IN THE SUPREME COURT

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,	)	
	)	Supreme Court No: 20120375
Plaintiff and Appellee,	)	
	)	Grand Forks County District Court
v.	)	Case No. 18-2011-CR-02656
	)	
ADAM SCOTT HAMILTON,	)	
	)	
Defendant and Appellant.	)	

Appeal from Judgment of Conviction from the District Court,

Grand Forks County, Northeast Central Judicial District, North Dakota

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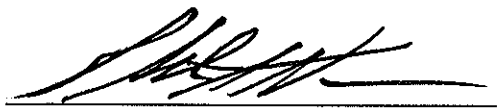
BRIEF OF APPELLANT

Respectfully submitted by:



1-30-13

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Date

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[¶3] STATEMENT OF ISSUES

[¶4] I. Whether the judge committed reversible error in accepting the defendant's guilty plea, where Mr. Hamilton did not enter his guilty plea knowingly and voluntarily because the plea colloquy did not comport with Rule 11(b)(1) in substantially advising him of his rights.

[¶5] II. Whether the court committed reversible error in accepting the defendant's guilty plea, where no factual basis was admitted to under the terms of Rule 11(b)(3).

[¶6] STATEMENT OF THE CASE

[¶7] On December 13, 2011, an information was filed charging the Defendant, Adam Scott Hamilton (hereinafter referred to as Mr. Hamilton), with the crime of Continuous Sexual Abuse of a Child, a Class AA Felony. Mr. Hamilton's initial appearance was before Judge Debbie Kleven on December 13, 2011. Mr. Hamilton's arraignment was before Judge Joel Medd on February 21, 2012. Although Mr. Hamilton originally admitted to the investigating officers that he molested the child, he thereafter has maintained that he does not remember the incidents. Sent. Tr. 53. There was a pretrial conference before Judge Joel Medd on May 24, 2012, at which Mr. Hamilton entered an open plea of guilty. Pretrial Conf. Tr. 3.

[¶8] During the pretrial conference, only one of the mandatory factors of advice to the Defendant from Rule 11(b)(1) of the North Dakota Rules of Criminal Procedure was even mentioned: (F), the nature of the charge to which the Defendant was pleading. Pretrial Conf. Tr. 4. The only factual basis formed on the record at the hearing was through a reading of the charge to Mr. Hamilton followed by asking him if he admitted it, which he did. Id. Judge Medd

immediately thereafter accepted the plea of guilty. Id. At the sentencing hearing on October 1, 2012, Judge Medd sentenced Mr. Hamilton to 30 years in prison. Sent. Tr. 96.

[¶9] STATEMENT OF FACTS

[¶10] Mr. Hamilton is a 34-year-old man with no previous criminal record and a distinguished military career. Sent. Tr. 95. On December 12, 2011, Deputies Rod Huot and Delicia Glaze interviewed Erin Hamilton, Mr. Hamilton's wife at that time, in response to her complaint that he was molesting her son (his step-son). App. 14. During this interview with the deputies, Mr. Hamilton admitted to touching his step-son inappropriately five to six years earlier in Fargo and then more recently in Larimore, about a month previously. App. 13. The recent, far more significant, contacts involved oral and anal sex, in both directions. Id. Mr. Hamilton admitted to an unspecified number of sexual contacts, though the number seemed at least three. Id. Mr. Hamilton said that he did the acts on days when he was really tired. Id.

[¶11] The next day, December 13, 2011, an information was filed charging Mr. Hamilton with Continuous Sexual Abuse of a Child, a Class AA Felony, in violation of North Dakota Century Code Sections 12.1-20-03.1(1) and 12.1-32-01(1). After his December 13, 2011, initial appearance and February 21, 2012, arraignment, Mr. Hamilton attended his pre-trial conference on May 24, 2012, before Judge Joel Medd. The judge notified Mr. Hamilton of the charge against him. Pretrial Conf. Tr. 2. Unsatisfied with the plea agreement offered by the State, Mr. Hamilton, through his attorney, expressed his desire to enter an open plea of guilty. Id. at 3.

[¶12] The following exchange then occurred:

> Court: "And you understand what an open plea means is the Court would have an option of sentencing you to the maximum potential sentence or, or anything less than that. You understand that."
>
> Def.: "Yes, Your Honor."
>
> Court: "With that understanding, how would you plead to this charge of continuous sexual abuse of child?"

Def.: "Guilty, Your Honor."

Court: "Is this plea of guilty freely and voluntarily made?"

Def.: "Yes, Your Honor."

Court: "And we'll go over this more thoroughly at the time of the sentencing but at this point do you agree that you committed the offense as charged in the Information?"

Def.: "Yes, Your Honor."

Court: And the charge here is that you engaged in a combination of three or more sexual acts or sexual contacts with a juvenile minor, initials H.H., who was under the age of 15 during a period of three or more months when you were at least 22 years of age at the time of the offense and that minor was under the age of 15. And that this took place in Grand Forks County. That's what's specifically alleged in the Information. You understand that."

Def.: "Yes, Your Honor."

Court: "And you admit that you committed the offense as indicated that I just outlined."

Def.: "Yes, Your Honor."

Court: "The Court finds that the plea of guilty is freely and voluntarily made and there's a factual basis for the plea of guilty. The Court will accept the plea of guilty."

Pretrial Conf. Tr. 3-4.

[¶13] The court then moved on to order a pre-sentencing report and to schedule the sentencing hearing. Id. at 4-5. The only other words directed at Mr. Hamilton were at the end of the hearing. The court told him he needed to get in contact with the parole and probation office. Id. at 7. The court also directed that he needed to stop by the clerk's office and he needed to go through his independent evaluation expeditiously, if at all. Id. at 8.

[¶14] After Mr. Hamilton's initial contact with the investigators, he asserted that he had no memory of committing the offenses. In particular, he alleges that the sleeping medication Ambien caused amnesia for significant parts of his recent life, and he believes the incidents did not happen. Sent. Tr. 95-96. The court commented specifically on this "denial" as a "serious harm" before sentencing Mr. Hamilton to 30 years. Id. Judgment of conviction was entered on October 1, 2012.

[¶15] Mr. Hamilton timely filed notice of appeal on October 9, 2012.

[¶16] LAW AND ARGUMENT

[¶17] Mr. Hamilton timely appealed as of right from the final judgment of conviction and this Court has jurisdiction under North Dakota Century Code Sections 29-28-03 and 29-28-06. With respect to the standard of review, Mr. Hamilton did not object to the errors in accepting his plea. One could argue this operates as a waiver of the issue on appeal unless Mr. Hamilton establishes obvious error. State v. Fichert, 2010 ND 61, ¶ 7, 780 N.W.2d 670. As the Rules of Criminal Procedure direct, "an obvious error or defect that affects substantial rights may be considered even though it was not brought to the court's attention." N.D. R. Crim. P. 52(b).

[¶18] In order to establish plain or obvious error, Mr. Hamilton must show: "(1) error; (2) that is plain; and (3) affects substantial rights." State v. Kruckenberg, 2008 ND 212, ¶ 15, 758 N.W.2d 427. In addition, to be considered obvious error, "an alleged error must be a clear deviation from an applicable legal rule under current law . . ." State v. Vandehoven, 2009 ND 165, ¶ 8, 772 N.W.2d 603. Also, if this Court considers this appeal to be like an appeal of a lower court's order denying a request to withdraw a guilty plea, Mr. Hamilton needs to show a manifest injustice to "withdraw his plea" after the court below has accepted a guilty plea and imposed a sentence. See N.D. R. Crim. P. 32(d).

[¶19] I. **The Court Plainly Erred in Accepting Mr. Hamilton's Guilty Plea Without Substantially Complying with Rule 11(b)(1)'s Mandatory Colloquy.**

[¶20] Under the heading of "Advice to Defendant," Rule 11 of the North Dakota Rules of Criminal Procedure lays out in detail pre-requisites to the judge being allowed to accept a guilty plea. N.D. R. Crim. P. 11. In particular, it states:

> 11(b)(1): The court may not accept a plea of guilty without first, by addressing the defendant personally [except as provided by Rule 43(b)] in open court, informing the defendant of and determining that the defendant understands the following:

(A) the right to plead not guilty, or having already so pleaded, to persist in that plea;
(B) the right to a jury trial;
(C) the right to be represented by counsel at trial and at every other stage of the proceeding and, if necessary, the right to have the counsel provided under Rule 44;
(D) the right to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;
(E) the defendant's waiver of these rights if the court accepts a plea of guilty;
(F) the nature of each charge to which the defendant is pleading;
(G) any maximum possible penalty, including imprisonment, fine, and mandatory fee;
(H) any mandatory minimum penalty; and
(I) the court's authority to order restitution.

N.D. R. Crim. P. 11(b)(1). The only exception listed therein, Rule 45, has to do with misdemeanor offenses, hearings on purely legal questions, and sentence corrections, none of which were the case at this pretrial conference. N.D. R. Crim. P. 45. These mandatory statements of information are so important to the proper administration of our criminal system of justice that Rule 11 specifically requires that "[a] verbatim record of the proceedings at which the defendant enters a plea must be made. If there is a plea of guilty, the record must include the court's inquiries and advice to the defendant required under Rule 11(b) and (c)." N.D. R. Crim. P. 11(f).

[¶21] A. *Substantial compliance with Rule 11(b)(1), requiring the defendant be advised of his rights in open court on the record, is mandatory.*

[¶22] As seen above, before a court may accept a guilty plea, it must advise the defendant of certain rights, as Rule 11 directs. State v. Magnuson, 1997 ND 228, ¶16, 571 N.W.2d 642. Giving this advice is "mandatory and binding on the court." State v. Schumacher, 452 N.W.2d 345, 346 (N.D. 1990). In the Federal arena, the Eighth Circuit has noted that "although ritualistic compliance with the dictates" of the Rule is not required, sufficient procedures must be observed. United States v. Riegelsperger, 646 F.2d 1235, 1236 (8th Cir. 1981). The North

Dakota Supreme Court has held that "ritualistic compliance is not required, but the court must substantially comply with the procedural requirements of the rule to ensure the defendant is entering a voluntary plea of guilty." State v. Hoffarth, 456 N.W.2d 111, 114 (N.D. 1990). As will be seen in greater depth later, the North Dakota Supreme Court has recently found lack of substantial compliance with the strictures of Rule 11(b)(1) to constitute obvious error, and that the 11(b) and 11(c) errors in that case necessitated reversal on appeal to avert manifest injustice. State v. Vandehoven, 2009 ND 165, ¶¶ 28-30, 772 N.W.2d 653.

[¶23] B. *The only part of 11(b)(1) arguably complied with was 11(b)(1)(F), which is not substantial compliance with this mandatory provision.*

[¶24] Though listed in nine sub-headings (A) through (I), several of those include numerous rights of which the defendant must be advised. For example, (D) includes the right to confront witnesses, the right to cross-examine adverse witnesses, the right to be protected from compelled self-incrimination, the right to testify, the right to present evidence, and the right to compel the attendance of witnesses. N.D. R. Crim. P. 11(b)(1)(D). So when the court completely fails to advise the defendant of his rights as per 11(b)(1)(D) as here, there are many rights involved which the court failed to determine that the defendant understood and knew that he was waiving. Let us first go to the rights as to which the court did advise Mr. Hamilton.

[¶25] The court advised Mr. Hamilton that the charge he faced was what was specifically alleged in the information. Pretrial Conf. Tr. 4. In particular, the court said:

> "And the charge here is that you engaged in a combination of three or more sexual acts or sexual contacts with a juvenile minor, initials H.H., who was under the age of 15 during a period of three or more months when you were at least 22 years of age at the time of the offense and that minor was under the age of 15. And that this took place in Grand Forks County. That's what's specifically alleged in the Information. You understand that."

Id. Mr. Hamilton responded, "Yes, Your Honor." So the court arguably advised Mr. Hamilton of the nature of the charge to which he was pleading, in compliance with Rule 11(b)(1)(F). On the other hand, the court did not ask Mr. Hamilton if he understood that the charge was a AA Felony. Although the court did, at the beginning of the conference, mention "The Defendant is charged with continuous sexual abuse of a child as a class AA felony," there is no direction of that comment toward the defendant, and there is no question or answer as to whether Mr. Hamilton understood that. Pretrial Conf. Tr. 2. Considering the complete absence of other compliance with the colloquy, this particular error seems minor.

[¶26] As an initial overview statement regarding the following analysis, there was no reference during the pretrial conference to any previous hearing. All our discussion is limited to the plea colloquy by which we here mean the pretrial conference.

[¶27] The court did not anywhere during the pretrial conference advise Mr. Hamilton of his right to persist in his plea of not guilty. Such advice was required by Rule 11(b)(1)(A). The court did not advise Mr. Hamilton of his right to a jury trial. Such advice was required by Rule 11(b)(1)(B). The court did not advise Mr. Hamilton of his right to be represented by counsel at trial, his right to be represented by counsel at every other stage of the proceeding, or his right to have counsel provided for him. Such advice was required by Rule 11(b)(1)(C). The court did not advise Mr. Hamilton of his right to confront witnesses, cross-examine adverse witnesses, to be protected from compelled self-incrimination, his right to testify and to present evidence, or his right to compel the attendance of witnesses. Such advice was required by Rule 11(b)(1)(D). The court did not advise Mr. Hamilton of the fact that he would waive all the Rule 11(b)(1) rights if the court accepted his plea of guilty. Such advice was required by Rule 11(b)(1)(E).

[¶28] The court did not advise Mr. Hamilton of any maximum possible penalty, including imprisonment, or fines, or mandatory fees. In fact, here the maximum penalty is life in prison, and one can hardly imagine a situation in which it is more necessary to notify a defendant of the maximum possible penalty and ask if he understands that and that he waives his trial on the issue. Such advice was required by Rule 11(b)(1)(G). The court did not advise Mr. Hamilton of the court's authority to order restitution. Such advice was required by Rule 11(b)(1)(H).

[¶29] In sum, the court at least partially complied with Rule 11(b)(1)(F)'s mandate that it advise the defendant of the nature of the charge against him, to the extent that the court read the charge in the information to him and asked if he understood that. Pretrial Conf. Tr. 4. Other than that, the court completed failed to comply with Rule 11(b)(1) in any way. Partial compliance with one of the Rule 11(b)(1) factors in this case cannot constitute substantial compliance with its mandates. As the North Dakota Supreme Court recently noted in Vandehoven, "The court failed to address several of the Rule 11(b) requirements with Vandehoven, and some which were addressed were not fully and properly explained. Substantial compliance requires more than occurred in this case." State v. Vandehoven, 2009 ND 165, ¶ 27, 772 N.W.2d 603.

[¶30] C. *This failure is obvious error, and the judgment should be reversed to correct a manifest injustice.*

[¶31] In order to prove obvious error, Mr. Hamilton needs to show there is: "(1) error; (2) that is plain; and (3) affects substantial rights." State v. Kruckenberg, 2008 ND 212, ¶ 15, 758 N.W.2d 427. In addition, to be considered obvious error, "an alleged error must be a clear deviation from an applicable legal rule under current law . . ." State v. Vandehoven, 2009 ND 165, ¶ 8, 772 N.W.2d 603.

[¶32] As the foregoing analysis shows, failure to comply with the mandates of Rule 11(b)(1) is error. Rule 11(b)(1) must be substantially complied with before the court is allowed to accept a plea of guilty. The error is obvious. The Rules mandate the colloquy must be verbatim on the record as to all the factors from (A) to (I), with the defendant's replies as well. N.D. R. Crim. P. 11(f). Nonetheless, in this case there is no colloquy whatsoever. The only arguable attempt at satisfying Rule 11(b)(1) was where the judge read the information to the defendant and asked if he understood that. Pretrial Conf. Tr. 4. The possibility of life in prison, a mandatory sex offender evaluation and registration, and court ordered restitution, for example, were all not even mentioned.

[¶33] This is not a minor deviation from the Rules which might be considered compliance. As the North Dakota Supreme Court has noted, "Rule 11 and our interpretive caselaw have enunciated clear legal guidelines for acceptance of a guilty plea. The record in this case demonstrates a clear deviation from an applicable legal rule under current law." State v. Vandehoven, 2009 ND 165, ¶ 8, 772 N.W.2d 603. The instant case has significantly greater 11(b)(1) deficiencies than that in Vandehoven. There, at least several of 11(b)(1)'s factors were discussed by the court with the defendant. For example, the court advised the defendant he could hire a particular attorney or have an attorney represent him if the case went to trial, Id. The Court listed deficiencies in: (C), (D), (G), and (H). Id.

[¶34] In Mr. Hamilton's case, there are deficiencies in every single element of the Rule 11(b)(1) colloquy. With the sole exception of reading him the offense, the court at the hearing before accepting the plea informed Mr. Hamilton of none of the required elements of Rule 11(b)(1). If merely reading the information to a defendant suffices as complying with the mandatory advice requirements of 11(b)(1), there is nothing left to the Rule. The Rule is in place

to determine whether the defendant is knowingly and voluntarily pleading guilty to a crime, realizing the substantial rights he is giving up in doing so and the possible penalties he faces as a result—not just to ensure he has heard and understands the offense. The effect on Mr. Hamilton's substantial rights is obvious. For example, he faced life in prison (and was sentenced to thirty years) and was not so advised before giving up his right to trial with his guilty plea, and he must register as a sex offender.

[¶35] The district court's failure to advise Mr. Hamilton of any of the relevant factors mandated by 11(b)(1) (with the arguable exception of (F)) is clear error, a clear deviation from a legal rule under current law, and Mr. Hamilton's substantial rights are affected. The court's almost complete failure to comply with 11(b)(1) is significantly worse than the 11(b) deficiency in Vandehoven, where the North Dakota Supreme Court found the 11(b) and 11(c) deficiencies warranted reversal to correct manifest injustice. We respectfully request this Court reverse the judgment below.

[¶36] II. **The Court Plainly Erred in Accepting Mr. Hamilton's Guilty Plea, Specifically in Finding a Factual Basis, where no Facts were Discussed until the Sentencing Hearing, Mr. Hamilton then Denied the Acts, and the Acts Previously Admitted Did Not Constitute the Offense Charged.**

[¶37] The district court must assure itself there is a factual basis of a guilty plea. N.D. R. Crim. P. 11(b)(3). "A factual basis is a statement of facts to assure the defendant is guilty of the crime charged." State v. Bates, 2007 ND 15, ¶ 8, 726 N.W.2d 595. This means the court must determine "the conduct which the defendant admits constitutes the offense charged . . ." Frojstad v. State, 2002 ND 52, ¶ 19, 641 N.W.2d 86. The court should compare the crime's elements to those facts which the defendant admits. Id. Only after the court has found a factual basis may it render judgment on a guilty plea. N.D. R. Crim. P. 11(b)(3).

[¶38] A. *There are several methods of determining a factual basis.*

[¶39] The North Dakota Supreme Court has identified three preferred ways to determine a factual basis:

> "First, the court could inquire directly of the defendant concerning the performance of the acts which constituted the crime. Secondly, the court could allow the defendant to describe to the court in his own words what had occurred and then the court could question the defendant. Thirdly, the court could have the prosecutor make an offer of proof concerning the factual basis for the charge."

State v. Bates, 2007 ND 15, ¶ 8, 726 N.W.2d 595. In addition, the court "may conclude that a factual basis exists from anything that appears on the record." Mackey v. State, 2012 ND 159, ¶ 13, 819 N.W.2d 539. This recent ruling expanded the sources from which such determination could be made to include information brought to the court's attention after the acceptance of the plea. This is in conflict with some jurisdictions, which hold that "a sufficient factual basis must be determined at the time the plea is accepted" and "an after-the-fact hearing will not suffice." United States v. Adams, 448 F.3d 492, 500 (2d Cir. 2006).

[¶40] B. *At the pretrial conference, the judge merely read the information and got no facts in any way.*

[¶41] As seen above in detail, the judge read the complicated but specific-fact-free charge in the information to Mr. Hamilton. Pretrial Conf. Tr. 4. The judge then asked Mr. Hamilton "And you admit that you committed the offense as indicated that I just outlined," to which Mr. Hamilton replied: "Yes, Your Honor." Id. The court's next words were: "The Court finds that the plea of guilty is freely and voluntarily made and that there's a factual basis for the plea of guilty. The Court will accept the plea of guilty." Id. No discussion of any of the facts occurred thereafter at that hearing. Clearly, there was not a factual basis established at this point, which would dispose of the issue in some jurisdictions. Due to the North Dakota Supreme Court's recent ruling in Mackey, we consider the sentencing hearing.

[¶42] C. *At the sentencing hearing, although the pre-sentence investigation report alleged vague facts and the prosecutor put forth some facts to support the charge, these were also insufficient to constitute a factual basis.*

[¶43] There are several new sources of information which the State could argue establish a factual basis for the offense. We shall go through each and examine will show they are insufficient. There was an in-court statement by the victim. There was Mr. Hamilton's confession, which he later repudiated, saying he does not remember the events and does not think he could have done it. Also, there were the facts (and the pre-sentencing report) offered by the State and Mr. Hamilton's attorney at the sentencing hearing.

[¶44] The victim's statement in court mentioned nothing sexual at all. Sent. Tr. 8-12.

[¶45] Mr. Hamilton's denial of the offense or amnesia about it is noted by Dr. Benson during her testimony. Sent. Tr. 41, 51, 52, 54.

[¶46] The first actual discussion of facts occurs on page 89 out of 107 of the transcript, where Mr. Hamilton's attorney noted that: "something happened five or six years ago in West Fargo not to the extent of what happened here and then there was most recently the current incidents." Sent. Tr. 89. Note that the Fargo incident cannot properly be considered part of the offense as charged as the information was for Grand Forks County. Thus, even Mr. Hamilton's initial admission of said conduct cannot be used to establish a factual basis for continuous sexual abuse in Grand Forks county.

[¶47] Mr. Hamilton's attorney continued, "it wasn't a continuous thing over four or five years. . . it wasn't something that continued on for five or six years, it was something that happened once in West Fargo and then at a later date . . . It wasn't something that continued for five or six years." Id. In fact, this actually can be considered a denial of the charge, and it is perfectly consistent with Mr. Hamilton's original confession. Mr. Hamilton originally admitted

"It happened in Fargo, approximately 5-6 years ago . . . and [I] touched H.H. inappropriately." App. 13. Turning to recent conduct, he went on, "I made another mistake about a month ago . . ." Id. He then detailed oral and anal sex in the November to December time frame. Id.

[¶48] Although the confession is difficult to pin down exactly, it seems that, at most, Mr. Hamilton admitted to one offense in Fargo six years before (thus not part of the offense with which he was charged), and some offenses over a one to two month time period in 2011. This is insufficient to form a factual basis for Continuous Sexual Abuse of a Child. The essential elements of that crime include that the crime occur "[w]ithin a period of three or more months in (Grand Forks County), North Dakota . . ." Three or more months must mean three months at a minimum, or else the "continuous" crime could be satisfied by three acts committed in succession in the course of a few minutes. Also, the County must have some meaning, or it would not be part of the essential elements. Here, Mr. Hamilton was charged with the conduct in Grand Forks County, yet the State seems to have convicted him based on conduct in Fargo. That conduct should be irrelevant to whether he committed this offense.

[¶49] In rebuttal, the State quoted Dr. Benson's report about the confession, noting Mr. Hamilton had admitted to sexual encounters "at least three times over the last several months. He admitted to mutual anal sex at least three times during this same time period as well . . ." Sent. Tr. 94. Again, note the complete absence of specificity as to the time period. Several can mean anything more than one. In order to support a factual basis for Continuous Sexual Abuse of a Child, three or more months needs to be shown.

[¶50] In short, even in his initial confession, Mr. Hamilton did not admit a sufficient factual basis for the crime with which he was charged. He was asked none of the particulars at the hearing at which his plea was accepted. No relevant facts were presented at all at that

hearing. When the particulars were finally examined at sentencing, Mr. Hamilton denied the encounters, and the discussion of them on the record failed to rectify the earlier lack of factual basis.

[¶51] Considering the complete lack of a factual basis at the time of the acceptance of the plea, the retraction of the (insufficient) confession prior to sentencing, the lack of specificity on the record proving the facts admitted to constitute the offense pleaded to, and Mr. Hamilton's denial of the offense, the court's error in finding a factual basis prior to judgment seems plain. In light of the defendant's protestations of innocence (in the form of both denial and lack of memory), the lack of any real specificity on the record should have put the court on notice that it needed to be extra careful in making sure there was a factual basis for the offense. The effect on his substantial rights is clear.

[¶52] It would be manifestly unjust to have anyone serve thirty years in prison when the court has never even assured itself properly that there are facts to support the conviction. We therefore respectfully request the judgment below be REVERSED.

[¶53] CONCLUSION

[¶54] For the foregoing reasons, Mr. Hamilton respectfully requests that this Court REVERSE the judgment below.

Respectfully submitted this 30 day of January, 2013.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA, Plaintiff and Appellee, v. ADAM SCOTT HAMILTON, Defendant and Appellant.	)	Supreme Court No. 20120375 Grand Forks County District Court Case No. 18-2011-CR-02656

CERTIFICATE OF SERVICE
BY E-MAIL

The undersigned, being of legal age and an officer of the court says that on January 30, 2013, he served true and correct copies of the following documents

1. **Brief of Appellant; and**
2. **Appendix to Appellant's Brief.**

Electronically through e-mail from bhankeylaw@gmail.com to:

M. Jason McCarthy, Attorney for Appellee
Grand Forks County State's Attorney's Office E-mail: sasupportstaff@gfcounty.org
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Dated this 30th day of January, 2013.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA, Plaintiff and Appellee, v. ADAM SCOTT HAMILTON, Defendant and Appellant.	)	Supreme Court No. 20120375 Grand Forks County District Court Case No. 18-2011-CR-02656

CERTIFICATE OF SERVICE
ON INDIGENT DEFENDANT

The undersigned, being of legal age and an officer of the court says that on January 30, 2013, he served true and correct copies of the following documents

1. **Brief of Appellant; and**
2. **Appendix to Appellant's Brief.**

by first-class, U.S. Mail, placing the same in the U.S. Postal Service, with postage being fully prepaid, with the return address of Hankey Law, 405 Bruce Ave, Ste 100, Grand Forks, ND 58201, and addressed to:

Adam Hamilton, Defendant and Appellant
Inmate No. 038595
c/o North Dakota State Penitentiary
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Bismarck, ND 58506-5521

Dated this 30th day of January, 2013.

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