF THE SAME CRIMINAL ACTIVITY AS THE BURGLARY, THAT THE COURT MUST HAVE MADE A MISTAKE. HOWEVER, LOOKING AT THE TOTAL NUMBER OF CHARGES, LIKE THE TWO THEFT CHARGES, ONE WAS IN 2002, WHILE THE OTHER WAS SOME (5) MONTHS EARLIER IN 2001. SO, HOW CAN THE DEPARTMENT OF THE COURT DEEM ONE TO BE IN CONNECTION WITH THE BURGLARY, AND NOT THE OTHER? ALSO THE STALKING CHARGE WAS LISTED FOR A TIMEFRAME OF (5) MONTHS, AND WOULD NOT BE AS THE SAME TIME AS THE BURGLARY. BUT, THE COURT DID SENTENCE ERNST TO CONCURRENT SENTENCES ON THESE TWO CHARGES, TO THE BURGLARY. ERNST BELIEVES THAT THE DEPARTMENT AND THE COURT ARE CAUSING A DOUBLE JEOPARDY BY TRYING TO AMEND THE EXPOSURE CHARGE. BUT, MCGUIRE DID PUT CONDITIONS INTO THE BURGLARY PROBATION, THAT WOULD TIE INTO THE EXPOSURE CHARGE. IF, THAT WAS HIS INTENTION THEN THE SENTENCE WOULD HAVE TO BE CONCURRENT. OTHERWISE THOSE CONDITIONS WOULD HAVE TO BE REMOVED AS THEY DO NOT FIT INTO BURGLARY.

SO, SINCE ERNST WAS ORIGINALLY SENTENCED TO CONCURRENT TERMS ON ALL OF THE CHARGES, IT MUST REMAIN THAT WAY. THE CONDITIONS THAT ARE FOR SEXUAL ACTIVITY, MUST BE REMOVED, AS THE ONLY PART OF THE SENTENCE TO SERVE, IS THE PROBATION FOR THE BURGLARY CHARGE. ALL THE OTHER CHARGES, THE SENTENCES HAVE EXPIRED.

THEREFORE, ERNST PRAYS FOR THE REVERSAL OF HIS PLEA, AND REMAND BACK TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS, AS THE ONLY CORRECT REMEDY OF THIS MANIFEST INJUSTICE IS THE REVERSAL OF THE PLEA, AS ERNST DID NOT KNOWINGLY UNDERSTAND WHAT HE WAS PLEADING TO.

DATED THIS 2ND DAY OF NOV, 2006.

RESPECTFULLY


RONALD R. ERNST PRO SE