

ORIGINAL

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20030345

June 28, 2004

Supreme Court of North Dakota
Supreme Court Clerk
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Bismarck ND, 58505 - 0530

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JUL 8 2004

STATE OF NORTH DAKOTA

Due to my Indigent status, my of knowledge and skills that require the professionalism of a lawyer I apologize for this I hereby submit this in the utmost good faith and to best of my knowledge and ability to the Supreme Court Magistrate of North Dakota

I also must state and bring forth the lack of legal resources, computer, computer disk available and the lack of adequate qualified legal assistance offered at the James River Correctional Center Law Library These are the conditions and circumstances I must deal with and work with order to submit a satisfactory and adequate required brief to Supreme Court of North Dakota.

The James River Correctional Center (JRCC) Does not allow or have access to computer or computer disk and we are not allowed to have computer disk here at the JRCC Law Library which lack all the adequate resources to submit a satisfactory brief to the North Dakota Supreme Court Magistrate I apologize for this, I hope and pray you understand my situation here and the inadequate resources available here at JRCC.

I pray you understand my predicament of my Indigent Status, Resources available, computers, disk and the lack of qualified legal assistance to file a well developed brief. I submit to you this letter and my statement for the record of my predicament and the circumstances. I Enter this statement in the ut most good Faith, Respectively and to the best of my Ability.

This I submit to you respectfully and sincerely to thy Magistrate of Supreme Court of North Dakota

Sincerely: Gerald Packman
Gerald Packman.

State of North Dakota
v
Gerald Packineau

In Burleigh County Court
South Central Judicial Court

Burleigh Co. No. 02-K-02453
Supreme Court No. 20030345

To the North Dakota Supreme Court Magistrate, that
Gerald Packineau, Pro se hereby appeal the decision
of GSI Class A Felony of February 19, 2003 and
Post-Conviction Admended Ruling on October 1, 2003
of the South Central Judicial Court of Burleigh
County by Honorable Judge Gail Hagerty. I hereby
take this action to submit my Brief to you Respectively
and ~~in~~ the utmost Good Faith

Dated June 27th 2004

Gerald Packineau Pro se
Gerald Packineau Pro se

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It comes now Gerald Packineau Pro se submit this Brief to the best of my ability and with the utmost respect and in Good Faith to all the Magistrate of North Dakota Supreme Court.

That Gerald Packineau, Ruling Pro se will address the issues concerning the case of my conviction of GSI Class A Felon N.D.C.C. Section 12.1-20-03 Provision 12.1-32-01(2) on the 17th day of February 2003 and the Amended Ruling on October 1st, 2003 by the South Central Judicial Court of Burleigh County by the Honorable Judge Gail Hagerly.

Introduction

I bring these issues before the North Dakota Supreme Court Magistrate. The Ineffective assistance of Counsel which effected all proceedings thru the Courts. The Failure to disclose the true Nature of the crime and charge which defendant was charge with. That which conviction, Trial, Jury and the Sentence were all under false pretense. The right to fair Hearing and the Conflict of Intrest of Kent Morrow Council and the State's Assistant Attorney Leann K Bertsch to fairly represent Gerald Packineau and the Due Process of the Law and violation of my 5th, 6th, 8th and 14th Admendment. By which Due Process and Sentencing and the representation of Counsel were violated under my Consitutiona Right to fair Hearing.

Issue Presented

These are the issues that are brought Forth to the North Dakota Supreme Court Magistrate.

I. Ineffective Assistant of Counsel

- (a) The Failure to disclose to Plaintiff Gerald Packineau the true Nature of the Charge a Class A Felony.
- (b) The Failure to bring forth before the Court the nature of the Charge or dispute the Charge In which the Trial, Conviction, Jury and the Sentencing are all under false pretense.
- (c) Failure to seek professional assistance or obtain legal consultant by a Professional DNA Interrupter or pathologist.
- (d) Conflict of Interest of working for the State and Representing the Client and Protecting My Right to a Fair Trial and Due Process of the Law by Counsel

II. The Illegal Modification of Class A Felony Charge

- (a) Clerical Error

III The Editing or Censorship of Trial ; Post Conviction Transcripts.

Presentation of Summary of Facts

It is for these reasons I feel that my Constitutional Rights have not been upheld or defended according to the 5th, 6th, 8th, and 14th Amendments. Due Process of the Law and Improper excessive of a sentencing of a crime or of a charge. My Right to a Fair Hearing, Representation by Counsel and the Equal Protection of the Law. Adequate representation and the Fundamentals of protecting my Rights thru all proceedings within the Courts and Trial. The prejudice and the hinderance by these action by Counsel and the Burleigh County South Central Judicial System to a fair Hearing and the right to be treated equally and without prejudice. Which now brings me before the North Dakota Supreme Magistrate where I now Appeal my Constitutional Rights. The violation of these rights, representation by Counsel, equal Protection of Law and my Right to a fair Hearing, Trial and conviction by my peers by the Burleigh County South Central Judicial Courts.

Summary of Facts

- I. It is for these facts that Counsel unfair, representation and prejudice of these proceeding by Kent Morrow and hereby Submit the North Dakota Rules of the Court of Professional Conduct

Summary Facts

I

Preamble, Scope and Terms / Rules of Professional Conduct
Preamble: A Lawyers Responsibilities

(a) Scope

Client-Lawyer Relationship

(a) Rule 1.1 Competence (Comment)

Thoroughness and Preparation

(b) Rule 1.2 Scope of Representation

By knowing the seriousness of the Charge
Counsel representation of plaintiff was misleading
and defraudent to plaintiff, Trial, Jury and
Sentencing.

c. Rule 1.3 Diligence

d. Rule 1.4 (a)(b) Comment

e. Rule 1.7 Conflict of Interest

Counsel representation of plaintiff Gerald
Packineau and by working for State, Counsel
did not adequately represent Client. By Not
disclose the true nature of the Charge to Plaintiff
Gerald Packineau which is conflict of Interest and
In best Interest of the Plaintiff Gerald Packineau.
Kent Morrow did not Grant Plaintiff a Fair Hearing,
Trial Sentences and Right of a legal Convention and
Due Process of the Law.

1. Comment Loyalty to Client

The Representation by Counsel Kent Morrow
and his lack of professionalism and knowledge
of the Law and due Process of Protecting My
Constitutional Right to Fair Hearing through
out all proceeding of the Court and Trial.

Summary Facts

I The Failure to seek out Professional assistant or Interrupter of DNA pathologist that would dispute these allegations of the tainted or contaminated evidence The Incompetency and the failure to ask question or any question during cross-examination; compared to the state's questioning and state's representation of professional DNA pathologist. In which the Court Granted Counsel to seek out professional assistant, "The North Dakota Rules of The Court"

a. Rules of Evidence

Article VII Opinions and Expert testimony

Rule 702 Testimony by Expert

Rule 705 Disclosure of Facts or data underlying Expert Opinion

Rule 706 Grant / Court Appointed Expert

(a) Appointment

The Failure to follow through or seek out Expert assistance or dispute any findings is a violation to a fair hearing of a trial and not dispute these findings during Cross-Examination showed that Counsel Lacked the skills and knowledge and the failure to disclose his incompetence in his preparing for Trial Rule 1.1 competence issues; and his failure to communicate his ~~inadequacy~~ Rule 1.4 communication so that Plaintiff Gerald Paulineau would understand and be entitled to a Fair Hearing

II The Rules of Clerical Error in Post Conviction hearing held on October 1st, 2003 In the South Central Burleigh County Courts by Judge Gail Hagerty. The Admended Charge of Class A Felony to B Felony. Then stated it was and is Clerical Error

Summary Facts

II. According to the North Dakota Rules of the Court Rules of Criminal Procedures Rule 36 Clerical Error "That Burleigh County's State's Attorney Richard J Rika duly sworn under oath and read said Information and believes that the Facts are set Forth are true and dated before him on 31st of July 2002 Class A Felony N.D.C.C. 12.1-20-03 Penalty Provision 12.1-32-01(2) " It is for this reason that Plaintiff Gerald Pedineau Pro se contest the Illegal Modification of a Sentence. Under Rules of North Dakota Criminal Procedures Clerical Mistake Rule 36 or error from oversight or omission does not qualify under these Rules. The Professional conduct of the Judicial System of proceedings in the Burleigh County South Central Judicial District that an oath was taken and sworn that these Fact are true. In accordance to the North Dakota Rules of the Court of Criminal Procedures II Preliminary Proceedings Rule 3. The Complaint (a) General (b) Admendment. May Admendment before a finding of verdict, which these proceeding are illegal modification of Record or Sentence that violated My Constitutional Rights of the Law and Due Process and excessive punishment and Sentencing.

Summary Facts

II The state of North Dakota have three qualified professional Lawyer's who represent South Central Judicial District of Burleigh County and are sworn by oath to uphold the Law and the public be treated fairly and equally and to protect the Law; Could not see that the Charge brought forth was No Class A Felon? Is this common practice of professional who are to defend and uphold our Constitutional Rights to have fair hearing through all proceedings. That during Trial Proceedings of Class A GSI Felon that no mention of violence or threats or any repeated offences of this nature and or against a minor was ever brought up or mentioned during Trial; and during Presentenced Investigation, that at the sentencing that Plaintiff Gerald Packineau Scored -5 Sexual Crime investigation showing and stating the fact of the Charge was grossly misleading. It is for these reasons that these prejudicial issues and detriment of trial, Jury Sentencing and conviction were misleading and under false pretenses. My Right to a Fair Hearing and Due Process of the Law and in accordance protecting my Constitutional Rights that Gerald Packineau be Granted a New Trial or be released forth with time served for excessive of sentencing and Violation of my Constitutional Right to Fair hearing and Sentencing by Burleigh County South Judicial District Court.

III The issues I bring forth a moot to the North Dakota Supreme Court Magistrate is the editing or censorship of Trial and Post-Conviction Transcripts North Dakota Rules of the Court of Appellate Procedures Rule 10. The Record on Appeal (H)(2) The editing of curcial testimony addressing

Summary Facts

III DNA findings in relationship of Native Americans in General and the relationship to Native Americans of North Dakota of Fort Berthold Reservation was deleted from Trial Transcripts. Post-Conviction transcripts testimony was edited out of Post-Conviction testimony; Questioned asked by State If I knew or and understood of DNA findings by the expert testimony? That Plaintiff Gerald Puckineau Testified "that I did not understand these finding" "I said No". The State's Suppression of testimony and hinderance to appeal to the Supreme Court Magistrate of North Dakota will not be known or can be questioned; Their Conduct to edit or censorship of carcial testimony in my favor is in violation of Due Process of Law and the defriment of one's right to a fair reading and interruption of my Right to appeal to the North Dakota Supreme Court Magistrate. To bring Forth testimony in my favor and the violation of My Conisitutional Right to Appeal with out prejudice

Closing Statment

Enclosing I appeal to the North Dakota Supreme Court Magistrate. For all reasons stuted herein my brief be true by Plaintiff Gerald Puckineau, Prose submit to you. Gerald Puckineau respectfully request to the North Dakota Supreme Court Magistrate to reverse the order by South Central Judicial District of Burleigh County Court by Judge Gail Hagerty and grant a new hearing and or order vacate sentenced imposed with time served and be Released this I Appeal to you.

Conclusion

I pray that the North Dakota Supreme Court Magistrate understand why I presented my brief in this manner. The circumstance of my indigent status and my lack of knowledge, skill, professionalism and the resources available at James River Correction Center. My right to a fair hearing without prejudice and the lack of adequate representation throughout all my proceedings during arraignment, trial by jury, conviction, sentencing and post-conviction hearing, and prejudice of the proceedings denying my right to due process of the law and representation by counsel. The violation of my constitutional rights of the 5th, 8th and 14th Amendments Excessive Sentencing, Due Process of the Law, and the failure of counsel to represent plaintiff fairly without prejudice. I hereby appeal to you North Dakota Supreme Court Magistrate

Dated June 28th 2004

Respectfully submitted
by *Derald Finkler*
Gerald Finkler