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20140118
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SEPTEMBER 9, 2014
STATE OF NORTH DAKOTA

THE SUPREME COURT
STATE OF NORTH DAKOTA

Adam Winarske,	)	
	)	
Petitioner and Appellant,	)	20140112-
	)	Supreme Court File No. 20140118
vs.	)	
	)	Stark County District Court No.
State of North Dakota,	)	45-2012-CV-00417, 418, 419,
	)	420, 421, 422 and 423
Respondent and Appellee.	)	

BRIEF OF APPELLANT

Appeal from the District Court's Order
Denying Motion for Post-Conviction Relief
entered on April 1, 2014
Stark County District Court
Southwest Judicial District
Honorable William A Herauf

Lynn Slaathaug Moen (ID# 06716)
BRUDVIK LAW OFFICE, P.C.
231 9th Ave SE
PO Box 547
Mayville, ND 58257
Telephone: 701-788-3251
Facsimile: 701-788-4243
E-service: lynn@brudviklaw.com

ATTORNEY FOR APPELLANT

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[¶1] **STATEMENT OF ISSUES**

I. Whether the District Court erred in denying Winarske's application for post-conviction relief because Winarske was denied the assistance of counsel at all stages of the proceedings; including but not limited to the preliminary hearing and arraignment, jury trial, and sentencing.

II. Whether the District Court erred in denying Winarske's application for post-conviction relief because his guilty pleas were not knowingly, intelligently, and voluntarily given.

III. Whether the District Court erred in denying Winarske's application for post-conviction relief because Winarske received ineffective assistance of counsel.

[¶2] **STATEMENT OF THE CASE**

[¶3] On January 20, 2005 in case number 45-04-K-01501, Adam Winarske ("Winarske") pleaded guilty to two counts of burglary and one theft, each count a C felony. (App. at 26-28). Transcripts of the pleas and sentencing in the original criminal cases were unavailable. Post-Conviction Evid. Hr'g. Tr. 17:6-24 ("Hr'g Tr."). In addition, Winarske pleaded guilty to one count of B misdemeanor theft. (App. at 26-28). On May 10, 2005, in case number 45-04-K-01596, Winarske pleaded guilty to C felony criminal conspiracy to commit criminal mischief. (App. at 29-30).

[¶4] On November 4, 2005, Winarske entered guilty pleas in case number 45-05-K-00598 to a C felony burglary, an A misdemeanor theft and an A misdemeanor criminal mischief. (App. at 31-34). In case number 45-05-K-00647, he entered guilty pleas to two counts of B felony gross sexual imposition. (App. at 35-37). In case number 45-05-K-01108, he pleaded guilty to B felony burglary and C felony theft of property. (App. at 38-41). In case number 45-05-K-01163, he pleaded guilty to C felony criminal

conspiracy to commit burglary and in case number 45-05-K-01188, he pleaded guilty to B felony burglary. (App. at 42-46).

[¶5] Winarske filed a Petition for Post-Conviction Relief *pro se* on May 30, 2012. (App. at 15-16). He alleged ineffective assistance of counsel and his own lack of competency to enter pleas. Id. He also requested the assistance of counsel. Id. The state filed its response opposing Winarske's application on June 25, 2012. (App. at 17). Winarske filed a supplemental brief and affidavits on July 9, 2012, further alleging that Winarske was improperly denied an attorney. (App. at 18-21).

[¶6] On October 21, 2013 and February 10, 2014, the district court held an evidentiary hearing on Winarske's application. (App. at 1). On April 1, 2014, the district court denied Winarske's Petition for Post-Conviction Relief. (App. at 22). Winarske filed a Notice of Appeal on April 2, 2014. (App. at 25). On Appeal, Winarske argues that the district court erred in denying his application because he was improperly denied the assistance of counsel and his plea of guilty was not knowingly, voluntarily and intelligently given in case number 45-04-K-1596 and he received ineffective assistance of counsel in case numbers 45-04-K-1501, 45-05-K- 598, 647, 1108, 1163, and 1188.

[¶7] **STATEMENT OF THE FACTS**

[¶8] Winarske was charged by criminal complaint on November 8, 2004 in Stark County case number 45-04-K-1501. (App. at 47-48). The complaint alleged that on July 1 and July 15, 2004, 18-year-old Winarske committed burglary and theft of property by using stolen keys to enter the offices of Bauer Property Management and stealing $40.00 and $600-800, respectively. Id. Winarske applied for counsel and William Heth was appointed. Winarske pleaded guilty and an Order Deferring Imposition of Sentence was entered on January 20, 2005. (App. at 26-28; 58-62).

[¶9] Winarske was charged by criminal complaint on December 7, 2004 in Stark County case number 45-04-K-1596. (App. at 49). The complaint alleged that on April 19, 2004, Winarske engaged in a criminal conspiracy to commit criminal mischief by engaging with a juvenile to "key" a number of vehicles belonging to Dan Porter Motors, broke a vehicle window, urinated in a Corvette, and slashed a convertible top. Id. An attorney was not appointed to represent Winarske in this case. (App. at 29-30). He was unrepresented when he waived his preliminary hearing and when he entered a guilty plea on February 15, 2005. Id. The court entered a Criminal Judgment May 10, 2005. (App. at 63-67).

[¶10] Winarske was charged by criminal complaint on May 31, 2005 in Stark County case number 45-05-K-00598. (App. at 50-51). The complaint alleged that on May 12, 2005, Winarske committed burglary, theft, and criminal mischief by breaking into Walco Vet Supplies by breaking a door and stealing $150.00 in cash, two brief cases valued at approximately $200 and miscellaneous change and a can of pop. Id.

[¶11] Another criminal complaint was charged on June 10, 2005 in Stark County case number 45-05-K-00647. (App. at 52-53). The complaint alleged that on December 31, 2004 and January 29, 2005, Winarske committed gross sexual imposition by attempting intercourse with a 14-year-old girl and otherwise touching her sexual or other intimate parts for the purpose of arousing or satisfying sexual desires. Id.

[¶12] He was again charged by criminal complaint on September 21, 2005 in Stark County case number 45-05-K-01108. (App. at 54). The complaint alleged that on May 20, 2005 Winarske committed burglary and theft of property by entering the dwelling of Dave Bauer at night and stealing a wallet containing credit cards, debit cards, and cash. He then allegedly used the credit cards to obtain approximately $1,900.00. Id.

[¶13] On October 4, 2005, Winarske was charged by criminal complaint on in Stark County case number 45-05-K-01163. (App. at 56). The complaint alleged that on May 8, 2005, Winarske committed criminal conspiracy to commit burglary by agreeing with another to break into a locked storage shed adjacent to Kolling Apartments and steal gasoline. Id.

[¶14] The last criminal charge was filed on October 12, 2005 in Stark County case number 45-05-K-01188. (App. at 57). The complaint alleged that on May 20, 2005, Winarske committed burglary by entering the dwelling of Connie Rehbein twice and stole a purse, a ring, and some coins. Id.

[¶15] Winarske requested and was appointed William Heth as counsel for the five cases, case numbers 45-05-K-598, 647, 1108, 1163, and 1188. (App. at 26-46). Winarske pleaded guilty in all five cases pursuant to plea agreement and the court entered its Criminal Judgment on February 22, 2006. (App. at 68-71). The court imposed additional conditions for case number 45-05-K-647, one of those conditions required sex offender registration. (App. at 72-74). On June 2, 2006, Winarske filed a request for reduction of sentence and modification of the court imposed conditions for a sex offender pursuant to Rule 35(b). (App. at 37). His request was denied on June 8, 2006. Id.

[¶16] On May 30, 2012, Winarske filed a *pro se* Petition for Post-Conviction Relief alleging ineffective assistance of counsel and his own lack of competency to enter pleas. (App. at 15-16). The state filed its response opposing Winarske's application on June 25, 2012. (App. at 17). Winarske filed a supplemental brief and affidavits on July 9, 2012, further alleging that Winarske was improperly denied an attorney. (App. at 18-21).

[¶17] On October 21, 2013 and continued on February 10, 2014, the district court held an evidentiary hearing on Winarske's application. (App. at 1). Winarske appeared

telephonically and was represented by counsel. (Oct. 21, 2013 Hr'g Tr. 3:5-7). Winarske argued that in case number 45-04-K-1596, the prosecution violated Rule 44 of the North Dakota Rules of Criminal Procedure by engaging in discussions with Winarske where he was unrepresented. (Feb. 10, 2014, Hr'g Tr. 26:5-11). Following this discussion, he waived his preliminary hearing, and in exchange for a plea received a suspended sentence. (Oct. 21, 2013 Hr'g Tr. 22:9-15). Further in case numbers 45-04-K-1501, 45-05-K-598, 647, 1108, 1163, and 1188, Winarske argued that he received ineffective assistance of counsel due to his counsel's failure to properly investigate, failure to make a motion to suppress, and then acceptance of a plea agreement that was not what Winarske believed it to be. (App. at 15-16; Feb. 10, 2014, Hr'g Tr. 26:23-27:22).

[¶18] **JURISDICTIONAL STATEMENT**

[¶19] The district court had jurisdiction to address Winarske's application for post-conviction relief under N.D. Const. art. VI, § 8, and N.D.C.C. § 29-32.1-03. This Court has jurisdiction over this appeal under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-32.1-14. This appeal is timely under N.D.R.App.P. 4(d).

[¶20] **LAW AND ARGUMENT**

[¶21] Winarske argues that the district court erred in denying his application for post-conviction relief because he was denied the assistance of counsel at all stages of the proceedings in case number 45-04-K-01596; including but not limited to the preliminary hearing and arraignment, jury trial, and sentencing. In addition, the district court erred in denying his application for post-conviction relief because Winarske did not knowingly, intelligently, and voluntarily enter his guilty pleas. In case numbers 45-04-K-1501, 45-05-K-598, 647, 1108, 1163, and 1188, Winarske received ineffective assistance of counsel. Winarske respectfully requests this Court reverse the district court's order and

remand the matter to the district court with instructions to grant Winarske the post-conviction relief he requested.

[¶22] The North Dakota Rules of Civil Procedure govern petitions for post-conviction relief, which are civil in nature. Garcia v. State, 2004 ND 81, ¶ 6, 678 N.W.2d 568. "The petitioner has the burden of establishing grounds for post-conviction relief." Flanagan v. State, 2006 ND 76, ¶10, 712 N.W.2d 602. "The district court's findings of fact in a post-conviction proceeding will not be disturbed on appeal unless they are clearly erroneous under N.D.R.Civ.P. 52(a)." Laib v. State, 2005 ND 187, ¶11, 705 N.W.2d 809. However, ineffective assistance of counsel claims are mixed questions of law and fact, and the district court's findings of fact are subject to the clearly erroneous standard from N.D.R.Crim.P. 52(a). See Greywind v. State, 2004 ND 213, ¶ 13, 689 N.W.2d 390; see also Moore v. State, 2007 ND 96, ¶ 8, 734 N.W.2d 336; Cue v. State, 2003 ND 97, ¶ 10, 663 N.W.22d 637. A finding of fact is clearly erroneous if it is "induced by an erroneous view of the law, if it is not supported by the evidence, or if, although there is some evidence to support it, a reviewing court is left with a definite and firm conviction that a mistake has been made." DeCoteau v. State, 2000 ND 44, ¶ 10, 608 N.W.2d 240. On appeal, questions of law in post-conviction proceedings are reviewed de novo. Peltier v. State, 2003 ND 27, ¶ 6, 657 N.W.2d 238.

I. THE DISTRICT COURT ERRED IN DENYING WINARSKE'S APPLICATION FOR POST-CONVICTION RELIEF BECAUSE WINARSKE WAS DENIED THE ASSISTANCE OF COUNSEL AT ALL STAGES OF THE PROCEEDINGS; INCLUDING BUT NOT LIMITED TO THE PRELIMINARY HEARING AND ARRAIGNMENT, JURY TRIAL, AND SENTENCING.

[¶23] The Sixth Amendment of the United States Constitution and Article I, Section 12 of the North Dakota Constitution guarantee a criminal defendant's right to counsel. Moreover, N.D.R.Crim. P. Rule 44(a)(1) provides, for felony cases, "An indigent

defendant facing a felony charge in state court is entitled to have counsel provided at public expense to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right."

> A criminal defendant who wishes to represent himself must voluntarily, knowingly, and intelligently relinquish the benefits of counsel. Whether a defendant's waiver of the right to counsel was made knowingly and intelligently depends on the facts and circumstances of each case. To intelligently and knowingly choose self-representation, a defendant should be aware of the dangers and disadvantages of proceeding without the skill and experience of counsel. The record must establish that the choice was made "with eyes open."

Wilson v. State, 2013 ND 124, 833 N.W.2d 492, 498; quoting In re Adoption of S.A.L., 2002 ND 178, 652 N.W.2d 912, 916; see also State v. Dvorak, 2000 ND 6, ¶ 10, 604 N.W.2d 445; State v. Harmon, 1997 ND 233, ¶ 22, 575 N.W.2d 635; Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). "The Sixth Amendment imposes an affirmative obligation on the prosecution to respect and preserve an accused's choice to seek assistance of counsel, and 'at the very least, the prosecutor and police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel.'" Ellis v. State, 2003 ND 72, 660 N.W.2d 603, 606; quoting Maine v. Moulton, 474 U.S. 159, 171, 106 S. Ct. 477, 484, 88 L. Ed. 2d 481 (1985).

[¶24] In case number 45-04-K-1596, Winarske was charged with criminal conspiracy to commit criminal mischief, a C felony. (App. at 49). After consulting with the prosecutor, and in exchange for what he believed to be a deferred imposition of sentence, Winarske waived his right to a preliminary hearing and pleaded guilty. (Oct. 21, 2013 Hr'g Tr. 22:9-15). Winarske's testimony and affidavits make it clear that Winarske was

not aware of his right to counsel and after discussion with the prosecutor; he was persuaded to waive his right to a preliminary hearing and plead guilty to a class C felony.

> *Q. Okay. Now what do you remember about that preliminary hearing when you pled guilty and waived your preliminary hearing? What do you remember about that hearing?*
>
> *A. I remember that – I remember a quick conversation outside. And then I remember knowing, like, that I'm not going to get in trouble and I'm not going to go to jail or prison if I took this sentence. And that's basically why I agreed to plead guilty right then because I had those other charges and I really didn't want to go to jail.*

(Oct. 21, 2013 Hr'g Tr. 29:5-13).

[¶25] Further, Winarske testified that in exchange for his guilty plea he was to receive a deferred imposition of sentence on this charge. (Oct. 21, 2013 Hr'g Tr. 21:10-13). However, his testimony and accompanying affidavits demonstrate Winarske's confusion regarding his plea and sentence. (Oct. 21, 2013 Hr'g Tr. 21:14-20; App. at 18). Winarske believed that he was to receive a sentence with a deferred imposition but was instead sentenced to a suspended term of incarceration.

> *Q. Okay. And did Mr. Mehrer have discussions with you before court?*
>
> *A. We just talked like outside of the Courthouse, or whatever, because my co-defendant, I believe, took a deal already and he just explained to me that if I took a certain deal, what would happen.*
>
> *Q. Okay. What did he tell you would happen?*
>
> *A. He basically told me that if I pled guilty that I would receive a deferred imposition of sentence and that basically meant that it would come off my record after a certain amount of time.*

(Oct. 21, 2013 Hr'g Tr. 21:3-13).

[¶26] The Criminal Judgment entered in 45-04-K-1596 did not provide for a deferred imposition of sentence. (App. at 63-65). However, it did provide for a sentence with the North Dakota Department of Corrections for eighteen months suspended for four years.

Id. At the very least, the discrepancy between Winarske's testimony and the criminal judgment demonstrates his confusion and lack of understanding of what he was agreeing to when he entered his guilty plea. At no point in the record did Winarske indicate that he understood he was to receive a suspended sentence or even that he presently understood the sentence. Instead, he references in his testimony that he was not going to jail and the charge would come off his record in exchange for his guilty plea. Even if one were to assume that Winarske simply confused his cases and the state did not promise a deferred imposition of sentence, Winarske did not understand what a suspended sentence meant. He believed the court would not sentence him to jail time, when in fact, he was truly facing up to eighteen months of jail time.

[¶27] When the facts are taken as a whole, including Winarske's comprehension of his agreement and waiver, it is clear that Winarske did not knowingly and "with eyes wide open" give up his right to legal counsel, waive his preliminary hearing, and enter a guilty plea.

[¶28] Winarske's right to counsel under the United States Constitution, North Dakota Constitution, and under Rule 44(a)(1) of the North Dakota Rules of Criminal Procedure was violated when he was persuaded without the aid of counsel to enter a guilty plea to a felony charge. For this reason, the district court erred in denying his application for post-conviction relief. Winarske respectfully requests that this Court reverse the district court's denial of his application for post-conviction relief and remand the matter with instructions to grant him the relief requested.

II. THE DISTRICT COURT ERRED IN DENYING WINARSKE'S APPLICATION FOR POST-CONVICTION RELIEF BECAUSE HE DID NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTER HIS GUILTY PLEA.

[¶29] The United States Supreme Court provides that a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Brady v. United States, 397 U.S. 742, 748 (1970). "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Id. at 748.

[¶30] Winarske entered his guilty plea in case number 45-04-K-1596 only after assurances from the prosecutor that he would receive a deferred imposition in return for his waiver of the preliminary hearing and plea of guilty.

> *Q. Okay. So you basically came into the preliminary hearing and were told if you waive your preliminary hearing and plead guilty you'll get a deferred sentence.*
>
> *A. Yes, sir.*

(Oct. 21, 2013 Hr'g Tr. 23:13-16). The record is clear that Winarske believed after speaking with the prosecutor without the aid of an attorney that he was to receive a deferred imposition of sentence. Instead, Winarske received an eighteen-month prison commitment that was suspended.

[¶31] "(A) plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). Brady, at 755.

[¶32] Here, the state promised Winarske a deferred imposition of judgment in return for his waiver of fundamental rights. The state induced his waiver of preliminary hearing and guilty plea by its promises and as such, he did not knowingly, intelligently, or voluntarily enter his plea of guilt. Because Winarske did not make his pleas knowingly, intelligently or voluntarily, the district court erred in denying his application for post-conviction relief.

III. THE DISTRICT COURT ERRED IN DENYING WINARSKE'S APPLICATION FOR POST-CONVICTION RELIEF BECAUSE WINARSKE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

[¶33] The district court erred in in denying his application for post-conviction relief because Winarske's appointed trial counsel provided him ineffective assistance of counsel. Winarske respectfully requests this Court reverse the district court's denial of his application for post-conviction relief, and remand the matter with instructions to grant him the relief he requested.

[¶34] The Sixth Amendment and Article I, section 12 of the North Dakota Constitution guarantee a criminal defendant the right to the effective assistance of counsel. See, e.g., State v. Garge, 2012 ND 138, ¶ 10, 818 N.W.2d 718; State v. Austin, 2007 ND 30, ¶ 29, 727 N.W.2d 790. "[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendants receive a fair trial." Strickland v. Washington, 466 U.S. 668, 689 (1984). "The essence of an ineffective assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." Kimmelman v. Morrison, 477 U.S. 365, 374 (1986).

[¶35] In analyzing ineffective assistance of counsel claims, the North Dakota Supreme Court follows the two-prong Strickland test. State v. Schweitzer, 2007 ND 122, ¶ 23, 735 N.W.2d 873. The first Strickland prong requires a defendant claiming ineffective assistance of counsel to demonstrate that his counsel's representation fell below an objective standard of reasonableness. Strickland, 466 U.S. at 687-88. "Effectiveness of counsel is measured by an objective standard of reasonableness considering prevailing professional norms." Lange v. State, 522 N.W.2d 179, 181 (N.D. 1994) (quoting Strickland, at 688). A defendant alleging ineffective assistance must overcome the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Stoppleworth v. State, 501 N.W.2d 325, 327 (N.D. 1993) (internal quotations omitted). "Trial counsel's conduct is presumed to be reasonable and courts consciously attempt to limit the distorting effect of hindsight." Lange, at 181. The first prong is measured by whether there were "errors so serious" that the defendant was not provided counsel as guaranteed by the Sixth Amendment. DeCoteau, at ¶ 8 (quoting State v. McLain, 403 N.W.2d 16, 17 (N.D. 1987); Strickland, 466 U.S. at 687)).

[¶36] The second prong of the Strickland test requires a defendant alleging ineffective assistance of counsel to establish that there is a reasonable probability that but for his counsel's unprofessional errors; the result of the proceeding would have been different. Strickland, 466 U.S. at 687-88. In situations where the defendant pleaded guilty and asserts an ineffective assistance of counsel claim, the defendant must establish that "'there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" Bahtiraj v. State, 2013 ND 240, ¶ 15, 840 N.W.2d 605 (quoting Hill v. Lockhart, 474 U.S. 52, 58-59 (1985)). A self-serving statement is not sufficient to establish prejudice; the defendant must show

that there is a substantial likelihood of a different result--that the defendant would not have pleaded guilty and insisted on going to trial. Id. at ¶ 16. Under Bahtiraj, the defendant must establish that the decision to reject a plea would have been rational under the circumstances. Id. (citing Padilla v. Kentucky, 559 U.S. 356, 372 (2010)).

[¶37] When applying the law to the case at hand, Winarske's trial counsel fell below an objective standard of reasonableness in his performance. Winarske's appointed attorney Mr. Heth was concerned about closing out his final cases before his impending retirement and not focused on providing sound legal advice to Winarske. (App. at 20-21). He failed to investigate properly Winarske's cases and he did not keep him informed during plea negotiations, which was crucially important given the number of charges Winarske faced at the time. Id. He further, failed to explain the consequences of pleading guilty to charges of gross sexual imposition. Id.

[¶38] Next, the court must determine if Mr. Heth's deficient performance prejudiced Winarske. Winarske's affidavits clearly demonstrate Winarske did not appreciate all of the consequences of pleading guilty. Id. Further, Winarske was never informed of an offer of five years straight time from the prosecution until it was too late to accept. Id. Instead, he ended up with a sentence of nine years with four suspended. (App. at 68-71). Had Mr. Heth advised Winarske of the offer and the consequences of his guilty pleas, he would not have pleaded guilty to the charges. (App. at 20-21).

[¶39] Trial counsel's performance fell below an objective standard of reasonableness, and the court erred in determining otherwise. Further, Winarske was prejudiced by his counsel's deficient performance and the court's determination otherwise is clearly erroneous and should be reversed.

[¶40] **CONCLUSION**

[¶41] The district court erred in denying Winarske's application for post-conviction relief. Winarske was entitled to counsel in case number 45-04-K-1596. Winarske's guilty plea was not made knowingly, intelligently and voluntarily in case number 45-040K-1596. In case numbers 45-04-K-1501, 45-05-K- 598, 647, 1108, 1163, and 1188, trial counsel's performance fell below an objective standard of reasonableness and Winarske was prejudiced by his counsel's defective performance. This Court should reverse the district court and remand the matter with instructions for the district court to grant Winarske the relief he requested.

Respectfully submitted this 9th day of September, 2014.

BRUDVIK LAW OFFICE, P.C.

/s/ Lynn Slaathaug Moen

Lynn Slaathaug Moen (ID# 06716)
BRUDVIK LAW OFFICE, P.C.
231 9th Ave SE
PO Box 547
Mayville, ND 58257
Telephone: 701-788-3251
Facsimile: 701-788-4243
lynn@brudviklaw.com
Attorney for Appellant

THE SUPREME COURT
STATE OF NORTH DAKOTA

Adam Winarske,	)	
	)	
Petitioner and Appellant,	)	
	)	Supreme Court File No. 20140118
vs.	)	
	)	Stark County District Court No.
State of North Dakota,	)	45-2012-CV-00417, 418, 419,
	)	420, 421, 422 and 423
Respondent and Appellee.	)	

AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF TRAILL)

Lynn Slaathaug Moen, being first duly sworn, does depose and state that she is of legal age and not a party to the above-entitled matter. On September 9, 2014, I served the:

BRIEF OF APPELLANT
ADAM WINARSKE

and

APPENDIX OF APPELLANT

By sending a copy by e-mail on September 9, 2014, to:

thenning@starkcountynd.gov
attorney@starkcountynd.gov
Tom Henning
Courthouse
P.O. Box 130
Dickinson, ND 58602-0130

To the best of Affiant's knowledge, the e-mail address above given is the e-mail address of the party intended to be served. The above document was duly e-mailed in accordance with the provisions of N.D.Sup.Ct.Admin. Order 14.

/s/ Lynn Slaathaug Moen
Lynn Slaathaug Moen
Attorney at Law
231 9th Avenue, SE
P.O. Box 547
Mayville, ND 58257
North Dakota ID# 06716
Telephone: 701-788-3251
Facsimile: 701-788-4243
lynn@brudviklaw.com

20140112-20140118

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SEPTEMBER 17, 2014
STATE OF NORTH DAKOTA

THE SUPREME COURT
STATE OF NORTH DAKOTA

Adam Winarske,	)	
	)	
Petitioner and Appellant,	)	
	)	Supreme Court File No. 20140112-118
vs.	)	
	)	Stark County District Court No.
State of North Dakota,	)	45-2012-CV-00417, 418, 419, 420
	)	421, 422 and 423
Respondent and Appellee.	)	

AFFIDAVIT OF SERVICE BY MAIL

Lynn Slaathaug Moen, being first duly sworn, does depose and state that she is of legal age and not a party to the above-entitled matter. On September 16, 2014 I served the:

Brief of Appellant
Appendix of Appellant

By sending a copy by mail on September 16, 2014, to:

Adam Winarske
United States Penitentiary Tucson
PO Box 24550
Tucson, AZ 85734

To the best of Affiant's knowledge, the mail address above given is the mailing address of the party intended to be served. The above document was duly mailed in accordance with the provisions of N.D.Sup.Ct.Admin. Order 14.

/s/ Lynn Slaathaug Moen
Lynn Slaathaug Moen
Attorney at Law
231 9th Avenue, SE
P.O. Box 547
Mayville, ND 58257
North Dakota ID# 06716
Telephone: 701-788-3251
Facsimile: 701-788-4243