

20140401

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

State of North Dakota,	)	FEB 06 2015
	)	
Plaintiff-Appellee,	)	STATE OF NORTH DAKOTA
	)	
-vs-	)	Supreme Court No. 20140401
	)	Burleigh County District Court
Johnny Lowe,	)	Case No. 08-2011-CR-1792
	)	
Defendant-Appellant,	)	
.....	)	

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**BRIEF OF PLAINTIFF-APPELLEE**

APPEAL FROM THE OCTOBER 21, 2014 ORDER DENYING 2<sup>ND</sup>  
MOTION FOR CREDIT FOR TIME SERVED FROM THE DISTRICT  
COURT, BURLEIGH COUNTY, NORTH DAKOTA

Burleigh County District Court  
South Central Judicial District  
The Honorable Bruce Romanick, Presiding

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Lea Wilson  
Burleigh County Assistant State's Attorney  
Courthouse, 514 East Thayer Avenue  
Bismarck, North Dakota 58501  
Phone No: (701) 222-6672  
BAR ID No: 07352  
Attorney for Plaintiff-Appellee

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### **STATEMENT OF THE ISSUE**

[¶ 1] The Defendant has a right to appeal to the Supreme Court.

[¶ 2] Whether the Court erred in not granting Defendant's credit for time served?

### **STATEMENT OF THE CASE**

[¶ 3] The State concurs with Mr. Lowe's statement of the case regarding the hearings and rulings that took place in district court.

### **STATEMENT OF FACTS**

[¶ 4] The State concurs with Mr. Lowe's statement of the facts in this case.

### **LAW AND ARGUMENT**

**Issue: The Defendant has a right to appeal to the Supreme Court.**

[¶ 5] The State agrees the Defendant has the right to appeal.

**Issue: Whether the Court erred in not granting Defendant's credit for time served?**

[¶ 6] The Appellee's position in this matter is that the Defendant was entitled to the requested credit. The documents provided to the State in the underlying case, and presented to this Court, reflect that the Defendant was booked into the Morton County jail on December 29, 2013 on the Burleigh County Warrant for case number 08-2011-CR-1792. See Appellant's Appendix Exhibit A-4. Although the Defendant was booked into Morton County jail on other outstanding warrants at the same time and apparently remained in Morton County jail for a period of time to resolve those outstanding cases, he was still served the warrant and held on the warrant in the underlying case. Thus, he would be entitled to credit for that time.

### **CONCLUSION**

[¶ 7] For the reasons stated above, the State respectfully leaves this decision to the Court.

Dated this 5 day of February, 2015.



\_\_\_\_\_  
Lea Wilson  
Burleigh County Assistant State's Attorney  
Courthouse, 514 East Thayer Avenue  
Bismarck, North Dakota 58501  
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 ..... )

STATE OF NORTH DAKOTA )  
 )ss  
 COUNTY OF BURLEIGH )

Michelle E. Leary, being first duly sworn, depose and say that I am a United States Citizen over 21 years old, and on the 6<sup>th</sup> day of February, 2015, I deposited in a sealed envelope a true copy of the attached:

1. Brief of Plaintiff-Appellee,
2. Affidavit of Mailing

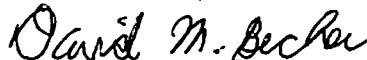
in the United States mail at Bismarck, North Dakota, postage prepaid, addressed to:

Thomas J. Glass  
Attorney at Law  
418 E. Rosser Ave., Ste 102  
Bismarck, ND 58501

which address is the last known address of the addressee.

  
Michelle E. Leary

Subscribed and sworn to before me this 6<sup>th</sup> day of February, 2015.



Notary Public  
Burleigh County, North Dakota

DAVID M. BECKER  
Notary Public  
State of North Dakota  
My Commission Expires November 4, 2020