

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20060250
20060251

Ronald R. Ernst,

Appellant,

vs.

State of North Dakota,

Appellee,

] SUPREME COURT NOS. 20056251&2006250

] CASS COUNTY NOS. 02-K-1810&02-K-2032

] FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

] DEC 13 2006

STATE OF NORTH DAKOTA

APPELLANTS REPLY TO APPELLEES BRIEF

APPEAL OF DISTRICT COURT DENIAL FOR CORRECTION OF SENTENCE
THE HONRABLE STEVEN E. McCULLOUGH, JUDGE OF DISTRICT COURT

BIRCH BURDICK

RONALD R. ERNST

STATE ATTORNEY

J.R.C.C.

CASS COUNTY COURTHOUSE

2521 CIRCLE DR.

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JAMESTOWN, N.D. 58401

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ATTORNEY FOR APPELLEE

PRO SE APPELLANT

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ARGUMENT OF THE REPLY TO STATE

THE FIRST ORDER OF BUSINESS, IS THAT THE STATE ATTORNEY IS NOT DEALING WITH THE MAIN ISSUE THAT IS INVOLVED WITH THE CASS COUNTY CASE OF 09-02-K-2032. THE STATE ATTORNEY HAS FAILED TO INSERT THE REGISTER OF ACTIONS ON THIS CASE, AS IT CLEARLY SHOWS THAT AN AMENDED JUDGEMENT OF CONVICTION AND SENTENCE WAS HELD ON 11/08/2002, LINE 13. THIS IS THE PROOF THAT I NEEDED TO SHOW THAT THE COURT CHANGED THE SENTENCE WITHOUT MY BEING PRESENT. THE STATE ATTORNEY PURPOSELY OMITED THIS DOCUMENT, AS TO COVER THE TRACKS OF THE CASS COUNTY COURT.

THE APPELLANT, (ERNST), WAS TRANSPORTED TO THE DEPARTMENT OF CORRECTIONS, BISMARCK ON NOVEMBER 7, 2002. THE DEPARTMENT OF CORRECTIONS HAS LISTED THAT ERNST WAS COMITED ON NOVEMBER 13, 2002, WHICH IS WRONG. IT ALSO HAD TO COVER FOR THE MISTAKES OF CASS COUNTY COURT. THEY WERE ALL IN CAHOOTS TO COVER THIS ILLEGAL AMENDED SENTENCE THAT THE COURT DID ON NOVEMBER 11, 2002.

THE SENTENCE THAT THE COURT DID IMPOSE, OF ONE YEAR ON THIS CASE, WAS NOT AN ILLEGAL SENTENCE. IT WAS APPROPRIATE FOR THE CLASS "A" MISDEMEANOR. AND THAT SENTENCE WAS PRONOUNCED BY THE COURT ON OCTOBER 28, 2002. THAT IS WHEN THE SENTENCE BEGAN TO TOLL. THAT SENTENCE WAS COMPLETED ON OCTOBER 28, 2003. THE COURT COULD NOT CHANGE THE SENTENCE AFTER IT HAD STARTED TO BE SERVED, STATE V. KUNZE 350 N.W. 2d. 36 (N.D. 1984). AND SINCE ERNST WAS NOT PRESENT BEFORE THE COURT, FOR THE COURT TO MAKE AN ATTEMPT TO CORRECT OF CHANGE THIS SENTENCE, WHEREBY IT DID SO IN AN UNLEGAL MANNER, WHITEMAN V. STATE 2002 ND 77, 643 N.W. 2d 704 (2002).

THE STATE IS TRYING TO STATE THAT THE SENTENCE WAS IMPOSED BY THE COURT IN A CONSECUTIVE MANNER. IF, THAT WAS TRUE, THEN IT HAD NO REASON TO CHANGE OR AMEND THE SENTENCE TO CONSECUTIVE, AS THE APPELLANT'S APPENDIX SHOWS. HOW CAN THE COURT AMEND A SENTENCE TO CONSECUTIVE, FROM WHAT KIND OF SENTENCE? THE STATE IS TRYING TO COVER MISTAKES IT MADE IN THE BEGINNING, AS IT PROBABLY MEANT TO SENTENCE TO CONSECUTIVE, BUT FAILED TO DO SO. NOW, IT WANTS TO CHANGE THE SENTENCE AFTER IT HAS ALREADY BEEN SERVED. IT CANNOT CHANGE ~~IT~~ AS THE TIME FRAME IS OVER.

THE COURT DID NOT WANT TO SEND THE REGISTER OF ACTION TO THE APPELLANT, WHEN THE APPELLANT MOTIONED THE COURT TO SUBMIT ONE TO HIM. IT IS CLEAR THAT THE COURT DID NOT WANT THIS POINTED OUT IN IT ON PAGE 1, LINE 13, THAT THE COURT DID IN FACT ATTEMPT TO AMEND A LEGAL SENTENCE THAT WAS IMPOSED. TO AMEND A LEGAL SENTENCE THE COURT HAD TO PERFORM AN ILLEGAL ACT, WHERE THE APPELLANT WAS NOT PRESENT, TO KNOW ABOUT THIS ILLEGAL ACT.

ALSO, IN N.D.C.C. 12.1-32-11 (1), IT SO STATES THAT WHEN A SMALLER SENTENCE IS IMPOSED WITH A BIGGER SENTENCE, AS IN THIS CASE OF THE ACCOMPANIED BURGLARY SENTENCE OF (5) YEARS, THAT THE SMALLER WILL BE RUN TOGETHER WITH THE BIGGER, UNLESS THE COURT DEEMS OTHERWISE. THE COURT DID IN FACT RUN THE (1) YEAR TOGETHER WITH THE LARGER ONE, BUT ONLY DECIDED TO CHANGE IT AFTER THE NORTH DAKOTA DEPARTMENT OF CORRECTIONS, QUESTIONED THE SENTENCE, AS THIS CASE WAS FROM A DIFFERENT TIMEFRAME OF THE BURGLARY.

THAT IS WHEN THE COURT REALIZED THAT IT HAD MADE A MISTAKE AND DID THE AMENDED SENTENCE, TO COVER IT'S TRACKS, BUT COULD NOT AS THE SENTENCE WAS ALREADY BEING SERVED. AND THEN THE DEPARTMENT TRIED TO COVER THE TRACKS OF THE COURT, BY STATING THAT ERNST WAS NOT COMITED TO THE PRISON, UNTIL (2) DAYS HAD PASSED SINCE THE COURT VIOLATED STATUE LAW, IN THE AMENDED SENTENCE. WHEN IN REALITY ERNST WAS ALREADY IN PRISON, PRIOR TO THE ERROR BY THE COURT, THAT IT TRIED TO CORRECT.

THE SENTENCE IMPOSED WAS NOT ILLEGAL, AND COULD NOT BE CHANGED. NOW, THE DEPARTMENT IS HOLDING THE APPELLANT TO SERVE THIS ILLEGAL SENTENCE, WHEN HIS TRUE RELEASE DATE WAS IN JULY 2006.

THE STATE ATTORNEY HAS ALSO STATED THAT ERNST WAS ARRESTED FOR A WARRANT THAT WAS SIGNED ON JUNE 4, 2002. IN ACTUALITY, IT WAS SIGNED ON JUNE 3, 2002. ERNST WAS BEING HELD IN JAIL, IN MINNESOTA FOR THIS WARRANT. WHEN THE COURT SENTENCED ERNST TO PRISON, IT GAVE ERNST 142 DAYS CREDIT FOR TIME PREVIOUSLY SERVED. THIS IS WRONG, AS WHEN THAT TIME IS BACKED UP FROM THE SENTENCE DATE OF OCTOBER 28, 2002, THAT ONLY COMES TO JUNE 8, 2002. THE COURT STILL OWES ERNST ANOTHER (5) DAYS OF PRE-SENTENCE TIME THAT IS WARRANTED BY STATUE, N.D.C.C. 12.1-32-02 (2). THIS TIME MUST BE AWARDED, IN CASE ERNST HAS HIS PROBATION REVOKED¹⁵

THAT TIME CAN BE USED TO SUBTRACT ANY TIME THAT WILL HAVE TO BE SERVED ON THE BURGLARY CHARGE.

THE DNA SAMPLE THAT THE CASS COUNTY COURT ORDERED, WHEREBY IT HAD NO AUTHORITY TO DO SO, AS THE REQUIREMENT IS PROPOSED BY STATUE, AND ONLY THE LEGISLATURE HAS THE AUTHORITY TO DEMAND THIS SAMPLE TO BE TAKEN WITH THE COMITING OF CERTAIN CRIMES. AND ERNST WAS NOT CONVICTED OF ANY OF THESE CRIMES, THAT THE DNA SAMPLE MUST BE GIVEN.

SUMMARY

THE SUPREME COURT CAN REVERSE THE DENIAL OF CASS COUNTY COURT, IN THAT IT CAN ABIDE BY IT'S OWN CITES, STATE V. KUNZE, AND WHITEMAN V. STATE. THE SENTENCE OF ONE YEAR THAT WAS IMPOSED ON OCTOBER 28, 2002, STARTED TO TOLL ON THAT DATE. THE CASS COURT COULD NOT AMEND THAT SENTENCE, BECAUSE ERNST WAS NOT PRESENT BEFORE THE COURT, AS HE WAS IN PRISON.

THE SUPREME COURT CAN ALSO ABIDE BY THE STATUE AS IT IS WRITTEN. IT SO STATES THAT ONLY PERSON'S CONVICTED OF CERTAIN FELONY SEX OFFENSES, OR OTHER FELONY CRIMES MUST GIVE A DNA SAMPLE TO THE STATE. ERNST DOES NOT FALL INTO THIS CLASS.

THE SUPREME COURT MUST DECIFER HOW A COURT CAN AMEND A SENTENCE THAT IS STATED BY THE STATE ATTORNEY IS CONSECUTIVE, TO THAT OF CONSECUTIVE. IN ORDER TO DO THIS, THE ORIGINAL SENTENCE HAD TO BE CONCURRENT. THE COURT DISCOVERED IT'S MISTAKE, AND TRIED TO REMEDY THAT MISTAKE BY DOING THE ILLEGAL AMENDED SENTENCE, TRYING TO GET IT PAST ERNST WITHOUT HIS KNOWING IT.

THEREFORE, THE SUPREME COURT MUST REVERSE THE DISTRICT COURT DENIAL, AND ORDER THE RELEASE OF ERNST, AS THE SENTENCES IMPOSED HAVE ALREADY BEEN SERVED.

DATED THIS 13TH DAY OF Dec, 2006.

RESPECTFULLY SUBMITTED,

RONALD R. ERNST 23241

CERTIFICATE OF SERVICE

THE UNDERSIGNED, BEING DULY SWORN UNDER PENALTY OF PERJURY,
DEPOSES AND SAYS: I'M OVER THE AGE OF EIGHTEEN YEARS OLD AND ON
THE 13TH DAY OF DEC., 2006, P. M.

I MAILED THE FOLLOWING:

REPLY BRIEF

BY PLACING IT/THEM IN A PREPAID ENVELOPE, AND ADDRESSED AS
FOLLOWS:

CLERK OF COURT	BIRCH BURDICK
SUPREME COURT	STATE ATTORNEY
STATE OF NORTH DAKOTA	CASS COUNTY COURTHOUSE
600 E. BOULEVARD AV. DEPT. 180	P.O. BOX 2806
BISMARCK, N.D. 58505-0530	FARGO, N.D. 58108-2806,



AFFIANT

RONALD R. ERNST 23241
J.R.C.C.
2521 CIRCLE DR.
JAMESTOWN, N.D. 58401

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13 DAY OF
December 2006, IN STUTSMAN COUNTY, NORTH DAKOTA.



NOTARY

CHAD PRINGLE
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JULY 5, 2007

COMMISSION EXPIRES