

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,)	
)	
Plaintiff/Appellee,)	
)	Supreme Court No. 20210011
v.)	
)	
BRENT ALLEN CASTLEMAN,)	Ward County Case No. 51-2019-CR-02004
)	
Defendant/Appellant.)	

APPELLEE’S RESPONSE TO APPELLANT’S MOTION TO EXPEDITE ISSUANCE OF
MANDATE

[1] COMES NOW the Appellee, the State of North Dakota, by and through Ward County Assistant State’s Attorney Christopher W. Nelson, and does hereby respond to Appellant’s Motion to Expedite Issuance of Mandate.

[2] On January 7, 2022, this Court entered its opinion in State v. Castleman, 2022 ND 7. The Court’s opinion reversed Mr. Castleman’s conviction for child abuse. Following the Court’s opinion a series of emails were exchanged between the parties and the Honorable Michael Hurly, the judge who presided over the matter.

[3] Judge Hurly directed attorney Craig “prepare an appropriate order for my signature regarding your client’s release. I will then sign it once the judgment of the [S]upreme [C]ourt is final.” E-mail from Michael Hurly, Judge of the District Court, to attorneys Nelson and Craig (Jan. 6, 2022, 2:47 pm).

[4] Attorney Craig filed proposed orders as directed in the underlying matter. State v. Castleman, 51-2019-CR-02004, Index #254, 255. Judge Hurly inadvertently signed the proposed

orders prior to this Court issuing its mandate in the matter. E-mail from Michael Hurly, Judge of the District Court, to attorneys Nelson and Craig (Jan. 11, 2022, 4:29 pm).

[5] The undersigned was then contacted by a representative of the North Dakota Department of Corrections and Rehabilitation regarding releasing Mr. Castleman pursuant to Judge Hurly's inadvertently signed order. Immediately following the phone call with ND DOCR, the undersigned sent an email to both Judge Hurly and Attorney Craig informing both of the call and stating the State's position that until the mandate is issued and jurisdiction returns to the district court, Judge Hurly did not have the authority to issue the proposed orders. E-mail from Christopher Nelson, Assistant State's Attorney Ward County, to Judge Hurly and Attorney Craig (Jan. 11, 2022, 4:17 pm). Judge Hurly responded shortly thereafter telling both parties the State was correct regarding the mandate and directing Attorney Craig file proposed amended orders including language that the orders are to take effect immediately upon the issuance of the mandate. E-mail from Michael, Hurly, Judge of the District Court, to attorneys Nelson and Craig (Jan. 11, 2022, 4:29 pm). Attorney Craig has not yet filed the proposed amended orders as directed by Judge Hurly.

[6] This Court has not yet issued its mandate in this matter, finalizing the opinion. Once the mandate is issued the district court will be required to carry out this Court's mandate under the mandate rule. See Montana-Dakota Utils. Co. v. Behm, 2020 ND 234, ¶ 8, 951 N.W.2d 208. Until the mandate is issued the judgment requires Mr. Castleman be held in the custody of the North Dakota Department of Corrections and Rehabilitation.

Respectfully submitted this 14th day of January, 2022.

/s/ Christopher W. Nelson
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