

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

Dennis James Gaede,

Petitioner - Appellant,

Supreme Court No. 20210336

vs.

District Court No. 09-2021-CV-01619

State of North Dakota,

Respondent - Appellee.

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**APPELLEE'S BRIEF**

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**APPEAL FROM JUDGMENT DENYING APPLICATION  
FOR POST-CONVICTION RELIEF  
EAST CENTRAL JUDICIAL DISTRICT  
THE HONORABLE STEVEN E. MCCULLOUGH, JUDGE**

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**[¶3] STATEMENT OF ISSUE**

[¶4] I. Whether the district court erred in denying Gaede’s fourth application for post-conviction relief on the same conviction.

**[¶5] STATEMENT OF CASE**

[¶6] Appellant Dennis James Gaede is hereafter referred to as “Gaede”. Appellee State of North Dakota is hereafter referred to as “State”.

[¶7] Gaede was charged with intentionally or knowingly murdering Timothy Wicks (“Wicks”) on December 28, 2001, in Gardner, North Dakota. (Court File No. 09-05-K-02878). He was found guilty by a jury and sentenced in June 2006 to life imprisonment without the possibility of parole. He appealed and this court affirmed his conviction. State v. Gaede, 2007 ND 125, 736 N.W.2d 418.

[¶8] In October 2008 Gaede filed an application for post-conviction relief (“PCR”) relating to his murder conviction, identifying 23 issues. (Court File No. 09-08-C-04458 (hereafter “PCR1”).) The district court denied Gaede relief in July 2010. He appealed and this court affirmed the denial. Gaede v. State, 2011 ND 162, 801 N.W.2d 707.

[¶9] Gaede filed a second PCR application on his murder conviction in January 2012. (Court File No. 09-2012-CV-00345 (hereafter “PCR2”).) The district court denied Gaede’s claims. He appealed and this court summarily affirmed the denial. Gaede v. State, 2013 ND 41, 832 N.W.2d 334.

[¶10] While awaiting the district court’s decision in PCR2, Gaede filed yet another PCR application, this time related not to his 2006 murder conviction but

instead to his 2002 convictions for theft, theft by deception and insurance fraud. (Court File No. 09-2012-CV-01417 (hereafter “PCR-theft”).) Those convictions were related to the subsequent murder conviction in at least two key ways: (1) part of the deception and fraud was that Gaede posed as Wicks, the victim in his murder conviction, and (2) although the two criminal convictions were several years apart, the underlying factual scenario occurred coincident in time. The district court, with a different district judge, summarily dismissed Gaede’s PCR-theft claims. (Court File No. 09-2012-CV-01417, Index #1, 36, 38, 40.) Gaede did not appeal.

[¶11] In May 2014 Gaede filed yet another post-conviction application on his murder conviction. (Court File No. 09-2014-CV-01350 (hereafter “PCR3”).) The district court denied his claims after an evidentiary hearing. He appealed and this court summarily affirmed the denial. Gaede v. State, 2015 ND 160, 870 N.W.2d 26.

[¶12] On May 18, 2021, Gaede filed another post-conviction application on his murder conviction. (Court File No. 09-2021-CV-01619 (hereafter “PCR4”).) He claimed that: (1) on or about July 18, 2019, he was diagnosed with post-traumatic stress disorder (“PTSD”), (2) the diagnosis constituted “new evidence” and qualified as a defense of lack of criminal responsibility, (3) the State’s psychiatrist provided the court false information in PCR2, and (4) his ex-wife adopted the identity of a “Hollywood fictitious serial killer” and copied the actions of a non-fictitious serial killer when she killed Wicks. The district court held an evidentiary

hearing on November 19, 2021, and thereafter denied his claims. (App. 45-50; Tr. 2-29.) Gaede timely appealed. (App. 51.)

**[¶13] STATEMENT OF FACTS**

[¶14] As a matter of general background, the State’s case in the underlying criminal conviction related to Gaede living as Wicks in North Dakota, buying a home, obtaining insurance and holding a job in Wicks’ name. Gaede knew Wicks from his days in Wisconsin before Gaede moved to North Dakota. The evidence showed that in December 2001 Gaede lured Wicks to North Dakota, where he murdered Wicks in Gaede’s Gardner home. Gaede and Diana Fruge, his then-wife (now deceased), transported Wick’s body to Wisconsin, where they disposed of Wicks’ partially dismembered body. See, Gaede, 2007 ND 125, ¶¶2-7, 736 N.W.2d 418 (providing further explanation of evidence at trial).

[¶15] The State corrects, clarifies, and adds to Gaede’s Statement of Facts as follows:

- a. Gaede described the sole witness at the evidentiary hearing, Dr. Madeline Free, as a “psychologist”. (Gaede Brief, ¶6.) Dr. Free is actually a psychiatrist and has not only diagnosed Gaede but prescribed him medications. (Tr. 7:17-19, 7:23-24; 10:4-5; App. 12, ¶1.)
- b. Dr. Free first diagnosed Gaede with PTSD on December 14, 2018. (Tr. 15:15-16:16; Index #51, p142-143.)
- c. Dr. Free testified that a diagnosis of PTSD is a label by which she is able to treat symptoms described by her patient. (Tr. 11:5-12:12.)

- d. When asked whether a patient, after reading about the symptoms of a particular diagnosis, may be able to describe those symptoms as their own, Dr. Free testified that sophisticated people “do it all the time”. (Tr. 15:5-14.)
- e. When asked whether Gaede may be malingering or fabricating symptoms, Dr. Free testified that Gaede is “good in his dialogue and storytelling”, “he can easily suck people in”, and “he embellishes symptoms in order to look good. Which is part of his narcissism”. (Tr. 9:20-25.) Dr. Free also testified that Gaede is “a very gifted individual in terms of coming up with dialogue to justify whatever end he is pursuing”. (Tr. 13:14-16.)
- f. Dr. Free’s un rebutted testimony was that Gaede’s current PTSD diagnosis “has no bearing on his crime or his competency”. (Tr. 13:5-6.)
- g. As an administrative comment, the Table of Contents for Gaede’s Appendix references the “Transcript”. Although the Appendix includes pages from the transcript, it is an incomplete copy. About one-third of the pages were left out, including the last page of the district court’s verbal order denying relief. (Tr. 29.)

[¶16] **LAW AND ARGUMENT**

[¶17] **I. The district court did not err in denying Gaede’s fourth application for post-conviction relief on the same conviction.**

[¶18] **A. Legal Bases/Standard of Review for Post-Conviction Relief.**

[¶19] Post-conviction relief (“PCR”) is not a constitutional right but rather a statutory remedy. The potential grounds for relief are reflected in N.D.C.C. §29-32.1-01. Gaede claims his PTSD diagnosis is “newly discovered evidence”. PCR may be granted on the grounds of newly discovered evidence when “[e]vidence, not previously presented and heard, exists requiring vacation of the conviction in the interests of justice.” N.D.C.C. §29-32.1-01(1)(e). This ground for relief is reviewed similarly to a “motion for a new trial based on newly discovered evidence under N.D.R.Crim.P. 33.” Ramsey v. State, 2013 ND 137, ¶10, 833 N.W.2d 478 (citations omitted).

To prevail on a motion for a new trial on the ground of newly discovered evidence, the defendant must show: (1) the evidence was discovered after trial, (2) the failure to learn about the evidence at the time of trial was not the result of the defendant’s lack of diligence, (3) the newly discovered evidence is material to the issues at trial, and (4) the weight and quality of the newly discovered evidence would likely result in an acquittal. A motion for a new trial based upon newly discovered evidence rests within the discretion of the trial court, and we will not reverse the court’s denial of the motion unless the court has abused its discretion. If the newly discovered evidence is of such a nature that it is not likely to be believed by the jury or to change the results of the original trial, the court’s denial of the new trial motion is not an abuse of discretion.

Id. (citation omitted). “A trial court abuses its discretion if it acts arbitrarily, unreasonably, unconscionably, or when its decision is not the product of a rational mental process leading to a reasoned decision.” Id.

[¶20] PCR proceedings are civil in nature. Tweed v. State, 2010 ND 38, ¶15, 779 N.W.2d 667. The burden of establishing a basis for PCR rests with the petitioner. Id.



[¶21] B. PTSD Diagnosis was Not Newly Discovered Evidence.

[¶22] Gaede apparently claims his PTSD diagnosis is newly discovered evidence not only to justify another PCR application, but in hope that he can get around the expired limitations period in N.D.C.C. §29-32.1-01(2). However, a look at both the facts and Gaede's legal history show there is nothing new about this claim.

[¶23] Dr. Free testified she diagnosed Gaede with PTSD on December 14, 2018. (Tr. 15:15-16:16; Index #51, p142-143.) She described PTSD as part of a spectrum of anxiety disorders. (Tr. 17:12-15.) Gaede has claimed various psychiatric disorders as bases for his post-conviction cases since 2008. Following is a summary of those efforts:

[¶24] 1. In PCR1, Gaede claimed his trial counsel should have had him evaluated by an independent psychiatrist, claiming he suffers from a fear of bridges (Wicks' torso was found in proximity to a bridge in Wisconsin). At the evidentiary hearing his trial counsel said Gaede never suggested the need for an evaluation nor mentioned such a fear, that it would not have been relevant to any reasonable defense because Gaede denied any involvement in the crime, and Gaede fully and actively participated in his own defense. (Court File No. 09-08-C-04458, Index #82, ¶M; Court File No. 09-2021-CV-01619, Tr. 22:8-24:9.) Gaede, 2007 ND 125, 736 N.W.2d 418 (affirming district court's denial of relief).

[¶25] 2. In PCR2, Gaede claimed a PTSD diagnosis was newly discovered evidence which might negate any requisite intent and showed he lacked criminal

responsibility. In this 2012 case, Gaede diagnosed himself with PTSD. Medical staff disagreed. The district court denied his claims and this court affirmed. (Court File No. 09-2012-CV-00345, Index #57; Court File No. 09-2021-CV-01619, Tr. 24:10-25:5.) Gaede, 2013 ND 41, 832 N.W.2d 334.

[¶26] 3. In PCR3, Gaede claimed that his diagnosis of generalized anxiety disorder NOS, made by the Penitentiary psychiatrist on November 18, 2013, was newly discovered evidence and represented a defense of lack of criminal responsibility. The district court denied his claims, found he had long known of his history of psychological disorders, and this court affirmed. (Court File No. 09-2014-CV-01350, Index #37; Court File No. 09-2021-CV-01619, Tr. 25:6-15.) Gaede, 2015 ND 160, 870 N.W.2d 26.

[¶27] 4. In the present case (PCR4), as he did in PCR2, Gaede claimed a PTSD diagnosis was newly discovered evidence. Rather than a self-diagnosis, this time it was diagnosed by a psychiatrist, largely based upon symptoms Gaede described to her. In analyzing Gaede's current claim, the district court referred to notes in Gaede's psychiatric records written before his 2006 trial. In particular, the district court mentioned the following: (1) on September 23, 2003, the notes characterized Gaede as "quite a scammer"; (2) on January 13, 2004, Gaede's answers were "quite detailed and elaborate" and "there is a question of validity"; (3) on February 18, 2004, medical staff noted that Gaede's profile type was associated with "gross overstatement of problems" and the "probability of malingering or overstating problems and symptoms for specific personal gain must

be considered”; (4) on April 13, 2004, the psychiatrist explained to Gaede that his testing “was not all that valid”; and (5) on April 14, 2004, medical staff described Gaede’s test profile as “invalid and reflects in effect an attempt to portray himself in an emotionally disturbed light”. In referring to psychiatric notes after Gaede’s trial, the district court mentioned: (6) on December 6, 2007 (the year following his trial), the Wisconsin Department of Corrections saw “no evidence of major psychological illness”; and (7) on May 11, 2010, the psychiatrist wrote “doubt PTSD” and many of Gaede’s complaints “may not have a lot of substance to them”. (Tr. 25:16-27:7; Index #51, pp31, 35, 38-41, 62, 79.) The district court also noted Dr. Free’s testimony that the PTSD diagnosis would have no bearing on Gaede’s competency to commit the offense or stand trial. (Tr. 27:18-19.) See, Moore v. State, 2007 ND 96, ¶¶15-16, 734 N.W.2d 336 (defendant’s claim of a PTSD diagnosis as newly discovered evidence failed when he did not provide expert testimony that he was suffering from PTSD when he stabbed his victim, or when he pled guilty, or that it affected the voluntariness of his plea).

[¶28] The analysis of a newly discovered evidence claim is left to the discretion of the district court. The district court concluded Gaede did not present anything in his current petition that was not previously presented, noting Gaede had alleged PTSD at least as far back as 2012. (Tr. 28:13-18.) Gaede failed to show how a PTSD diagnosis nearly 20 years after the crime was material to the issues at trial. In fact, Dr. Free testified it was irrelevant. Gaede also failed to show how this diagnosis would likely result in an acquittal. (Tr. 28:21-29:20.) Ramsey at ¶10.

Gaede did not meet his burden. The district court did not abuse its discretion in denying his claim.

[¶29] C. Other Considerations - Affirmative Defenses.

[¶30] In its Answer, the State asserted the affirmative defenses of the statute of limitations, res judicata, misuse of process and laches, and put Gaede to his proof. Index #10.

[¶31] 1. Statute of Limitations.

[¶32] In 2013 the North Dakota Legislature enacted N.D.C.C. §29-32.1-01(2). It became effective on August 1, 2013. The enactment requires a PCR application be filed within two years of the date the conviction becomes final. Murphy v. State, 2014 ND 84, ¶¶5-6, 845 N.W.2d 327. Gaede was convicted in 2006. This court affirmed his conviction in 2007. Gaede, 2007 ND 125, 736 N.W.2d 418. His opportunity to appeal to the U.S. Supreme Court expired in 2007. Sup.Ct.R. 13(1) (petition for review by the U.S. Supreme Court must be filed within 90 days of the judgment entered by a state court of last resort). Accordingly, Gaede's conviction was final in 2007.

[¶33] The statute provides an exception to the limitations period for newly discovered evidence. N.D.C.C. §29-32.1-01(3). As addressed above, Gaede did not present any newly discovered evidence. Even if he had, Gaede's claim was still untimely. The limitations exception for newly discovered evidence requires the PCR claim be filed within two years of when the petitioner discovered or reasonably should have discovered that new evidence. N.D.C.C. §29-32.1-01(3)(b). Gaede

mistakenly alleged he was diagnosed with PTSD on July 18, 2019. App. 12, ¶1. According to Gaede's psychiatric records and Dr. Free's testimony, she diagnosed him with PTSD on December 14, 2018. (Index #51, p142-143; Tr. 15:15-16:16.) Gaede now acknowledges this. (Gaede Brief, ¶7.) Gaede filed this PCR case on May 18, 2021, which was 2-years-plus-155-days after his diagnosis. The State asserted Gaede's PCR4 claims violated the statute of limitations. The district court concurred. (Tr. 27:20-28:1.)

[¶34] 2. Res Judicata and Misuse of Process.

[¶35] The defense of res judicata bars relief if the same or similar claims have been fully and finally determined in a previous proceeding. N.D.C.C. 29-32.1-12(1); Syvertson v. State, 2000 ND 185, ¶16, 620 N.W.2d 362 (res judicata bars variation of prior claims). The defense of misuse of process bars relief when an applicant inexcusably fails to raise a claim in an earlier proceeding or filed multiple applications with a claim so lacking legal or factual support as to be frivolous. N.D.C.C. §29-32.1-12(2); Steen v. State, 2007 ND 123, ¶13, 736 N.W.2d 457 (post-conviction proceedings are not intended to allow a defendant multiple opportunities to raise the same or similar issues); Johnson v. State, 2006 ND 122, ¶14, 714 N.W.2d 832 (inherent in the concept of misuse of process is the obligation of a litigant to raise issues in a proper and timely fashion). The State asserts Gaede's PCR4 claims are barred by res judicata and misuse of process due to multiple filings since 2008. The district court concurred. (Tr. 28:2-9.)

**[¶36] CONCLUSION**

[¶37] For all the reasons provided above, the State respectfully requests this Honorable Court affirm the district court's denial of post-conviction relief in this matter.

[¶38] Respectfully submitted February 10, 2022.

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**[¶39] CERTIFICATE OF COMPLIANCE**

[¶40] I hereby certify that this brief complies with N.D.R.App.P. 32(a)(8)(A).  
The page count is 14 pages.

[¶41] Dated February 10, 2022.

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**[¶42] CERTIFICATE OF SERVICE**

[¶43] A true and correct copy of the foregoing document was sent via e-mail on February 10, 2022, to Laura C. Ringsak at: lringsak@midconetwork.com.

Birch P. Burdick, NDID #5026