

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

Derek Lynn Foreid,)	
)	Supreme Court No. 20100325
Petitioner/Appellant,)	
)	
v.)	Ward County No. 06-K-1988
)	
State of North Dakota,)	
)	
Respondent/Appellee,)	

PETITION FOR REHEARING
OF NORTH DAKOTA SUPREME COURT OPINION AND JUDGMENT DATED
FEBRUARY 8, 2011 AFFIRMING DISTRICT COURT ORDER SUMMARILY
DISMISSING PETITION FOR POST-CONVICTION RELIEF

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STATEMENT OF THE ISSUES

¶1 It is the Petitioner/Appellant's opinion that the Supreme Court overlooked or misapprehended the importance of the failure to provide petitioner with a hearing on his application for post-conviction relief.

STATEMENT OF THE PETITIONER

¶2 Petitioner, Derek Lynn Foreid ("Foreid") was found guilty by a jury of gross sexual imposition. Foreid appealed his conviction to the North Dakota Supreme Court. The Supreme Court affirmed the conviction, Foreid v. State, 2011 ND 16. Foreid filed an application for post-conviction relief. The District Court summarily dismissed the application for post-conviction relief and Foreid appealed claiming the District Court erred in failing to provide him with a hearing on his application for post-conviction relief. The Supreme Court of North Dakota summarily affirmed the lower court's decision.

¶3 Pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure, Derek Lynn Foreid requests the undersigned attorney file this Petition for Rehearing of the North Dakota Supreme Court opinion and judgment dated February 8, 2011, which affirmed the lower courts summary dismissal of Foreid's application for post-conviction relief. It is the opinion of Foreid that the Supreme Court overlooked, or misapprehended, the importance of the fact that he was not afforded a right to a hearing on the claim of ineffective assistance of counsel.

¶4 Foreid filed his application for post-conviction relief raising numerous issues to be brought before the district court. Foreid then filed a Supplement to Application for Post-

Conviction Relief which included his Affidavit in support of the application for post-conviction relief.

[¶5] In Foreid's application, he sets forth, with specificity, the evidence the State had failed to turn over in the initial discovery and the fact his trial counsel had failed to conduct a subsequent interview with the alleged victim, after the initial interview of her. Additionally, at paragraph 8 of his Affidavit, Foreid specifically set forth the manner in which his trial attorney failed to provide effective assistance of counsel in the preparation of Foreid's defense, either for pretrial or trial matters. In providing this affidavit, Foreid had provided the district court with sufficient, and specific, information to support his application for post-conviction relief and raised genuine issues of material fact requiring an evidentiary hearing.

[¶6] Foreid's affidavit supplementing the initial application for post-conviction relief sets out the manner in which his trial attorney failed to provide effective assistance of counsel. Foreid's affidavit specifically setting forth the claims of ineffective assistance, was more than satisfactory to meet any burden of proof he had and therefore an evidentiary hearing should have been held in order to further develop and inform the trial court through testimony and evidentiary support not available in the record of prior proceedings.

[¶7] It is Foreid's opinion that the Supreme Court overlooked or misapprehended the importance of the fact that Foreid requested an evidentiary hearing in order to provide testimony and evidentiary support for his application for post-conviction relief which was

not available in the record of prior proceedings and that such additional evidentiary support is 'unnecessary' in the original application.

CONCLUSION

[¶8] For the foregoing reasons, Derek Lynn Foreid respectfully requests a rehearing.

Respectfully submitted this 21st day of February, 2011.



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