

**20110088**

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

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
OCTOBER 28, 2011  
STATE OF NORTH DAKOTA

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**SUPREME COURT NO. 20110088**

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Alman Andrew Wong,

Petitioner-Appellant,

-vs-

State of North Dakota,

Respondent-Appellee.

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**PETITION FOR REHEARING**

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## STATEMENT OF THE ISSUES

[¶1] At the Judgment and Sentence of Defendant/Appellant, Alman Andrew Wong on December 16, 2009, should Mr. Wong's incapacity of a mental disease and NDCC 12.1-04-04 have prevented the judge from sentencing Mr. Wong?

[¶2] Was counsel for Defendant/Appellant, Alman Andrew Wong ineffective in his assistance of counsel because he knew of Mr. Wong's mental disease but did not:

1. Require the trial court's ordered evaluations of Mr. Wong's Motions to determine his competence and criminal responsibility be completed before Mr. Wong was sentenced.
2. Stop the sentencing proceeding because of Mr. Wong's mental disease.
3. After sentencing make a motion to have the judgment and sentence vacated because of Mr. Wong has a mental disease.

NATURE OF THE CASE

[¶]3] This is a petition to rehear the opinion filed in the above entitled matter on October 18, 2011.

## STATEMENT OF FACTS

[¶4] Defendant/Appellant, Alman Andrew Wong Petitions for Rehearing from the North Dakota Supreme Court’s ruling affirming the decision of the District Court of Morton County South Central Judicial District, the Honorable Bruce B. Haskell.

## ARGUMENT

**[¶5] ISSUE I. At the Judgment and Sentence of Defendant/Appellant, Alman Andrew Wong on December 16, 2009, should Mr. Wong’s incapacity of a mental disease and NDCC 12.1-04-04 have prevented the judge from sentencing Mr. Wong?**

[¶6] NDCC 12.1-04-04. Disposition of mentally unfit defendants. No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against the person or to assist in the person’s own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

[¶7] A letter, item 38 in Morton County Case Summary Case No. 30-08-K-00880, App. P. 13. “Mr. Wong arrived to NDSH this morning for his court ordered evaluation. When I attempted to assess Mr. Wong, he refused to undergo the assessment shortly after an interview was attempted. During our brief exchange, it was evident that Mr. Wong is suffering from a psychotic disorder, likely that of Schizophrenia, paranoid type, as previously diagnosed. He informed me that he is not taking any antipsychotic medication currently and there is no data in the records to the contrary. During our brief assessment, it became apparent that Mr. Wong, as a result of

the mental condition, is not able to assist in his own defense and lacks a rational (and perhaps factual) understanding of the proceedings against him.

Within the next week to three weeks I will generate and turn in a report to the court indicating my finding that he currently lacks fitness to proceed. I will also indicate that there is a substantial likelihood he will gain fitness to proceed in the foreseeable future on the condition he is required to comply with antipsychotic medication per a court order. He will likely not comply with medication treatment if not required to do so involuntarily.”

[¶8] According to Morton County case summary, the trial Court admitted item 38 into the court record. The letter was addressed to the attorney prosecuting the case and the attorney defending the Defendant, Alman Andrew Wong. Therefore at that time the record clearly show that the trial judge, the prosecutor and the defense attorney all knew Mr. Wong had a mental disease or defect and lacked capacity to understand the proceedings.

[¶9] The record then goes onto show that Mr. Wong was sentenced.

[¶10] According to the following language in NDCC 12.1-04-04, No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against the person or to assist in the person’s own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

[¶11] The record clearly shows that when Mr. Wong was sentenced he had a mental disease or defect, lacked the capacity to understand the proceeding, or to assist

in his own defense. Because of the above, Mr. Wong's Petition for Rehearing should be granted.

**[¶12] ISSUE II. Was counsel for Defendant/Appellant, Alman Andrew Wong ineffective in his assistance of counsel because he knew of Mr. Wong's mental disease but did not:**

**1. Require the trial court's ordered evaluations of Mr. Wong's Motions to determine his competence and criminal responsibility be completed before Mr. Wong was sentenced.**

**2. Stop the sentencing proceeding because of Mr. Wong's mental disease.**

**3. After sentencing make a motion to have the judgment and sentence vacated because of Mr. Wong has a mental disease.**

[¶13] A letter item 38 in Morton County Case Summary Case No. 30-08-K-00880, app. P. 13 states that Lincoln D. Coombs, a psychiatrist at the Jamestown, North Dakota State Hospital can within a week to 3 weeks generate and turn in a report indicating Mr. Wong lacks the fitness to proceed. Therefore since the trial judge, District Judge Bruce B. Haskell had issued an Order requiring an Examination of Mr. Wong, no sentencing should have taken place until the Judge's Order requiring an examination be completed.

[¶14] Because of NDCC 12.1-04-04 and a letter, item 38 in Morton County Case Summary Case No. 30-08-K-00880, Mr. Wong's attorney, Jay Greenwood should after sentencing made a motion to have Mr. Wong's sentence vacated. An examination of



Morton County Case Summary shows no such motion was ever made.

CONCLUSION

[¶15] For the above and foregoing reasons Mr. Wong's Petition for Rehearing should be granted.

DATED this 28th day of October, 2011.

/s/ Benjamin C. Pulkrabek  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I am an employee in the office of Pulkrabek Law Office and I am a person of such age and discretion as to be competent to serve papers.

That on October 28th, 2011, she served, by e-mail, a copy of the following:

**PETITION FOR REHEARING**

to:

Brian Grosinger  
Morton County  
Assistant State's Attorney  
brian.grosinger@mortonnd.org

The undersigned further certifies that on October 28th, 2011, she electronically filed with the Clerk of the North Dakota Supreme Court, Appellant's Petition for Rehearing.

/s/ Sharon Renfrow  
Sharon Renfrow, Legal Assistant to  
Benjamin C. Pulkrabek