

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20110318

FILED
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MARCH 22, 2012
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20110318

Elijah Addai,

Petitioner-Appellant

- vs -

State of North Dakota

Respondent-Appellee

APPEAL FROM THE CRIMINAL JUDGMENT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CR. NO. 2010-CV-01281
THE HONORABLE WICKHAM CORWIN, PRESIDING

PETITION FOR REHEARING

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I. Did the record produced by the Defendant/Appellant Elijah Addai establish ineffective assistance of counsel standards sufficient to require the granting of Mr. Addai’s application for post-conviction relief?	
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<u>Presley v. Georgia</u>				
558 US (2010), 130 SCT. 721, 175L Ed2d 675	.			¶8, 9, 10, 11, 12

OTHER

6 th Amendment to the United States Constitution	.	.	.	¶7
Section 12 of the ND Constitution	.	.	.	¶7

ABBREVIATIONS

Post Conviction Rehearing Transcript - PCRT
Transcript of Jury Trial - Tr.

STATEMENT OF THE ISSUES

[¶1] ISSUE:

I. Did the record produced by the Defendant/Appellant Elijah Addai establish ineffective assistance of counsel standards sufficient to require the granting of Mr. Addai's application for post-conviction relief?

NATURE OF THE CASE

[¶2] This is a petition to rehear the opinion in the above-entitled matter that was heard on March 1, 2012.

STATEMENT OF THE FACTS

[¶3] Appellant Elijah Addai is petitioning for a rehearing of the North Dakota Supreme Court's ruling affirming the decision of the District Court of Cass County, East Central Judicial District, the Honorable Wickam Corwin.

ARGUMENT

[¶4] ISSUE I. Did the record produced by the Defendant/Appellant Elijah Addai establish ineffective assistance of counsel standards sufficient to require the granting of Mr. Addai's application for post-conviction relief?

[¶5] The issue of ineffective assistance of counsel began with the trial court's closing of Mr. Addai's trial to the public and Mr. Addai's trial counsel not objecting to the closure. PCRT, P.20, L.13-25, P.21, L.1-15.

[¶6] Addai's trial counsel testified at the Post-Conviction Relief Hearing regarding the closure by the trial judge of the courtroom to the public. During that testimony, trial counsel admitted his failure to object was wrong. Tr. P.11, L.1-25, P.12, L.1-25, P.13, L.1-6.

[¶7] Defendants in North Dakota have a right to have the public at his or her trial according to the 6th Amendment to the United States Constitution and Section 12 of the North Dakota Constitution.

[¶8] Presley v. Georgia 558 US (2010), 130 SCT. 721, 175L Ed2d 675 requires all trial court orders excluding the public from criminal trial to consider all reasonable alternatives before excluding the public from a trial. After Presley the failure of trial

court to consider all reasonable alternatives to excluding the public before issuing an order to exclude the public will cause a mistrial.

[¶9] In this case no such hearing was ever held on reasonable alternatives. The reason given was there are no alternatives. If that is true Presley still requires a hearing in the trial court and a finding there are no reasonable alternatives.

[¶10] Had the trial court followed Presley and had a hearing before excluding the public, the trial court would have found that the case mark sealed was no reason to exclude the public because that case had been marked in error.

[¶11] Presley requires a new trial when the public is excluded from a criminal trial without holding a hearing to consider reasonable alternatives. Therefore the result in the case now before the court would have been different because a new trial should have been granted after the courtroom was closed to the public. Had the mistrial been granted timely there would have been no guilty verdict.

CONCLUSION

[¶12] Presley was ruled on before the North Dakota Supreme Court ruled on the direct appeal in Mr. Addai's case. Therefore the Presley decision was the law of the land and must be followed by the North Dakota Supreme Court in its ruling on Mr. Addai's direct appeal and on his Post-Conviction Appeal.

[¶13] Mr. Addai has established a record of ineffective assistance of counsel standards that require his application for post-conviction relief be granted.

DATED this 21st day of March, 2012.

/s/Benjamin C. Pulkrabek

Benjamin C. Pulkrabek

