

**ORIGINAL**

**20030150**

original  
County of Morton

Case No. , 30-02-K-1845

State of North Dakota

-VS-

Michael Ray Sims

Criminal Judgement

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

JUN 13 2003

STATE OF NORTH DAKOTA

Represented By

Michael Ray Sims  
Michael Ray Sims

## (Briefs)

### A {Statement of Review}

- (1) In regards to Judgement of Sentence

On stipulation (2) of the agreement. The defendant shall serve (1) year at the Morton County Correctional Center. During that year of incarceration. Defendant shall be eligible for work release and follow the rules and regulations of the jail administrator.

Refer to (F)

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### B {Nature of Case}

- (1) Theft of Property is a class (C) felony in violation of section 12.1-23-02 of the North Dakota Century Code.

A statement was not given during the proceedings of this case.

Refer to (F)

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### C {Statement of Fact}

- (1) Recommendations for this case from Allen Kopp and my Attorney Todd Schwartz. COURT APPT.

One (1) year in Morton County Correctional Center with work release, in order to pay restitution to my clients. I agreed to these conditions.

## (Table of Contents)

- \* A. Statement for review
- \* B. Nature of case
- \* C. Statement of fact
- \* D. Argument
- \* E. Relief Sought
- F. Order of Sentence
- G. Work release Schedule from MCCC.
- H. States Original offer.

D

{Argument}

- (1) I was not informed of the work release guidelines set fourth by Bob Erdhart at the Morton County Correctional Center.

Refering to G page (6)

Work/School Schedule of Morton County Correctional Center.

{Work release guidelines}

- You are not eligible for work release if:  
# (1) You have been convicted of a Felony.

Therefore, after the fact of my incarceration. I was informed that I would be ineligible.

Refering to F page 1 Theft of Property is a  
(Class C felony)

- COURT APPT. ATTORNEY DIDN'T INFORM ME -  
- I wouldn't BE ELIGIBLE -

E

{Relief Sought}

- (1) Considering all the facts of my case. I would like my sentence ammended from the Morton County Correctional Center to the D.O.C.

Or refer to (H) the original offer from Ladd Erickson for the State of North Dakota, (4) years, two (2) years at D.O.C. and two (2) years suspended for four (4) years.

(F)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota, )

Case No. 30-02-K-1845

Plaintiff, )

-vs.- )

CRIMINAL JUDGMENT

MICHAEL RAY SIMS, )

Defendant. )

On the 11th day of April, 2003, the above-named defendant, MICHAEL RAY SIMS, appeared in person and with his legal counsel, Todd A. Schwarz, attorney at law, Bismarck, North Dakota. Morton County State's Attorney, Allen Koppy, appeared on behalf of the Plaintiff, the State of North Dakota. The defendant, having been convicted by a plea of guilty to the following crime, as alleged in the INFORMATION:

THEFT OF PROPERTY, a Class C Felony in violation of Section 12.1-23-02 of the North Dakota Century Code; and

The defendant, having been asked by the Court whether there was any statement to be made or any information given in the defendant's own behalf or wished to be provided in mitigation of punishment or which would require the Court to withhold pronouncement of judgment and sentence and with no sufficient cause to the contrary having been shown,

IT SHALL BE THE JUDGMENT AND SENTENCE OF THIS COURT:

1) That as to the single count alleged in the INFORMATION, the defendant, shall be committed to the legal and physical custody of the North Dakota Department of Corrections and Rehabilitation for a period of five (5) years;

2) That execution of four (4) years of the sentence shall be suspended for a period of five

(Def Copy)

FILED APR 11 2003

(F)

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(5) years from the date of the defendant's release from incarceration, and the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Department of Corrections and Rehabilitation and its officers, and subject to the conditions of supervised probation in the attached Appendix "A". The defendant shall serve the unsuspended portion of the sentence, that being one (1) year, at the Morton County Correctional

~~Center~~, commencing at 7:00 o'clock P.M. C.D.T. on April 11, 2003. The defendant shall be

eligible for work release during his actual incarceration pursuant to the rules and regulations of ~~the jail administrator of the Morton County Correctional Center.~~ I CAN'T BE ELIGIBLE BECAUSE OF THIS CONVICTION

3) That the defendant shall pay a \$25.00 crime victim/witness program fee and a \$25.00 indigent defense application fee to the Morton County Clerk of District Court.

THAT THE DEFENDANT, SHALL STAND COMMITTED UNTIL THIS CRIMINAL JUDGMENT, Sections (1), (2) AND (3) ARE SATISFIED.

Dated this 11 day of April, 2003.

BY THE COURT:

Gail H. Hagerty  
Hon. Gail H. Hagerty, District Judge  
Morton County District Court  
Mandan, North Dakota

ATTESTING:

Kathy Marshall  
Kathy Marshall, Clerk of District Court  
Morton County, North Dakota

By: Joyce Bauer  
Deputy

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**APPENDIX A****CONDITIONS FOR SENTENCE TO PROBATION,  
DEFERRED OR SUSPENDED SENTENCE IN THE CASE OF**

**State of North Dakota v. Michael Ray Sims  
County: Morton County  
Criminal No. 30-02-K-1845**

***Pursuant to the Order of the Court:***

**As the Defendant in this case you shall not violate any Federal, State, County, or Municipal criminal law or ordinance during the period of probation.**

**In addition you shall:**

1. Continue present employment or seek and maintain suitable employment; you may pursue a vocational or educational course of study which will lead to future of better employment.
2. Refrain from the use or possession of alcoholic beverages for the duration of your probation. You will not purchase, possess or consume any controlled substance, except as prescribed by a licensed physician. You understand that any excessive use of chemicals will give your probation officer the right to require you to undergo an outpatient evaluation and you will abide by the recommendations of the evaluator.
3. Inform your probation officer immediately in the matter that he/she directs of any changes in your place of residence and employment, and other pertinent activities. This information will be furnished to the probation officer by written report, telephone, or a personal visit to his/her office. You also understand that your probation officer has the right to visit you residence or place of employment at reasonable hours. You are to report within twenty-four hours to: Bismarck District Office, State Penitentiary Grounds, PO Box 5521, Bismarck ND 58502. 701-328-6660.
4. Not leave the State of North Dakota without permission from your probation officer.
5. Not own, purchase, borrow, possess, use or carry any type of firearm, destructive device, or dangerous weapon. (Upon conviction of a felony, federal law bars you from owning, purchasing, or possessing a firearm, destructive device or explosives.)
6. Waive extradition to the State of North Dakota from any jurisdiction in or outside the United States of America, wherever you may be found, and also agree that you will not contest any effort by any jurisdiction to return you to the State of North Dakota while this probation is in effect.

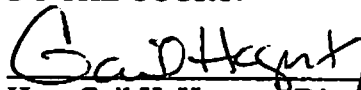
(F)

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7. You shall support your dependents.
8. You shall regularly attend weekly Alcoholics Anonymous/Narcotics Anonymous meetings.
9. You shall not knowingly associate with drug users or traffickers in controlled substances, which are or have been possessed, manufactured, or delivered in violation of law.
10. You shall submit to a medical examination or other reasonable testing including the Breathalyzer, Intoxilyzer, blood samples or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any probation officer.
11. You shall submit to a search of your person, vehicle, or place of residence by any probation officer at any time of the day or night, with or without a search warrant.
12. You shall be required to pay a supervision fee in the amount of \$36.00 per month to the North Dakota Department of Corrections and Rehabilitation, or shall perform community service in lieu thereof.
13. You shall agree to undergo community constraints and conditions as intermediate measures of the Department of Corrections and Rehabilitation to avoid revocation of probation pursuant to subdivision (q) of subsection (3) of Section 12.1-32-07 of the North Dakota Century Code.
14. You shall pay the amount of \$50.00 to the North Dakota Division of Parole and Probation pursuant to Section 12.1-32-02(10) and (11) of the North Dakota Century Code.
15. You shall pay restitution in an amount to be determined by legal counsel for the parties, and that amount shall be determined within sixty (60) days, and subject to your right to a restitution hearing pursuant to the provisions of Section 12.1-32-08 N.D.C.C.
16. Submit to fingerprinting pursuant to the provisions of Chapter 12-60 N.D.C.C.

Dated this 11 day of April, 2003.

BY THE COURT:



Hon. Gail H. Hagerty, District Judge  
Morton County District Court  
Mandan, North Dakota

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(F)

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

The State of North Dakota,

Case No. 30-02-K-1845

Plaintiff,

-vs.-

CERTIFICATE OF SERVICE

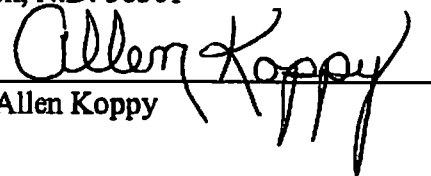
MICHAEL RAY SIMS,

Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April, 2003, a copy of the foregoing document, entitled **CRIMINAL JUDGMENT** [Unexecuted] was served upon legal counsel for the defendant, by placing a copy of the document in the United States mail at Mandan, North Dakota 58554, with sufficient postage attached, to the following address:

Todd A. Schwarz  
Attorney at Law  
115 North 4<sup>th</sup> Street  
Bismarck, N.D. 58501

  
Allen Koppy

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(G)

ATT.

**WORK/SCHOOL SCHEDULE FOR INMATES AT THE  
MORTON COUNTY CORRECTIONAL CENTER**

I recieved this AFTER I WAS INCARCERATED

Inmate's name \_\_\_\_\_

DOB \_\_\_\_\_ Inmate's Phone \_\_\_\_\_

Employer's Name and  
Address \_\_\_\_\_

Phone# \_\_\_\_\_

Work/School Phone \_\_\_\_\_

You, as the employer of the above named inmate who has been granted work/school release though our courts, also have some responsibilities:

- A.) You are to notify Correctional Center staff immediately whenever an inmate does not report to work/school/treatment as scheduled or leaves work/school early, for any reason, during the course of the agreed schedule.
- B.) You are required to fill out completely, accurately, and legibly the schedule and all other information each time the schedule changes or the inmate will not be released for work/school/treatment release.
- C.) **You must supply us with the exact location or phone number where inmate can be reached at all times.** This must be done so we may make periodic checks to assure the court that the inmate is in fact working.
- D.) The use of alcoholic beverages or illegal drugs by work/school/treatment release inmates will not be tolerated. If detected, his/her work/school release will be revoked immediately.
- E.) The inmate is allowed to work an 8 hour day not to exceed a 40 hour work week in 5 days.
- F.) There will be no deviation from the work/school/treatment schedule or rules.
- G.) **Employee/student adherence to all work/school/treatment release rules is part of the employers/supervisors/counselors responsibilities.**

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I understand and accept the responsibilities as listed above.

(Please write and print legibly)

---

Date \_\_\_\_\_  
(Employer's Signature **AND** Name Printed)

Job location if different then the employer's business address:

---

---

How long has this employee worked for you?

---

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MORTON COUNTY CORRECTIONAL CENTER  
WORK RELEASE PROGRAM  
INMATE WORK SCHEDULE

EMPLOYEE'S NAME: \_\_\_\_\_

DAY	DATE	START TIME	FINISH TIME	JOB SITE
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				
SATURDAY				
SUNDAY				
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				
SATURDAY				
SUNDAY				

I hereby certify that the above schedule is accurate and reflects the exact times this employee is required to be present at the specified jobsite.

EMPLOYER'S SIGNATURE: \_\_\_\_\_

BUSINESS NAME: \_\_\_\_\_

I understand that I must be present at the specified jobsite during the hours listed above. I understand that I will be allowed travel time of \_\_\_\_\_ before work and \_\_\_\_\_ after work, and that failure to return to the Morton County Correctional Center within this time limit will be considered a violation of the work release rules.

EMPLOYEE'S SIGNATURE: \_\_\_\_\_

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**MORTON COUNTY CORRECTIONAL CENTER**  
**WORK, SCHOOL, OR TREATMENT RELEASE CONDITIONS**

- 1.) You will abide by the following rules when you are allowed to go out for work, school, or treatment release. Failure to do so will cause you to lose your release privilege. If your work/ School release is ever revoked, or has been in the past, you will not be allowed work/school release from the Morton County Correctional Center again! The court will cooperate with us in this matter.
- 2.) You will be respectful to the authority of the Morton County Sheriff, his deputies and the Correctional Center staff, and you will follow those instructions and directives as determined by the Sheriff and his officers to be reasonably necessary.
- 3.) Your employer, teacher, counselor should be notified, and you must know, that being on a release program is a privilege, and if the correctional center staff is busy your work release time **might be delayed.**
- 4.) You will bring in a schedule of your work, school, or treatment release hours **signed** by your employer, teacher, or counselor 24 hours before work, school, or treatment. A telephone number where we can contact you will be on the schedule, along with the name of the establishment and your employer, teacher, or counselor and supervisor's name. It will also contain a detailed description of where you will be at all times.
- 5.) You will check into the correctional center at the time stated on the court order. If the correctional center detects an odor of alcohol, you will be held for eight (8) hours to twenty-four (24) hours in detox. This time will be added to your time. Your work release will be terminated!

- 6.) When you return to the correctional center a correctional center officer will do a visual body assessment search, before you go back to your cell. If any contraband is found on you in the assessment you will be charged with bringing contraband into the correctional center and you will lose your work, school, or treatment release privilege.
- 7.) While on work, school, or treatment release you will not consume any type of alcoholic beverage or use any illegal drugs. If you do, you will forfeit your right to work, school, or treatment release. Be advised the correctional center staff can at any time, have random alcohol and drug use tests conducted on work, school, or treatment release participants. Termination of your work, school, or treatment release has been authorized in advance by the judge that sentenced you as soon as possible following any violation of the work, school, or treatment release conditions.
- 8.) While out on work, school, or treatment release you are responsible for your meals, phone calls to the correctional center, and transportation to and from work, school, or treatment. **You will not be allowed to contact any personal business appointments or be allowed to enter any public place (example- convenience stores, gas stations, ect.) without prior written approval to do so from the work release officer or the supervising correctional center officer.** If you do so, your release program will be terminated!
- 9.) If you need medical or dental attention while on work, school, or treatment release program, we will give you permission to go see a doctor or dentist, or we will make an appointment for you and see that you get to the appointment. In case of a medical emergency go directly to the hospital and contact us from the hospital. If the injury happened while out at work, school, or treatment it is your

(G)

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bill. You must make your own arrangements for paying any medical expenses!

10.) You will be required to pay a work release fee of an amount not to exceed ten dollars per day. You will pay one week fee in advance before going out for work and the same each week after that and be paid up in full one week prior to release date. All work release fees will be paid in **cash only**. If you refuse to pay the work release fee you will not go out for work.

### **WORK RELAESE GUIDELINES**

You are not eligible for work release if:

- 1 ■ You have been convicted of a fail to appear charge
- 2 ■ You have been convicted of a fleeing charge
- 3 ■ You have had more than 2 DUI convictions in 2 years
- 4 ■ You have had more than 2 DUS convictions in 2 years
- 5 ■ You have had more than 2 class A misdemeanor drug convictions
- 6 ■ You have been convicted of assault
- 7 ■ You have been convicted of a felony
- 8 ■ You have outstanding warrants
- 9 ■ You have a protection/restraining order against you

**You must have been employed by this employer for 3 months before time of incarceration.**

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**AGREEMENT TO WORK RELEASE CONDITIONS**

- 1.) I will obey all federal, state, and local laws and ordinances.
- 2.) I will not enter any establishment that sells or serves alcoholic beverages.
- 3.) I will only take drugs prescribed by the correctional center physician or personal physician which have been verified and approved by the correctional center.
- 4.) I will not take over the counter medication unless approved by the correctional center.
- 5.) I will submit to urine sample or breath test (PBT) or blood test at the request of any staff. If my urine test is positive, I agree to pay for the cost of the test.
- 6.) I will advise my family and friends that I can not visit with them at my place of work, school, or treatment. All visits will be during visiting hours within the correctional center.
- 7.) I will immediately telephone the detention center if any problems arise while I am out on work, school, or treatment release.
- 8.) I will call in when I get off of work, school, or treatment, and any changes of location.
- 9.) I will immediately return to the detention center if released from work, school, or treatment **early**. Failure to return to the Morton County Correctional Center constitutes escape as defined by section 12.1-08-06, N.D.C.C., and may be felony with a maximum penalty of ten years imprisonment and/or a ten thousand dollar (\$10,000.00) fine.
- 10.) I will provide my own medication.

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You and your employer may be required to bring in your check stub, time card, or I.R.S. statements to verify your hours worked.

I have read or have had read to me the above rules and agree to comply with them. I further understand that if I violate any of these rules, it will be considered a major rule violation and I will lose my work, school, or treatment release privilege.

Inmate's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**PLEASE NOTE:** Give a copy of this form to your employer. The Work Release Officer will check with your employer to make sure they see and understand **all** of the conditions of your work release. Form must be returned to correctional center 24 hours before going out to work.



Have you ever been convicted of any of the following?:

**A.) Sexual Offense-** (such as gross sexual imposition, sexual imposition, corruption, or solicitation of a minor, sexual assault, indecent exposure, incest, deviate sexual act, or similar offense):

Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, list offense and conviction date \_\_\_\_\_

**B.) Violent Offense-** (such as murder, manslaughter, negligent homicide, simple assault, domestic assault, aggravated assault, reckless endangerment, terrorizing, menacing, harassment, stalking, kidnapping, felonious restraint, unlawful imprisonment, or similar offense.)

Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, list offense and conviction date \_\_\_\_\_

**C.) Violation of Court Order-** (such as violation of a protection order, violation of a disorderly conduct restraining order, contempt of court, or similar offense.)

Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, list offense and conviction date \_\_\_\_\_



If you believe you may have been convicted of an offense similar to any of the above, it is your obligation to speak with the work release supervisor about the offense and allow him/her to make the determination whether such offense qualifies.

The making of any false statement within this application may lead to criminal prosecution and may be punishable by imposition of a jail sentence and/or fine.

Inmates Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MORTON COUNTY**  
**STATE OF NORTH DAKOTA**  
**OFFICE OF**  
**STATE'S ATTORNEY**



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210 2<sup>nd</sup> AVE. N.W.

MANDAN, NORTH DAKOTA 58554

PHONE 701-667-3350

**ALLEN KOPPY**  
State's Attorney

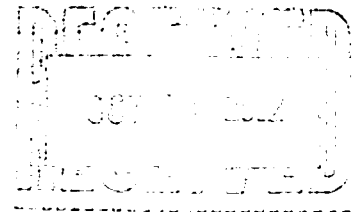
**BRIAN D. GROSINGER**  
Assistant State's Attorney  
**LADD R. ERICKSON**  
Assistant State's Attorney

DATE: **OCTOBER 23, 2002**

MCSAO FILE NO. **18480**

TO: **TODD SCHWARZ**  
**ATTORNEY AT LAW**  
**1110 COLLEGE DR, STE 211**  
**BISMARCK ND 58501**

CASES: **STATE OF ND V MICHAEL SIMS**  
**02-K-1845**



PRETRIAL SCHEDULED FOR: **11-18-02**

AT: **1:30 P.M.**

**PRETRIAL OFFER**

**SENTENCE:**

Incarceration: **FOUR (4) YEARS WITH**  
**TWO (2) YEARS SUSPENDED FOR THREE (3) YEARS**

Fine:

**PROBATION:**

Period: **THREE (3) YEARS - SUPERVISED**

- Conditions:
- 1. NO CRIMINAL VIOLATIONS**
  - 2. RESTITUTION**
  - 3.**
  - 4.**
  - 5.**

*-Date to be locked  
-1 yr w/ wk release  
-1 yr in custody - w/ full yr.*

SIGNED: \_\_\_\_\_

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RECEIVED BY CLERK  
SUPREME COURT

JUN 30 '03

20030150

STATE OF NORTH DAKOTA,

Plaintiff, Criminal No. 30-02-K-1845

v.

SUPREME COURT No. 20030150

MICHAEL SIMS,

Defendant,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON JUNE 26,  
2003 A COPY OF THE APPELLANTS BRIEF  
WAS SERVED TO STATES ATT. OFFICE  
ALLAN KOPPY. I MICHAEL RAY SIMS CERTIFY  
THIS.

DATED JUNE 26, 2003.

Michael Ray Sims  
MICHAEL RAY SIMS

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

JUN 30 2003

STATE OF NORTH DAKOTA

JUN 23 '03

STATE V. SIMS

20030150

Supreme Court NO. 20030150

Morton County No O-K-01845

{ AFFIDAVIT OF SERVICE }

I MICHAEL SIMS, the Appellant,  
DID IN FACT MAIL ONE (1) ORIGINAL +  
2 COPIES ON JUNE 12<sup>th</sup>, 2003, + (5) MORE  
COPIES ON JUNE 16<sup>th</sup> 2003. THESE COPIES  
+ ORIGINAL COPY OF MY BRIEF WERE  
MAILED TO THE SUPREME COURT OF  
NORTH DAKOTA.

THIS IS IN ACCORDANCE WITH MY  
APPEAL OF SENTENCE.

Sincerely  
Michael Sims  
MICHAEL SIMS

Subscribed and sworn before me  
this 19<sup>th</sup> day of June, 2003.

Lynn Hobbins  
Notary Public  
Morton County  
Com Expires: 12-30-06

JUN 23 2003