

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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SUPREME COURT NO.: 20120307

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Ryan Ray Corman,

Petitioner-Appellant

- vs -

State of North Dakota

Respondent-Appellee

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APPEAL FROM THE CRIMINAL JUDGMENT  
NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORDS COUNTY CR. NO. 18-07-K-1498  
THE HONORABLE JOEL D. MEDD, PRESIDING

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BRIEF

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BENJAMIN C. PULKRABEK

ATTORNEY FOR APPELLANT

402 FIRST STREET NW  
MANDAN, NORTH DAKOTA 58554  
(701)663-1929  
N.D. BAR BOARD ID NO. 02908

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**STATEMENT OF THE ISSUES**

**[¶1] ISSUE:**

**I. Did the trial judge err when he summarily dismissed petitioner Ryan R. Corman's Application for Post Conviction Relief?**

## NATURE OF THE CASE

[¶2] Petitioner-Appellant, Ryan Ray Corman made an application for Post-Conviction Relief that was filed with the Court on October 3, 2011.

[¶3] Respondent's Brief in Opposition to Petitioner's Application for Post-Conviction Relief was filed October 21, 2011.

[¶4] A Response to State's Motion for Summary Judgment was filed February 9, 2012.

[¶5] A Memorandum decision and order denying application for post-conviction relief was filed July 10, 2012.

[¶6] The Notice of Appeal was filed July 25, 2012 and the Notice of Filing the Appeal was filed July 26, 2012.

[¶7] This matter is now before the North Dakota Supreme Court.

## STATEMENT OF FACTS

[¶8] The District Courts case number is 18-07-K-1498. This case began in June of 2007 when the State charged Ryan Ray Corman with contributing to the delinquency of a minor under NDCC §14-10-06 and with harassment under NDCC §12.1-32-01(5). These charges were tried in a bench trial in March of 2008. After the State rested its case, Corman moved for an acquittal on both charges claiming that the State had failed to carry its burden of proof. The trial court denied Corman's Motion. Corman then presented evidence. After he rested the trial court found him not guilty of harassment but guilty of contributing to the delinquency or depravation of a minor.

[¶9] The trial court sentenced Corman to serve one year in the Grand Forks County Correctional Center with six months suspended. The trial court also ordered Corman to register as a sex offender under NDCC §12.1-32-15(2)(a)(d) and (e).

¶10] Corman appealed the judgment finding him guilty of contributing to the delinquency or depravation of a minor to the North Dakota Supreme Court. The North Dakota Supreme Court in *State v Corman*, 2009 ND 85, 765 N.W.2d 530 ordered the judgment against Corman affirmed as modified. The modification deleted from the criminal judgment the part of the judgment that required Corman to register as a sex offender under NDCC §12.1-32-15(2)(d). This deletion didn't end Corman's having to register as a sex offender because the trial court had also ordered Corman to register as a sex offender under §12.1-32-15(2)(e). As to §12.1-32-15(2)(e) the North Dakota Supreme Court found that the trial courts findings were sufficient to support sentencing Corman as a sex offender under ¶12.1-32-15(2)(e). Therefore the trial court did not err in requiring Corman to register as a sex offender under NDCC §12.1-32-15(2)(e).

¶11] Mr. Corman filed his Application for Post-Conviction Relief in 19-07-K-1498 on the 28<sup>th</sup> day of September, 2011.

¶12] This Petition is verified and contains 9 grounds for post conviction relief.

¶13] The State then filed Respondents Brief in opposition to petitioners application for post conviction relief on October 21, 2011. Part II of that brief is entitled "This Court Should Grant Summary Disposition for the State:

¶14] Mr. Corman's attorney then filed a Response to State's Motion for Summary Judgment.

¶15] The trial judge on July 9, 2012 signed a Memorandum Decision and Order Denying Application for Post Conviction Relief.

¶16] Mr. Corman appealed that denial and this matter is now before the North Dakota Supreme Court.

## ISSUE

[¶17] Did the trial judge err when he summarily dismissed petitioner Ryan R. Corman's Application for Post Conviction Relief?

## ARGUMENT

[¶18] The standard of review of a summary disposition of post conviction relief according to *Vandenburg vs State* 2003 ND 71, 600 NW2d 568 is:

“The procedure followed for a motion for the summary disposition of a petition for post-conviction relief is similar to that followed for a motion for summary judgment.”

*Weaver*, 2003 ND 47, ¶5,658 NW2d 352 . Proceedings for post-conviction relief are civil in nature and all rules and statutes applicable in civil proceedings are available to the parties. *Id.* Our review of a summary denial of post-conviction relief is like the review of an appeal from a summary judgment. *Id.* A trial court may summarily dismiss an application for post-conviction relief if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.* The initial burden is on the moving party to show there is no genuine issue of material fact, the burden shifts to the non-movant to demonstrate there is a genuine issue of material fact. *Id.* For the summary disposition of a petition for post-conviction relief, the moving party bears the burden of showing there is no dispute as to either the material facts or the inferences to be drawn from undisputed facts, and that the movant is entitled to judgment as a matter of law. *Id.*; N.D.C.C. § 29-32.1-09(1). A genuine issue of material fact exists if reasonable minds could draw different inferences and reach different conclusions from the undisputed facts. *See Belgarde v. Rosenau*, 388 N.W.2d 129, 130 (N.D. 1986).

¶19] Mr. Corman sets out 9 grounds for post conviction relief in his application for post conviction relief. App. P.8 to 22. In these grounds for relief Petitioner alleges:

(1) that law enforcement personnel and the States Attorney knowingly and intentionally used false information against him to obtain an arrest warrant;

(2) that his conviction was obtained using evidence that was falsified and witnesses testimony was coerced by police and the States Attorney;

(3) that the States Attorney illegally tampered with defense witnesses prior to the trial without notification to the Defendant or his trial counsel;

(4) that the States Attorney materially misrepresented this criminal history to the Court at sentencing in order to prove he was a dangerous sex offender; Defendant alleges that the States Attorney also misrepresented the Defendant's criminal history in documentation submitted to a counselor/psychologist which materially colored that professional's treatment of the Defendant;

(5) that because of the use of the incorrect criminal history, Defendant was subsequently forced to register as a sex offender and suffered the indignity which is attendant of such registration.

¶20] In the application the petitioner in each of the 9 grounds for relief explains in detail what was done and names the persons involved where applicable.

¶21] These 9 grounds are not issues that were known to the District Court or the defense counsel at the time of the trial, would not have been made part of the record of the trial, and therefore would not have been reviewed by the Supreme Court at the Defendant's appeal.

¶22] According to Petitioners verified application for post conviction relief these are troublesome facts behind the trial evidence and testimony that puts the trial evidence in question.

¶23] Petitioner believes summary dismissal in his case is not appropriate for his application for post conviction and an evidentiary hearing is necessary to develop the issues and complete the record.

¶24] According to *Jensen vs State* 373 NW2d 894 (ND 1985):

The Uniform Post-Conviction Procedure Act was never intended to create a new remedy to wholly replace habeas corpus and the other common-law writs. Rather, the Uniform Act creates a procedure which implements the writ of habeas corpus and provides an opportunity for more extensive development of the issues and a more complete record for review.

¶25] The trial courts dismissal of the Mr. Corman's 9 grounds for post-conviction relief and its reasons for the dismissal set out in Memorandum Decision and Order Denying Application for Post-Conviction Relief:

“As to each Petitioner's allegations, they are either barred by res judicata or misuse of process. In particular, claims one, two, four, six, and seven are barred by res judicata. With regard to these allegations, Petitioner provided in his Application explanations as to the grounds for relief and essentially presented two arguments: insufficient evidence to convict him and erroneous requirement to register as a sex offender. Both of these issues were addressed by this Court in his initial trial, and were later raised on appeal to the North Dakota Supreme Court. See State v. Corman, 2009 ND 85, 765 NW2d 530. Therefore, because the claims have been raised on direct appeal, they cannot be subsequently raised in a post-conviction application, Murchison v. State, 1998 ND 96, ¶7, 578 NW2d 514 and are barred by re judicata.”

¶26] The remaining claims are barred by misuse of process. With regard to allegations three, five, eight, and nine, Petitioner explained in his Application his record of past sex offenses

was false, the State acted impermissibly at trial, and the Court erred in allowing the State's misconduct. In reviewing the prior proceedings, it is clear that Petitioner's prior criminal history was presented at trial and the defense was able to object to the State's conduct, but was overruled. Petitioner then failed to pursue these claims on this appeal before the North Dakota Supreme Court. As a result of the inexcusable failure to pursue the issues on direct appeal, the issues are barred under misuse of process. See Clark, ¶ 27, 678 NW2d 765.

[¶27] The problem with the above trial courts ruling is that the facts in the 9 issues raised in the post conviction were not known to Mr. Corman or his counsel at the time of trial. Therefore they weren't raised at trial and aren't a part of the trial record. Mr. Corman if allowed to have a hearing in the District Court will be able to more extensively develop each issue and have more complete record for review.

#### CONCLUSION

[¶28] For the above and foregoing reasons this case should be remanded to the trial court with an order directing the trial court to allow Petitioner to have a hearing on his application for post conviction relief.

Dated this 21st day of August, 2012.

/s/ Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek, ID #02908

**CERTIFICATE OF SERVICE BY MAIL**

[¶29] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

That on August 21st, 2012, she served, by e-mail and mail a copy of the following:

**APPELLANT'S BRIEF**

to:

Carmell F. Mattison  
GF County Assistant State's Attorney's Office  
[carmell.mattison@gfcounty.org](mailto:carmell.mattison@gfcounty.org)

Mailed to:  
Ryan R. Corman  
JRCC  
2521 Circle Dr.  
Jamestown, ND 58401

The undersigned further certifies that on August 21st, 2012, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANT'S BRIEF.

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