

20120179

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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JUN 21 2012

SUPREME COURT NO.20120179
DISTRICT COURT NO.08-2012-CV-00202 STATE OF NORTH DAKOTA

Tilmer Everett

Plaintiff/Appellant,

Vs.

State of North Dakota

Defendant/Appellee,

Appellant Everett's Brief

**Appeal from Order Denying Post-Conviction
March 21, 2012
South Central Judicial District
Burleigh County Case No.08-2012-CV-00202
Judge Bruce Romanick**

**Appeal from Order Denying Motion to Remove Judge
March 21, 2012
South Central Judicial District
Burleigh County Case No.08-2012-CV-00202
Judge Bruce Romanick**

**Tilmer Everett; Pro Se.
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Box 5521
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Table of Contents

Table of Contents.....	i
Table of Cases.....	iii
Statutes and other Authorities	v
Statement of the Issues	1
Nature of the Case	2
Statement of the Facts	5
Arguments	17

Issues Presented: A Post-Conviction Relief Application with an affidavit attached dated January 27, 2012 had been filed to the District Court under N.D.C.C. 29-32.1-01(1)

- (a) The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota; (*illegal judge and illegal sentence*)
- (b) The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected; (*perjured testimony, falsifying evidence, and withholding evidence*)
- (e) Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice. (*index number #329*)

Addressed and declared with three (3) concise grounds as stated below;

Ground One: Denial of a fair right to an appeal.

Ground Two: New Evidence.

Ground Three: Two illegal judgment of dismissals dated November 15, 2010 and June 24, 2011 were signed by District Court judge Bruce Romanick as those documents were not properly served on “me” as the Appellant.

See; Supreme Court No.20120179 Appellant’s Appendix pages #30-55.

Issues Presented: A Motion for Reconsideration with an affidavit attached dated February 16, 2012 had been filed with the District Court. In this request made to the District Court, I Tilmer Everett had filed a prejudicial allegation against judge Bruce Romanick within my post-conviction relief application dated January 27, 2012 as it would be a conflict of interest for this the judge to rule and or proceed within my request made to the District Court.

Addressed with:

- 1) That judge Bruce Romanick had been illegally requested and then obtained as my trial judge by the State under N.D.C.C. 29-15-21 Demand for a Change of Judge from August 10, 2006 thru December 5-7, 2006. As this makes my arguments made within my application dated January 27, 2012 against judge Bruce Romanick as an illegal judge at risk. As this is a conflict.
- 2) That judge Bruce Romanick prejudiced me Tilmer Everett from an fair right to a appeal when “he” (Bruce Romanick) deliberately failed to instruct on two separate occasions to tell both the District Clerk of Court’s Office and or the Burleigh County State’s Attorneys Office to provide me with two judgment of dismissals dated November 15, 2010 and June 24, 2011 after he had signed them. As each of those documents named were illegally withheld from me Tilmer Everett for my appeals with the North Dakota Supreme Court. As this is a conflict.

As an affidavit dated September 16, 2011 had also been addressed against judge Bruce Romanick stated by Christine Harmon District Deputy Clerk of Court to you the North Dakota Supreme Court concerning a Notice of Appeal that I Tilmer Everett had filed against a denial of a subpoena duces tecum. See; Supreme Court No.20120179 Appellant’s Appendix “B” pages #136-138. I also had addressed issues of prejudice against judge Bruce Romanick in 2011 with the court that established his unethical act against me Tilmer Everett within my appeal process. See; Appendix “B” pages #105-130.

Conclusion..... 24
Certificate of Mailing 26

Table of Cases

Brady vs. Md,
373 U.S. 83,87 (1963).

Kyles vs. Whitley,
514 U.S. 419,453 (1995).

Mooney vs. Holohan,
294 U.S. 103,112 (1935).

Whiteman vs. State,
643 N.W. 2d 704 (2002).

Roe vs. Flores-Ortega,
528 U.S. 470,145, L.ED.2d 985,120 S.ct.1029 (2000).

Frank's Vs. Delaware,
438 U.S. 154, 164-171 (1978).

Bulloch Vs. United States,
763 F.2d 1115, 1112 (10th Cir. 1985).

The People of the State of Illinois Vs. Fred E. Sterling,
357 Ill. 354; 192 N.E. 229 (1934).

People Vs. Zadic,
88 Ill.App.3d 477, 410 N.E. 2d 626 (1980).

Kenner Vs. C.I.R.,
387 F3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p.512, 60.23.

Liteky Vs. U.S.,
114 S.Ct. 1147, 1162 (1994). [Emphasis added].

Liljeberg Vs. Health Service Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988);

United States Vs. Balistrieri,
779 F.2d 1191 (7th Cir. (1985) Section 455(a).)

Taylor Vs. O'Grady,
888 F.2d 1189 (7th, 1989).

United States Vs. Sciuto,
521 F.2d 842, 845 (7th, Cir. 1996).

Offutt Vs. United States,
348 U.S. 11, 14, 75 S.Ct 11, 13 (1954).

Table of Authorities

U.S.C.A. Const. Amend 5, Due Process (the due process clause).

U.S.C.A. Const. Amend 6, Effective Assistance of Counsel.

U.S.C.A. Const. Amend 6, Right to face Accuser (confrontation clause).

N.D.R.App.P. 3(a)(1)(d)

N.D.R.Civ.P. 58(b)

Interference with exercise of civil rights by District Court judge Bruce Romanick as denying me Tilmer Everett the right to be heard on evidentiary issues with post-conviction relief requests filed. (2010, 2011, and 2012)

“The right to a tribunal free from bias or prejudice is based, not on section 144, but the due process clause.”

If you were a non-represented litigant, and should the Court not follow the law as to Non-Represented Litigants, then the judge has expressed an “appearance of partiality” and, under the law, it would seem that he/she has disqualified him/herself.

North Dakota Rules of Professional Conduct

Rule 3.3 Candor towards the tribunal. (a)(1)(b)

Rule 3.4 Fairness to opposing party and counsel. (a)(b)(c)(d) and (e)

Rule 3.8 Special responsibilities of a prosecutor. (a)(d)

Criminal Fraud- fraud that has been made illegal by statute and that subjects the offender to criminal penalties such as fines and imprisonment.

Obstruction of Justice- Interference with the orderly administration of law and justice, as by giving false information to or withholding evidence from a police officer or prosecutor, or by harming or intimidating a witness or juror. Obstruction of justice is a crime in most jurisdictions.

Judicial Notes:

- * The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution.

- * When any officer of the court has committed "fraud on the court", the orders and judgments of that court are void, of no legal force or effect.

- * Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, No judge has immunity to engage in such acts.

Statement of the Issues

This is the presentation of District Court judge Bruce Romanick's Memorandum Opinion and Order Denying Post-Conviction Relief dated March 21, 2012 and also District Court judge Bruce Romanick's illegal Order Denying Request to Remove Judge dated March 21, 2012.

- I Judge Bruce Romanick's memorandum opinion and order denying post-conviction relief dated March 21, 2012 as addressed against me Tilmer Everett is inaccurate and also prejudicial. Because he as the judge is in fact attempting to distort and also manipulate the three (3) actual grounds that I had declared within my post-conviction relief application dated January 27, 2012.**

- II Judge Bruce Romanick erred with prejudice and bias against me Tilmer Everett within his stated memorandum opinion and order denying post-conviction relief dated March 21, 2012. As judge Romanick completely refuses to acknowledge my affidavit as legal support with "new evidence" attached to the post-conviction application dated January 27, 2012 as addressed and declared against the State.**

- III Judge Bruce Romanick's stated memorandum opinion and order denying post-conviction relief dated March 21, 2012 is now being declared illegal and void by law within new case file. Due to the fact that "he" as a judge refuses to accept and or even acknowledge within his addressed ruling, that my due process rights concerning discovery had been violated by the State, when the State had filed an deceitful motion to the District Court in August of 2006 and had my original trial judge name Donald Jorgensen illegally disqualified.**

- IV Judge Bruce Romanick's order denying request to remove judge dated March 21, 2012 does violate my due process rights with prejudice. Because he as a judge requested to be removed should have never heard and or ruled upon my motion dated February 16, 2012 since it was filed and against him.**

Nature of the Case(s)

On November 15, 2010 my rights were violated from a fair right to an appeal within Supreme Court Case No.20100222 by the State. Because the Burleigh County State's Attorneys Office had deliberately failed to send and or have me Tilmer Everett as a Appellant served with a Judgment of Dismissal for the Court's Signature (a document) for my appeal process with you the North Dakota Supreme Court. As that document signed by judge Bruce Romanick dated November 15, 2010 had been intentionally withheld from me because on at least two separate occasions (November 5, and 10, of 2010), you the Supreme Court specifically told prosecutor Cynthia Feland to have that Judgment of Dismissal for the Court's Signature to be signed and sent in to your office and yet a prosecutor name Cynthia Feland did nothing. As I Tilmer Everett was finally sent that Judgment of Dismissal dated November 15, 2010 by a District Deputy Clerk of Court name Christine Harmon dated December 21, 2011. And then after receiving that document dated November 15, 2010 (as new information) from the District Clerk of Court's Office that I never knew about, I than filed for post-conviction relief and declared with the District Court that my appeal right were violated with prejudiced from a fair right to an appeal within Supreme Court No.20100222 addressed January 27, 2012. As my request made to the District Court for relief was then denied dated March 21, 2012 by judge Bruce Romanick. Which now brings my three grounds that I had addressed and declared to the District Court within the application dated January 27, 2012 to you the North Dakota Supreme Court. *(Nature of the Case)*

[I will note for the record that neither the State and or District Court judge Bruce Romanick for that matter ever tried to acknowledge and discuss those issues that I had declared within my request for post-conviction relief in the reply response dated February 17, 2012 and or the memorandum opinion dated March 21, 2012.]

On June 24, 2011 I Tilmer Everett was denied a fair right to an appeal **again** by ~~the~~ State (the Burleigh County State's Attorneys Office), when they prejudicially failed to send and or have me Tilmer Everett served with a certified copy of another Judgment of Dismissal for the Court's Signature (as information) for my appeal process as a pro-se litigant concerning the appeal brief and appendix due with you the North Dakota Supreme Court. As this document (the judgment of dismissal dated June 24, 2011) was finally sent to me Tilmer Everett by District Deputy Clerk of Court Christine Harmon dated December 21, 2011. And again this allowed me Tilmer Everett as an applicant dated January 27, 2012 the right to address and declare that I was prejudiced for the second time as I was denied a fair right to an appeal within Supreme Court No.20110189 (2011) just like in Supreme Court No.20100222 (2010). As my request made for relief to the District Court was than denied dated March 21, 2012 by judge Bruce Romanick. As I have filed an appeal against that judgment dated March 21, 2012 of which now brings me Tilmer Everett to you the North Dakota Supreme Court. *(Nature of the Case)*

*[I will note again for the record that I did bring up the issue to you the North Dakota Supreme Court in a motion or a letter, that the Burleigh County State's Attorneys Office and or the District Court **again** failed to properly send or serve me Tilmer Everett with a certified copy of that judgment of dismissal for the court's signature dated 2011 for my appeal process and proceedings.]*

March 21, 2012 I Tilmer Everett was again denied the proper due process procedure when a illegal judge name Bruce Romanick had prejudicially heard and ruled upon my motion filed with the District Court dated February 16, 2012. As the Motion made to the District Court did request to have judge Bruce Romanick be removed

from my case file due to a conflict of interest filed with the District Court in regards to some of the issues that I had addressed within my post-conviction application. Because there is evidence stated on record that shows and proves judge Bruce Romanick had been illegally obtained as my trial judge with an untruth and illegal motion dated 8-10-06 made to the District Court by the State and also that " he" (Bruce Romanick) illegally and prejudicially failed to send and or have me Tilmer Everett served with two judgment of dismissals for the court's signature (2010 and 2011) for my appeal proceedings with you the North Dakota Supreme Court. I then filed an appeal against judge Bruce Romanick's prejudicial judgment as stated against me Tilmer Everett, which now brings me to you the North Dakota Supreme Court. *(Nature of the Case)*

[I will note that judge Bruce Romanick never did heard me out about my concerns about it being considered illegal for him to rule upon my motion as stated against him. Instead what he did was use another illegal judgment that he made against me Tilmer Everett in 2011 within his ruling in 2012.]

Statement of the Facts

1. In this case on January 27, 2012 Applicant/Appellant Tilmer Everett had filed an application for post-conviction relief attached with a affidavit and documents as New Evidence to the District Court. The following events as circumstances are now being addressed below as:

2. January 31, 2012 the District Clerk of Court's Office I had received notification of assignment of judge with a new case number that my post-conviction application dated January 27, 2012 had been received as filed. Stating in that document (notification) that judge Bruce Romanick was going to be assigned as the judge to my case file number with assigning me a new case file number as 08-2012-CV-00202. See; Supreme Court No. 20120179 Appellant's Appendix page #56-57.

3. After my post-conviction application was received as filed with the District Court I had than filed a Notice of Motion and a Motion for Discovery dated February 8, 2012 requesting for the Burleigh County State's Attorneys Office give me Tilmer Everett seven items (1-7) named within Case No.06-9417. The motion made to the District Court stated against the State had also been addressed with an affidavit as legal support in relation to the new evidence (index #329) declared within my request for post-conviction relief dated January 27, 2012. See; Supreme Court No.20120179 Appellant's Appendix pages #58-65.

4. February 16, 2012 I than had filed a Notice of Motion and a Motion for Reconsideration under North Dakota Rule Civil Procedure 60(b) for relief with the District Court from the Judgment or Order dated January 31, 2012. Requesting to have a

District Court judge Bruce Romanick removed from my new case file number due to a conflict of interest concerning issues raised within my post-conviction relief application dated January 27, 2012. This request made to the District Court had been addressed with an affidavit as legal support as my intent and a precaution to protect all the allegations that I had stated and made against an illegal judge name Bruce Romanick within my case file. See; Supreme Court No.20120179 Appellant's Appendix pages #66-72.

5. February 17, 2012 the State then files a reply response back to my post-conviction application dated January 27, 2012 to the District Court. In this response stated by Jeffery Ubben I will note for the record that there was nothing relevant at all made by the State to what issues had addressed within my application. As a matter of fact the State attempts to manipulate my motion that I had filed with the District Court after my application for post-conviction had been filed. [*stated in page 3.line 3, "On February 8, 2012, Everett filed his sixth application for post-conviction relief."*] Now see what is really stated on record within the Statement of the Facts in numbers 1 and 2 as addressed above and or even in my appendix for that matter. As the States reply response stated to the District Court only shows that "he" attempts to use frivolous and manipulative prejudicial and illegal rulings made against me by you the North Dakota Supreme Court. See; Supreme Court No.20120179 Appellant's Appendix pages #73-76.

6. On that Same day February 17, 2012 attached with the States reply response, I had also received a Notice of Motion and Motion for Protective Order to be made against me Tilmer Everett by the State. As this request made to the District Court by the State is there attempt (intent) to involve that Court to also violate my rights in the process

of my appeal with you the North Dakota Supreme Court. Attempting to prevent me from seeking evidence in my favor (Case No.06-9417) that will prove what discovery had been in fact illegally withheld from me for my trial by the State and or the State attempting to prevent me from proving my innocence within Case No.06-K-1026/06-9442.

See; Supreme Court No.20120179 Appellant's Appendix pages #77-80.

[The motion made by S.A. Jeffery Ubben to the District Court is evidence that shows he is attempting to try and involve the Court with committing a criminal act and or crime against me Tilmer Everett called obstruction of justice or a criminal contempt of court violation against an ruling and order made on the court dated July 31, 2006 by District Court Judge Donald Jorgensen and is in fact declared within Case No.08-2012-CV-00202.]

I will note for the record that if that request (motion for a protective order) is granted to the State by the District Court, than I will file a 1983 class action civil rights violation law suit against each and everyone of those named individuals who are "all" attempting to prevent me Tilmer Everett from seeking the truth to a crime (Case No.06-9417) that my name had gotten illegally accused of by Bismarck police and is being covered-up within my appeal attempts by prosecutors and a judge.

7. February 22, 2012 I Tilmer Everett had than filed a motion to deny the States response with the District Court. Requesting the District Court to deny the States response with prejudice in its entirety. **See;** Supreme Court No.20120179 Appellant's Appendix pages #81-87.

8. February 24, 2012 I then had filed a reply response back to the District Court against the States motion requesting for an protective order dated February 17, 2012. In my reply response I had also addressed to the District Court that there was an order made on the court by Judge Donald Jorgensen dated July 31, 2006 and that the Burleigh County

State's Attorneys Office was in violation of that ruling made by Judge Donald Jorgensen. Informing the District Court in my response that the motion dated February 17, 2012 made by the State could also involve the court with committing the crimes called obstruction of justice and or hinderance of the prosecution to Case No.06-9417. Since I do have evidence on record already proving that the State have already intended to misconstrue all the facts and circumstances about Case No.06-9417 within my Case File No.06-K-1026/06-9442 and trial proceedings. See; Supreme Court No.20120179 Appellant's Appendix pages #88-90.

With my reply response dated February 24, 2012 I also had file a Notice of Motion and a Motion with the District Court requesting that a hearing be held on the States motion for a protective order dated February 17, 2012. Giving the State ten day rule to respond to my request made to the District Court. See; Supreme Court No.20120179 Appellant's Appendix pages #91-94.

9. February 28, 2012 the State than files a response back to the District Court in regards my motion that I had served and filed with the District Court dated February 16, 2012 when requesting to have a judge name Bruce Romanick be removed from my case file due to an conflict of interest. With the State using an illegal judgment (2011) made against me by the District Court first and than you the North Dakota Supreme Court. See. Supreme Court No.20120179 Appellant's Appendix pages #95-96.

10. March 5, 2012 I Tilmer Everett then had filed a reply response back to and against the States motion dated February 28, 2012 filed with the District Court. Requesting the District Court in my reply response to deny the States request with

prejudice in its entirety. Advising the District Court that an Notice and Order had already been set by you the District Court that Judge Donald Jorgensen was suppose to be my trial judge and that he (Mr. Jorgensen) had made an order on the court against the State. **See;** Supreme Court No.20120179 Appellant's Appendix pages #97-101.

With my reply response dated March 5, 2012 as addressed above I had also filed another motion to the District Court requesting that a different judge hear and rule upon my motion that I had served and filed with the District Court. Since I had noted that it was judge Bruce Romanick's obligated duty to promptly designate another judge to act in the place of that motion filed against him. **See;** Supreme Court No.20120179 Appellant's Appendix pages #102-104.

11. March 21, 2012 I Tilmer Everett had then filed a motion of default against the State with the District Court for that agencies failure to response to my motion dated February 24, 2012. Advising the District Court that an affidavit dated April 5, 2011 with attached documents numbered #1-#20 as factual elements (probable cause), has already been given and addressed to the Court, that establishes and proves Bismarck police had in fact illegal accused and wrongfully named me Tilmer Everett the prime suspect from one investigation into the other. [Case No.06-9417 first; Case No.06-9442 second.] And that the State was also in violation of an order made on the court by Judge Donald Jorgensen. Therefore this by law now entitled me Tilmer Everett to be heard on and against the States served motion filed with the District Court dated February 17, 2012. **See;** Supreme Court No.20120179 Appellant's Appendix pages #105-109.

12. March 21, 2012 District Court judge Bruce Romanick then sends me Tilmer Everett a prejudicial and frivolous memorandum opinion and order denying post-conviction relief. Bruce Romanick's opinion and order drafted against me has no bearing at all what so ever to the exact issues (the three grounds) that I had addressed and declared within my application dated January 27, 2012. As judge Bruce Romanick is attempting to completely distort those three grounds as addressed with other legitimate issues raised within past post-convictions that were also prejudicially denied. Only to make his own Judgment of Dismissal this time with complete disregard to my due process rights concerning those three grounds that I had addressed and declared to the District Court. The fact the judge Bruce Romanick ruled upon another motion that I had filed with the District within his opinion and order shows his prejudice against me altogether. See; Supreme Court No.20120179 Appellant's Appendix pages #110-113.

March 23, 2012 I Tilmer Everett had also received an order dated March 21, 2012 Stated by an illegal judge name Bruce Romanick within my case file that he was denying my motion that I had filed with the District Court Dated March 5, 2012. As this named individual (Bruce Romanick) as the audacity to bring up and address an illegal ruling that he had also made against me Tilmer Everett in 2011. See; Supreme Court No.20120179 Appellant's Appendix page #114.

13. March 29, 2012 I then had filed two notice of appeals with the District Clerk of Court's Office. For the record, in each of those notice of appeals filed I had addressed to the Court most of the information from January 27, 2012 all the way through March 22, 2012 concerning what I had done so far within my new case file number. As I was

in serious disagreement with judge Bruce Romanick's illegal and prejudicial rulings made against me. See; Supreme Court No.20120179 Appellant's Appendix pages #115-129.

14. April 4, 2012 I had received a document from the District Clerk of Court's Office that each of my notice of appeals that I had filed dated March 29, 2012 with the District Court were received as filed dated April 2, 2012.. I will note that the clerk of court's office only sent me Tilmer Everett one document of the notice of filing of the notice of appeal when I had filed two notice of appeals. See; Supreme Court No. 20120179 Appellant's Appendix page #130.

I will note that on that same day (4-4-12), that I had also received a letter from you the North Dakota Supreme Court dated April 3, 2012 informing me that my notice of appeals has been filed by the District Court. With advisement in that letter that the District Clerk of Court's Office has until May 2, 2012 to certify the all records on appeal to your office. As this letter was sent to me Tilmer Everett from Sheryl Stradinger Deputy Clerk of the Supreme Court. See; Supreme Court No.20120179 Appellant's Appendix page #131.

15. April 4, 2012 I had then filed three motions with the District Court request that Court to give me documents stated on record and also for a court order to be made against the State to transcribe transcripts of the oral argument as addressed with you the Supreme Court dated November 15, 2010 for my appeal brief and appendix concerning Supreme Court No.20120179. See; Supreme Court No.20120179 Appellant's Appendix pages #132-136.

16. April 11, 2012 the District Clerk of Court's Office than had sent me a letter with advisement that I had to pay for those copies that I had requested for dated April 4, 2012. Informing me that I would have to pay \$7.90 for 79 pages stated on record within Case No.08-2012-CV-00202 and pay \$19.50 for 195 pages stated on record within Case No.06-K-1026 as this letter was sent from Michele Bring Deputy Clerk of District Court. **See; Supreme Court No.20120179 Appellant's Appendix page #137.**

17. April 12, 2012 you the North Dakota Supreme Court had sent me a letter to clarify my notice of appeal(s) filed with the District Court. That I had until April 23, 2012 to do this. **See; Supreme Court No.20120179 Appellant's Appendix page #138.**

18. April 18, 2012 I Tilmer Everett had then followed through with what Michele Bring Deputy Clerk of District Court letter dated April 11, 2012 informing what to do concerning those records and documents that I had to pay for myself. As I did enclose a check in the amount of \$27.40 to the District Court also with advisement about concerns to other motions that were filed to that court and have never been answered yet. **See; Supreme Court No.20120179 Appellant's Appendix pages #139-144.**

19. April 18, 2012 I Tilmer Everett had then sent you the North Dakota Supreme Court a letter of clarification concerning my filed appeals with the District Court and the letter dated April 12, 2012 that I had received from your office. With this letter I had also requested and filed a motion for an extension of time to due my Appeal Brief and Appendix. **See; Supreme Court No.20120179 Appellant's Appendix pages #145-147.**

20. April 23, 2012 I had then received an official receipt document from the District Clerk of Court's Office with submitted documents of records that I had requested for and had to pay for myself for my appeal. *I am going to submit those documents for the record Appendix "A" for evidence against the District Court as to what was all sent to me.* That way I can show you the North Dakota Supreme what I talking about as to how I am being prejudiced by the District Court from a fair right to an appeal. As the District Court demonstrates there intent and refusal to accept or even acknowledge that all my documents were filed and sent in to them concerning my appeals. **See;** Supreme Court No.20120179 Appellant's Appendix page #148 **See also;** Supreme Court No. 20120179 Appellant's Appendix "A" pages #4-81 to *Case No.08-2012-CV-00202, #82-153 to 2010; Case No.06-K-1026, and #154-260 to 2011; Case No.06-K-1026,* as the only documents (records) that were sent in to me Tilmer Everett dated April 23, 2012 by the District Clerk of Court Office. ***Supreme Court No.20120179 Appellant's Appendix as pages #155-158 addressing and stating "my concerns" to the District Court about missing documents.***

21. April 23, 2012 I had received from you the North Dakota Supreme Court a response to my motion requesting for an extension of time dated April 18, 2012. Granting my request dated April 20, 2012 and giving me until June 11, 2012 to file and do the Appellant's Brief and Appendix. **See;** Supreme Court No.20120179 Appellant's Appendix page #149.

22. April 24, 2012 District Court judge Bruce Romanick than sends me an Order Denying Request for transcripts and briefs concerning my motion dated April 4, 2012

that I had filed and served to the Court. "With Bruce Romanick stating in his order denying my request against me Tilmer Everett that I was rambling in my motion to the District Court." Advising me that the copies that I am requesting for would have to be asked on the Supreme Court clerk's office. **See;** Supreme Court No.20120179 Appellant's Appendix page #150.

23. April 27, 2012 I Tilmer Everett had then filed a motion against the State with you the North Dakota Supreme Court requesting that the Burleigh County State's Attorneys Office be held accountable and responsible for making my oral argument transcripts dated November 15, 2010 due to the fact that they violated my appeal rights in the process of that appeal as addressed with my application seeking post-conviction relief dated January 27, 2012. I did attach judge Bruce Romanick's order dated April 24, 2012 to my motion also. **See;** Supreme Court No.20120179 Appellant's Appendix pages #151-154.

24. April 27, 2012 I Tilmer Everett had sent the District Clerk of Court's Office a letter of concern with frustration in regards to documents that are missing from my New Case File No.08-2012-CV-00202. Please refer back to page 20 as addressed above. I basically wanted to know why I did not receive all those documents that I had filed with there office? As those documents (records) that I had requested and paid (\$27.40) for should have all come in April 23, 2012 from the District Clerk of Court Office. **See;** Supreme Court No.20120179 Appellant's Appendix pages #155-158.

25. May 1, 2012 you the North Dakota Supreme Court than had responded to my motion dated April 27, 2012. Denying the Court Order to be made against the Burleigh

County State's Attorneys Office, when I had requested for those Oral Arguments dated November 15, 2010 to be transcribed for my appeal brief and appendix. "Except you the Supreme Court informing me that the oral arguments dated November 15, 2010 are not part of the record in an appeal." Telling me that if I wished to have a transcript made, that I would need to ask someone to listen to the recording on the Supreme Court website and make me one. See; Supreme Court No.20120179 Appellant's Appendix page #159.

26. May 11, 2012 I Tilmer Everett had than filed a motion to compel against the District Court with you the North Dakota Supreme, requesting you the Supreme Court to step-in and compel the District Court to act and or rule upon motions filed with that Court. As my request made has everything to do with my post-conviction relief that I had filed with there court before it was denied. See; Supreme Court No.20120179 Appellant's Appendix pages #160-162.

27. May 16, 2012 I Tilmer Everett had received a letter from you the Supreme Court informing me that my motion dated May 11, 2012 was received on the 15th of May 2012. "Basically telling me that, no action will be taken as the motion is not proper in your court." See; Supreme Court No.20120179 Appellant's Appendix page #163.

28. May 24, 2012 I Tilmer Everett then had filed a motion of mandamus to the District Court requesting the court to act and or rule upon motions that were filed by me Tilmer Everett and or by the State that have never been acted upon yet. See; Supreme Court No.20120179 Appellant's Appendix pages #164-167.

29. May 25, 2012 I Tilmer Everett had then filed another motion for extension of time with you the Supreme Court requesting for more time to file my appeal brief due by June 11, 2012. Even if its was just 15 more days from my due dated. See; Supreme Court No.20120179 Appellant's Appendix pages #168-170.

30. May 29, 2012 I Tilmer Everett had received a letter dated May 25, 2012 from you the North Dakota Supreme Court acknowledging that the District Clerk of Court's Office had finally mailed in a certified copy of the electronic record for my appeal in regards to Case No.08-2012-CV-00202. I can only hope that all documents were filed and recorded as addressed above. See; Supreme Court No.20120179 Appellant's Appendix page #171

30. June 1, 2012 I Tilmer Everett had received a response back as dated May 31, 2012 from you the North Dakota Supreme Court in regards to my motion requesting for an extension of time as dated May 25, 2012 for more time to file the Appellant's Brief and Appendix. In this letter that I had received, I was also inform that unless a complaint Appellant's Brief and Appendix are not filed by July 2, 2012, that my appeal would be dismissed. See; Supreme Court No.20120179 Appellant's Appendix #172.

Arguments

I Judge Bruce Romanick's memorandum opinion and order denying post-conviction relief dated March 21, 2012 as addressed against me Tilmer Everett is inaccurate and also prejudicial. Because he as the judge is in fact attempting to distort and also manipulating the three (3) actual grounds that I had declared within my post-conviction relief application dated January 27, 2012.

In District Court judge Bruce Romanick's stated memorandum opinion and order denying my request for post-conviction relief dated March 21, 2012 it shows that "he" as a judge is in fact attempting to manipulate and twist the three(3) actual grounds that I had declared as new evidence within my post-conviction application, with other issues that I had addressed to the district court, that qualifies me as a petitioner for relief under N.D.C.C. 29-32.1-01(1); (a),(b), and (e). As opinion and order shows that he as the judge is prejudicially attempting to ignore the three (3) actual grounds that I had addressed as to my nine page application and or that he is "also" refusing to accept or acknowledge that I Tilmer Everett was in fact denied a fair right to an appeal as declared.

See; the bottom portion of page 2 then on to page 3 as stated within his memorandum opinion and order dated March 21, 2012 as addressed within Supreme Court No.

20120179 Appellant's Appendix page #111-112.

Ground One: *"his initial trial judge was illegally removed so any rulings by this court are illegal." (taken out of context by the judge!)*

Ground Two: *"Everett was illegally prosecuted by fraud, perjury and the State withholding evidence." (taken out of context by the judge!)*

Ground Three: *"new evidence exists of photo lineups from a companion case and a 911 call from a companion case." (taken out of context by the judge!)*

Now See; what petitioner Everett's nine page application dated January 27, 2012 states within Supreme Court No.20120179 Appellant's Appendix pages #30-38.

[It will be noted for the record that the States (Burleigh County State's Attorneys Office) response made against my petition as dated February 17, 2012 to the District Court has no bearing and or no legal merit at all, as to what I Tilmer Everett had addressed within my post-conviction application with the affidavit dated January 27, 2012.]

As a matter of fact the States response made to the district court only shows there prejudicial intent (the act) as an attempt to distort and manipulate my issues that I had raised and declared within my post-conviction application dated January 27, 2012, to a motion that I had filed to the District Court dated February 8, 2012. This just goes to show you the North Dakota Supreme Court how both the State and District Court judge Bruce Romanick are in fact attempting to divert the totality of circumstances as addressed within my application dated January 27, 2012, to other illegal rulings and judgments made against me Tilmer Everett. (*Collusion*) See: States response as addressed in page 3 within Supreme Court No.20120179 Appellant's Appendix page #75 as:

On February 8, 2012, Everett filed his sixth application for post-conviction relief. Everett's current claim for relief is based on the same claims made in previous applications for relief that have repeatedly been rejected by this court and affirmed by the North Dakota Supreme Court on appeal, or are simply variations of previous claims that have been rejected.

The three (3) grounds as issues addressed and made by judge Bruce Romanick within his memorandum opinion and order dated March 21, 2012 as claims addressed above only lacks in factual support or of no legal basis as to be frivolous from what was actually addressed and declared within Everett's application dated January 27, 2012. Therefore, the Order dated March 21, 2012 stated by judge Bruce Romanick must be overruled and remanded back to the District Court for an evidentiary proceeding on the legal merit(s) addressed.

II Judge Bruce Romanick erred with prejudice and bias against me Tilmer Everett within his stated memorandum opinion and order denying post-conviction relief dated March 21, 2012. As judge Romanick completely refuses to acknowledge my affidavit as legal support with “new evidence” attached to the post-conviction application dated January 27, 2012 as addressed and declared against the State.

In District Court judge Bruce Romanick’s stated memorandum opinion and order dated March 21, 2012 this document shows that he as the judge is completely refusing to acknowledge and or even accept the affidavit with new evidence attached to my post-conviction application dated January 27, 2012. *See*; the bottom portion of page 2 in “his” opinion and order as stated within Supreme Court No.20120179 Appellant’s Appendix page #111 as:

[Everett on January 31, 2012, filed this new nine page application for post-conviction relief. It is difficult to discern from the application what grounds Everett bases his most recent application for post-conviction on.]

That document stated within page #111 in the appendix as addressed to you the North Dakota Supreme Court concerning page 2 in the opinion and order dated March 21, 2012 clearly in fact establishes evidence as material fact of prejudice and bias by judge Bruce Romanick. As his ruling made shows his intent (the act) to *again* prejudicially ignore and disregard the three (3) grounds that I Tilmer Everett had addressed within the affidavit as legal support to my post-conviction relief application dated January 27, 2012.

[Clearly this demonstrates judge Romanick’s prejudicial intent (his bias act) with manipulation as stated within his opinion and order. As this gave him as a judge the advantage and opportunity from refraining to discuss and or address those three (3) actual grounds that I had declared and this also refrained him from allowing to accept and or discuss with a question of law within his ruling “if” my due process rights were in fact violated from a fair right to an appeal in 2010 and 2011 by the State.]

Therefore making judge Bruce Romanick wrong about “he” stated as: ***There is no genuine issues as to any material fact and Everett’s application is an abuse of process.***

III Judge Bruce Romanick's stated memorandum opinion and order denying post-conviction relief dated March 21, 2012 is now being declared illegal and void by law within new case file. Due to the fact that "he" as a judge refuses to accept and or even acknowledge within his addressed ruling, that my due process rights concerning discovery had been violated by the State, when the State had filed an deceitful motion to the District Court in August of 2006 and had my original trial judge name Donald Jorgensen illegally disqualified.

I Tilmer Everett would like to state for the record to you the North Dakota Supreme Court that in District Court judge Bruce Romanick's stated memorandum opinion and order dated March 21, 2012 (*See; Appellant's Appendix pages #111-112*), proves that he as a judge is not only attempting to distort and also manipulate the issue that I had addressed and declared as "Ground One" within my application for post-conviction relief dated January 27, 2012. (*See; Ground One in Appellant's Appendix pages #33-36.*) But the opinion and order dated March 21, 2012 as stated in Appellant's Appendix pages #111-112 addressed by judge Bruce Romanick against me Tilmer Everett clearly demonstrates his bias and prejudicial intent (the act), that now shows that he is in fact refusing to accept and or even acknowledge within his ruling that the States filed motion made to the District Court was in fact illegal and also under false pretenses. As judge Bruce Romanick even attempts to try and disregard the Issue (*"his initial trial judge was illegally removed so any rulings by this Court are illegal"*) that he had addressed against me Tilmer Everett with false statements made within his ruling dated March 21, 2012 by stating: *"This is the first time Everett has raised this issue after five appeals to the Supreme Court and numerous post-conviction relief requests."* That statement made by judge Bruce Romanick is wrong and here's why. *See; Everett's post-conviction application addressed 2011 in Appendix "B" page #66 and pages #86-92.*

I would also like to point out for the record that judge Bruce Romanick is wrong about **how** he had addressed his opinion and order against me Tilmer Everett in regards to those three (3) alleged grounds that he states that I am claiming within grounds one, two, and three. Instead what judge Bruce Romanick is technically attempting to do is that he is completely leaving-out (*bypassing*) with manipulation as to what qualifies me as an applicant for post-conviction relief within those three issues (a),(b), and (e) under the N.D.C.C. 29-32.1-01(1) as:

- a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota; (*In Case No.06-K-1026*)
- b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected; (*In Case No.06-K-1026*)
- e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice. (*In Case No.06-K-1026*)

Making judge Bruce Romanick's memorandum opinion and order dated March 21, 2012 a frivolous one, due to the fact that he as a judge, is prejudicially refusing to accept and or acknowledge that "**my appeal rights**" have in fact been violated by the State in 2010 and 2011 as addressed and declared within my petition dated January 27, 2012. As his ruling shows that he is deliberately refusing to acknowledge the three (3) grounds that I had declared within my application as: 1) Denial of a fair right to an appeal; 2) New Evidence as Two Judgment of Dismissals dated November 15, 2010 and June 24, 2011 were sent to me from Deputy Clerk of Court Christine Harmon dated December 21, 2011; and finally 3) Two illegal Judgment of Dismissals dated November 15, 2010 and June 24, 2011 were signed by District Court judge Bruce Romanick within my Case No.06-K-1026 as he the

judge prejudicially failed to send and or have me Tilmer Everett properly served with each of those documents for my appeal.

Therefore this now leaves the window open for me as an appellant and defendant as issues to attack with the North Dakota Supreme Court as an legitimate argument that judge Bruce Romanick never did contest and or never did make any kind of arguments towards any of those three (1-3) actual grounds that I had name above in regards my appeal rights as having been violated by the State in 2010 and 2011. And with that argument I am requesting that an evidentiary hearing be **granted** by you the Supreme Court, so that I as an Appellant would be able to establish on record within my case file to the District Court that my appeal rights have in fact been violated by the State, as addressed and declared with my post-conviction application dated January 27, 2012. *See; My appeal rights having been violated by the State and judge Bruce Romanick in 2010 and 2011 stated in Appellant's Appendix "B" pages #4-99 as addressed circumstances along with pages #141-166 as events (probable cause) declared in Everett's post-conviction application dated January 27, 2012 to the District Court.*

IV Judge Bruce Romanick's order denying request to remove judge dated March 21, 2012 does violate my due process rights with prejudice. Because he as a judge requested to be removed should have never heard and or ruled upon my motion dated February 16, 2012 since it was filed and against him.

Judge Bruce Romanick's order dated March 21, 2012 as ruled against me Tilmer Everett is without a doubt illegal and also prejudicial by law, due to the fact that he as a judge, is being impartial by deliberately ignoring those conflicting issues that I had addressed against him within my motion to remove dated February 16, 2012 altogether and or that he has complete disrespect (disregard) for my due process rights.

District Court judge Bruce Romanick had no business at all with ruling against the motion that I had filed against him dated February 16, 2012 therefore this makes "his" ruling illegal and prejudicial. *See; Supreme Court No.20120179 Appellant's Appendix pages #66-72 with page #112 of what judge Romanick states in the bottom portion of page 3 as: "Everett's request to remove judge is also denied as having previously been adjudicated and appealed."*

I will note that if judge Bruce Romanick to taking credit for another illegal ruling that he has made against me in 2011 than that's fine to because prejudice attaches to his illegal order that he has now made against me Tilmer Everett in 2012 as addressed above.

I do have the right to challenge each of those illegal judgment made by judge Bruce Romanick in the evidentiary hearing because he was illegally obtained as the judge altogether by the State. *See; 2011 factual circumstances addressed within Appellant's Appendix "B" pages #100-135 and actual evidence of prejudice against me Tilmer Everett by judge Bruce Romanick in pages #136-140.*

Conclusion

I Tilmer Everett as an Appellant have given you the North Dakota Supreme Court clear and convincing evidence as index numbers #329 and #367 that establishes legal merit within my appeal process that proves that I was in fact prejudiced from a fair right to an appeal by both the State and District Court in 2010 and 2011. Therefore it is evident that I as a petitioner and defendant do qualify for post-conviction relief under N.D.C.C. 29-32.1-01 (1);(a),(b), and (e), to prove those three grounds addressed and declared as:

Ground One: Denial of a fair right to an appeal. (*within Supreme Court No.20100222 and Supreme Court No.20110189*)

Ground Two: New Evidence. (*index #329 and #367 were sent to me from District Deputy Clerk Christine Harmon dated December 21, 2011*)

Ground Three: Two illegal judgment of dismissals were signed by judge Bruce Romanick. (*as judge Romanick prejudicially failed to instruct*)

[Also evidence that I Tilmer Everett would like to use as my defense for my appeal process within Supreme Court No.20120179 to you the North Dakota Supreme Court that shows and proves that my appeal rights were in fact violated again with prejudice from a fair to an appeal is stated within Supreme Court No.20100222 the oral argument proceedings dated November 15, 2010.] Declared as evidence!

Factual circumstances stated within those proceedings (2010) that establishes evidence against the State (**Cynthia Feland**), that proves that my due process rights were violated, when “she” failed to send in and or give you the North Dakota Supreme Court the District Court’s Judgment of Dismissal for the Court’s signature prior to my scheduled hearing being entertained on that day, as an objection was made by me to you the Supreme Court, when Cynthia Feland was told to give it to your court after the hearing. As this was prejudiced me Tilmer Everett from an fair appeal.

I would like to also note for the record that my oral argument proceedings dated November 15, 2010 should have never been entertained by you the North Dakota Supreme Court ***“without”*** that Judgment of Dismissal’s signature first. Therefore I am requesting that the Memorandum Opinion and Order handed down against me Tilmer Everett dated July 1, 2010 by judge Bruce Romanick be declared illegal and void by law, due to the fact I was prejudiced when both the State and District Court each failed to give me that document for my appeal process with you the North Dakota Supreme Court.

It is also considered illegal for judge Bruce Romanick to rule and or act upon a motion dated February 16, 2012 that I filed against him. Therefore his rulings and orders as stated against me Tilmer Everett are also being declared illegal and void by law with you the Supreme Court. Since all of his rulings are illegal within my case file to...

A complaint brief and appendix is also being supplemented with this Appeal Brief.

Dated this 18 day of June, 2012.

A handwritten signature in black ink, appearing to read 'Tilmer Everett', with a large, stylized initial 'A' at the end of the signature.

Tilmer Everett; Pro Se.
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58506

