

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

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Cody Atkins,	)	
	)	
Appellant,	)	Supreme Court No.
	)	20220006
vs.	)	
	)	District Court No.
	)	18-2021-CV-01260
State of North Dakota,	)	
	)	
Appellee.	)	

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**ON APPEAL FROM THE DISTRICT COURT FOR THE NORTHEAST  
 CENTRAL JUDICIAL DISTRICT GRAND FORKS COUNTY,  
 NORTH DAKOTA ISSUANCE OF ORDER DENYING POST-CONVICTION  
 RELIEF ENTERED ON DECEMBER 13, 2021, AND PRE-FILING ORDER  
 PURSUANT TO N.D. SUP. CT. ADMIN. R. 58 ENTERED ON JANUARY 6, 2022,  
 THE HONORABLE JOHN THELEN, PRESIDING.**

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**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

**I. Whether the District Court properly denied Atkins' application for post-conviction relief.**

The District Court properly denied Atkins' application for post-conviction relief as Atkins brought claims barred by res judicata and/or misuse of process.

**II. Whether the District Court properly issued its findings and pre-filing order pursuant to North Dakota Supreme Court Administrative Rule 58 which determined Atkins a vexatious litigant.**

The District Court properly issued its findings and pre-filing order pursuant to North Dakota Supreme Court Administrative Rule 58 finding Atkins a vexatious litigant given his litigation history.

## **STATEMENT OF THE CASE**

[¶1] Appellant, Cody Michael Atkins (hereinafter Atkins) appeals from an order denying an application for post-conviction relief entered on December 13, 2021. (R69). Atkins also appeals from the findings and a pre-filing order entered on January 6, 2022, where pursuant to North Dakota Supreme Court Administrative Rule 58 Atkins was determined to be a vexatious litigant. (R74).

[¶2] On September 8, 2014, an Information was filed in Grand Forks District Court charging Atkins with Gross Sexual Imposition. (R21:1). On March 19, 2015, Atkins pled guilty. (R74:1). Sentencing occurred on June 29, 2015, where Atkins persisted in his open plea of guilty and was sentenced to 20 years with the North Dakota Department of Corrections with five (5) years suspended for ten (10) years and ten (10) years of supervised probation. (R21:2).

[¶3] Atkins appealed after his judgment was entered and on appeal alleged ineffective assistance of counsel and that the district court failed to comply with Rule 11 of the North Dakota Rules of Criminal Procedure. State v. Atkins, 2016 ND 13, ¶ 5, 873 N.W.2d 676. Atkins appeal was denied by the North Dakota Supreme Court and Atkins never moved to withdraw his guilty plea at the district court level and instead raised the issue for the first time on appeal. Additionally, the North Dakota Supreme Court asserted that claims of ineffective assistance of counsel are generally inappropriate on appeal. Id. at ¶ 6.

[¶4] Subsequently, Atkins filed a petition for post-conviction relief on March 23, 2016, alleging ineffective assistance of counsel in 18-2016-CV-0559 which was ultimately dismissed on July 1, 2016. (R74:2). Atkins then filed an identical petition for

post-conviction relief in 18-2016-CV-01909 which was later dismissed on May 9, 2017 and affirmed by the North Dakota Supreme Court on February 2, 2017. Atkins v. State, 2017 ND 290, 904 N.W.2d 738.

[¶5] On July 24, 2017, Atkins filed a Rule 35 Motion for Reduction of Sentence in the underlying criminal file 18-2014-CR-1844 which was denied and considered a third post-conviction action for relief. (R74:3). On November 17, 2017, Atkins filed a document entitled Motion to Dismiss in criminal file 18-2014-CR-1844 which failed to provide any supporting evidence or brief and was dismissed on December 12, 2017. (R74:3).

[¶6] February 2, 2018, Mr. Atkins filed a Motion to Vacate Judgment and Withdraw Plea of Guilty but failed to serve the State. (R74:3). In a Supplemental Brief Atkins argued there was a manifest injustice requiring withdraw of his guilty plea and that there was newly discovered evidence requiring a new trial. (R74:3-4). A hearing occurred on August 10, 2018, Atkins testified and admitted that he failed to review discovery he received from his attorney and had access to the information he claimed to be “newly discovered” prior to the conviction in the matter. (R74:4). On October 31, 2018, the district court filed an Order Denying Defendant’s Application for Post-Conviction Relief and found the doctrines of misuse of process and res judicata applied. (R74:4). Atkins filed a notice of appeal. (R74:4). Just prior to filing a notice of appeal Atkins filed a third Post-Conviction Relief Action in case number 18-2018-CV-02604 which brought allegations barred under the doctrines of misuse of process and/or res judicata which was ultimately appealed, and the North Dakota Supreme Court affirmed

the order for the district court. (R74:4). The same occurred in case number 18-2020-CV-02006. (R74:4).

[¶7] On June 30, 2021, Atkins brought an application for post-conviction relief alleging newly discovered evidence, actual innocence exception, Brady violation, and invalid guilty plea. (R1). Atkins filed an Affidavit, Exhibits and application for court appointed counsel. (R2-7). Subsequently, Atkins filed a Motion for Change of Judge. (R8). The State filed its Answer to Atkins Application for Post-Conviction Relief, a Brief in Response to Atkins Motion for Change of Judge and a Motion to Dismiss. (R17, 18 and 20). The District Court denied Atkins Motion for Change of Judge, allowed Atkins a continuance and denied the State's Motion to Dismiss. (R25, 33, 44 and 46). On August 12, 2021, the State filed its notice and supporting documents pursuant to North Dakota Administrative Rule 58. (R51-54). Atkins was then appointed counsel and a supplemental brief was filed on September 21, 2021, with two exhibits. (R57-59). The State filed a response on October 1, 2021. (R62). A hearing occurred on November 12, 2021, where both Atkins, his counsel and the State were present. (Transcript of Proceedings, November 12, 2021 [hereinafter Tr.1]). The District Court took the matters of post-conviction relief and the State's request to find Atkins a vexatious litigant in accordance with North Dakota Administrative Rule 58 under advisement. (Tr.1, Page 38). The District Court entered its Order denying Atkins post-conviction relief action on December 13, 2021. (R69). Subsequently, on January 6, 2022, the District Court entered its Findings and Pre-Filing Order pursuant to North Dakota Administrative Rule 58 determining Atkins a vexatious litigant. (R74). Atkins filed a notice of appeal for both orders on January 7, 2022. (R79).



### **STATEMENT OF THE FACTS**

[¶8] Atkins' Statement of the Facts refers to an evaluation from St. Alexius Archway Mental Health. Appellee would note for this Court that the evaluations referred to by Atkins took place on September 22, 2011, October 5, 2011, and January 24, 2012, all dates well before Atkins was charged with the underlying crime of Gross Sexual Imposition. (R58:1, 6, 11).

[¶9] Appellee would have nothing additional for this Court regarding the facts.

## **STANDARD OF REVIEW**

[¶10] “Generally, the applicability of res judicata is a question of law and is fully reviewable on appeal.” State v. Atkins, 2019 ND 145, ¶ 12, 928 N.W.2d 441. In post-conviction proceedings, the standard of review is well established:

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.

Brewer v. State, 2019 ND 69, ¶ 4, 924 N.W.2d 87.

[¶11] This Court reviews a district court order enjoining certain future litigation for an abuse of discretion. Matter of Hirsch, 2017 ND 291, ¶ 8, 904 N.W.2d 740, 743 and State v. Holkesvig, 2018 ND 17, ¶ 4, 906 N.W.2d 84, 85. North Dakota Supreme Court Administrative Rule 58 indicates a court’s presiding judge “may” find a person a vexatious litigant upon requisite finding and “may” enter a pre-filing order enjoining a vexatious litigant from further filings without leave of court. N.D. Sup. Ct. Admin. R. 58. The use of the word “may” in Rule 58 is permissive and therefore, indicates a matter of discretion. Hirsch, ¶ 8. A court abuses its discretion when it acts arbitrarily, unconscionably, or unreasonably, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. Id.

## **ARGUMENT AND STATEMENT OF AUTHORITY**

### **I. The District Court properly denied Atkins' application for post-conviction relief as Atkins brought claims barred by res judicata and/or misuse of process.**

[¶12] Applicants for post-conviction relief may not avoid the application of res judicata principles by raising variations of previous arguments. Silvesan v. State, 1999 ND 62, ¶ 10. Further, an issue is barred as a misuse of process if (1) the defendant inexcusably fails to raise the issue in a proceeding leading to judgment of conviction and subsequently seeks review in a first application for post-conviction relief; (2) the defendant inexcusably fails to pursue an issue on appeal which was raised and litigated in the original trial court proceedings; or (3) the defendant inexcusably fails to raise an issue in an initial post-conviction application. Clark v. State, 1999 ND 78, ¶ 23. Each claim and argument brought by Atkins in this application for post-conviction relief has been heard before, thus, making Atkins barred from seeking further relief. It should be noted for this Court that Atkins has brought at least six prior post-conviction relief actions. Atkins v. State, 2021 ND 83, ¶ 1, 959 N.W.2d 588.

[¶13] Under N.D.C.C. § 29-32.1-03, an applicant has the burden of establishing grounds for relief. The applicant must provide certain allegations, but argument, citations and discussions of authority are unnecessary. Burden v. State, 2019 ND 178, ¶ 11, 930 N.W.2d 619. When requesting post-conviction relief, an applicant must identify the proceedings in which the applicant was convicted and sentenced, provide the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. N.D.C.C. § 29-32.1-04(1). Parameters, as set forth

in N.D.C.C. § 29-32.1-01(1)(a)-(h) exist regarding the various grounds for relief which may be sought when a Defendant requests post-conviction relief.

[¶14] After an application for post-conviction relief is filed by a petitioner and, if, the petitioner satisfies the burden by appropriately articulating a ground for relief pursuant to the Uniform Post-Conviction Relief Act, the burden then shifts to the State to respond by answer or motion. N.D.C.C. § 29-32.1-06. The State may move to dismiss an application and in that instance the petitioner must provide minimal competent evidence which would entitle them to an evidentiary hearing. N.D.C.C. § 29-32.1-06(2); Atkins, 2017 ND 290 at ¶ 6. Once put on proof, a petitioner may be entitled to an evidentiary hearing if they meet their burden. Steinbach v. State, 2003 ND 46, ¶ 17, 658 N.W.2d 355. A court may deny an application for post-conviction relief on the grounds of res judicata if the claim has been fully and finally determined in a previous proceeding. N.D.C.C. § 29-32.1-12(1). A court may also deny relief on the grounds of misuse of process which occurs when a petitioner presents a claim of relief for which they inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous post-conviction proceeding or files multiple applications containing a claim so lacking a factual support or legal basis as to be frivolous. N.D.C.C. § 29-32.1-12(2).

[¶15] In this case, the District Court properly denied Atkins post-conviction relief because it determined the claims as raised by Atkins are barred by res judicata and/or misuse of process. (R69:4). Atkins first suggests that the district court erred in denying his application for post-conviction relief because his original plea was not knowing and voluntary due to a mental disease, he suffers from which precluded timely assertion of the application for relief. Atkins' mental disease did not preclude timely

assertion of the application for relief as he has made numerous applications for post-conviction relief since his conviction in 2015. Atkins, 2021 ND 83 at ¶ 1. To summarize, Atkins brought a direct appeal regarding his criminal judgment in 2015 requesting the ability to withdraw his guilty plea, alleging ineffective assistance of counsel and the district court's failure to substantially comply with Rule 11 of the North Dakota Rules of Criminal Procedure. Id. In 2016, Atkins filed an application for post-conviction relief asserting there was evidence not previously heard, denial of effective assistance of counsel, and a conviction obtained by use of coerced confession. Id. Again in 2016, Atkins filed another application for post-conviction relief asserting ineffective assistance of counsel which was dismissed by the district court for Atkins failing to present any competent evidence raising an issue of material fact. Id. The district court order was appealed and affirmed by this Court. Atkins, 2017 ND 290 at ¶ 11. In 2017 Atkins filed a motion arguing he was entitled to relief because he was precluded from using the internet as part of his probationary conditions. Atkins, 2021 ND 83 at ¶ 1. The district court found Atkins motion was his third post-conviction request for relief and it was denied. Id. Again in 2017, Atkins filed a motion for post-conviction relief to vacate his guilty plea and alleged newly discovered evidence, however, his request for relief was denied after a hearing when the court concluded his attempt to withdraw his guilty plea was procedurally barred by abuse of process and res judicata and that his motion for a new trial based on newly discovered evidence did not meet the four-part test to qualify as newly discovered evidence. Id.

[¶16] The mere fact that Atkins brought numerous applications for post-conviction relief prior to this instance negates the entire argument that Atkins suffered

from a mental disease that precluded timely assertion of his application in this matter. Additionally, these evaluations presented by Atkins to show his mental disease were completed in 2011 and 2012. (R58 and Tr.1, Page 5). The years 2011 and 2012, being before Atkins was ever charged with the underlying crime and before he ever brought his first post-conviction relief application in 2015. “Post-conviction proceedings are not intended to allow defendants multiple opportunities to raise the same or similar issues, and defendants who inexcusably fail to raise all of their claims in a single post-conviction proceeding misuse the postconviction process by initiating subsequent application raising issues that could have been raised in the earlier proceeding.” Steen v. State, 2007 ND 123, ¶ 13, 736 N.W.2d 457. Atkins could have and should have brought the claim that he suffers from a mental disease prior to this proceeding as the evaluations were completed in 2011 and 2012. Atkins inexcusably failed to raise this claim in his prior post-conviction proceedings. Failure to do so constitutes a misuse of process and therefore, this Court should find that the District Court’s findings were not clearly erroneous and that it properly denied Atkins application for post-conviction relief based on misuse of process.

[¶17] Next, Atkins alleges the District Court erred in denying his application for post-conviction relief because his guilty plea was not knowing, intentional and voluntary. Again, ever since his first appeal in 2015, Atkins has consistently alleged ineffective assistance of counsel, motioned for a new trial, and asserted his due process rights were violated. Atkins, 2021 ND 83 at ¶ 1. Atkins asserts his case is like United States Supreme Court Case Henderson v. Morgan, where the defendant was subjected to a new psychiatric examination but found competent to stand trial but was later deprived of

receiving adequate notice of the offense to which he pleaded guilty to, specifically the element of intent. 426 U.S. 637, 642-47, 96 S. Ct. 2253, 2256-60, 49 L. Ed. 2d 108 (1976). Atkins claims he was never instructed the offense charged was a strict liability offense but provides no evidence to support his claim. This is distinguishable from Henderson, where the court specifically found as a fact that the element of intent was not explained to defendant and that the defendant's unusually low mental capacity provided a reasonable explanation for counsel's oversight and foreclosed the conclusion that the error was harmless beyond a reasonable doubt and lends a degree of credibility to defense counsel's appraisal of the homicide as a manslaughter rather than murder. Id. at 647. Here, Atkins did not provide evidence to support his allegations that he was never given adequate notice of the offense he was charged with or that he was never instructed the offense he was charged with is a strict liability offense. Atkins brought prior applications for post-conviction relief as mentioned above regarding this exact claim and therefore, this is just a variation of a previous claim made by Atkins and thus, is barred by res judicata. The post-conviction application brought by Atkins in this instance was well after the two-year mark of the conviction becoming final and thus, Atkins is limited to seek relief if he can show the following:

- 1) The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
- 2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
- 3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.

N.D.C.C. § 29-32.1-01(3)(a). Here, Atkins is claiming his due process rights were violated after the two-year mark and uses a United States Supreme Court Case from 1976 to support his position. Atkins does not meet the requirements under North Dakota post-conviction statute for this claim and therefore, is misusing the procedure as outlined. This Court should find the District Court's finding was not clearly erroneous and affirm that Atkins raised a claim that was a variation of a previous claim already made and is misusing the process of post-conviction relief.

[¶18] Atkins also claims the district court did not allow him to present evidence in open court, however, Atkins stated he wanted a continuance at the hearing because he did not subpoena his witnesses. (Tr.1, Page 38). Contrary to this position taken by Atkins, the District Court scheduled a hearing for November 12, 2021, which he was provided notice of on July 12, 2021. (R15). Given that Atkins had four (4) months to prepare for this hearing and was afforded court appointed counsel, there is no reason why Atkins could not adequately prepare for the hearing on November 12, 2021, and present evidence should he wished to meet his burden regarding newly discovered evidence.

[¶19] Overall, the District Court in this case made specific findings which supported its ultimate finding that Atkins claims were barred by misuse of process and res judicata in this application for post-conviction relief. Specifically, the District Court found that the issues set forth and argued by both Atkins and his counsel were all variations of previous claims, having been previously litigated, or inexcusably failed to be raised in previous proceedings. (R69:3). The District Court's findings were not clearly erroneous and properly denied Atkins application for post-conviction relief and this Court should affirm the same.



**II. The District Court properly issued its findings and pre-filing order pursuant to North Dakota Supreme Court Administrative Rule 58 finding Atkins a vexatious litigant given his litigation history.**

[¶20] Under N.D. Sup. Ct. Admin. R. 58, a court's presiding judge may find a person a vexatious litigant upon the requisite finding and may enter a pre-filing order enjoining a vexatious litigant from further filings without leave of court. N.D. Sup. Ct. Admin. R. 58.

[¶21] This Court adopted North Dakota Supreme Court Administrative Rule 58 regarding vexatious litigants at the request of the Joint Procedure Committee. See Order of Adoption, Supreme Court No. 20170237. On March 1, 2017, the Rule became effective and presented a purpose to address vexatious litigants which impede proper functioning of the courts while protecting reasonable access to courts. Everett v. State, 2017 ND 93, ¶ 3, 892 N.W.2d 898. Under subsection (2)(b) of Rule 58, a "vexatious litigant" is defined as "a person who habitually, persistently, and without reasonable grounds engages in conduct" that:

- (1) serves primarily to harass or maliciously injure another party in litigation;
- (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law;
- (3) is imposed solely for delay;
- (4) hinders the effective administration of justice;
- (5) imposes an unacceptable burden on judicial personnel and resources; or
- (6) impedes the normal and essential functioning of the judicial process.

N.D. Sup. Ct. Admin. R. 58. Under subsection (3)(a) of the rule, "[t]he presiding judge may enter a pre-filing order prohibiting a vexatious litigant from filing any new litigation or any new documents in existing litigation in the courts of this state as a self-represented party without first obtaining leave of a judge of the court in the district where the litigation is proposed to be filed." Additionally, subsection (4) of Rule 58 provides:

A presiding judge may find a person to be a vexatious litigant based on a finding that:

- (a) In the immediately preceding seven-year period the person has commenced, prosecuted or maintained as a self-represented party at least three litigations, other than in small claims court, that have been finally determined adversely to that person; or
- (b) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, as a self-represented party, either
  - (1) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined; or
  - (2) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; or
- (c) in any litigation while acting as a self-represented party, the person repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary burden, expense or delay; or
- (d) the person has previously been declared a vexatious litigant by any state or federal court of record in any action or proceeding.

N.D. Sup. Ct. Admin. R. 58(4). Finally, subsection (6) indicates the court's pre-filing order is appealable under N.D.C.C. § 28-27-02 and N.D. R. App. P. 4. N.D. Sup. Ct. Admin. R. 58(6).

[¶22] Atkins asserts the District Court's Order finding him a vexatious litigant should be reversed because he had reasonable grounds and a good faith argument to file the documentation in his cases, however, provides no detail regarding reasonable grounds or his good faith argument regarding any of the litigation history cited by the District Court.

[¶23] In this case, the District Court issued its findings and pre-filing order after allowing ample opportunity for Atkins and his counsel to respond. The District Court also held a hearing where Atkins was free to address this Motion. (Tr.1, Page 26). The District Court provided a detailed outline of the litigation history in its findings and pre-filing order to include the beginning of Atkins litigation in 2015 up to and including the most

recent litigation in 2021. (R74:1-6). Based on the history, the District Court found Atkins to be a vexatious litigant because he is a person who habitually, persistently, and without reasonable grounds engaged in conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. (R74:6-7). Additionally, the District Court found Atkins' actions to have imposed an unacceptable burden on judicial personnel and resources by continuously litigating and relitigating his case when he is repeatedly denied relief under res judicata and misuse of process. (R74:7). Finally, the District Court found Atkins actions to impede the normal and essential functioning of the judicial process by his unwarranted consumption of judicial resources and filings during period of appeal. (R74:7). The District Court specifically noted Atkins has commenced, prosecuted, or maintained as a self-represented party at least three litigations in the preceding seven year-period which have been determined adversely to him. (R74:7). The District Court noted Atkins has repeatedly relitigated or attempted to relitigate as a self-represented party, the validity of the final determinations against him and as a self-represented party, repeatedly filed unmeritorious motions, pleadings, or other papers. (R74:7). In accordance with Administrative Rule 58, the District Court ordered that Atkins be prohibited from filing any new litigation or new documents in existing litigation in the courts of this state as a self-represented party without first obtaining leave of judge of the court in the district where the litigation is proposed to be filed, unless he first files an application with the court requesting leave to file and the court approves such filing. (R74:7). The District Court indicated there is a basis for the order and that a judge may permit the filing of new litigation or any documents in existing litigation only if it appears the litigation or

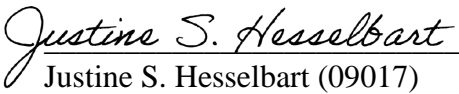
document has merit and has not been filed for the purpose of harassment or delay.  
(R74:7-8).

[¶24] Given the extensive findings recited by the District Court, this Court should affirm the findings made by the District Court as they support the ultimate finding that Atkins is a vexatious litigant under Rule 58 of the North Dakota Supreme Court Administrative Rules. Additionally, this Court should find the District Court did not act arbitrarily, unconscionably, or unreasonably and did not misinterpret or misapply the law, and its decision was in fact a product of a rational mental process leading to a reasoned determination.

### **CONCLUSION**

[¶25] Based on the foregoing law and argument, the State of North Dakota respectfully requests this Court deny Atkins' appeal and affirm, in total, the District Court's orders which denied Atkins post-conviction relief and found Atkins a vexatious litigant. Atkins continues to bring forth claims which are barred by res judicata and/or misuse of process rendering post-conviction relief unwarranted. Atkins was afforded due process and heard on multiple occasions. Atkins attempts to expand the due process right of notice and a hearing to address legal grievances to where a limit does not exist. Based on Atkins' continuous filings and litigation history, this Court should also find the findings and pre-filing order in accordance with North Dakota Supreme Court Administrative Rule 58 proper and necessary.

DATED this 7<sup>th</sup> day of April 2022.



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

---

Cody Atkins,	)	Supreme Court No. 20220006
	)	
Appellant,	)	
	)	District Court No. 18-2021-CV-01260
vs.	)	
	)	
State of North Dakota,	)	
	)	
Appellee.	)	

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**CERTIFICATE OF COMPLIANCE**

[¶1] The State of North Dakota, by and through Assistant State's Attorney Justine Soraya Hesselbart hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 21 number of pages.

Dated this 7<sup>th</sup> day of April, 2022.

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Cody Atkins,	)	Supreme Court No. 20220006
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Appellant,	)	
	)	District Court No. 18-2021-CV-01260
vs.	)	
	)	
State of North Dakota,	)	<b>DECLARATION OF SERVICE</b>
	)	
Appellee.	)	

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