

**Filed 1/12/10 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2010 ND 4

Tilmer Everett,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20090244

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce A. Romanick, Judge.

AFFIRMED.

Per Curiam.

Tilmer Everett (self-represented), P.O. Box 5521, Bismarck, N.D. 58506, petitioner and appellant.

Cynthia Mae Feland, Assistant State's Attorney, Courthouse, 514 East Thayer, Bismarck, N.D. 58501-4413, for respondent and appellee.

Everett v. State

No. 20090244

Per Curiam.

[¶1] Tilmer Everett appeals from the district court's judgment summarily dismissing his application for post-conviction relief. Everett's conviction for gross sexual imposition was affirmed in State v. Everett, 2008 ND 126, 756 N.W.2d 344, and the denial of his initial application for post-conviction relief was affirmed in Everett v. State, 2008 ND 199, 757 N.W.2d 530. Everett argues on appeal that his conviction was obtained by the unconstitutional failure to disclose evidence favorable to him and by use of evidence obtained from an unlawful arrest and that there was a conspiracy to commit fraud and perjury. The district court's judgment is affirmed under N.D.R.App.P. 35.1(a)(6) and (7); Klose v. State, 2008 ND 143, ¶ 10, 752 N.W.2d 192 (res judicata precludes claims or variations of claims raised in previous proceedings, and misuse of process precludes claims that could have been raised in a prior post-conviction proceeding or other proceeding).

[¶2] Gerald W. VandeWalle, C.J.
Dale V. Sandstrom
Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner