

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Matthew Eagleman,)
)
Defendant/Appellant,)
)
vs.) Supreme Court No.20030149
)
State of North Dakota,)
)
Respondant/Appellee.)

20030149

APPEAL FROM POST CONVICTION RELIEF

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV 3 2003

STATE OF NORTH DAKOTA

BRIEF OF APPELLEE

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RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

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STATEMENT OF THE CASE

1
2 On May 15, 2002, the Defendant was charged with Gross
3 Sexual Imposition, a Class A Felony, in Ramsey County District
4 Court. Specifically, the complaint alleged that in Ramsey
5 County, North Dakota, the Defendant did engage in a sexual act
6 with a fourteen year old girl who is now pregnant. On May 13,
7 2002, the Defendant was charged with harboring a runaway
8 minor, specifically that on the 10th day of May, 2002, the
9 Defendant did speak with Officer John Rose and was told that
10 law enforcement was seeking a thirteen runaway female, and the
11 Defendant was found with the girl by her parents on May 10.

12 On June 11, 2002, the Defendant was charged with
13 attempted tampering with witnesses and informants in
14 proceedings. Specifically, on June 10, 2002, the Defendant
15 did attempt to send three letters to his mother from the Law
16 Enforcement Center jail, asking her to keep in contact with
17 the victim of his gross sexual imposition charges that were
18 pending in Ramsey County District Court, and in two of those
19 letters to his mother, there were letters to the victim with
20 instructions to lie on the stand so his charges would be
21 dismissed. Those letters were intercepted and not provided to
22 the Defendant's mother.

23 On September 19, 2002, the Defendant plead guilty
24 pursuant to a plea agreement. The specific plea agreement was
25 that the State would dismiss the attempted tampering with a
26 witness charge, and the Defendant would plead guilty to the

1 Class A Felony Gross Sexual Imposition charge and the Class A
2 Misdemeanor Harboring a Runaway charge. On the felony, the
3 Defendant was sentenced to five years with the Department of
4 Corrections, with credit for time served, and the balance was
5 suspended for four years. He was placed on supervised
6 probation as of September 19, 2002. Transcript of sentencing
7 hearing, at page 2. The Court accepted the plea agreement,
8 and asked the Defendant a number of questions regarding his
9 understanding of the plea agreement. Transcript at page 2,
10 lines 17-25, transcript at page 3, lines 1-23, transcript at
11 page 4, lines 1-25. The Court then specifically read the
12 allegations of the Gross Sexual Imposition charge, that on or
13 about February 2002, in Ramsey County, North Dakota the
14 Defendant committed the offense of Gross Sexual Imposition,
15 to-wit: the said defendant did engage in a sexual act with a
16 fourteen year old girl who is now pregnant. With regard to
17 this charge how do you plead, and the Defendant answered
18 "guilty". Transcript at page 5, lines 1-7. The Court asked
19 if the factual basis was set out in the complaint and
20 information, to which the State responded that in February
21 2002, in Ramsey County, Mr. Eagleman, who was eighteen at the
22 time, had sexual intercourse with a fourteen year old girl who
23 became pregnant. Transcript at page 5, lines 11-13. The
24 Court accepted this as a factual basis for the guilty plea.
25 The Court then read the allegation of the harboring a runaway
26 minor to the Defendant. Transcript at page 5, lines 16-24.
27 The Defendant plead guilty to charge. Transcript at page 5,
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1 line 25. The Court then asked several questions verifying
2 that this was a voluntary plea agreement and the Defendant
3 indicated that no one had threatened or coerced him into
4 pleading guilty. Transcript at page 6, lines 1-3. The Court
5 again advised him that by pleading guilty he was giving up his
6 right to a jury trial and giving up his right to confront
7 witnesses that would testify against him, and the Defendant
8 answered "yes, sir". Transcript at page 6, lines 7-11. Eight
9 days later, on September 27, 2002, the Defendant barricaded
10 himself in his sister's apartment, located in Devils Lake,
11 with the juvenile victim of his crime, in violation of
12 Condition 20b of his Appendix A. He also, at that time, was
13 with his sister's eighteen month old child, in violation of
14 Condition 20c of Appendix A. A probation revocation hearing
15 was held on October 16, 2002. The Court found that the
16 Defendant had violated those terms of his probation, and
17 revoked his prior sentence. On the harboring charge, the
18 Court sentenced him to one year with the Department of
19 Corrections, with credit for 141 days. On the gross sexual
20 imposition charge, the Court sentenced the Defendant to five
21 years with the Department of Corrections with no credit for
22 time served. He was to serve four years consecutive with the
23 harboring charge, and one year was suspended for five years
24 from his date of release. In April, 2003, the Defendant filed
25 a motion for post conviction relief, alleging the same issue
26 of place of conception which had been the basis of the
27 attempted tampering with a witness charge. On May 15, 2003,

1 the Court denied the Defendant's motion for relief. The
2 Defendant appealed.

3
4 **LAW AND ARGUMENT**

5 The issue of ineffective assistance of counsel on appeal
6 is designed as a two part analysis. Strickland v. Washington,
7 466 U.S. 668,694(1984). The two questions arise as to whether
8 counsel's performance was deficient and but for the
9 unprofessional conduct, a different result would have
10 occurred. The North Dakota Supreme Court has held that a
11 defendant claiming ineffective assistance of counsel must
12 establish two elements; (1) counsel's performance was
13 deficient and (2) counsel's deficient performance prejudiced
14 the defendant. State v. Roberson, 502 N.W.2d 249,251.
15 Specifically, the defendant must establish a reasonable
16 probability that but for the lawyers unprofessional conduct,
17 the result of the proceedings would have been different.
18 DeCoteau v. State, 1998 N.D. 199, 586 N.W.2d 156 (1998). The
19 Defendant must further point out with specificity how and
20 where the trial counsel was incompetent and that the probable
21 result would have been different. Id.

22 In the case at hand, the Defendant had been charged with
23 harboring a runaway thirteen year old girl, and gross sexual
24 imposition, for having sex with a fourteen year old girl, and
25 getting her pregnant. While he was in jail, the Defendant was
26 charged with attempted witness tampering for attempting to
27 send letters to his mother to contact the victim and change
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1 her story, specifically to tell her to testify that they sex
2 in Canada.

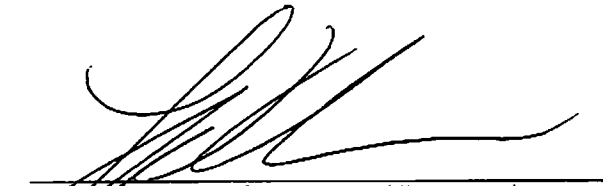
3 The Defendant accepted a plea agreement, wherein he plead
4 guilty to the gross sexual imposition and harboring a runaway
5 charge and the attempted witness tampering charge was
6 dismissed. The Court accepted the plea agreement and took a
7 factual basis for the charge on September 19, 2002. The Court
8 specifically ordered the Defendant to not have contact with
9 any children under the age of eighteen, and that he have no
10 contact with the victim of the gross sexual imposition charge.
11 He was released from court that day. Eight days later, the
12 Defendant was found in an apartment with the victim of the
13 gross sexual imposition charge, and an eighteen month old
14 child.

15 After being sentenced to prison, the Defendant filed the
16 application for post conviction relief, alleging ineffective
17 assistance of counsel. The Court denied this, citing the fact
18 that the Court accepted the plea agreement and the factual
19 basis that the sex act had occurred in Ramsey County.

20 CONCLUSION

21 The Defendant had failed by a preponderance of the
22 evidence that the trial attorney's conduct was unprofessional
23 and but for the unprofessional conduct the result would have
24 been different. The State asks that the trial court decision
25 be upheld.

26 Dated this 31st day of November, 2003.



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