

Filed 11/6/18 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2018 ND 239

Tate A. Pederson, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

No. 20180126

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable Douglas R. Herman, Judge.

AFFIRMED.

Per Curiam.

James R. Loraas, Bismarck, ND, for petitioner and appellant.

Reid A. Brady, Assistant State's Attorney, Fargo, ND, for respondent and
appellee.

Pederson v. State

No. 20180126

Per Curiam.

[¶1] Tate A. Pederson appeals from a district court’s order denying his motion for relief under N.D.R.Civ.P. 60(b) and denying his application for post-conviction relief. On appeal, Pederson argues the district court abused its discretion by denying his motion for relief because the district court’s 2014 dismissal with prejudice was not entered at Pederson’s request; rather, it was requested by his attorney. We conclude the district court did not abuse its discretion by dismissing Pederson’s motion for relief because the State raised the affirmative defense of res judicata and “[a] court may deny an application for post-conviction relief on the ground of res judicata if the claim has been fully and finally determined in a previous proceeding.” *Smestad v. State*, 2011 ND 163, ¶ 6, 801 N.W.2d 691 (citing N.D.C.C. § 29-32.1-12(1)); *Pederson v. State*, 2015 ND 53, ¶ 2, 861 N.W.2d 172 (summarily affirming the district court’s dismissal with prejudice). We affirm the district court’s denial under N.D.R.App.P. 35.1(a)(4) and (7).

[¶2] Gerald W. VandeWalle, C.J.
Lisa Fair McEvers
Daniel J. Crothers
Jerod E. Tufte
Jon J. Jensen