

**Filed 6/26/07 by Clerk of Supreme Court  
IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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2007 ND 92

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Luis Hernandez, Sr., Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

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No. 20070051

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Appeal from the District Court of Cass County, East Central Judicial District,  
the Honorable Georgia Dawson, Judge.

AFFIRMED.

Per Curiam.

Bonnie L. Storbakken, P.O. Box 7273, Bismarck, ND 58507-7273, for  
petitioner and appellant.

Birch P. Burdick, State's Attorney, P.O. Box 2806, Fargo, ND 58108-2806, for  
respondent and appellee.

**Hernandez v. State**

**No. 20070051**

**Per Curiam.**

[¶1] Luis I. Hernandez, Sr., appealed from a district court judgment denying his application for post-conviction relief. Hernandez argued that his trial counsel committed numerous errors which cumulatively caused him to receive ineffective assistance of counsel. Additionally, he argued that his claim of prosecutorial misconduct should not be barred for misuse of process. We conclude the district court properly denied Hernandez's application for post-conviction relief. We summarily affirm under N.D.R.App.P. 35.1(a)(2) and (7). See Laib v. State, 2005 ND 187, ¶¶ 6-7, 705 N.W.2d 845 (holding that a claim of prosecutorial misconduct may be dismissed for misuse of process when the defendant has inexcusably failed to raise the issue in prior proceedings).

[¶2] Gerald W. VandeWalle, C.J.  
Carol Ronning Kapsner  
Mary Muehlen Maring  
Daniel J. Crothers  
Dale V. Sandstrom