

ORIGINAL

20080271—20080273

SUPREME COURT OF NORTH DAKOTA

WYNN WALSTAD,

APPELLANT,

V.

STATE OF NORTH DAKOTA,

RESPONENT,

SUPREME COURT NO. 20080271

20080272

20080273

WILLIAMS CO. NO. 04-K-00741

04-K-00742

04-K-00743

APPELLANT BRIEF AND APPENDIX

APPEAL OF DISTRICT DENIAL OF FAILURE TO ANSWER MOTION

ASSISTANT STATE ATTORNEY
WILLIAMS COUNTY DISTRICT COURT
P.O. BOX 2047
WILLISTON, N.D. 58801

RESPONDENT

WYNN WALSTAD
JAMES RIVER CORRECTIONAL CENTER
2521 CIRCLE DR.
JAMESTOWN, N.D. 58401

APPELLANT, PRO SE

STATEMENT OF THE ISSUES

The issue of this action to the Supreme Court, is that the District Court failed to award the time spent in custody that was served in the North Dakota State Penitentiary, and the County jail, for the charges that are now being served upon the sentences of the Court on the Case No.s in the foregoing action before this Court.

This issue is in regard to the North dakota Century Code; 12.1-32-02, (2). that is afforded all who are sentenced for any criminality in this State.

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FACTS OF THE CASE

The Appellant was sentenced to serve nine years, with six of those years imposed to be suspended, for a period of five years. The period of suspension, to be served on probation, with terms and conditions, as set forth by the Court.

The Appellant served his three years in the Department of Corrections, in North Dakota, and was released to the community to serve his suspended sentence, or probation.

After a period of time, the appellant violated his probation, and was re-sentenced to the North Dakota Department of Corrections, to a period of ten years. The Williams County District Court did not give the Appellant credit for the three years spent in the North Dakota Department of Corrections, or any of the days spent in the Williams County Jail, which amounted to about ten days.

Under the North Dakota Century Code, the Appellant must receive credit for any time spent in custody for the charge that he is sentenced for.

The Appellant filed a "MOTION with the Williams County District Court, asking for the credits to the sentence that he is now serving. But, the Williams County District Court failed to give an answer to the "MOTION" filed.

ARGUMENT

The Appellant is appelaing the denial of the Williams County District Court's failure, to answer to a "MOTION" put before the Court for credit spent in custody on the cases that he is now serving. The Appellant was previously sentenced to prison time, and probation on these charges.

At a later date, the probation of the appellant was revoked, and he was again sentnced to the North Dakota Department of Corrections to serve the remainder of his sentence.

According to the North Dakota Century Code, 12.1-32-02, (2), all persons sentenced to prison time for a charge, "shall" recieve credit for any time spent in custody, whether it be in a hospital, jail, treatment facility, or other institution deemed to be in an enviornment where the person is not free.

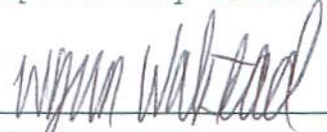
The Appellant did serve three years in the North Dakota Department of Corrections on the first sentence imposed. He, was later re-sentenced to more prison time, but the Court failed to give the appellant any credit for time spent on the charges, or case number listed on the cover sheet. The Appellant also served about ten (10) days in the Williams County Detention center waiting for the probation revocation hearing to be held.

RELIEF SOUGHT

The Appellant seeks the proper credits that are due him by the North Dakota Statue, that is afforded all persons that are sentenced for criminality in this state.

Dated this 24 day of November, 2008.

Respectfully submitted,



WYNN WALSTAD

20080271- 20080273

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AFFIDAVIT OF SERVICE BY FIRST
CLASS MAIL

State of North Dakota } ss
County of Stutsman }

The undersigned, being duly sworn upon oath, hereby affirms
that a true and complete copy of the following document;

BRIEF OF APPELLANT

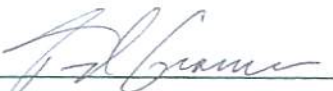
HAVE BEEN DULY SERVED UPON:

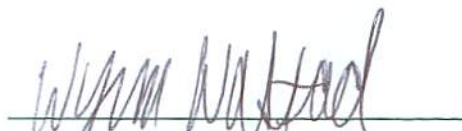
ASSISTANT STATE ATTORNEY
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P.O. BOX 2047
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SUPREME COURT OF NORTH DAKOTA
OFFICE OF THE CLERK
600 E. BOULEVARD AVE. DEPT !*)
BISMARCK, N.D. 58505-0530

by depositing same in the United States Mail, postage prepaid,
at the James River Correctional center, on the 12th day
of November, 2008.

Subscribed and sworn to/before me this 12th day of November,
2008, in Stutsman County, ND.


NOTARY


WYNN WALSTAD

COMMISSION EXPIRES

TAD GRANMOE
Notary Public
State of North Dakota
My Commission Expires MARCH 7, 2012