

**Supreme Court No. 201000090
District Court No. 09-05-K-02261**

NORTH DAKOTA SUPREME COURT

State of North Dakota

(Appellee)

v.

Bruce A. Hager

(Appellant)

Appeal from Order Revoking Probation and Sentence issued March 15, 2010
Honorable Wickham Corwin of the Cass County District Court

REPLY BRIEF OF THE APPELLANT

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ISSUES PRESENTED

I. Whether The District Court substantially relied on an impermissible factor when issuing a sentence.

LAW AND ARGUMENT

I. The District Court substantially relied on an impermissible factor when issuing a sentence.

[1]The District Court's Amended Memorandum Opinion and Order centered on whether Hager engaged in activities requiring registration while on probation.¹ The District Court found that Hager was acting as an "agent" within the meaning of N.D.C.C. §10-04.² The District Court further found that Hager was not "exempt" under N.D.C.C. §10-04-10(2), and was selling securities as an unregistered agent.

[2]Although Hager admitted to violating his probation by possessing firearms, the District Court used the securities violations as a significant factor in sentencing. If this Court concludes that Hager was exempt from registration and therefore, not acting as an unregistered agent, then the significant weight attributed to the securities violations were an "impermissible factor" used in sentencing.

[3]Appellate review of a sentence itself focuses only on whether the district court "acted within the limits prescribed by statute, or substantially relied on an impermissible factor." State v. Ennis, 464 N.W.2d 378, 382 (N.D. 1990). Although the District Court's sentence was within the statutory limits, the court gave substantial weight to the securities violations when sentencing.

¹ Amended Memorandum Opinion and Order page 2.

² Amended Memorandum Opinion and Order page 6. "The record in this case clearly establishes that Hager was acting as an agent.

[4]The court substantially relied on the securities violations to impose Hager's thirty-month sentence. When imposing sentence, the court determined that the "new violations are of the exact kind and nature as the original violations." The court further elaborated by stating "[C]learly, the message was not received."³ More importantly however, the court wanted to send a message based on the securities violations when Judge Corwin stated, "I must also agree that that period of incarceration does need to reflect both the serious nature of the violations, and it needs to convey, if not to you [Hager], at least to others who might be similarly disposed, that the securities laws of this state are serious. Violations need to be treated as serious."⁴

CONCLUSION

[5] Although the court is granted with a wide range of discretion, the court cannot substantially rely on an impermissible factor when rendering a sentence. The sentencing transcript clearly reveals that the district court was assigning substantial weight to the alleged securities violations and wanted to send a strong signal that the securities laws of this state were serious. The transcript is devoid of references to the possession of firearm being a factor in sentencing. Should this court determine that Hager was not acting as an unregistered agent and therefore, not in violation of N.D.C.C. §10-04, it is then impermissible to assign any weight to the lawful conduct. Hager's sentence should be

³ Page 29 sentencing transcript.

⁴ Page 29-30 sentencing transcript.

determined without a finding that he violated the securities laws of the state of North Dakota.

Respectfully submitted this 12th day of July, 2010.

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**IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA**

State of North Dakota,)	
)	
Appellee,)	Supreme Court No. 2010000090
)	District Court No. 09-05-K-2261
-vs-)	
)	CERTIFICATE OF SERVICE
Bruce A. Hager,)	
)	
Appellant.)	

I, Amy Mihulka, an employee of the law offices of Larivee & Light, hereby
certify that on **July 13, 2010**, I served the **Appellant's Reply Brief** upon the following
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