

ORIGINAL

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In the Supreme Court of the State of North Dakota

20030149

Matthew Eagleman
Appellant

Supreme Court Number 20030149

vs.

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CLERK OF SUPREME COURT

State of North Dakota
Appellee

SEP 10 2003

STATE OF NORTH DAKOTA

Appeal From The District Court
North East Judicial District
Ramsey County Case No. 02-K-474
Hon. Donovan Foughty

Brief of the Appellant

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Statement of Issues

Issue One: Did the court err in denying Mr. Eagleman's Motion for Post conviction relief, alleging ineffective assistance of counsel?

Statement of the Case

1. Matthew Eagleman Appeals from the trial courts denial of his Motion for Post Conviction Relief, based upon his claim of ineffective assistance of counsel, and collaterally the lack of jurisdiction by the trial court. The Defendant entered a guilty plea to Gross Sexual Imposition pursuant to a plea agreement with the State. This plea was accepted by Judge Donovan Foughty on September 9th, 2002. The plea agreement was that Mr. Eagleman would be sentenced to time served, and placed upon supervised probation for a period of four (4) years. Subsequently, Mr. Eagleman's probation was revoked, and Mr. Eagleman acting pro-se, brought a motion for Post Conviction Relief, arguing that Robert N. Lee, his trial counsel, was ineffective. The trial court summarily dismissed the Motion for Post conviction relief on May 15, 2003.

Statement of Facts

2. On September 19, 2002, the Defendant pled guilty pursuant to a plea agreement with the State of North Dakota to Gross Sexual Imposition and harboring a runaway. On the felony he was sentenced to five years incarceration, with credit for time served, and the balance of the sentence suspended for a period of (4) four years during which time he would be on supervised probation. On the misdemeanor charge of Harboring a Runaway he was sentenced to one year incarceration, all of which suspended for a period of 2 years. The charge of attempted tampering with a witness was dismissed as a part of the plea agreement. His probation was subsequently revoked by the trial court.

3. The Defendant alleges Robert N. Lee the attorney for the Eagleman failed to adequately investigate the situs of the crime, and subpoena witnesses that would support the claim of no jurisdiction of the court. Eagleman in support of his application for post judgement relief provided sworn affidavits in support of his argument that the court of Ramsey County lacked jurisdiction due to the fact that the crime was not committed in Ramsey County.

4. Judge Foughty summarily denied Mr. Eagleman's request on the basis that the argument was without merit.

Law and Argument

Issue One: Did the court err in denying Mr. Eagleman's Motion for Post conviction relief, alleging ineffective assistance of counsel without a hearing on the matter?

Short answer to question presented: Yes.

5. Mr. Eagleman has appealed the trial courts denial of his motion for post conviction relief due to the ineffective assistance of his trial counsel. Mr. Lee. Under both the United States Constitution through the 14th amendment, and the North Dakota State Constitution, Article I, Section 12, Mr. Eagleman is guaranteed the right of reasonably effective assistance of counsel. Damron vs. State, 2003 ND 102 ¶ 6; 663 NW2d 650, 654 (ND 2003) Thus, ineffective assistance of counsel is one ground for relief from a criminal conviction. *Id.* The burden is on Mr. Eagleman as the moving party to demonstrate that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would be different. *Id.* at ¶ 13. Both prongs of the test must be proven by Mr. Eagleman. *Id.* at ¶ 7.

6. In this case, Mr. Eagleman alleges that his plea of guilty in the matter was not a voluntary plea, because it was based upon advice from Mr. Lee. his attorney, who had repeatedly failed to investigate issues as requested by Eagleman, and refused to bring motions regarding jurisdictional issues, that Eagleman felt appropriate. Eagleman indicates that Lee advised him to plead guilty, without interviewing witnesses. or by preparing the defense as requested by Mr. Eagleman.

7. Mr Eagleman in his application for post conviction relief provided affidavits that indicate that he was in the Dominion of Canada at the time the alleged criminal acts occurred. He further indicates that this fact was made known to Mr. Lee, and yet Mr. Lee failed to bring an appropriate motion to dismiss. Further, that Mr. Lee failed to subpoena witnesses that would have supported this version of events. It is these specific errors that constitute a serious dereliction on the part of Mr. Lee, such that his conduct fell below the objective range of conduct demanded of attorneys in criminal actions which is the test as set out in Damron. *Id.* at ¶ 13; p. 655 .

8. Eagleman in his application for relief, supported the application with affidavits which raised a material question of fact as to whether the alleged criminal acts occurred in Canada, or in Ramsey County as alleged by the state. Accordingly, it was inappropriate for the trial court to summarily dismiss Eagleman's application, as a question of material fact existed. It is the existence of this fact which determines whether Mr. Lee was derelict in his representation of Mr. Eagleman. In Whiteman vs. State, 2002 ND 77 ¶ 22; 643 NW2d 704, 712 (ND 2002), the Supreme Court held that

“if the evidence raises a reasonable inference of ineffective representation which creates a genuine fact issue, an evidentiary hearing on a post conviction claim of ineffective assistance of counsel is required.” “The opposing affidavits and other material submitted in this case create a genuine issue of material fact...”

The state alleges that the affidavits represent a fraud upon the court. in light of previous statements by the same witnesses, but the very existence of conflicting statements raise a material issue of fact. sufficient that the trial court should have granted an evidentiary hearing on the application.

9. The second prong of the Damron test is that the dereliction of counsel prejudiced Mr. Eagleman. Damron at ¶7; p. 654. In this case, there has been put into issue, a material fact regarding jurisdiction, that was not argued by Mr. Lee. In light of the facts evidenced by the sworn affidavits in support of Mr. Eagleman's application, if those facts had been argued by Mr. Lee, there is a reasonable probability that the outcome of Eagleman's trial would have been dismissal due to jurisdictional defect. See State vs. Palmer, 2002 ND 5 ¶ 11; 638 NW2d 18, 22 (ND 2002) (setting out reasonable probability test). Thus, the failure of Mr. Lee to utilize those facts in Eagleman's defense, and at his demand, constitute a breach of Lee's reasonable duty to Eagleman.

Conclusion

10. Eagleman has put forth facts that constitute a question of material fact with regard to whether Mr. Lee's assistance to him as trial counsel was ineffective. Yet the trial court summarily dismissed the Application for post trial relief, in contravention of precedent from this court. Eagleman has shown specific instances where Mr. Lee's conduct fell below the objective standard for criminal defense attorneys by not arguing, nor gathering evidence with respect to the issue of Jurisdiction. Eagleman has further shown how these specific failures by Mr. Lee prejudiced Eagleman's defense.

Accordingly, this court should vacate Mr. Eagleman's pleas of guilty in this matter, as it was not taken with the assistance of competent counsel, and the matter should be remanded back to the trial court for a trial on the merits.

Respectfully submitted this 11th day of August, 2003.

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