

**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

State of North Dakota,	)	Supreme Court No. 20210011
	)	Ward County District
Plaintiff/Appellee	)	North Central Judicial District
	)	Court Case No. 51-2019-CR-02004
vs.	)	
	)	
Brent Allan Castleman,	)	
	)	
Defendant/Appellant	)	
	)	

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Appeal from the

Criminal Judgment entered December 31<sup>st</sup>, 2020.

District Court, Ward, North Dakota  
The Honorable Michael P. Hurley, Presiding

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**RESPONSE IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS**

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Kyle R. Craig (#07935)  
ACKRE & CRAIG LAW FIRM  
Attorneys for Defendant  
1600 2<sup>nd</sup> Ave SW Suite 30  
Minot, ND 58701  
(701) 838-3325  
kcraig@ackrelaw.com

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## Table of Authorities

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[¶1] On May 27<sup>th</sup>, 2021, the Appellee, State of North Dakota, filed a motion to dismiss the appeal currently pending in front of this Court based on alleged violations of the North Dakota Rules of Appellant Procedure. The Appellant, Brent Castleman, hereby responds to and opposes the instant motion.

**LAW AND ARGUMENT:**

[¶2] The State of North Dakota raises a number of issues that they claim justify dismissal of Mr. Castleman's appeal. None of these alleged violations, assuming that they are in fact found, justify dismissal of Mr. Castleman's appeal. "While dismissal is permissible, this Court has been reluctant to dismiss an appeal and generally desires to reach the merits of a case." Latendresse v. Latendresse, 283 NW.2d 70, 71 (ND 1979). "Whether to administer sanctions under North Dakota Rules of Appellant Procedure 13 for non-compliance with the Rules of Appellant Procedure is discretionary with this Court." Silbeernagel v. Silbeernagel, 2007 ND 124, ¶21, 736 NW.2d 441.

[¶3] None of the claimed violations raised to the level that should prompt this Court to dismiss Mr. Castleman's appeal.

[¶4] In paragraph three of the State's brief in support of its motion to dismiss, the State claims a number of items are contained in the appendix, which were not part of the record below and as such, the appeal should be dismissed. The State neglects to actually take notice of here is that an amended appendix was almost immediately filed after the complained of appendix, which omits this material. No justification or any sort of logic or rational argument was presented

by the State as to how this justifies dismissal and as such, this Court should not even consider this argument.

[¶5] The State next contends that pursuant to State v. Noack, 2007 ND 82, ¶8, 732 NW.2d 389, that because there was not extensive citations to the record that dismissal is therefore appropriate. The State of North Dakota completely misreads State v. Noack, which is a case in which a pro se individual filed a completely unsatisfactory brief that this Court determined violated nearly every single rule of appellate procedure. The appellant brief currently in front of this Court, although not containing enough citations on the record to satisfy the State of North Dakota, is not so devoid of compliance with the rules that the drastic remedies, such as dismissal, is appropriate.

[¶6] That State similarly fails to cite any authority where this Court has ever imposed drastic sanctions being requested on the remaining issues, such as lacking a concise statement of the applicable standard of review. Those appear to be arguments that the appellee can raise in their own brief to counter the arguments raised by Mr. Castleman, but are not appropriate for this Court to summarily dismiss an appeal, rather than reach a conclusion on the merits of the case.

[¶7] The Appellee additionally contends that Mr. Castleman is in violation of North Dakota Rules of Appellant Procedure 30(b) on the basis that Mr. Castleman is allegedly not provided the State's responses to any motions that are being appealed. However, the State misreads the actual text of that rule, which state's "the parties are encouraged to agree as to the contents of a single

appendix's. If an appellee or cross appellant considers it necessary to direct the attention of the court to parts of the record not included in the appellant's appendix, a separate appendix may be served and filed with the appellee's brief." If the State of North Dakota is unsatisfied with the appendix prepared by the appellant, they can certainly prepare their own. However, dismissal is not an appropriate remedy.

**CONCLUSION:**

[¶8] Based on the forgoing, the State has failed to establish the level of severity that justifies this Court ignoring the merits of the argument and instead dismissing the matter on some procedural quirk.

[¶9] Dated this 8<sup>th</sup> day of June, 2021.

**/s/ Kyle R. Craig** \_\_\_\_\_

Kyle R. Craig (#07935)  
ACKRE & CRAIG LAW FIRM  
Attorneys for Appellant  
1600 2<sup>nd</sup> Ave SW Suite 30  
Minot, ND 58701  
(701) 838-3325  
kcraig@ackrelaw.com

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CERTIFICATE OF SERVICE

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[¶1] I hereby certify that on June 8, 2021, the following documents:

Response in opposition to Appellee's Motion to Dismiss

Were filed and served on the North Dakota Supreme Court E-Filing portal to the Clerk of the North Dakota Supreme Court at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) and courtesy copies were served and mailed to the following:

Roza Larson @ [51wardsa@wardnd.com](mailto:51wardsa@wardnd.com)  
Ward County State's Attorney

**/s/ Kyle R. Craig** \_\_\_\_\_  
Kyle R. Craig (#07935)  
ACKRE & CRAIG LAW FIRM  
Attorneys for Defendant/Appellant  
1600 2<sup>nd</sup> Ave SW Suite 30  
Minot, ND 58701  
(701) 838-3325  
[kcraig@ackrelaw.com](mailto:kcraig@ackrelaw.com)