

**Filed 4/4/13 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2013 ND 42

Larry Allen Froistad, Jr.,

Plaintiff and Appellant

v.

Robyn Schmalenberger, Warden,
North Dakota State
Penitentiary, Eddy Wilson,
Warden, Wyoming State
Penitentiary,

Defendants and Appellees

No. 20120381

Appeal from the District Court of Bowman County, Southwest Judicial District, the Honorable Zane Anderson, Judge.

AFFIRMED.

Per Curiam.

Benjamin C. Pulkrabek, 402 1st Street NW, Mandan, ND 58554-3118, for plaintiff and appellant.

James D. Gion, State's Attorney, 23 Main Avenue, P.O. Box 101, Regent, ND 58650-0101, for defendants and appellees.

Froistad v. Schmalenberger
No. 20120381

Per Curiam.

[¶1] Larry Froistad appeals a district court order summarily denying his petition for post-conviction relief without an evidentiary hearing. Froistad argues the State withheld exculpatory evidence and newly discovered evidence warrants a new trial. Froistad sought and was denied post-conviction relief after a full hearing. Denial of Froistad’s requested relief was affirmed. Froistad v. State, 2002 ND 52, 641 N.W.2d 86. We affirm under N.D.R.App.P. 35.1(a)(7). Steen v. State, 2007 ND 123, ¶ 13, 736 N.W.2d 457 (“[M]isuse of process occurs when a post-conviction relief applicant ‘presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding.’”) (quotation omitted).

[¶2] Gerald W. VandeWalle, C.J.
Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom