Matuska v. State
Supreme Court No. 20150235
Burleigh Co N 2014-CV-00803

2015 0 2 FILED IN THE OFFICE OF THE CLERK OF SUPREME COURT
JAN 15 2016
STATE OF NORTH DAKOTA

Supplemental Statement (Additional Issues at Post Conviction)

1. That Judge Haskell errored in accepting an amended Complaint during Oct, 2013 proceeding against Matuska as sufficient basis was not presented to amend the original Complaint. Matuska's attorney, Blake Hankey, did not appose amending, thus being deficient in representation. The Court, at the charge of plea hearing/pre-trial conference, allowed and accepted a second amending of the Complaint back to the original Complaint status. This was done under terms of plea agreement Matuska contends he had with State at that time. Matuska believes this action prejudiced the Court's perception that Matuska was receiving favorable treatment by the State and in fact, only the Court could proper know if this is the case. Matuska contends that the very acts of amending was an error of manifest injustice and that everthing afterward served only to prejudice Matuska further at each step afterwards. Only returning to a point in the proceedings prior to this (prior to guilty plea) can correct this error.

2. That Judge Haskell should have recussed himself from presiding over the post Conviction petition due to prior rulings and statement made. Every action done in error has prejudiced Matuska. Statements that Haskell made at Sentencing on January 11, 2014 and repeated at the post Conviction hearing on August 4, 2015, clearly demonstrate that Judge Haskell is prejudiced and predisposed to deny Matuska's petition. Haskell was not willing to allow Matuska to present legitimate issues as these very issues had previously been determined as without merit by Haskell.

3. That Judge Haskell should not have allowed Matuska's former attorney, Blake Hankey, to testify telephonically as this prejudiced Matuska's case. Hankey was properly subpeona'd and Matuska learned of his absence only just prior to the hearing. Hankey provided no proper excuse for absence. Prejudice exists against Matuska and the Court as neither were able to gage Hankey's responses or if he were relying on written responses and other cues and able to conceal expressions and demeanor. Adam Fleishman was subpeonaed at same time as Hankey yet only Fleishman appeared thus creating a shadow over testimony of each about the other. Hankey should have been ordered to appear or be held in contempt.

4. That it is obvious by letter Matuska received on January, 2014, and entered into evidence at August 4, 2015, hearing that Matuska's attorney's did lead Matuska to believe and represented in letter that Matuska did have a plea agreement in this case. This is evidenced by the explanation of type of plea agreement that Matuska's type was in letter from Hankey and signed by Fleishman. Matuska has maintained he had a plea agreement with a specific time recommendation of 5 years concurrent all counts from the State along with the amended reduction in mandatory sentencing a pro offered by the State and agreed to by Matuska in agreeing to it and pleading guilty to the charges. When the

when the State failed to make the agreed upon recommendation that was the basis of Matuska's guilty plea, this action creates a manifest injustice and requires that Matuska automatically be allowed to withdraw his guilty plea. This is at the heart of plea withdrawl and manifest injustice. Most importantly, it is exactly what Matuska believed was the case of what was happening at that time.

5. Ineffective assistance of Counsel existed when Matuska's attorney allowed and encouraged Matuska to plead guilty to various drug charges when no evidence had been presented to the Court or entered into the record to support this. As Matuska had questioned this in letters to his attorney, the failure of his attorney to inquire on this crucial aspect of a drug case is at the least ineffective. The court also errored in accepting the guilty pleas of Matuska without Factual basis supported by the absence of crucial evidence such as lab tests or other analysis. There exists no Foundation in the record for any of these actions.

6. The state, as represented by Dawn Dietz, assistant State's attorney, through its various filings, documents, and statements before the Court indicates specifically that Matuska possessed and delivered Methamphetamine and other illegal substances. The state even claims this was confirmed by the ND state lab in documents and before the Court as if this is fact. In truth, there is no evidence of lab report or lab analyst testimony to support this. The state should be required to produce this evidence and if it cannot, then the state has committed fraud and again, manifest injustice exists requiring that Matuska be allowed to withdraw his guilty plea that was based upon this fact.

7. Matuska was corrected into entering a guilty plea by the actions of the state, his attorney, and the Court. The state provided unsubstantiated evidence and used corrercion by increased severity of offenses and intimidation as is clearly evidenced in G-mail E-mail provided to Matuska's attorney and Matuska. The court, in accepting amended Complaint, provided additional duress and Matuska's attorney, in not making any attempt at researching or defending acts aided in forcing Matuska's diminished state of mind and confusion, rendering any decision by Matuska unintelligently made and under duress. Matuska cannot be held responsible for these bad acts and should be allowed to withdraw his guilty pleas and proceed with trial under a different judge.

8. Judge Haskell did not address each specific issue raised by Matuska at his post Conviction hearing or Matuska's assertions regarding each. In choosing to only address testimony and evidence presented during the hearing, the Court abused its discretion. The Court attempts to render these issues mute or without merit by not acknowledging that Matuska raises them or that they had the effect and direct bearing on Matuska's demeanor and state of mind.

9. Judge Haskell's characterization of records of mental defect/disease as circumstantial was incorrect and abuse of discretion. These records were provided as a result of a court order signed by Haskell and directed to two state agencies, the North Dakota State Penitentiary and West Central Human services of Bismarck. Neither of these two agencies have any interest or opinion regarding the proceedings against Matuska and only state diagnosis and medications that were prescribed. The records provided by the North Dakota State Penitentiary further provide proof that Matuska took the medication prescribed by virtue of visual inspection of Matuska actually swallowing medication and mouth check afterwards followed by initialed record. This is a actual record as provided by medical professionals licensed through the State of ND. This cannot be considered hearsay as it cannot be disputed that Matuska was in fact diagnosed with mental illness, prescribed medication, and visually checked to verify taking it. Haskell further abuses discretion in dismissing Matuska's direct testimony regarding his prior mental state, his mental state during court proceedings and while at the Burleigh County Detention Center, and his mental state upon arrival at NDSP and since. All of Matuska's contentions were verifiable and backed up by documentation from state agencies. Taken as a whole, this testimony along with records of diagnosis and medication should have left no doubt in Haskell's mind of the legitimacy of matuska's contention of mental defect/diminished capacity during this case.

10. Matuska was denied extraordinary expense request by the Commission on Legal Defense for Indigents to have independant evaluation, diagnosis and testimony provided as evidence of his assertion of mental disease/defect. Matuska did provide documentation of his mental state upon arrival at the NDSP following his sentencing and incarceration. Matuska was diagnosed with severe depression, anxiety, sleep disturbance, suicidal thoughts, and hopelessness, all contributing and inhibiting his ability for rational thought and decision making. He was immediately placed on medications which included Prozac, Effexor, Trazadone, and Amitriptyline. These are all prescribed for psychological issues along with close monitoring. This is fully documented by certified and licensed medical staff and provided to Haskell yet he chose to ignore these facts when presented.

11. The element of deception exist when the actions of the state, through Dawn Dietz, are weighed against the facts today. There is no lab test in evidence that proves Matuska was involved with illegal substances. The state does indicate the state lab confirmed Methamphetamine yet does not provide proof. The state moved to amend the original complaint to a greater severity, from a 5 year minimum mandatory to 20 year mandatory when the record does not support this and the Court should have not

have granted the amended complaint. The state does allude to Matuska being contacted by a confidential informant who initiated the contacts each time and coerced and induced Matuska to act on his behalf. The state must be aware that this informant would have a personal interest and state in having Matuska arrested. These activities were recorded by digital audio recording in possession of law enforcement, entered into the record to obtain search warrants and redily available to the state but never made availabe to Matuska or his attorney. It is Matuska's belief that these recordings are purposely withheld as they would prove a valid defense for Matuska, including his state of mind the evening before and just prior to his arrest.

12. All this information was brought to Matuska's attorney yet this person failed to research or act upon any of the 10 other letters of questions by Matuska. This is far below any minimum standard of representation.

13 The court has completely ignore Matuska's perception of all these events as they occured, including Matuska's believe that he would plead guilty pursuant to a plea agreement and that the state would make a specific recommendation which it did not, thus violating the agreement and thus Matuska should be allowed to withdraw his guilty pleas as a matter of law.

Mark Matuska 1-14-16
Mark Matuska

Subscribed and sworn hereto before me this 14th day of January, 2016.

NOTARY PUBLIC
Burleigh County, ND

PATRICK SCHATZ
Notary Public
State of North Dakota
My Commission Expires January 1, 2021