

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
District Court No. 08-04-C-01366/011
Supreme Court No. 20040254

20040254

Danielle Greybull,
Petitioner/Appellant,

vs.

State of North Dakota,
Respondent/Appellee.

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT - 7 2004

STATE OF NORTH DAKOTA

BRIEF OF APPELLANT

Appeal from the Burleigh County District Court
Order Denying Petitioner's Application for
Post-Conviction Relief
Entered October 7th, 2004
Honorable Thomas J. Schneider,
Presiding District Judge

Danielle Greybull
Petitioner/Appellant, pro se
MCF/#210852
1010 W 6th Ave
Shakopee, Mn 55379

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ISSUES ON APPEAL

1. WHETHER THE COURT MADE ILLEGAL DETERMINATION OF SENTENCE BY NOT FOLLOWING PROVISIONS OF SPECIAL DANGEROUS OFFENDER STATUTES AND NOT LETTING JURY DECIDE ON WHETHER GREYBULL FITS THE DEFINITION OF A SPECIAL DANGEROUS OFFENDER AND DECIDING HER LENGTH OF SENTENCE
2. WHETHER THE BLAKELY V. WASHINGTON AND APPRENDI RULE SHOULD BE APPLIED RETROACTIVELY, GIVEN THE FACT THE NORTH DAKOTA LEGISLATURE HAS NOT CHANGED THE STATUTES OF THE SPECIAL DANGEROUS OFFENDER STATUTE TO COME INTO COMPLIANCE WITH THIS MANDATE.

STATEMENT OF THE CASE

On April 23, 1996 Danielle Greybull was charged with the crime of manslaughter. (hereinafter referred to as Greybull). The Defendant, Greybull was convicted by a jury on April 16, 1997. On June 23, 1997, the North Dakota District Court found that the Defendant to be a special dangerous offender, under N.D.C.C. 12.1-32-09(1)(e). The sentence was enhanced to a twenty-years. A Appeal was filed in 1997, Trial Court sentence was affirmed.

The first Post-Conviction Relief petitioned was July 7, 1998. Post-Conviction was denied by court and Greybull appealed. The Defendant, Greybull has put forward two (2) other Post-Convictions, Which have been denied and appealed.

In the most recent Post-Conviction Relief filed was on July 30, 2003. Greybull stated as for grounds for relief that the Apprendi rule should be applied retroactively and that Notice of Intent to seek dangerous special offender status was untimely, filed. This Post-Conviction Relief Application was denied and appealed. North Dakota Supreme Court affirmed in 2004.

On August 2, 2004, Greybull, Pro se, petitioned the courts with a fourth (4th) Post-Conviction Relief Application. On the grounds that she be granted relief because there has been substantial change of substantial or procedural law, which in the interest of justice should be applied retrospectively. This Post-Conviction Relief was dismissed on Aug 27th, 2004. Greybull is currently Appealing.

STATEMENT OF FACTS

The Defendant, Greybull was charged for the crime of manslaughter, a class B felony pursuant to section 12.-1-16-02. It was alledged that Greybull caused the death of Charlene Yellow-Bear, by stabbing her with a dangerous weapon. The Defendant, Greybull was sentenced by the court to twenty (20) years on June 23,1997. Ms. Greybull must serve a minimum mandatory of four (4) years without the benefit of parole.

Originally, this case was set for trial and continued. On April 16, 1997, Greybull was tried and found quilty of manslaughter, by a jury, a class B felony that holds the penalty of ten (10) years or a \$10,000 fine. This is what the jury had found Greybull quilty of. The jury was not presented with the determination of finding Greybull quilty of any definition or status of being a special dangerous offender. The court instead determined and made the decision to classify Greybull, as a dangerous special offender. Ms. Greybull has no previous record of being a hibitual criminal but has a court record in Burleigh county being charged with NSF with her personal bank account in the amount of seventeen (17) dollars. The court made the determination on that Greybull, was over the aga of eighteen (18) and she used a dangerous weapon. Also, in the Sentencing Hearing Transcripts, dated June 23, 1997, the court made the statement that because of Greybull's behavior or conduct after her trial, he felt she qualified as a special dangerous offender status. And sentenced her to the maximum of twenty-years. This may not be quoted word for word, Greybull is recalling by memory only.

LAW AND ARGUMENTS

The Court made the finding that the Defendant, Greybull under N.D.C.C. 12.-1-32-09(1)(e), was a special dangerous offender, pursuant to sections 12.-1-32-09 N.D.C.C.. That the Defendant was over the age of eighteen (18) years at the time the crime alleged to have occurred; and in that a dangerous was used in the commission of the offense on or during the flight there from.

The Defendant, Greybull would like to address to the Court that she can not give exact quote for her legal argument in her brief to the Court but to the best of her ability quote statements that were given at the Sentencing Hearing for Defendant, Greybull on June 23, 1997. Let it be known that Defendant, Greybull requested by letter to Clerk of Courts, for a copy of the sentencing Hearing Transcripts in Three (3) separate letters.

The Defendant, Greybull is not only claiming her enhanced sentence was illegally made because of how the Courts decided the enhancement her sentence but that the jury should of made the decision of length of sentence and if Defendant fit the provisions of a special dangerous offender.

The Defendant , Greybull would like to make Court aware that her enhanced maximum sentence was decided illegally, beyond the provisions of the special dangerous status . The Court made the statement."that because of Greybull's behavior after the Trial, she should be sentenced to the maximum of twenty (20) years.

The enhanced sentence given by the Court was not in accordance with the provisions given under 12.-1-32-09, special dangerous offender status - Habitual Offenders - Extended Sentence- Procedure. The conduct or behavior of a Defendant after their trial does not constitute a fair decision to sentence the Defendant to a maximum sentence and is illegal.

The way the Defendant, Greybull conducted her behavior after the trial is no part of the North Dakota Statutory Provisions required to make a determination on a her enhanced sentence, that is under the special dangerous offender status.

The United States Supreme Court decided in the case of *Blakely v. Washington*, that Defendants should have be allowed to have the jury decide whether their crime merits an enhanced prison term. In the high courts, a 5-4 decision , the majority determined, the power a judge has to add years to a sentence inhibits a jury's duty to access the extenuating factors of a criminal act and penalize accordingly.

The North Dakota Legislature continues to ignore the mandates of Apprendi and refuses to bring the North Dakota Courts up to modern compliance with this and any "New Rules", set by The United Supreme Court. The United Supreme Court decide on such "New Rules", as *Blakely v. Washington*, and Apprendi, to justify illegal enhancement of sentences. Why, then does the North Dakota Courts refuse to comply with procedural laws?

To protect my Constitution Rights, I respectfully, request The North Dakota Supreme Court to find my enhanced sentence,

under the special dangerous status, and Courts determination that went illegal beyond provisions and sentence wasn't decided by jury unconstitutional; under the "New Rules", Blakely v. Washington, and it requires a retroactive application under Apprendi. Accordingly, it is requested that the Court reverse the special dangerous offender status and remand for a trial by jury.

To emphasize my arguments to the Courts as to why, my special dangerous offender status should be remanded to a jury. On or there abouts July 21, 2004, the Minnesota Court of Appeals returned the case Dennis L. Whitley, to Hennepin County District court for resentencing because Whitley did not know he could have a jury assess the factors that determine the length of his sentence.

In another case of this year 2004, The Minnesota Courts of Appeals send Lionel Lee Washington's serving a forty (40) year sentence, case back to the trial court for resentencing because the United States Supreme Court has ruled that juries not judges should decide prison terms.

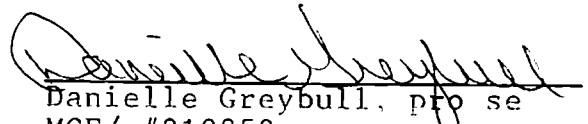
I urge the North Dakota Courts to follow Minnesota Supreme Courts decision and to bring statutes with in Constitutional mandate.

Conclusion

Defendant, Greybull, was convicted of the crime of Manslaughter and sentenced as a special dangerous offender pursuant to North Dakota Statutes. The finding of special dangerous offender was not accomplished, by a jury but instead, by a Court pursuant to North Dakota Statutes, which have not been complied with since the decision of Apprendi in 2000. It is Ms. Greybull's position that the Supreme Court of North Dakota in order to mandate the Legislature's compliance with the provisions of Blakely v Washington and Apprendi hold that under Blakely v Washington, a jury should decide her sentence and Apprendi should be an retroactive application. In conclusion considering, the circumstances and therefore not reasonable requiring under both arguments that this matter be remanded to the court for appropriate finding, whether or not she is a dangerous offender and for the other relief as to the court seems just and equitable.

Respectfully submitted.

Dated this 7th day of Oct, 2004.


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