

IN THE SUPREME COURT  
 STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	
	)	
-vs-	)	Supreme Ct. No. 20200220
	)	20200221
Andrew James Glasser,	)	
	)	District Ct. No. 08-2017-CR-03409
Defendant-Appellant	)	08-2017-CR-03567

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**CORRECTED BRIEF OF PLAINTIFF-APPELLEE**

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Appeal from Amended Criminal Judgment dated 8/3/2020 in case 08-2017-CR-03567) and Corrected Amended Criminal Judgment dated 8/4/2020 in case 08-2017-CR-03409

Burleigh County District Court  
 South Central Judicial District  
 The Honorable David E. Reich, Presiding

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**ORAL ARGUMENT REQUESTED**

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### **STATEMENT OF THE ISSUES**

- [¶1] Whether the district court had the authority to amend the criminal judgments.

## **STATEMENT OF THE CASE**

[¶2] The Defendant, Andrew Glasser, was charged in case 08-2017-CR-03409 with one count of Gross Sexual Imposition, a class AA felony. (Appellant's Appendix ("App.") p. 12). The charge was amended to Gross Sexual Imposition, class A felony. (App. pp. 24-25). Glasser pled guilty on July 17, 2019 and a presentence investigation was ordered. (App. p. 8).

[¶3] In case 08-2017-CR-03567, Glasser was charged with ten counts of Possession of Certain Materials Prohibited. (App. pp. 47-49). Glasser pled guilty to these charges at the same hearing as the companion case and the order for a presentence investigation applied to this matter as well. (App. p. 44).

[¶4] A sentencing hearing on both cases was set for February 24, 2020. (App. pp. 8-9, 44-45). Twenty-six letters of support were filed by the Defendant's attorneys in advance of the sentencing hearing in case 08-2017-CR-03409. (App. pp. 8-9). A sentencing hearing on both cases, along with a third case, was held on February 24, 2020. The district court imposed a sentence of ten years with all but four years suspended for five years of supervised probation on the charge of Gross Sexual Imposition in case 08-2017-CR-03409 and a sentence of five years all suspended for three years of supervised probation, on each of the Possession of Certain Material Prohibited counts in case 08-2017-CR-03567, to run concurrent with each other and with the sentence imposed on the charge of Gross Sexual Imposition. (App. pp. 26-27, 69-78).

[¶5] The State filed a Motion to Correct Sentence and Prohibit Public Access to Documents in case 08-2017-CR-03409 on March 12, 2020, after it was discovered that three of the support letters filed by the Defendant were forgeries. (App. p. 9). Glasser's trial counsel withdrew from representation but requested additional time for Glasser to respond to the State's motion. (App. pp. 8-9). Glasser did not file response and the district court granted the State's request for a hearing by order dated June 10, 2020 and, sua sponte, set a hearing in case 08-2017-CR-3567 and the third case considered at the sentencing hearing which had been held on February 24, 2020. (App. p. 10, 28-30, 45, 79-81).

[¶6] A sentencing hearing was held on July 31, 2020 in both these matters and the district court sentenced Glasser to twenty years with all but ten years suspended for 5 years of supervised probation on the charge of Gross Sexual Imposition and to five years all suspended for three years of supervised probation, consecutive to the sentence imposed on the Gross Sexual Imposition charge. (App. pp. 31-32, 83-91). Glasser did not raise any objection at the hearing. (See Transcript of Sentencing and Resentencing Hearings ("Tr.")).

[¶7] Glasser filed a timely notice of appeal in both cases on August 19, 2020.

## **STATEMENT OF THE FACTS**

[¶8] The facts on appeal center around twenty-six letters of support filed by Glasser's attorneys on his behalf in case 08-2017-CR-03409 on February 18, 2020. (App. pp. 7-8). Three of the letters were determined to be forgeries and Glass was charged and pled guilty to forging the letters, the signatures on the letters, and filing the letters with the Court. (Tr. p.6, line 14 – p.8, line 15 (pp. 6:14 – 8:15). Subsequent to the original sentencing hearing on February 24, 2020, the State was contacted by one of the alleged authors of a letter who stated he had not written the letter nor had he given anyone permission to sign a support letter on his behalf. (Tr. p. 7:18-24). The Burleigh County State's Attorney's Investigator investigated the matter and discovered there were two additional letters which were not written or signed by the purported authors. (Tr. pp. 7:25 – 8:8).

[¶9] In determining the original sentence imposed at the February 24, 2020 sentencing, the district court indicated it considered a number of factors to include the statutory sentencing factors, the presentence investigation report, the evaluations, arguments of counsel, a photograph of the child's injuries, the victim impact statement, and the character reference letters, including the forged letters. (Tr. pp. 10:15-20; 11:1,12-23).

[¶10] After it was made aware of the forgeries, the State filed a motion to correct the sentence on March 12, 2020. (Tr. p. 13:1-6). The district court stated its authority to correct the sentence was authorized by Rule 35(a)(1), North Dakota Rules of Criminal Procedure, indicating a sentence obtained by

fraud is an illegal sentence. (Tr. p. 13:18-21). During the hearing, neither Glasser nor his attorney objected to the district court's authority to correct the judgment in these matters. (See Tr. pp. 18:10 – 20:15).



## **ARGUMENT**

### **I. Whether the district court had the authority to amend the criminal judgments.**

[¶11] As this is an appeal from the correction of an illegal sentence under N.D.R.Crim.P. 35(a), which involves a substantial right of a defendant, there is a right to appeal from a corrected sentence. State v. Gunwall, 522 N.W.2d 183 (N.D.1994). However, because Glasser did not object to the State's motion or the district court's exercise of its authority to correct the sentence, Glasser did not properly preserve the issue for appeal. Glasser argues the district court did not have jurisdiction to correct the sentences in these matters and indicates this is a constitutional issue, therefore Glasser's failure to raise an objection to the district court should be excused.

[¶12] Rule 35(a)(1), North Dakota Rules of Criminal Procedure, allows for the Court to correct a sentence imposed in an illegal manner within the time provided for a reduction of sentence. The time the Court can reduce a sentence is within 120 days after the court imposes sentence. N.D.R.Crim.P. 35(b)(1)(A). As the Defendant was initially sentenced on February 24, 2020, only seventeen days had passed from the time sentence was imposed to the filing of the State's motion for a correction of an illegal sentence. (App. p. 8). The State, in its motion, argued the sentence was imposed in an illegal manner as the Court took into consideration intentionally false information provided by the Defendant. The district court first ordered the sentencing hearing be held on May 21, 2020, well within the 120-day time-frame, but due to COVID-19

restrictions, the hearing was ultimately held on July 31, 2020. (App. pp. 28-30, 79-81).

[¶13] The Defendant in this case has perpetrated a fraud upon the court. By using his attorneys to intentionally provide false information for the Court to use at the sentencing hearing, he has impugned the integrity of the judicial process.

Even a party proceeding Pro se to present his case in court is required to scrupulously guard the integrity of the judicial process. The standard for honesty and good faith is no lower for a person proceeding Pro se than for an attorney who represents another person. A Pro se litigant is as much (sic) an officer of the court as a licensed attorney, and misconduct by either can be fraud on the court.

Gajewski v. Bratcher, 240 N.W.2d 871, 893 (N.D. 1976). The Defendant was represented by two attorneys in the matter, however, the attorneys were unaware of the fraudulent nature of the documents when the letters were filed with the Court and at the sentencing hearing. It was only after one of the purported authors contacted the State's Attorney's office and an investigation was undertaken that the fraud was discovered. (Tr. p. 7:12 – 8:8). As such, the Defendant abused the trust placed in him by his attorneys and used his attorneys to advance information he knew was false to benefit him at his sentencing.

[¶14] The district court also relied on State v. Foster, to modify the illegal sentence under Rule 35 but also to correct a judgment obtained through fraud. 484 N.W.2d 113 (N.D. 1992) and (Tr. p. 13:22 – 14:3). In Foster, the defendant used a false name at his arrest and appeared in district court under the assumed name, facing two felony charges. Id. at 114. He pled guilty; a

presentence investigation was conducted and he was sentenced, all under the assumed name. Id. Foster was originally given a suspended sentence, which was revoked, again under the assumed name, and he was then sentenced to serve the balance of his three-year sentence on each charge, concurrently, at the State Penitentiary. Id. While serving his sentence, prison officials learned of his true identity and informed the district court, who informed the State's Attorney's office, who filed a writ of habeas corpus ad prosequendum to have Foster resentenced. Id. Foster was then sentenced to five years on each charge, consecutive. Id.

[¶15] This Court has said the district court loses its jurisdiction when a “case has been tried, a judgment of conviction has been rendered, and sentence has been pronounced” unless there is authority provided by statute or rule. Id. at 116 (quoting John v. State, 160 N.W.2d 37, 41 (N.D. 1968)). This Court agreed with the district court in Foster that when Foster assumed another identity to defeat justice, the sentence was an illegal sentence subject to modification. Id. at 117.

[¶16] The same is true for the instant case. While Glasser did not lie about his identity, he forged and presented to the district court three letters purportedly written by individuals not related to him who vouched for his character, his history, and his attitude. The district court relied upon those letters when imposing the sentence, taking into account that the letters from non-related individuals were given more weight than the other letters from family members. (Tr. pp. 20:25 – 23:15)

[¶17] Justice Levine’s concurrence expressed concern that the Foster decision would be used to reopen “all kinds of judgments” and expressly stated “[t]his case does not, however, support the proposition that every time a defendant ‘misleads’ the court, that defendant’s sentence becomes ‘illegal’ and subject to change when the deception is uncovered. If that were the case, finality would be as scarce as a balanced federal budget.” Id. Glasser’s behavior was not telling the district court a “little white lie” to garner favor or present himself in a more favorable light. Glasser used real people from his past and fabricated support letters purportedly signed by them in hopes of obtaining a lenient sentence from the district court, with potential grave consequences to those people. (Tr. p. 16:10-24). Furthermore, this was not a spur of the moment utterance at a highly stressful hearing. These were documents that Glasser took time to create, sign, take to his attorney’s office, and have his attorney file them with the court. These were deliberate, calculated acts on behalf of Glasser to lie to the district court. As such, these acts fit squarely with the ruling in Foster.

[¶18] Glasser has waived any right to object to the district court issuing a corrected judgment in either of these cases as he failed to object to the district court’s jurisdiction or authority under the law and the rules. It has been well established by this Court that it generally does not address issues that are raised for the first time on appeal. See State v. Tresenriter, 2012 ND 240, ¶ 15, 823 N.W.2d 774; State v. Jahner, 2003 ND 36, ¶ 9, 657 N.W.2d 266; McLain v. Nurnberg, 16 ND 144, 112 N.W. 243, 244 (N.D.1907). There was no

objection or responsive pleading filed by Glasser to the State's motion for correction of sentence. Nor was there any objection made at the hearing to either the State's motion or the district court's exercise of authority over hearing the companion case before this Court. Therefore, Glasser did not preserve the issue for appeal.

[¶19] Glasser claims this is a constitutional issue and this Court should overlook his failure to object and should find obvious error under N.D.R.Crim.P. 52(b). This Court "exercise[s] the power to notice obvious error cautiously and only in exceptional circumstances where the defendant has suffered serious injustice". State v. Tresenriter, 2012 ND 240, ¶12, 823 N.W.2d 774. Glasser must show plain error which is a clear deviation from an applicable legal rule under current law that affected his substantial right. Id. Based upon the State's arguments above, the district court was well within its authority under N.D.R.Crim.P. 35(a) and the interpretation by this Court in correcting Glasser's judgments based upon his fraud to the district court. There is no obvious error.

## **CONCLUSION**

[¶20] Based upon the foregoing, the State respectfully requests that the Amended Criminal Judgment in case 08-2017-CR-03567 and the Corrected Amended Criminal Judgment in case 08-2017-CR-03409 be affirmed.

[¶21] **ORAL ARGUMENT REQUESTED to clarify the State's arguments if there are any questions and to respond to any Reply Brief of the Defendant-Appellant.**

Dated this 23<sup>rd</sup> day of November, 2020.

/s/ Julie Lawyer  
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Andrew James Glasser,	)	
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Defendant-Appellant	)	08-2017-CR-03567

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this documents complies with the page limitations allowed by  
N.D.R.App.P. 32(8). The brief of Respondent-Appellee contains 14 pages.

Dated this 23<sup>rd</sup> day of November, 2020.

/s/ Julie Lawyer  
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Defendant-Appellant	)	08-2017-CR-03567

[¶1] I hereby certify that on November 23, 2020, the following documents:

**Brief of Plaintiff-Appellee; and  
Certificate of Compliance**

was filed electronically with the Clerk of Court through the North Dakota E-Filing Portal  
and service will be made via electronic service through the portal to the following:

Benjamin C. Pulkrabek  
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the above being the last known address of the addressee.

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Defendant-Appellant	)	08-2017-CR-03567

[¶1] I hereby certify that on November 25, 2020, the following documents:

**Corrected Brief of Plaintiff-Appellee**

was filed electronically with the Clerk of Court through the North Dakota E-Filing Portal  
and service will be made via electronic service through the portal to the following:

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Attorney at Law  
[pulkrabek@lawyer.com](mailto:pulkrabek@lawyer.com)

the above being the last known address of the addressee.

/s/ Julie Lawyer  
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