

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court Nos. 20200169

District Court Nos. 30-2020-CV-00568 [30-2014-CR-01101]

Rodney Harold Friesz,)
)
Petitioner and Appellant,)
)
v.)
)
State of North Dakota,)
)
Respondent and Appellee.)

BRIEF OF THE APPELLEE

APPEAL FROM THE MORTON COUNTY DISTRICT COURT ORDER
[JUNE 4, 2020] DENYING PETITIONER'S
MOTION FOR POST-CONVICTION RELIEF

MORTON COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT
HONORABLE DAVID REICH, PRESIDING

****ORAL ARGUMENT IS REQUESTED****

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****ORAL ARGUMENT HAS BEEN REQUESTED TO CLARIFY APPELLEE'S POSITION AND ADDRESS ANY QUESTIONS THE COURT MAY HAVE.****

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STATEMENT OF THE ISSUES

[¶1] Whether the District Court clearly erred in denying the Petitioner's requested post-conviction relief?

STATEMENT OF THE CASE AND FACTS

[¶2] Rodney Harold Friesz was charged by Criminal Complaint on October 10, 2014 and appeared in court on an initial appearance on that same day. Criminal Index #1, 2, and 5. The Defendant was charged with the offenses of Murder, a Class AA Felony and Arson, a Class B Felony. Criminal Index #1. The Defendant requested counsel and was assigned indigent defense counsel, Travis Finck, who was at that time the supervising attorney for the Bismarck-Mandan Public Defender's Office. Criminal Index#5-8.

[¶3] Discovery was requested by Finck and provided by the State prior to the contested preliminary hearing, held on November 10, 2014. Criminal Index #9, 14, 15, and 17. Probable cause was found for each of the offenses and the matter was set for trial in April 2015. Criminal Index #29. Finck filed a Motion for Psychological Evaluation on November 19, 2014. Criminal Index #23-25. The Court granted the Motion, ordering, in Index #27, a Psychological Evaluation of Friesz, to be conducted at the North Dakota State Hospital, in order to determine whether the Defendant:

- a. was oriented to time and place;
- b. Had some recollection of the events which formed the basis of the criminal charges pending against him in Morton County, North Dakota;
- c. Had sufficient present ability to consult with his attorney with a reasonable degree of rational understanding which would permit him to assist in his own defense. If not, the court asked the evaluator to address whether there was a substantial probability Friesz would attain fitness to proceed in the foreseeable future, and if so, at what projected point in time;
- d. Had a rational, as well as factual understanding of the criminal proceedings pending against him;
- e. Lacked substantial capacity to comprehend the harmful nature or consequences of his conduct;
- f. Acted as a result of a loss or serious distortion of his capacity to recognize reality;

- g. Lacked the capacity specified immediately above in questions e and f at the time the offense occurred which forms the basis of the charges against the Defendant?

[¶4] The Psychological Evaluation on Fitness to Proceed and Criminal Responsibility, a 31-page document, was performed by Dr. Jennifer Krance, a ND-licensed psychologist, at the North Dakota State Hospital. Criminal Index #39. Krance made findings on each of the issues in the court's order and provided a report detailing her findings, in light of the legal standards applicable, to the court. The results of the evaluation included the findings that Friesz was oriented, was able to form intent, was able to consult with his attorney and aid in his own defense, and was criminally responsible. Krance also indicated a lack of truthfulness on Friesz's part as well as his insistence that his actions were "self-defense." Criminal Index #39.

[¶5] Following the results of this examination, Finck requested a continuance of the trial, which was granted, resetting trial into July 2015. Criminal Index #41, 46, 47. Finck also filed Defendant's Disclosures, which included the Notice of Self-defense and Defense of Premises. Criminal Index #43. Finck additionally filed a Motion to Suppress Evidence, alleging an illegal search and seizure of evidence contained within the subject premises. Criminal Index #49-50. An Order Denying Motion to Suppress was entered by the trial court, after a contested hearing was held on the merits. Criminal Index #336, 96, 85.

[¶6] On July 10, 2015, Finck requested a continuance of the July trial date. Criminal Index #86-87. The Court granted the continuance, despite objection from the State, after a hearing was held. Criminal Index 90, 91, 103. The requested continuance was a result of new information being discovered by Finck, which he need to follow

up on. Criminal Index #90-91. A new trial date was set in October 2015. Criminal Index #103. Finck moved to withdraw from his representation of Friesz on September 9, 2015. Criminal Index #107-109. The Court allowed Finck to withdraw due to the irreparable breakdown in attorney-client relations. New trial counsel, Monty Mertz, was assigned. Criminal Index #115.

[¶7] Mertz requested a continuance after his assignment on September 23, 2015, in order to receive and review discovery and prepare with Friesz for trial. Criminal Index #116-117. Trial was reset in order to allow Mertz the opportunity to prepare. Criminal Index #122.

[¶8] Mertz received and reviewed discovery, including meeting multiple times with Friesz in order to prepare a defense. Mertz knew of Krance's evaluation of Friesz at the North Dakota State Hospital. Transcript of First Post-Conviction hearing in 30-2018-CV-00419, Index 46, hereinafter cited as "Tr.", p. 24, lines 21-25, Tr. p. 25, lines 1-24. Mertz requested Dr. Troy Ertelt, a second forensic psychologist to review the findings of Krance. Tr. p. 25, lines 13-24. Mertz considered it his due diligence to have Ertelt evaluate Friesz, which Ertelt did, spending a day with Friesz. *Id.* Ertelt's findings were consistent with Krance's. *Id.* From Krance's and Ertelt's findings, Mertz saw that Friesz was found legally competent and able to assist in his own defense as well as able to form the requisite intent. *Id.* Based on the findings of two psychologists, Mertz did not see a possible defense of insanity. Tr. p. 26, lines 3-20. Mertz reviewed the multiple confessions for signs of coercion but found none. Tr. p. 28, lines 24-25, Tr. p. 29, lines 1-25, Tr. p. 30, lines 1-9. However, Mertz used the recorded confessions and evidence of Friesz's mental state to mitigate the evidence

and confessions at trial. Mertz attributes this strategy to the result of Friesz being found guilty of Manslaughter and not Murder. Tr. p. 27, lines 19-25, Tr. p. 28, lines 1-14, Tr. p. 28, lines 24-25, Tr. p. 29, lines 1-25, Tr. p. 30, lines 1-9.

[¶9] Mertz continued investigating defenses after taking the case over from Finck. Mertz received the case at a time when Friesz had confessed multiple times on recording and had informed Finck and the psychologists that he had killed Jassman as self-defense. Tr. p. 21, lines 6-24. Mertz recognized that his client's position changed and followed up on every statement made by Friesz, attempting to locate additional witnesses and suspects. Tr. p. 21, line 25, Tr. p. 22, lines 1-6, Tr. p. 22, lines 11-25, Tr. p. 23, lines 1-25, Tr. p. 24, lines 1-20, Tr. p. 35, lines 14-25, Tr. p. 36, lines 1-25, Tr. p. 37, lines 1-5. Mertz followed every "rabbit trail" to the end in order to ascertain facts beneficial to his client. Tr. p. 44, lines 1-15. Mertz found no evidence of any kind that anyone other than Friesz was in the residence at the time Gene Jassmann was murdered and the residence lit on fire. Tr. p. 39, lines 17-21. Mertz used Friesz's stated beliefs that Jassmann posed a threat and people were after Friesz as mitigation and defense during the jury trial. Tr. p. 26, lines 13-20, Tr. p. 27, lines 19-25, Tr. p. 28, lines 1-14.

[¶10] Jury Trial was held from February 2-5, 2016. Mertz defended Friesz at the trial. During the Jury Trial, Mertz had subpoenaed multiple witnesses, including Derek Wisham and Mike Bonogofsky. Tr. p. 23, lines 19-25, Tr. p. 24, lines 1-20. Bonogofsky testified, which did not allow Mertz the ability to have him declared unavailable and limited the ability of Mertz to call additional witnesses to testify to Bonogofsky's hearsay statements. *Id.* Mertz had prepared for the potentiality of

Bonogofsky not testifying and presented offers of proof to the court by way of formal depositions of Jeremy Ficklin and Robert Heck and the formal statement of Derek Wisham, all of which had been conducted and obtained prior to trial. *Id.*; Criminal Index #133, 304-306.

[¶11] Mertz had prepared and filed a Notice of N.D.R.Evid. 804(b)(3) Testimony and N.D.R.Evid. 807 Residual Hearsay Exception, detailing his intentions and, essentially, the theory of Friesz's defense(s) along with the relevant jury instructions and transport orders. Criminal Index #133, 129-130, 139-142.

[¶12] The jury returned verdicts of guilty to the lesser included offense of Manslaughter and Arson, as alleged. Criminal Index #311. Mertz appealed the issues of the trial court's Order Denying the Motion to Suppress and the sufficiency of the evidence for the convictions of Manslaughter and Arson. Criminal Index #324, 326. *See State v. Friesz*, 2017 ND 177, 930 N.W.2d 609. The North Dakota Supreme Court concluded that the trial court had not erred in denying the motion to suppress and that there was sufficient evidence to sustain convictions of arson and manslaughter. Criminal Index #330-331. *See State v. Friesz*, 2017 ND 177, 930 N.W.2d 609.

[¶13] On May 2, 2018, Friesz filed an application for Post-Conviction Relief. 30-2018-CV-00419, Index #1. On appointment of his post-conviction counsel, Russell Myhre, and at the opening of the post-conviction hearing on February 4, 2019, Myhre refined the grounds on which Friesz was seeking post-conviction relief to include ground 1) conviction obtained by coerced confession; ground 4) conviction obtained by unconstitutional failure of the prosecution to disclose to the defendant evidence favorable; and ground 6) denial of effective assistance of counsel Travis Finck and

Monty Mertz; and ground 8) conviction obtained through the denial of right to call witnesses favorable to Friesz's behalf. The Court sought clarification of the remaining issues, which counsel agreed amounted to an overall claim of ineffective assistance of trial counsel. Tr. p. 4, line 20-Tr. p. 6, line 19.

[¶14] After a hearing, during which Travis Finck and Monty Mertz were called as witnesses and were subject to direct and cross-examination, as well as post-hearing briefing, the District Court [the same as the trial court], issued an Order on Application for Post-conviction Relief. 30-2018-CV-00419, Index #34. The District Court, citing to *Heckelsmiller v. State*, 2004 ND 191, ¶3, 687 N.W.2d 454 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)), outlined the standard for ineffective assistance of counsel: "1) counsel's representation fell below an objective standard of reasonableness, and 2) the defendant was prejudiced by counsel's deficient performance." 30-2018-CV-00419, Index #34 at ¶6.

[¶15] The District Court determined that Friesz had not carried his burden and satisfied the *Strickland* test in that Friesz had both failed to establish an objective standard of reasonableness [of representation] or that his trial counsel's representation fell below the acceptable standard. 30-2018-CV-00419, Index #34 at ¶10. The District Court, also found that Friesz failed to show, in line with *Laib v. State*, 2005 ND 187, ¶10, 705 N.W.2d 845, how and where his trial counsel was incompetent and the probable different result. 30-2018-CV-00419, Index #34 at ¶¶9, 11. The District Court stated that Friesz's speculation that a second evaluation would have produced a different result and changed the outcome of the trial did not create a reasonable probability of a different result. 30-2018-CV-00419, Index #34 at ¶11.

The District Court denied Friesz's Application for Post-conviction Relief in its entirety. 30-2018-CV-00419, Index #34 at ¶12.

[¶16] Friesz appealed the Order on Application for Post-conviction Relief on the basis that the "trial court erred in denying the Petitioner's Petition for Post-Conviction Relief" on both *Strickland* bases: 1) Friesz's trial counsel's conduct fell below the standard of reasonableness that is expected and constitutionally ensured and 2) Friesz was prejudiced by his trial counsel's lack of diligence and poor preparation. *See Friesz v. State*, 2020 ND 2, 937 N.W.2d 285. The North Dakota Supreme Court, in a Per Curiam opinion, stated that the District Court did not err in denying Friesz's application for post-conviction relief and summarily affirmed the District Court's Order Denying Post Conviction Relief.

[¶17] On May 1, 2020, Friesz filed a second Application for Post-Conviction Relief. 30-2020-CV-00568, Index #1. On appointment of his post-conviction counsel, Benjamin Pulkrabek, the State of North Dakota filed a Motion for Summary Judgment/Dismissal and a Motion to Abrogate Attorney-Client Privilege based on Friesz's claim of ineffective assistance of counsel. 30-2020-CV-00568, Index #8-15. The State also filed an Answer. 30-2020-CV-00568, Index #13. Friesz was seeking post-conviction relief to include [as summarized by the District Court] ineffective assistance of trial counsel Monty Mertz and Travis Finck, ineffective assistance of post-conviction appellate counsel Laura Ringsak, insufficiency of the evidence to sustain a conviction and denial of his Fourth Amendment rights regarding the warrantless search of the residence, the seizure of the firearm, and the failure of the court to grant his motion to suppress.

[¶18] The District Court [the same as the trial court and first post-conviction court], issued an Order on Application for Post-Conviction Relief. 30-2020-CV-00568, Index #16, Appendix of Appellant at p. 28-32. The District Court outlined the entire procedural history of the criminal case, appeal in *State v. Friesz*, 2017 ND 177, 898 N.W.2d 688, first post-conviction proceedings in 30-2018-CV-00419, appeal from the first post-conviction order in *Friesz v. State*, 2020 ND 2, 937 N.W.2d 285, as well as outlining the claims in Friesz’s second application for Post-Conviction Relief. 30-2020-CV-00568, Index #16, ¶¶1-4.

[¶19] The District Court found that the Defendant, Rodney Friesz’s application for post-conviction relief was filed “well beyond the two-year statute of limitations in [N.D.C.C.] 29-32.1-01(2) and the application does not state any of the exceptions to the two-year statute of limitations listed in 29-32.1-01(3).” 30-2020-CV-00568, Index #16 at ¶6. The District Court stated:

“The court may, on its own motion, deny a meritless application on any and all issues raised in the application; may summarily deny a second or successive application for similar relief on behalf of the same applicant; and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.” *Id.*

The District Court found that as all grounds for relief stated by Friesz had been, or could have been, raised in his direct appeal from his conviction or in his previous application for post-conviction relief. *Id.* Based on these findings, the District Court denied Friesz’s Application for Post-Conviction Relief. 30-2020-CV-00568, Index #16 at ¶7.

[¶20] Friesz appealed the Order on Application for Post-conviction Relief on the basis that the “trial court erred in denying Mr. Friesz’s Petition for Post-Conviction Relief,” arguing that the District Court’s order was untimely and outside of his authority under N.D.C.C. § 29-32.1-09.

STANDARD OF REVIEW

[¶21] The Standard of Review regarding post-conviction relief, specifically instances of a summary denial, is defined by *Parizek v. State*, 2006 ND 61, ¶4, 711 N.W.2d 178:

“This Court reviews an appeal from a summary denial of post-conviction relief as it reviews an appeal from a summary judgment. The party opposing the motion for summary disposition is entitled to all reasonable inferences at the preliminary stages of a post-conviction proceeding and is entitled to an evidentiary hearing if a reasonable inference raises a genuine issue of material fact.”

[¶22] In *Atkins v. State*, 2017 ND 290, the Court discussed the Standard of Review for summary dismissal of post-conviction relief cases, citing to Section 29-32.1-09(3) of the North Dakota Century Code:

“The court may grant a motion by either party for summary disposition if the application, pleadings, and previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Atkins v. State*, 2017 ND 290, ¶5, 904 N.W.2d 738.

The Atkins Court continued that the applicant has the burden of establishing grounds for post-conviction relief. *Atkins* at ¶6 (citing *Chase v. State*, 2017 ND 192, ¶5, 899 N.W.2d 280).

[¶23] However, in this case, despite the State having noticed and filed motions for summary dismissal based on lack of timeliness and res judicata, the Court specifically cited to its own statutory ability and requirement to summarily dismiss meritless applications; to dismiss second or successive applications for similar relief on behalf of the same applicant; to summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case; and to summarily dismiss any grounds in an application which allege ineffective

assistance of postconviction counsel. The standard of review in the circumstances and for the reasons outlined by the District Court is therefore analogous to that cited in *Hunter v. State*, 2020 ND 224, ¶10:

“A trial court’s findings of fact in a post-conviction proceeding will not be disturbed on appeal unless clearly erroneous under N.D.R.Civ.P. 52(a). A finding is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by any evidence, or if, although there is some evidence to support it, a reviewing court is left with a definite and firm conviction a mistake has been made. Questions of law are fully reviewable on appeal of a post-conviction proceeding.” (citing *Brewer v. State*, 2019 ND 69, ¶4, 924 N.W.2d 87.)

ARGUMENT

I. The District Court Did Not Err in Denying the Defendant's Application for Post-Conviction Relief.

[¶24] In the instant case, Judge Reich cited specifically to the law and the findings that were the basis of his decision to summarily dismiss the Defendant's second application for post-conviction relief. Now, Friesz argues that there is confusion about what was truly meant by the court and that Judge Reich acted outside of his authority in summarily denying Friesz's second post-conviction application. The State contends, however, that the District Court was clear and did not err in his findings that Friesz's second post-conviction application is barred as untimely as well as acting within the court's authority to dismiss, on its own motion, a second or successive application for similar relief; an application where the issues raised had already been decided by the appellate court, and/or an application alleging ineffective assistance of postconviction (here postconviction appellate) counsel.

[¶25] The District Court first made a finding that Friesz's application was "filed well beyond the two-year statute of limitations in 29-32.1-01(2)." This is not an erroneous interpretation of the law. North Dakota Century Code § 29-32.1-01(2), clearly states:

"Except as provided in subsection 3, an application for relief under this chapter must be filed within two years of the date the conviction becomes final. A conviction becomes final for purposes of this chapter when: a) The time for appeal of the conviction to the North Dakota supreme court expires; b) If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or c) If review was sought in the United States supreme court, the date the supreme court issues a final order in the case."

In the instant case, Friesz did appeal his conviction to the North Dakota supreme court, at which time the conviction was affirmed, but the case was remanded for a

correction to the criminal judgment. The North Dakota Supreme Court's Judgment was docketed in case 30-2014-CR-01101, Index #331 on August 3, 2017 and was dated July 12, 2017. On July 13, 2017, the Corrected Criminal Judgment was entered by the District Court at Criminal Index #331. No review was sought in the United States Supreme Court, and the period for review passed, at the latest possible date, on October 11, 2017. Two years from that date, which would be the latest possible date available to Friesz for post-conviction, would end on October 11, 2019. Friesz did not file his second post-conviction application until May 1, 2020, which, as the District Court noted, is well beyond the two-year statute of limitations.

[¶26] The District Court also noted that none of Friesz's claimed grounds for post-conviction fell within the exceptions of the statute of limitations, as provided in N.D.C.C. §29-32.1-01(3). Therefore, the District Court did not err in summarily dismissing Friesz's second post-conviction relief application on the basis of timeliness alone. Friesz attempts to argue that the court does not have the authority to summarily dismiss time-barred applications, but that claim must fail, as the statute of limitations prohibits proceedings, except in the narrowest of circumstances that are inapplicable here.

[¶27] Similarly, the issue of ineffective assistance of counsel, as it pertains to post conviction and/or post-conviction appellate counsel is barred by N.D.C.C. §29-32.1-09(2). This isn't up for discussion, debate, or interpretation. The statute plainly states: "An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter."

[¶28] Finally, the District Court noted, that in addition to the bar for proceeding that the statute of limitations imposes and outside the bar against ineffective assistance of counsel claims against post-conviction counsel, the District Court may, on its own motion, summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case. The District Court specifically noted that grounds for relief sought by Friesz all either have, or could have, been raised in his direct appeal from his conviction or in his previous application for post-conviction relief. This is a matter of not only district court record, but North Dakota Supreme Court record.

[¶29] Friesz appealed the issues of the trial court's Order Denying the Motion to Suppress and the sufficiency of the evidence for the convictions of Manslaughter and Arson. Criminal Index #324, 326. *See State v. Friesz*, 2017 ND 177, 930 N.W.2d 609. In *State v. Friesz*, 2017 ND 177, 930 N.W.2d 609, the North Dakota Supreme Court concluded that the trial court had not erred in denying the motion to suppress and that there was sufficient evidence to sustain convictions of arson and manslaughter. Criminal Index #330-331. *See State v. Friesz*, 2017 ND 177, 930 N.W.2d 609.

[¶30] Friesz raised in his first post-conviction application issues of ground 1) conviction obtained by coerced confession; ground 4) conviction obtained by unconstitutional failure of the prosecution to disclose to the defendant evidence favorable; and ground 6) denial of effective assistance of counsel Travis Finck and Monty Mertz; and ground 8) conviction obtained through the denial of right to call witnesses favorable to Friesz's behalf. The District Court denied Friesz's Application

for Post-conviction Relief in its entirety after a contested hearing and post-hearing briefing on the issues. 30-2018-CV-00419, Index #34 at ¶12.

[¶31] Friesz appealed the Order on Application for Post-conviction Relief on the basis that the “trial court erred in denying the Petitioner’s Petition for Post-Conviction Relief” on both *Strickland* bases: 1) Friesz’s trial counsel’s conduct fell below the standard of reasonableness that is expected and constitutionally ensured and 2) Friesz was prejudiced by his trial counsel’s lack of diligence and poor preparation. *See Friesz v. State*, 2020 ND 2, 937 N.W.2d 285. The North Dakota Supreme Court, in a Per Curiam opinion, stated that the District Court did not err in denying Friesz’s application for post-conviction relief and summarily affirmed the District Court’s Order Denying Post Conviction Relief.

[¶32] As the District Court noted, because findings had already been made by the appellate court on the issues raised in Friesz’s second post-conviction application, and the second post-conviction application qualified as a second or successive application for similar relief, he was within statutory authority to summarily deny Friesz’s second post-conviction application. This action is not clearly erroneous but is based upon the findings of both the district and appellate courts.

[¶33] Friesz argues alternatively that the Court prematurely considered the State’s Motion for Summary Judgment and/or that the Court does not have the authority to summarily dismiss on its own motion for any basis listed in N.D.C.C. §29-32.1-09 once the State has Answered the post-conviction application. The District Court clearly states he is making his findings on his own motion, rather than considering the State’s motion for summary disposition. Friesz’s argument as to the Court misapplying the

law is an extremely creative and misguided read of the statute, which is clear on its face.

[¶34] North Dakota Century Code § 29-32.1-09 states in subsection 1: “The court on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state.” Friesz argues that this statement precludes any summary judgment on the court’s own motion thereafter, but the statute does not say that, nor should we interpret either the district court’s ruling or the intent of the statute as such when the district court specifically cited to the continuing language: “The court *also* may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.” There is no limiting language as to when the court may summarily dismiss based on these grounds, and these are the grounds on which the district court did summarily dismiss, citing to the similar claims and the prior rulings of the North Dakota Supreme Court on these issues.

[¶35] All of this, of course, is secondary to the statute of limitations bar of all claims and the bar against claims of ineffective assistance of post-conviction counsel. These are statutory prohibitions. The findings of the District Court were that these matters were time barred and no exception applied, that there could not be ineffective assistance of post-conviction counsel, and that all of the remaining issues raised in this second application for post-conviction relief had already been subject to prior

post-conviction and appellate proceedings. The District Court did not err in making these findings.

CONCLUSION

[¶36] The District Court did not err, in considering the statute of limitations, bars against claims of ineffective assistance of post-conviction counsel, and ability of the court to summarily dismiss second or successive applications for similar relief or applications previously decided by the appellate court in his decision deny Friesz's second Application for Post-Conviction Relief in all things. For all of the foregoing facts and argument, the State of North Dakota respectfully requests this Court affirm and uphold the District Court's Order on Application for Post-Conviction Relief.

[¶37] Respectfully submitted this 28th day of October, 2020.

/s/ Gabrielle J. Goter

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CERTIFICATE OF COMPLIANCE

[¶38] The undersigned certifies that the Appellee’s Brief contains twenty-four (24) pages consisting of the cover page through the conclusion and signature block, thereby complying with the page limits outlined in North Dakota Rules of Appellate Procedure Rule 32(a)(8)(A).

Dated this 28th day of October, 2020.

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CERTIFICATE OF SERVICE

[¶1] The undersigned hereby certifies that on the 28th day of October, 2020, a true and correct copy of the **BRIEF OF THE APPELLEE** (corrected) in PDF was filed with the Clerk of the North Dakota Supreme Court with a copy served upon the Petitioner/Defendant/Appellant by electronic mail to his counsel of record, Kiara Kraus-Parr to her email address: service@kpmwlaw.com.

Dated the 28th day of October, 2020.

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