

20150205

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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CLERK OF SUPREME COURT

SUPREME COURT CASE NO. 20150205
DUNN COUNTY NO. 13-2013-CR-325

NOV - 3 2015

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,
Plaintiff and Appellee,
vs.
CHARLES WILLIAM RUSSELL, II,
Defendant and Appellant.

BRIEF OF APPELLANT

APPEAL FROM THE SENTENCE HANDED DOWN AT THE REVOCATION OF
PROBATION HEARING OF APRIL 14, 2015, AND FROM THE JUNE 17,
2015, AMENDED CRIMINAL JUDGMENT, DUNN COUNTY DISTRICT COURT,
THE HONORABLE DANN GREENWOOD PRESIDING


Charles William Russell, II, pro se
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2521 Circle Drive
Jamestown, ND 58401

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[¶3] ISSUES PRESENTED

[¶4] ISSUE 1: WHETHER THE DISTRICT COURT ERRORED IN SENTENCING DEFENDANT/APPELLANT WITHOUT FIRST DETERMINING THAT DEFENDANT/APPELLANT WAS MENTALLY COMPETANT TO REPRESENT HIMSELF, AND/OR UNDERSTAND THE PROCEEDINGS.

[¶5] ISSUE 2: WHETHER THE DISTRICT COURT HAD JURISDICTION OVER THE BODY OF THE DEFENDANT/APPELLANT.

[¶6] STATEMENT OF THE CASE

[¶7] This is an appeal from the sentence handed down at the Revocation of Probation hearing held on April 14, 2015, in Dunn County, North Dakota, and from the Amended Criminal Judgment of June 17, 2017. (Appendix page-29; hereinafter App.p.). There is no Criminal Judgment or any document of Probation Hearing of April 14, 2015.

[¶8] During the Revocation of Probation Hearing of April 14, 2015, the Honorable Dann Greenwood, Judge of the District Court ("District Court") sentenced Defendant/Appellant ("Appellant") to a term of "two (2) years incarceration at the Department of Correction, with the requirement that there be two years of probation following his release." (See, Revocation of Probation Transcript at 55, lines 8-11; hereinafter Rev.Prob.Tr.).

[¶9] On June 17, 2015, an Amended Criminal Judgment was entered against the Appellant on the charge of a class C felony possessing methamphetamine (a controlled substance).

[¶10] A notice of Appeal was filed on July 16, 2015. (App.p. 11).

[¶11] STATEMENT OF THE FACTS

[¶12] On April 14, 2014, during a Revocation of Probation hearing, Appellant, was sentenced on three (3) criminal counts: Possession of drug paraphernalia, a class A misdemeanor; possession of controlled substance, a class A misdemeanor; and Possession of drug paraphernalia, a class A misdemeanor. Petitioner was sentenced to "two years of incarceration at the Department of Correction, with the requirement that there be two years probation following his release." (See, Rev.Prob.Tr. at 55, lines 8-10). Appellant, is unaware of any criminal judgment being prepared on this sentence. Additionally, the District Court sentenced Appellant to two (2) years on the class C felony of Possessing methamphetamine (a controlled substance), (App.p. 30 at ¶12), during a hearing on the State's Motion to Reconsider, Enter Judgment of Guilty and Re-Sentence Defendant. (App.p. 29-31).

[¶13] Subsequently, Appellant has filed many pro se Motions to claim his body in the Divine Trust. (App.p. 34,35,36,37 and 40). Appellant further attempted to argue during both the Revocation of Probation Hearing and the Motion to Reconsider hearing, that he was claiming his body in the Divine Trust. (See, Rev.Prob.Tr. and Transcript of the Motion to Reconsider Hearing; hereinafter M.Rec.Tr.). Yet, the District Court has failed to rule on this issue, resulting in the appeal before

the Court. (App.p. 11).

[¶14] LAW AND ARGUMENT

[¶15] Jurisdiction

[¶16] Pursuant to N.D.C.C. §29-28-03, a defendant may appeal from any or all verdicts, judgments, or orders inumerated in N.D.C.C. §29-28-06. Accordingly, Appellant's appeal of the Amended Criminal Judgment (App.p. 29-31) is appropriately before the Court.

[¶17] ISSUE 1: WHETHER THE DISTRICT COURT ERRORED IN SENTENCING DEFENDANT/APPELLANT WITHOUT FIRST DETERMINING THAT DEFENDANT/APPELLANT WAS MENTALLY COMPETANT TO REPRESENT HIMSELF, AND/OR UNDERSTAND THE PROCEEDINGS.

[¶18] From the plain reading of both the transcript of the Revocation of Probation hearing held on April 14, 2015 and the Motion to Reconsider hearing held on June 16, 2015, before the Distirct Court at the Stark County Courthouse, 51 3rd Street East, Dickinson, North Dakota, 58601. It clearly shows that Appellant could not, and was not following even the simplest of the questions and answers, and clearly was under duress. (See, M.Rec.Tr. at 17, lines 4-25; at 18, lines 1-5).

[¶19] The District Court clearly should have requested an Expert to determine whether Appellant was mentally competent to proceed without counsel at the hearings held in this matter, prior to allowing Lloyd Suhr to withdraw (App.p. 7 at DOC.# 58-61), and prior to holding the hearings without defense counsel present, if even only on standby. The District

Court, the State and Lloyd Suhr were all aware of Appellant's bizarre behavior and failure to follow-up to discover psychological disorder(s) or failing to investigate Appellant's use of drugs was prejudicial, because from the facts in the two transcripts alone show Appellant was incompetent to admit guilt, represent himself or even help in his defense.

[¶20] Appellant did not have the "sufficient present ability" to consult with his counsel with a "reasonable degree of rational understanding" prior to counsel withdrawal, and clearly Appellant did not have a "rational" and "factual understanding of the proceedings against him." (See, Dusky v. U.S., 362 U.S. 402, 402 (1960)(per curiam)).

[¶21] The failure of the District Court to provide an competency determination, was a violation of Appellant's Due Process Rights under the Due Process Clause of the United States Constitution and even greater protections under Section 1, Article 12 of the North Dakota Constitution. (See, Drope v. Mo., 420 U.S. 162, 178-83 (1975)). The District Court's failure to conduct competency hearing in light of Appellant's "pronounced irrational behavior" during the two hearings was a clear due process violation. (See, Drope v. Mo.,; Pate v. Robinson, 383 U.S. 375, 385-86 (1966)).

[¶22] The circumstances such as Appellant's irrational behavior, demeanor during both hearings, created sufficient doubt as to Appellant's competence, required the District Court to

conduct a competency hearing. (See, Drope v. Mo., 420 U.S. at 180). Because, there was reasonable cause to believe Appellant was presently suffering from a mental disease or defect rendering Appellant mentally incompetent to the extent that Appellant was unable to understand the nature and consequences of the proceedings and to properly assist in his defense and clearly showed a "fundamental misunderstanding of proceedings" and did not understand the most simple question and answers.

[¶23] Failure of the District Court to conduct a competency hearing violated Appellant's Due Process Rights under the United States and North Dakota Constitutions. (See, Drope, 420 U.S. at 183; Pate, 383 U.S. at 385).

[¶24] Further, the District Court failure to conduct a competency determination and to allow counsel to withdraw without such prejudiced Appellant, and Appellant was denied counsel entirely during a critical stage of the proceeding, and because of the District Court's failure(s) prejudice is presumed. (See, United States v. Cronin, 466 U.S. 648, 658-59, 80 L.Ed.2d 657 (1984); Mickens v. Taylor, 535 U.S. 162, 166 L.Ed.2d 291 (2002)); and such was per se prejudicial warranting automatic reversal.

[¶25] **ISSUE 2:WHETHER THE DISTRICT COURT HAD JURISDICTION OVER THE BODY OF THE DEFENDANT/APPELLANT.**

[¶26] On the 16th day of June 2015, I, Charles William

Russell II, before the honorable Judge Dann Greenwood in Dickinson ND, did state for the court "anything I've said or did was done under duress, there fore it is unlawful", thus reverting my status as trustee of the Charles William Russell II constructive trust case #13-2013-CR-00325, to beneficiary. North Dakota Century Code-Volume 12.59-01-09. Good faith required of trustee. In all matters connected with a trustee's trust, a trustee is bound to act in the highest good faith toward the beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

[¶27] On the 16th day of June 2015, I Charles William Russell II, before the honorable Judge Dann Greenwood, stated for the court, "I now claim my body to be in the Divine Trust therefore collapsing the Cestui Qui trust that you've charged, as there is no value in it", assuming the honorable Judge Dann Greenwood would serve as a competent authority in which to vacate the presumption that I, CHARLES WILLIAM RUSSELL II, am either dead, incompetent, or a minor. North Dakota Century Code-Volume 12.59-02-17. Trusts--How terminated. A trust is extinguished by the entire fulfillment of its object becoming impossible or unlawful.

[¶28] Should this brief be deemed incomplete, I now ask for a reasonable extension and the due date be pushed back a couple weeks, considering my circumstances of being locked up. With all respect, I should think it would be obvious the

remedy I seek, NOTHING less than immediate release will due. Further compensation may or may not be sought as the physical and psychological trauma I endure every day leaves the per-verbial door open.

[¶29] Respectfully giving thanks to the court, their families, and all they hold dear, along with the countless generations of prominent leaders of society and all they have sacrificed, I pray this very brief brief serves its purpose with the highest regard for the children of the unknowing victims, and that this is only the beginning of the end of a temporarily necessary system of deceit that has served its purpose and needs to find its place in history. One God, One Rule, One Direction, to no End!

[¶30] CONCLUSION

[¶31] WHEREFORE, for the reasons stated herein, the Appellant respectfully prays that the Court reverses and remands to the District Court's Amended Criminal Judgment.

[¶32] Respectfully submitted this 2nd day of November, 2015.



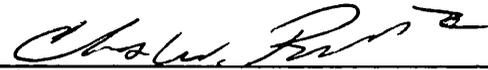
Charles William Russell, II, pro se
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[¶33] CERTIFICATE OF SERVICE

[¶34] I hereby certify that I served, by United States Mail (Prison Mail Box System) a true and accurate copy of the foregoing Brief of Appellant and Appendix of Appellant upon the following party:

Pat J. Merriman
Dunn County States Attorney
P.O. Box 747
Killdeer, ND 58640-0747

[¶35] Dated this 2nd day of November, 2015.



Charles William Russell, II