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SUPREME COURT JUN 18 2010

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

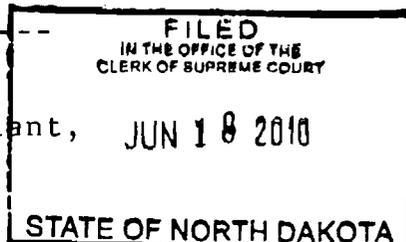
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Supreme Court #s 20090347 & 20100011

Mr Vonnie Darin Darby,  
Petition-Appellant,

Vs.

State of North Dakota,  
Respondent-Appellee.



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SUPPLEMENT  
APPELLANT'S REPLY BRIEF

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Vonnie Darin Darby  
Pro se #25457

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*Original*

## STATEMENT OF THE FACTS

### LAW AND ARGUMENT

If the Appellee is allowed to submit an amended/corrected brief after its initial chief response brief was filed and docketed with and by the Clerk, the appellant must be allowed to supplement his reply brief as well.

On June 4, 2010, the appellee's brief was electronically filed. On June 11, Clerk H. Keller acknowledged such filing. On that same day, the appellee electronically submitted its 'corrected' brief, as of this date the appellant has yet to receive notice from the clerk as to its office docketing said 2nd brief, (however it may be in the coming mail). In both electronically filing submissions, the appellant's copy of said briefs was not received by U.S. mail until June 7, and 14, the following Mondays. Rule 31(a) 14 day submitting of reply brief clock doesn't start until after he had received the appellee's brief. With respect to the fact that appellant's initial Reply Brief is only 6 pages long, (Rule 32(7)(B) allows 10 pages for reply brief), his initial timely submission date would be June 21, and June 28, 2010 would be the his 2nd filing deadline date, and the appellee was allowed to file its 2nd brief, the appellant's supplement brief is timely and rightfully submitted.

#### IV. Attorney David Orgen's Performance Was Ineffective For Not Raising Darby's Constitutional Right to Self-Representation Issue on Direct Appeal

Hamilton v Groose, 28 F3d 859,(8th 1994); Spencer v Ault, 941 F Supp 832,(ND Iowa 1996), at 846: "To invoke his 6th Amendment right under Faretta v california, 95 S.Ct. 2525, a defendant does not need to recite some talismanic formula hoping to open the eyes & ears of the court to his request."

On Oct. 4, 2006, at Darby's Initial Appearance, at Tr. 10, after the court informed him that it was appointing Monty Mertz to his case, Darby immediately requested that Jeff Bredahl be appointed, but the court cut himj off and told him: "unfortunately the way our system works is you're going to 'have' to "have Mr Mertz on this case." Okay, was all the defendant could say at that point. He had made his request and the Court had spoken and ruled.

Spencer at 852: To avoid a waiver of a previously-invoked right to self-representation, a defendant 'is not' required continually to renew a request once it is conclusively denied or to "make fruitless motions or forego cooperation with defense counsel in order to preserve the issue on appeal." ... Spencer clearly stated his reluctance to proceed with Mr Coy as appointed counsel, (as did Darby). ... As the court pointed out above, a defendant is entitled to a reversal, regardless of whether he can demonstrate prejudice. With the record & case law being undisputable and a mirrored case to the underline, Orgen poor performance clearly fails the Strickland 2-prong test.

V. Mertz' Ineffectiveness Regarding Darby's Speedy Trial  
Invoking Right Timely and For Not Knowing The Obvious Law

In the Appellee's unnumbered brief, at 5, it stated: "Darby argued that Mr Mertz had failed to inform Darby that he had to make a demand for a speedy trial within 14 days. ... The district court noted that, 'there is no such requirement under the law in North Dakota' and therefore opined that the allegation was without merit." The state seems to be in the same belief as the Court and Mertz, and is therefore in error as both the Court and Martz.

NDCC 29-19-02 Right to speedy Trial (in part): ... The ... defendant "shall" elect this right within 14 days following the arraignment. 2009 Pocket Supplement: Defendant's request for a speedy trial was denied where he did 'not' elect this right within 14 days of his arraignment, which was held on June 19, 2006. Everett v State, 757 N.W.2d 530, (ND 2008).

With respect to the above, the Court was in error for not finding Mertz ineffective for not knowing and not making his client aware of said vital Constitutional right and exhaustion requirement.

VI. Mertz Was Ineffective For Lying and Not Setting forth  
Effort to Seek and Provide Said Phone Transcripts To Mr  
Darby

At 7, the Appellee stated: "Darby also alleges that Mertz's failure to obtain copies or transcripts of jail phone calls was effective assistance. The district Court found that Mertz had investigated the matter and found that there were no recordings or transcripts made of the phone calls, therefore he could not be expected to "procure evidence that does not exist." Thus, it was not ineffective assistance.

Mertz's claim to have investigated the phone call record-ings & transcripts during his Oct. 4, thru Dec. 8, 2006, re-presentation is an 'outright lie.' And if he lied about one issue, he likely lied on others. The same must apply to the State & Court for backing such outright, of record, false testimony & Constitutional[s] violation[s]!!!

At trial, some 5½ months after the calls was made, det. Cruff stated in his March 7, 2007 report: ..."I checked the jail phone calls under Kroll's phone # and 2 phone calls from Darby to Kroll's Kitchen. ... This report is to be forwarded to the Cass Co. States attorneys Office attached with transcribed 2 phone calls ..." See Ex 38, Report, & Ex 43, Transcripts; and Trial Tr. 455, where Cruff stated "I pulled those up last week." These are 'all' Officers of the Court. Darby's Due Process, Right to confront Witnesses, Brady Entitlements and to a Fair Trial & Effective Assistance of Counsel Was com-promised, violated & disregarded by 'all' said Officers of the Courts.

#### CONCLUSION/RELIEF SOUGHT

Throughout Appellant's PC Relief Application, his Chef Brief and the record, he, and it is shown, that the above issues amounts to Plain Error "Obvious" and that the Court erred in its ruling regarding Darby's ineffectiveness claims and that he was not prejudiced by counsel[s] deficient performances. The record shows the contrary. Reversal is overwhelmingly warranted in all raised claims within Darby's briefs. Dated this June 17, 2010.

CC: Kara Schmitz Olson



Vonnice Darby, Pro se 25457