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IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
JUNE 15, 2010  
STATE OF NORTH DAKOTA

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Supreme Court #s 20090347 & 20100011

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Vonnie D. Darby,  
Petitioner-Appellant,

Vs.

State of North Dakota,

And

Tim Schuetzle,  
Respondent{s}-Appellee{s}.

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APPELLANT'S REPLY BRIEF

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VONNIE DARIN DARBY  
PRO SE #25457  
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## STATEMENT OF THE ISSUES

The statement of issues are set forth in Darby's initial brief and in response to the State's Appellee's brief are supplemented below.

## STATEMENT OF THE CASE

The statement of the case is set forth within Darby's initial brief, and as his statement of the issues, need not be repeated.

## STATEMENT OF THE FACTS

## LAW AND ARGUMENT

With respect to true litigation and pursuit in achieving just and meaningful entertainment from the highest Court in the State of North Dakota, the pro se appellant will, unlike the State, be more professional in assisting the Court to stay on track and not falling victim to the State's elementary attempt to mislead the Court in an off-course direction from the relevant issues at hand and unjust ruling that may follow by playing the out-dated relevant snow-ball effect, and dodge-ball games that many have participated in and felled victim to.

I. Darby's Appeal Should Not be Dismissed For Failure to Comply With The N.D. Rules of Appellate Procedure.

The State cited *State v Noack*, 732 N.W.2d 389, (N.D. 2007), with selective acknowledgement. Contrary to the State's limited tunnel vision of this Court's **Noack's** requirement ruling for pro se brief filing litigant's, Darby's briefs meets the requirements set forth in **Noack**.

Furthermore, Clerk Penny Miller, after informing Darby, via phone conversation, see April 30<sup>th</sup>, 2010, letter that his initial 50 page brief was too lengthy, but informed him on May 3<sup>rd</sup>, that despite the 40 page maximum she cited, via phone conversation, he could send his reduced to 42 page brief for filing.

The fact that Darby's Writ has its own case # and should have not been forced to be litigating with his Post Conviction brief is also a factor.

II. Darby Has Met His Burden to Establish Ineffective Assistance of Counsel And That The Trial Court Abused Its Discretion in All Issues Raised during Pre-Trial, Trial And Post Conviction Appeal Proceedings.

For whatever reasons Darby ended up acting pro se at whatever different level that such self-representation took place, his poor performance or failure to meet a "burden", does not give a reviewing Court of an ineffective assistance of counsel claim, a passage to hold the required burden of the

pro se defendant-appellant, and at the same time free or turn its back on the requirement or burden that licensed, trained, sworn to and skilled Counsel is held to by rule, duty, case law and the Constitution. For it is clear that a pro se litigator cannot scream ineffectiveness on self, but to enforce such rationale does not mean a counsel that fails to meet the underline State or U.S. Supreme Court Strickland v Washington, 104 S.Ct. 2052,(1984), standard effective assistance of counsel performance, can be waived simply because the underline defendant-appellant's performance thereafter was poor as well. Such practice is ludicrous and absurd, and to apply such practice would to only be to punish a pro se defendant-appellant for acting pro se. The Constitution or the Faretta v California, 95 S.Ct. 2525,(1975), Court does not call or stand for such misapplication of the law or pursuit in justice. The appellant's above position and rationale must evenmoreso be applied when the record clearly shows the defendant-appellant to be out-right innocent and/or been the victim of server miscarriage of justice or numerous Constitutional violations.

With respect to the above, the same principle and logic must apply and be held to the trial court. The appellant's alleged poor performance can not be an excuse for an reviewing court to not hold the lower court from its

duty and responsibility to follow the mandated rule and language set forth in the Uniform PC Procedure Act, Chapter 29-32.1-07, 29-32.1-10 & 29-32.1-11.

With respect to law enforcement misconduct, prosecutorial misconduct, failure to seek and preserve critical evidence, planting of evidence, witness falsely accusing, 1-photo display and show-up ID highly suggestive procedures, wrongful arrest, trial & conviction, all committed in the highest degree of constitutional violations and set forth in chief brief, but that has never been seen on record in the State of N.D., clearly warrants publication and stern ruling and scowling from the Supreme Court on such miscarriage of justice and wrongful conviction prosecution and behavior from such officers-of-the-court members as to what should 'not' be done or 'tolerate' to obtain a wrongful conviction, imprisonment & continued incarceration.

III. The State's attorney Duty is Not to Just Prosecute the Guilty, But to Free the Wrongfully Accused & Imprisoned As Well.

As expressed in the above paragraph, the same logic and necessity for such scowling and publication is warranted for all to be on notice that such prosecutorial behavior "cannot and will not" be tolerated from such Law Enforcer.

The law and public concern require that a State Prosecutor to not only

prosecute the guilty but to free the innocent as well. No where within the Appellee's 16 page brief does it attempt to dispute and concede to the dozen plus "facts of record" that is shown within Appellant's brief that a "serious" 'miscarriage of justice', unfair trial, total disregard for critical constitutional protection and wrongful prosecuted and imprisoned has clearly taken place in the underline case. On top of not acknowledging such facts and failure to attempt to correct the prior to present wrongs that the Appellant has suffered from for nearly 4 years, the State Attorney not only ignores such, but continue in such behavior in hopes of influencing the Chief Law Enforcement Court in the State of North Dakota to turn its back on such "outright" **innocent** "facts of record" evidence and its duty to free the innocent; which would, if successful, subject the wrongfully convicted, sentenced & imprisoned prisoner to **continued** incarceration.

There comes a time that a prosecutor must relinquish and cease its pursuit in trying, imprison and to continue incarceration. "**No**" rule, practice, procedure, standard, requirement showing or exhaustion, etc., can be rightfully intended to trump or disregard clear and undisputed facts of record and evidence that clearly shows "obvious" plain error, miscarriage of justice and wrongfully convicted in the highest degree, which has been shown within

the appellant's chief brief. There are 'many' disturbing issues that warrants reversal in this case, but when alleged victim/witness from out the gate states that the alleged crime was committed by a stranger and later testifies that said perpetrator was someone that "played football like him", the wrongfully convicted prisoner must go free. If the shoe doesn't fit, you must acquit!

Any-

thing less or else is enforcement of one's personal belief and not of which that what the law or constitution requires or that what the evidence supports.

Justice delayed, is justice denied.

#### CONCLUSION

The Appellant respectfully request the Court to **reverse** the district Court's order denying Darby's request for Post Conviction relief and habeas corpus, and to remand for outright reversal on both counts forthwith.

Dated this 8<sup>th</sup> day of June, 2010.

  
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#### CERTIFICATION OF SERVICE

A true and correct copy of the foregoing document was sent electronically on the 11<sup>th</sup>, or 14<sup>th</sup>, 2010, by H. Jean Delaney, of the Commission on Legal Counsel for indigent Defense, to Kara Schmitz-Olson, SchmitzOlsonK@casscountynd.gov .