ORIGINAL

IN THE SUPREME COURT

OF THE STATE OF NORTH DAKOTA

980360

The State of North Dakota, Plaintiff/Appellee, Vs. Paul E. Palmer, Defendant/Appellant.	)	Supreme Court No. 980360

REPLY TO STATE OF NORTH DAKOTA'S BRIEF

Appeal Taken from Judgment Denying
Motion to Correct Illegal Sentence
Dated November 2, 1998
District Court Case No. 95-K-0890
Williams County District Court
Northwest Judicial District
The Honorable David W. Nelson, Presiding

Submitted by:

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RESPONSE TO STATE'S BRIEF

Palmer responds to the State of North Dakota's brief in this case.

After reading the State's Brief Palmer believes that there is only one part that needs response. There has been no claim by the State that the cases that are cited in Palmer's Brief are not valid. The only issue that is seems to be in contention is that of the legislative history of N.D.C.C. § 12.1-32-07 (6) and specifically the sentence in question.

The State alluded to this Court's review of the Legislative history in deciding State v. Lindgren, 483 N.W.2d 777 (N.D.1992). Looking at Lindgren the only mention to the legislative history is in reference to the sentencing study mentioned previously by Palmer in his Brief at page 8. The other case cited by the State in mentioning the legislative history of this section is State v. Miller, 418 N.W.2d 614, 615-616 (N.D. 1988). Miller is a 1988 case decided prior to the passing of HB 1052 which changed N.D.C.C. ¶ 12.1-32-07 (4) (now (6)) and has no mention of anything relating to the legislative history of the question at hand.

During the research on HB 1052 (1989) Palmer was able to get copies of the original tapes of the Judiciary Committee Hearings on this bill. (A copy is offered to the court for consideration) These tapes begin with

the introduction of the bill by Jim Ganje, who is now employed by the office of the Supreme Court of North Dakota. In his introduction Mr. Ganje explains the purpose of adding the sentence in question to the sub-section. He says in part,

> "...what this does is restate the language of 12-53-11 and makes clear that in the case of suspended execution of sentence if..when defendant violates probation, the court is limited to the sentence that it imposed at the outset. It can't search around in sentencing and tack something else on...." (emphasis added) (At metered foot 308 SIDE A BEGINNING of the offered tape.)

Prior to this quote Mr. Ganje had explained the problem that had arisen with this Courts decision in State v. Jones, 418 N.W.2d 479 (N.D. 1988). The tape clearly shows the intent of the legislature. Having access to Mr. Ganje may be of a distinct advantage to the Court in reviewing this matter.

Also on the tape is the testimony of Charles Placek, testifying for the North Dakota Parole Department, in which he clearly supports the offered purpose of the legislation. (At metered foot 534 SIDE A BEGINNING of the Offered tape.)

The tape also has the testimony of Bruce Haskell, now the Honorable Judge Bruce Haskell, speaking for the North Dakota State's Attorneys. His concern was not whether you could increase a sentence, he clearly supported language that would limit the courts to the

imposition of the sentence previously imposed, but rather that the language limited the court to the inability to sentence a defendant to a lesser term than originally imposed. (At metered foot 425 of the offered tape.)

The entire time of the hearing, that is covered by the offered tape, is approximately 2 hours. All of it is quite interesting and would give great insight in understanding what the intent of the legislature was. The three excerpts previously mentioned are the main points that will show the intent in the legislature's own words.

There is no support, in this tape, for the position that this court takes in Lindgren, supra, or any other case that has been decided after the passing of HB 1052 in 1989. It simply isn't there.

What is there is the fact that the 1989 Legislative Assembly passed a bill, HB 1052, that specifically dealt with the issue at bar. HB 1052 was passed with the intention that by adding, the sentence at issue to § 12.1-32-07 (4) (now (6)), it would be clear that the court could not increase a sentence, upon the revocation of an unexecuted portion of a defendant's sentence.

Reply briefs are allowed when there is a new issue presented to the matter. In this instance the State has alledged that this Court has previously reviewed

the Legislative History of HB 1052 from 1989. Palmer replies now with the presentation of incontrovertible evidence as to the intent of the legislature.

Palmer would hope that this Court would listen to the tape in question and make a decision consistant with the intent of the legislature.

Dated this 28th day of January, 1999.

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