

20100383

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
DECEMBER 17, 2010
STATE OF NORTH DAKOTA

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

SUPREME COURT NO. 20100383

Michael Allan Nelson,

Petitioner-Appellant,

-vs-

State of North Dakota,

Respondent-Appellee.

APPEAL FROM THE CRIMINAL JUDGMENT
SOUTH EAST JUDICIAL DISTRICT
BARNES COUNTY CR. NO. 02-09-K-297
THE HONORABLE MIKAL SIMONSON, PRESIDING

BRIEF

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ISSUE

[¶1] Is it reversible error for the Clerk of the District Court in Barnes County, North Dakota not to notify Defendant/Appellant, Michael A. Nelson (Nelson) of his statutory right to apply for and the procedure to apply for court appointed counsel after Nelson filed an application for postconviction relief with the Clerk of Court?

NATURE OF THE CASE

[¶2] This case involves an application by Nelson for postconviction relief that was filed on August 30, 2010.

[¶3] Nelson's application was dismissed by the Court with prejudice on October 28, 2010.

STATEMENT OF FACTS

[¶4] On December 16, 2009, as part of a plea agreement, Nelson plead guilty to Corruption of a Minor, a Class A Misdemeanor, and was sentenced to 365 days in jail and required to register as a sex offender. Appellee's App., pp. 1 and 2.

[¶5] On August 30, 2010 Nelson filed an application for postconviction relief. Appellant's App. pp. 3, 4, 5, and 6. The State's reply resisting Nelson's application was filed on October 6, 2010. Appellant's App. pp. 8, 9, and 10. The Court dismissed with prejudice Nelson's application for postconviction relief on October 28, 2010. Appellant's App. p. 12.

[¶6] Nelson then filed a Notice of Appeal on December 3, 2010. Appellant's App. p. 13.

ARGUMENT

[¶7] The facts in this case are similar to Grey Bull v. State, 2000 ND 8, 604

NW2d 440. In Grey Bull the record failed to establish the Clerk of the District Court informed Grey Bull of her right to apply for counsel under N.D.C.C. §29-32.1-03. Id. at ¶3.

[¶8] Section 29-32.1-03(6), N.D.C.C. states:

If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.

[¶9] In the instant case, the Barnes County Clerk of the District Court failed to provide Nelson with an application and instructions for court appointed counsel.

CONCLUSION

[¶10] It was reversible error for the Barnes County Clerk of the District Court not to notify a postconviction applicant of his statutory right to apply for counsel and the procedure for obtaining counsel. Therefore the Order dismissing Nelson's application for postconviction relief should be reversed.

Dated this 17th day of December, 2010.



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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing documents were served electronically on the following individual on this 17th day of December, 2010.

Benjamin C. Pulkrabek
Attorney for Appellant
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A handwritten signature in blue ink that reads "Bradley A. Cruff". The signature is written in a cursive style with a large, stylized initial 'B'.

Bradley A. Cruff, ND Bar ID #05181
Attorney for Appellee