

ORIGINAL

20070313

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Raymond Voisine,)
Appellant,)
vs.)
State of North Dakota,)
Appellee.)

Supreme Court No. 20070313

Seridan Co. No. 04-K-01004

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

FEB - 8 2008

STATE OF NORTH DAKOTA

BRIEF OF APPELLANT VOISINE & *Appended*

APPEAL FROM ORDER DENYING
POST CONVICTION RELIEF DATED
SEPTEMBER 26, 2007 IN DISTRICT
COURT, SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE SONNA M. ANDERSON PRESIDING

Raymond Voisine
2521 Circle Drive
Jamestown, ND 58401

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STATEMENT OF THE ISSUES

1. The Appellant's probation was revoked unlawfully.

Whereas the Appellant was not subject to the conditions of probation at the time of the "Petition" to the Court, for revocation.

Whereof, the Appellant relied on the District Court's Sentencing Order, which specifically states that Appellant shall be subject to the "Conditions of Probation" while serving his probation under the "Suspended Period" of the sentence, for which applies only upon release from incarceration, as prison time is not a period of suspended sentence.

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STATE OF NORTH DAKOTA

STATEMENT OF THE CASE

¶1 On October 22, 2004, Appellant, Raymond Voisine (hereafter "Voisine"), upon entry of a plea agreement to a charge of Gross Sexual Imposition, was sentenced to five years for imprisonment under the custody of the North Dakota Department of Corrections and Rehabilitation (hereafter "NDDOCR"), requiring Voisine to serve one year of incarceration, and upon the release from that incarceration, begin a four year suspension period from from imprisonment as a term of probation under the supervision, management, and control of a probation officer; that term of probation under the suspended period being subject to the conditions of probation set forth in an 'Appendix A' attached to the applicable sentencing document.

¶2 On May 2, 2005, occurring before Voisine's release from incarceration, a one Terry Grumbo, probation officer for Voisine even though he was not on probation and suspended period of sentence, petitioned the Court for revocation of Voisine's probation. Mr. Grumbo claimed that Voisine violated his probation while incarcerated at the State Penitentiary for failure to successfully complete sex offender treatment and admit responsibility to his alleged crime, as ordered under the conditions of probation set forth in the aforementioned 'Appendix A', condition number thirteen.

¶3 On May 4, 2005, an order to apprehend Voisine for violation of probation was made by Judge Sonna Anderson, pursuant to the petition for revocation of probation made by Mr. Grumbo.

¶4 Voisine was arrested on May 10, 2005, while in the process of being released from incarceration at the State Penitentiary while still on State Penitentiary property.

¶5 On June 2, 2005, Voisine, having appeared at Court with his attorney, Marvin Hager, was re-sentenced to ten years for imprisonment under the custody of the "NDDOCR", requiring Voisine to serve five years of incarceration, and upon release from that incarceration, begin a five year suspension period from imprisonment as a term of probation under the supervision, management, and control of a probation officer.

STATEMENT OF THE FACTS

¶6 Voisine began his sentence to incarceration on October 22, 2004, with 121 days credit for time served already.

¶7 During Voisine's incarceration period, he participated in a sex offender treatment program offered to him during his stay at the State Penitentiary.

¶8 During such period of incarceration, treatment staff informed Mr. Grumbo that they believed that Voisine to be not compliant with treatment for allegedly failing to admit criminal responsibility.

¶9 On May 2, 2005, Mr. Grumbo, Voisine's probation officer, petitioned the Court to revoke Voisine's probation for violating condition thirteen of "Appendix A' during his court-ordered incarceration period of which a probation violation did not apply to the non-suspended period of incarceration.

¶10 On May 10, 2005, Voisine was arrested at the State Penitentiary while being released from incarceration for the alleged probation violation.

¶11 On June 2, 2005, Voisine appeared at Court and was unlawfully revoked of his probation and re-sentenced.

¶12 Thereafter, Voisine filed for post conviction relief based on a claim of his probation being unlawfully revoked, the alleged violation not existant.

¶13 On September 26, 2007, the District Court issued an order denying Voisine of post conviction relief, whereof, he now appeals that decision to this Court.

LAW AND ARGUMENT

¶14 During the revocation hearing, the prosecution did not establish that there was a violation of probation. The State claimed that Voisine violated his probation while he was incarcerated. As a result of that hearing, Voisine was re-sentenced to extended incarceration, unlawfully.

¶15 Voisine appeals to this Court, in that, he argues that his probation or suspended portion of his sentence was unlawfully revoked, because the alleged violation occurred during the period of incarceration of which probation and suspended period of the sentence did not apply. The conditions of probation apply to the suspended period of the sentence, and not during incarceration.

¶16 The State unlawfully revoked probation because the State failed to establish that a violation of probation occurred.

Voisine was not on probation at the time of the alleged

violation. Therefore, there was no violation of probation.

¶17 The language of the sentencing order is clear, as Voisine and any ordinary person of average intelligence would understand. The order reads, "During the suspended period, the Defendant must be placed on supervised probation...subject to conditions in the attached appendix A." Furthermore, that order reads, "the execution of the balance of four years is suspended for a period of five years, beginning after the period of incarceration". (emphasis on the underlined).

¶18 Thus, Voisine is not at fault or in violation of the original sentencing order. Voisine understood, as is plain to the ordinary person, except the prosecutor, that the conditions of probation apply only to the suspended period of the sentence, and that the balance of four years for a period of five years is suspended, beginning after the period of incarceration.

CONCLUSION

¶19 'Appendix A' begins its execution and effect, according to the sentencing order, beginning at the time of release from incarceration, as 'Appendix A' applies only to the suspended period of sentence which begins upon release from incarceration. The alleged violation of probation is not a claimable violation, in that, the claim occurred without effect of 'Appendix A'. The conditions of probation did not apply while Voisine was incarcerated, but rather, they begin effect after release from incarceration. A probation violation cannot occur unless Voisine was serving probation at the time of the claim of the

violation. Citation of statutes and authorities are not necessary to quote, as the presence of law is embodied within the Court's sentencing order, wherein, logic and honor apply to the simplicity of justice.

¶20 Voisine objects to the irrelevancy of any State argument concerning sex offender treatment, whereas, the relevant matter is not the question of complying with the conditions of probation but rather whether Voisine was subject to the conditions of probation at the time of the claim of violation. It is clear and obvious that the time of the claim of violation occurred while Voisine was incarcerated and not on probation.

¶21 Voisine was not subject to the conditions of probation outlined in 'Appendix A' during the time of the claim of violation. There was no probation violation of legitimacy.

¶22 Thus, Voisine strongly requests that this Court review and reverse the District Court's decision, and enforce the original sentencing order, terminating the current sentencing order.

Signed this 24th day of November, 2007.



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