20160282

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IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAY 4 2017

STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.20160282
DISTRICT COURT NO.08-06-K-1026

Tilmer Everett

Plaintiff/Appellant,

vs.

State of North Dakota

Defendant/Appellee,

Petition for rehearing

Order Denying Petition
for Post-Conviction Relief
Dated June 20, 2016 by Judge Bruce Romanick
Case No.06-K-1026

Tilmer Everett; pro-se
Box 5521
Bismarck, North Dakota
58506

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Table of Cases and other Authorities

Cases: Brady v. Maryland, 397 U.S. 753 (1970).
Riak v. State, 2015 ND 120, ¶19, 863 N.W.2d 894.
Rodenburg v. Fargo-Moorhead YMCA, 2001 ND 159, ¶12, 632 N.W.2d 407 (quoting).
State v. Hegland, 355 NW 2d 803, 806 (N.D. 1984).

Statutes: N.D.C.C. 29-32.1-01(2) and (3).
N.D.C.C. 28-27-02(1).
N.D.C.C. 29-28-06.

Rules: North Dakota Rules of Professional Conduct rule 3.3.(a)(1).
North Dakota Rules of Professional Conduct rule 3.4.(a) and (b).

Constitutional Provisions: 6th Constitutional amendment to Confront.
14th Constitutional amendment to be heard.

Authorities: Black's Law Dictionary Sixth Edition: False representation is misrepresentation or a failure to disclose a material fact when a duty to disclose that fact has arisen." False representation must allege and must prove by a preponderance of the evidence the following elements: (1) that the representation was made; (2) that it was false; (3) that the plaintiff was thereby injured...

- In this case, the prosecution withheld F.L.'s recantation and lied to the Supreme Court in Appellant's oral argument in 2010.

Issue Presented for Review

I. Is Appellant Everett able to address vexatious litigation with the higher Court, that impedes the proper functioning of the Courts, when he attempts to "cure the defect" in his appealing denying him leave for further filings to Supreme Court No. 20160282?

Statement of the Case

[¶1] April 25, 2017 the Supreme Court of North Dakota additionally dismissed Appellant Everett's appeal brief and appendix to Supreme Court No. 20160282. Stated against the Appellee (State of North Dakota) as not being appealable. (Dismissal Without Prejudice.)

[¶2] Appellant Everett now intends to show or State that the district Courts order denying him leave to file further motions or pleadings on appealability, affects his "substantial right" access to the Supreme Court of North Dakota, that's supposed to be adequate, effective and meaningful, to cure the defect as:

- N.D.C.C. 28-27-02(1), an appeal may be taken from "[a]n order effecting a substantial right made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken."

That the "new information" about recantation withheld by the State (Appellee) must be preserved or heard, protecting the one(1) year of Statute of limitations, from order denying further filings.

Statement of Facts

[¶3] May 9, 2016 a motion made requesting permission to file Newly Discovered Evidence against the Burleigh County State's Attorneys Office and a former prosecutor name Cynthia Feland in pursuant to N.D.C.C. 29-32.1-01(2) and (3) was stated towards a written Statement dated April 13, 2016 by Brandon Lyon a witness, as crucial information, about **F.L.** and her recantation in Case No.06-9442 to the State's Attorney. An affidavit attached as legal support addressed to the district Court States the issue (recantation), has never been brought up in prior post-conviction applications, of which violated my right to a fair trial in **2006** and also violated my right to a fair appeal in **2010.** See, Appellant's Appendix pages #1-#22. As Everett took the position from day one, that he is not guilty against F.L. (06-9442) in the district Court. Read; State v. Hegland...

¶4] A petition for relief stating evidence, not previously presented or heard, exists requiring vacation or Sentence in the interest of justice about recantation withheld must be heard. Establishing circumstances against the State's Attorneys office request for a continuance dated November 28, 2006 as F.L. attempted to **recant** with ① Cynthia Feland, ② Lori Steele, and ③ Det. Marks, when "they" violated my right to a fast and speedy trial. See, Appellant's Appendix pages #23-#41. (Brady v. Maryland)

[¶5] June 20, 2016 a order denying petition for post-conviction relief stated by district Court judge Bruce Romanick is as: "The Court has reviewed the new application and finds all of the alleged new allegations are meritless and Everett has previously brought these same matters before the Court in previous post-conviction applications." See, Appellants Appendix pages #42-#43. (Wrong!!!)

Argument

I. Is Appellant Everett able to address vexatious litigation with the higher Court, that impedes the proper functioning of the courts, when he attempts to "cure the defect" in his appeal denying him leave for further filings to Supreme Court No. 20160282?

[¶6] August 8, 2016 Tilmer Everett filed a Notice of Appeal addressed with Statement of Preliminary Issues (**I - IV**) against the district Court's order denying petition for post-Conviction relief. See, Appellant's Appendix pages #44-#48. This Court filed the appeal and had given a Case file as Supreme Court No. 20160282.

[¶7] First, Everett not knowing his present appeal brief and appendix Supreme Court No. 20160282 accepted and processed by this Court, is not from a final judgment under 29-32.1, N.D.C.C. of the post-conviction Statute. But is instead, from the Court's order denying Everett permission leave for further filings to appeal.

[¶8] Everett respectfully now intends to "cure the defect" with the Supreme Court of North Dakota that denied his processed appeal brief(s), from being entertained. In appling a Statutory basis governed under Section 28-27-02(1) of the N.D.C.C., requesting this Court, to take-over jurisdiction on the merits addressed and provided within Appellant's brief(s) and appendix Supreme Caurt No. 20160282 thus far, to petition for rehearing as:

- Section 28-27-02(1), an appeal may be taken from "[a]n order effecting a substantial right made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken."

Riak v. State, 2015 ND 120, ¶19, 863 N.W. 2d 894. (quoting Rodenburg v. Fargo-Moorhead Y.M.C.A., 2001 ND 139, ¶12, 632 N.W. 2d 407).

- That Appellant's appeal process be properly entertained?

[¶9] Supreme Court new information received April 13, 2016 by a witness name Brandon Lyon about F.C.'s attempt to recant in 2006 with the State's Attorney (Cynthia Feland) at that time, must be preserved and or protected as vital evidence against that "entity", that establishes the North Dakota Rules of Professional Conduct rule 3.3. (a) (1); North Dakota Rules of Professional Conduct rule 3.4. (a) and (b), had been committed against me Tilmer Everett violating my civil rights in trial or in the appeal process.

[¶10] I am now asking the Supreme Court to report that the Burleigh County State's Attorneys office played fraud on the Courts within Case No. 06-K-1026, by knowingly and intentionally covering-up a sexual assault complaint made with Case No. 06-9417. Obstruction of Justice! false representation in Case No. 06-9442, is declared against Everett staged by Appellee.

Conclusion

[¶11] Whereas, Everett simply asks this Court to accept his request governed by Statute made within. Also the rules of professional misconduct be reported against the Appellee on the "facts" addressed and given thus far.

- Withheld evidence by misrepresentation made. (recantation)
- Falsifing evidence by counseling a witness to testify, that is prohibited by law. (falsely)
- Covering-up a crime (06-9417) to prosecute a innocent man for a false report (06-9442) made.
- Conspiracy... (No Statute of limitations.)

It is this Courts obligation to report misconduct by law, when sworn under oath. Thank you.

The provisions by rules of professional Conduct, you all, must report "fraud" against the Burleigh County State's Attorney's Office.

[¶12] Dated this 2 day of May, 2017.

Tilmer Everett, pro-se
Box 5521
Bismarck, North Dakota
58506

CERTIFICATE OF SERVICE BY MAIL
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
DIVISION OF ADULT SERVICES
SFN 50247 (04-2014)

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn under penalty of perjury, deposes and says: I'm over the age of eighteen years and on the 2 day of May, 2017, _____M, I mailed the following:

I Tilmer Everett am sending the Supreme Court of North Dakota a petition for rehearing referencing Supreme Court No. 20160282 as one(1) original and Seven(7) Copies under N.D.C.C. 28-27-02(1). One(1) Copy is sent to the States Attorneys Office also. I am unable to file an electronic copy of petition for rehearing as the institution prohibits me.

by placing it/them in a prepaid envelope and addressed as follows:

Burleigh County State's Attorney
514 East Thayer Ave
Bismarck, North Dakota
58501

Clerk of Court, Penny Miller
600 East Boulevard Ave
Bismarck, North Dakota
58505-0550

and depositing said envelope in the Mail, at the NDSP, PO Box 5521, Bismarck, ND 58506-5521.

AFFIANT

PO Box 5521
Bismarck, North Dakota 58506-5521

Subscribed and sworn to before me this 2 day of May, 2017.

Notary Public

My Commission Expires On
May 14 2018

ERIC HASBY
Notary Public
State of North Dakota
My Commission Expires May 14, 2018