

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

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
DECEMBER 10, 2010
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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ABBREVIATIONS

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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 of his statutory right to apply for counsel and of the procedure for obtaining counsel after Mr. Nelson has filed an Application for Post Conviction Relief with the Clerk of Court's office?

NATURE OF THE CASE

[¶2] This case involves an application by Defendant/Appellant, Michael A. Nelson for post conviction relief that was made on August 26, 2010.

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

STATEMENT OF FACTS

[¶4] Defendant/Appellant, Michael Allan Nelson (Mr. Nelson) has plead guilty to the following charges:

1. Theft of Property;
2. Theft of Property (Firearm)
3. Forgery
4. Corruption of a Minor
5. Burglary

[¶5] On August 30, 2010 Mr. Nelson's Application for Post-Conviction Relief was filed. App. p. 3, 4, 5, and 6. The State's Reply Resisting this application is found in the App. p. 8, 9, and 10. The Court dismissed with prejudice Mr. Nelson's Application for Post Conviction Relief. App. p. 12.

[¶6] Mr. Nelson then filed a Notice of Appeal on November 24, 2010. App. p.

13. Along with this appeal Mr. Nelson filed a Notice of Motion, a Motion for Transcripts and Appointment of Appellate Counsel and a Brief in Support of Motions Transcript. App. p. 14, 15, 16 and 17.

[¶7] The Notice of Filing of the Notice of Appeal is dated December 1, 2010. App. p. 18.

[¶8] An Application for Indigent Defense Services Criminal Case is dated 11-29-10 and signed by Mr. Nelson. App. p. 19, 20, 21 and 22. This Application is signed by a District Judge and filed with the Court on December 3, 2010. App. p. 22.

[¶9] The Notice of Appeal was filed December 3, 2010. App. p. 23.

[¶10] The remainder of the documents listed in the Clerks Register of Actions are another Notice of Appeal, Notice of Motion, Motion for Transcripts, Appointment of Appellate Counsel, Brief in Support of Motions for Transcript , Notice of Eligibility for Appointed Counsel and Assignment of Counsel - Notice App. p. 24, 25, 26, 27, and 28.

ARGUMENT

[¶11] The facts in this case are similar to Grey Bull v State, 2000 ND 8, 604 NW2d 440 [¶3]. In Grey Bull the record failed to establish the Clerk of the District Court informed Grey Bull of his right to apply for counsel under NDCC §29-32.1-03. Section 29-32.1-03(6), NDCC states:

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

[¶12] [¶3] Grey Bull goes on to say: “If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to person unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.

[¶13] In Mr. Nelson’s case, the Barnes County Clerk of the District Court failed to do the same thing that the clerk of the District Court in Grey Bull did and that was to notify the party making the Post Conviction Appeal of the statutory right to apply for counsel and the procedure for obtaining counsel.

CONCLUSION

[¶14] It was reversible error for the Barnes County Clerk of the District Court not to notify a Post Conviction Applicant of his or her statutory right to apply for counsel and if the procedure of obtaining counsel. Therefore the Order dismissing Mr. Nelson’s Application for Post Conviction, relief must be reversed.

DATED this 10th day of December, 2010.

/s/

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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 10th day of December, 2010.

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