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[¶ 3] STATEMENT OF THE ISSUES

[¶ 4] Whether the district court erred by summarily denying the post-conviction relief without addressing the petitioner’s claims and allegations?

[¶ 5] STATEMENT OF THE CASE

[¶ 6] Lekemia Caster (hereinafter “Caster”) appeals from a one sentence Order, summarily denying his application for Post-Conviction Relief entered on January 30, 2019. A.A. at 28. Caster filed for post-conviction relief on October 8, 2018. A.A. at 8. The State answered the petition and simultaneously filed a motion for summary disposition on November 8, 2018. A.A. at 12-21. Caster, through counsel, filed an amended petition for post-conviction relief and responded to the State’s motion for summary disposition on November 26, 2018. A.A. at 22-27.

[¶ 7] On January 30, 2019, without a hearing, the district court signed the proposed order submitted with the State’s documents stating, “[f]or the reasons articulated in the State’s Motion, IT IS ORDERED: Petitioner’s Application for Post-Conviction Relief is Summarily denied.” A.A. at 28.

[¶ 8] Caster, through counsel, filed a timely notice of appeal on February 7, 2019 pursuant to N.D.R.App.P. 4. A.A. at 29. The District Court had jurisdiction under N.D.C.C. § 27-05-06 and N.D. Const. art. VI, § 8. The Supreme Court has jurisdiction under N.D.C.C. § 29-32.1-14 and N.D. Const. art. VI, § 2.

[¶ 9] STATEMENT OF THE FACTS

[¶ 10] As there was no evidentiary hearing and the district court’s order references only “reasons articulated in the State’s Motion,” a true and full recitation of the facts is

impossible. See A.A. at 28. To properly articulate why this order is impossible to address by this Court, a timeline of the filings and their general contents must be provided.

[¶ 11] The original application for post-conviction relief, was filed on October 8, 2018. A.A. at 8. This application contained a background of the criminal case, the criminal appeal, the law under the Uniform Post-Conviction Act which Caster was relying upon, and general statements of newly discovered evidence and an unlawful sentence. A.A. at 8-10.

[¶ 12] In response, the State filed their answer and motion for summary disposition on November 8, 2019. A.A. at 12-21. Of note, this answer and motion was untimely pursuant to N.D.C.C. § 29-32.1-06, in that the answer and motion came thirty-two days after the docketing of the application on October 8, 2018. However, no reference of this is made of by the district court, despite the irony of the State's number one reason for summary disposition being the petitioner's post-conviction application was 'untimely.' A.A. at 16, ¶1(1) & 18, ¶8.

[¶ 13] The State goes on in their motion for summary disposition that Caster's application does not raise an issue of material fact, constitutes a misuse of process, and presents a claim that was fully and finally determined in a previous proceeding. A.A. at 16. Yet, in the attached brief in support of the motion for summary disposition, the State's Legal Argument section provides only arguments for the untimeliness argument and the lack of issues of material fact. A.A. at 18-20, ¶¶8-14. The State fails to address the misuse of process or *res judicata* arguments.

[¶ 14] The last and final document the State files on November 8, 2018 is a Proposed Order – Order for Summary Judgment. See A.A. at 1, Index # 14. This Proposed

Order is the exact document that the district court signs on January 30, 2019. Compare A.A. at 1, Index # 14 and Index # 19. On November 26, 2018, Caster, through court appointed counsel, files an amended petition to post-conviction relief and an answer to the State's motion for summary disposition. A.A. at 22-27. This amended petition for post-conviction relief raises a brand-new issue of a Sixth Amendment Constitutional violation, as well as addresses the timeliness of the original application filed by Caster.

[¶ 15] Then after forty-three days of no action in the Registry of Actions, ample time for the district court to identify the new issue raised, ample time for the State to address the new issue or address the timeliness argument, the district court simply signs the proposed order from November 8, 2018. A.A. at 28. It is for this reason that this Court is now left with virtually nothing to review. Arguably, the new issue raised on November 26, 2018 by Caster's counsel have never been addressed by the district court and these issues cannot be addressed by this Court.

[¶ 16] Moreover, the ultimate issue of "timeliness" of the application has been left completely unaddressed, as the district court has offered no independent "findings explaining the basis for its ultimate conclusion." State v. Juntunen, 2014 ND 86, ¶3, 845 N.W.2d 325. The State reasoned the application was untimely based on the "conviction" date for Caster as the original judgment in 2015. A.A. at 19, ¶10. The State offered no legal reference for this date being the time to begin "tolling" for the statute of limitations under N.D.C.C. § 29-32.1-01.

[¶ 17] In the amended petition and answer, Caster's counsel asserts the time to begin "tolling" is the 2017 opinion by this Court in State v. Caster, 2017 ND 87, 894 N.W.2d 908. A.A. at 25, ¶5. Counsel bases this assertion on the argument that the Sixth

Amendment right to counsel violation stems from the probation revocation hearing. A.A. at 26, ¶10. Caster’s counsel cites relevant North Dakota Century Code to support this argument. See N.D.C.C. § 29-32.1-01(2):

Except as provided in subsection 3, an application for relief under this chapter must be filed *within two years* of the date the conviction becomes final. *A conviction becomes final for purposes of this chapter when:*

- a. ...;
- b. *If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires...*

Emphasis added.

[¶ 18] Therefore, as asserted to the district court, but never acknowledged or addressed, the “tolling” time for the two-year statute of limitation did not even begin until June 18, 2017. A.A. at 25, ¶7. This would render the deadline for Caster’s application June 18, 2019, which, as of the date of this appellate brief, is a date that has yet to transpire.

[¶ 19] Finally, this Court cannot even take the district court’s order at face value. The district court’s order references the “reasons articulated in the State’s Motion....” A.A. at 28. There is no “reasoning” articulated in the State’s Motion, merely four conclusory statements. A.A. at 16. This again shows the district court’s lack of review of the file before signing the order, which places this Court in the position of being wholly unable to review the district court’s logic and reasoning, as there was none.

[¶ 20] ARGUMENT

[¶ 21] Due to the actions taken by the district court, no “argument” here can be officially made. This appeal rests solely in the Statement of the Facts, in that the district court’s actions render an appeal on the merits of the arguments impossible. “A reviewing court needs to know the reasons for the trial court’s decision before it can intelligently rule

on the issues, and if the trial court does not provide an adequate explanation of the evidentiary and legal basis for its decision, [a reviewing court is] left to merely speculate whether the court properly applied the law.” In re Estate of Nelson, 2015 ND 122, ¶ 8, 863 N.W.2d 521.

[¶ 22] Furthermore, “this Court merely reviews findings of fact and does not make its own findings of fact.” State v. Knox, 2016 ND 15, ¶ 13, 873 N.W.2d 664, citing State v. Boehm, 2014 ND 154, ¶ 22, 849 N.W.2d 239. Since there is no finding of fact, this Court has nothing to review.

[¶ 23] **CONCLUSION**

[¶ 24] For the foregoing reasons, this case must be reversed and remanded, if for no other reason, for a finding of fact to be provided. However, so as to not simply make a “formality” of this reverse and remand, Caster further requests instructions on this remand that the district court hold an evidentiary hearing to take testimony, or hear arguments, so that a formal record can be made for any future proceedings.

Respectfully submitted this Monday, March 25, 2019.

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